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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 30th November, 2018

\+ Crl. Appeal no. 419/2002

OM PRAKASH ..... Petitioner
Through: Mr. M.L. Yadav, Adv.

versus

STATE OF DELHI ..... Respondent
Through: Mr. Amit Ahlawat, APP for the State.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Neelam, aged about 35 years, wife of the appellant herein, was indisputably living with him, and their children, in the first floor portion of property described as RZ-8K in Gali No. 4, Indira Park, Palam Road, New Delhi. Sometime during the night of 11th and 12th September, 2000, she sustained injuries in the consequence of which she died, the death having been discovered in the morning of 12.09.2000 and brought to notice of local police vide DD No. 10 A (Ex.PW-8/A). The matter was entrusted, for inquiry, to SI Rampal (PW-8) who accompanied by Constable Sabodh (PW-6) went to the place in question. They found the dead body lying in the said premises with some indication of struggle, this in the form of broken bangle pieces and blood stains.

2. Sangeeta (PW-1), five year old daughter of the deceased (and the appellant herein) was also present besides the appellant. The child (PW-1) was examined and her statement (PW-1/A), in question and answer form, was recorded, it revealing physical assault with a rolling pin (*Bellan*) by the appellant on the head of the deceased during the previous night, this having led to the injuries that proved fatal. PW-8 (the investigating officer) recorded his observations as to the scene of incident, by endorsement (Ex.PW-5/A), on the basis of which first information report (FIR) no. 830/2000 (Ex.PW-5/B) came to be registered at 9.50 a.m. on 12.09.2000.

3. The investigation into the aforesaid FIR culminated in a report under Section 173 of the Code of Criminal Procedure, (Cr.P.C.) being submitted on 23.11.2000. The appellant had been arrested in the course of investigation on 12.09.2000. He stood summoned and eventually put to trial in the court of sessions (vide sessions case no. 18/2000) on the charge for the offence under Section 302 of Indian Penal Code, 1860 (IPC).

4. On the conclusion of the trial, by judgment dated 13.03.2002, the appellant was held guilty and convicted for offence under Section 304 Part II IPC. By subsequent order dated 19.03.2002, the trial court awarded sentence of rigorous imprisonment for four years with fine of Rs. 1,000/- and in default of payment of fine, further simple imprisonment for two months, the benefit of set off under Section 428 Cr.P.C. also having been accorded.

5. The appeal at hand challenges the judgment of conviction and order on sentence passed by the trial court against the appellant.

6. Having heard the submissions of both sides and having perused the record, certain indisputable background facts emerge from the evidence that may be noted at the outset.

7. The appellant admitted the evidence for the prosecution during his statement under Section 313 Cr.P.C. that he was married to the deceased in 1984, this fact having been affirmed on oath by Ashok Kumar (PW-3), brother of the deceased, he being a resident of *Charkhi Dadri* in Haryana. PW-3 has testified, at length, indicating that the couple *i.e.* the appellant and the deceased had had reasons for differences between the two of them, there being indication of the appellant being not very comfortable with his wife's brothers. The evidence of PW-3 that the deceased had come to the parental home, sometime in 1987, with allegations of she being subjected to torture by the appellant and further that the appellant had sent a notice for divorce followed by a *Panchayat* being called wherein the matter was settled for sometime, has gone unchallenged. Similarly, the evidence of PW-3 that the deceased had continued to complain that the appellant had continued to subject her to torture by beating her frequently, this leading to another separation, sometime in 1989-90 is also a background fact which is virtually admitted. The brother of the deceased (PW-3) testified that the matter was settled sometime in 1989-90, through intervention of the society to which the parties belonged wherein it was agreed that he (the brother of the deceased) and, those on his side, would not visit the house of the appellant.

8. The appellant in the course of his statement under Section 313 Cr.P.C. has taken the position that he had a quarrel with the brother of

his wife and that the matter was eventually settled by the *Panchayat* in 1992.

9. The evidence about his conduct of beating the wife frequently or subjecting her to torture, denied by the appellant, is sought to be re-inforced by the prosecution through the evidence of Brij Bhushan (PW-2), the 15 year old son of the deceased and the appellant, who statedly was also present at home when the alleged assault took place. Noticeably, in the cross-examination of the said witness (PW-2), there was no serious attempt made to challenge the credibility of the said witness about the past conduct of the appellant towards his wife (the deceased).

10. There is no dispute as to the fact that Neelam, wife of the appellant, suffered death on the first floor of her house due to injuries sustained sometime during the night of 11th and 12th of September 2000. This fact is brought home not only by the evidence of PW-1 and PW-2 but also by the investigating officer (PW-8) and the constable (PW-6) accompanying him upon receipt of initial input vide DD No. 10A. The investigating officer, during the course of his deposition, proved that he had carried out the necessary inquiry including the death report (Ex.PW-8/D), recording the brief facts ((Ex.PW-8/F) and submitted a request for post-mortem examination (Ex.PW-8/E), the dead body before the autopsy being identified by PW-3 (brother of the deceased) vide formal statement (Ex.PW-3/A), the scene having been photographed by Devender Kumar (PW-12), private photographer who proved the photographs (Ex.PW-8/1 to 5) with the help of negatives and Ex.P-10/1 to 5.

11. The autopsy was conducted in the mortuary of Deen Dayal Hospital by Professor R.P. Sharma (PW-4), Head of Department of Forensic Medicine of the said hospital on 12.09.2000. As per the autopsy report (Ex.PW-4/A), he found three ante-mortem injuries on the dead body, they including a lacerated wound on the right side of the scalp measuring 5cm x 2 cm bone deep besides contusion of both eye lids (swollen), such injury in the opinion of the autopsy doctor, being the result of the first one (the one on the scalp) and small contusion over the right and left bottom of hand (2 cm x 1 cm), the injuries being 12-18 hours old, the autopsy having been carried out from 3.30 p.m. to 4.15 p.m. on 12.09.2000. The autopsy also revealed that the deceased had suffered haemorrhage under the scalp of right side of the temporal region (3 cm x 3 cm) and on the left side of the scalp (4 cm x 3cm), with extensive subdural haemorrhage and extensive subdural haemorrhage all over. In the opinion of the autopsy doctor (PW-4), the cause of death was due to intracranial haemorrhage occurring from the hard blunt impact on head. The autopsy doctor was cross-examined at length. He denied the possibility of the first injury, which had proved fatal, to have been suffered due to fall as was suggested at the instance of the appellant.

12. The prosecution rested its case primarily on the evidence of PW-3, the brother of the deceased (to show), as to the past conduct of the appellant in treating his wife (the deceased) ever since they got married in 1984, he narrating the previous incidents of physical assaults. The prosecution also rested its case on the ocular testimony

of PW1 and PW-2, the two children of the deceased living with her and the appellant under the same roof.

13. In the course of their statements, the two children (PW-1 & 2) – have deposed about the appellant having hit the deceased with the rolling pin on the head on the night of 11.09.2000, this rendering her unconscious, she thereafter being found in the morning to have died. While PW-1 was very cryptic in her narration of the incident, she not being in a position to speak about the reasons for the incident respecting which she was testifying nor clear as to the time when such assault took place, her brother (PW-2) has been more elaborate. PW-2 would speak about previous incidents of assault on the person of his mother by his father (the appellant). He would state that on 11.09.2000 at about 9.30 p.m. his father (the appellant), had returned from the shop and at that time, he being under the influence of liquor. He stated that the family was watching TV and at that stage the father had taken away the remote control from him and sat in front of the TV asking the mother (the deceased) to serve the food. He stated when the mother served the food, her father (the appellant) started beating her with fists and legs and when his mother started shrieking, he continued with the assault by rushing to the kitchen, bringing out the rolling pin (Ex.P-1) and hitting, with the said tool, on the head of the deceased rendering her fall down. He stated that thereafter the children (including him) were asked to go to sleep. In the morning, the mother did not wake up and the children saw blood was coming from her mouth. When they asked their father as to what had happened he told

them that she had died while also extending threats to them against the facts being narrated by them to the police.

14. The cross-examination against PW-1 and PW-2 was primarily directed with the objective to demonstrate that witnesses, who concededly, been taken away by their maternal uncles, including PW-3, had been tutored. It was suggested to PW-2 that the deceased had fallen down on a slope outside the steps as she had gone to rectify the booster pump (which was connected with overhead water tank) located under the staircase. The witness denied such to be the sequence of events.

15. In the course of his statement, under Section 313 Cr.P.C., while not disputing the evidence about the result of the autopsy, or the death being on account of the afore-mentioned injury on the head, the appellant stated that on 11.09.2000 he had come home from the shop around 9-9.30 p.m. and had dinner after which he had gone to sleep. He stated that water supply to the property would start sometime around 1.00 or 2.00 a.m. and it was at that stage that the deceased had gone down to start the motor when she slipped near the door. He stated that he had heard some noise on the next morning upon which he had got up to find crowd having gathered there, finding his wife having fallen down and injured in the head. He stated that the police was informed by the public and the body of his wife was brought upstairs by some public persons, information also being conveyed to her brother. He stated that the signatures of PW-1 had been fabricated (on her statement) to falsely implicate him. He also stated that the children (PW-1 and PW-2) had been tutored.

16. The appellant led evidence in defence, he examining Ram Vilas Sharma (DW-1) and Ganga Ram (DW-2). DW-1 is a tenant who was living in the property of the appellant on the relevant date while DW-2 was a neighbor. DW-2 only spoke of he having heard noises that the wife of the appellant had fallen and so had reached the premises to find the deceased lying on the slope (ramp) whereupon information was conveyed telephonically to the police. DW-1, on the other hand, testified that on 12.09.2000 early in the morning he was going to fetch milk when he had noticed the deceased woman lying on the concrete slope near the gate of the house. He returned and called out the appellant, several people having gathered, they picking up the victim finding that she had sustained head injuries, the police having arrived within 5-10 minutes, the woman having been lifted by a few people upstairs to her premises at the first floor.

17. The trial judge did not believe the evidence of the defence rejecting the defence theory of a fall outside the house, the evidence of physical assault with rolling pin on the head, as adduced through the mouthpiece of PW-1 and PW-2 having been accepted as credible. It is on that basis that the trial Judge concluded the death to be homicidal. It was, however, also found that there was no intention to cause death nor any intention to cause such bodily injury as would – with such knowledge – render the case, a case of culpable homicidal amounting to murder. Thus, the conviction was recorded holding the appellant guilty of culpable homicidal death not amounting to murder.

18. It has been argued on behalf of the appellant that the evidence of the prosecution was founded on the ocular testimony of PW-1 &

PW-2, both children who have been under the influence of their maternal uncles including PW-3. It is submitted that the evidence of these witnesses would show that they were tutored, they having been taken to the office of an advocate before being brought in to the trial court for their respective deposition. It is also submitted that the evidence would also show that the maternal uncle (PW-3) had come to the scene immediately after the occurrence and was instrumental in having the statement of PW-1, a child then of 5 years old recorded so as to be basis of the FIR, her signatures on the said statement having been fabricated. It is the argument of the appellant that the defence plea of the deceased having suffered a fall during the night at the lower floor level where she had gone to rectify the booster pump for supply of water, which would come during the night, is supported by the evidence of defence witnesses who saw her dead body lying outside in the early morning hours. It is also the argument of the appellant that the autopsy does not rule out, wholly, the possibility of the fall being the reason for the deceased suffering the head injury which had proved fatal. It is further the argument of the appellant that the rolling pin *(bellan)* (Ex.P1) which was alleged to have been used as the weapon of offence was never sent for opinion as to the possibility of it having been used in the assault nor subjected to any forensic scrutiny. It is argued that the evidence of PW-2 is, even otherwise, incredible because he would talk of his mother being hit several times, the autopsy report, in contrast, showing only one injury having been suffered.

19. *Per contra,* the learned additional public prosecutor argued that the evidence of PW-1 and PW-2 cannot be ignored inasmuch as they are children of the deceased and the appellant and they were natural witnesses present at the scene of occurrence, not deposing against a stranger but against their own parent, it calling for courage and conviction. It is also the submission of the public prosecutor that the evidence of the child witnesses though generally acceptable on its own strength, in the present case it finds due corroboration from the autopsy report and other facts and circumstances of the case, including the fact that the dead body was found lying close to the door inside the room where the family was living at the relevant point of time, there being other evidence available showing scuffle having taken place.

20. Undoubtedly, there is material to show that PW-3 (brother of the deceased) was not on cordial terms with the appellant, his brother-in-law and there had been some history wherein the appellant had shown particular aversion to the brothers of his wife (deceased) i.e. including PW-3. This is the reason why he would not welcome his brothers-in-law to his house. But then, the reasons for such extreme feelings on the part of the brothers of his wife have not been brought to light by the appellant. On the contrary, there is enough material to show, including the virtually unchallenged testimony of PW-2, that the appellant had a violent streak particularly towards the wife. He would often enter into quarrels with her and beat her up, this leading to her leaving his company once. It is clear from the evidence brought on record that the brotherhood – extended family – had to intervene and in the *Panchayats* that were held, more than once, some wisdom

having prevailed in terms of which the couple decided to live together once again. The reasons for the decision on the part of the deceased to agree to live again with the appellant under the same roof are not far to seek. She had given birth to three children out of this wedlock, they including, aside from PW-1 and PW-2, a second son Lekh Raj, who was handicapped, as per the testimony of PW-2, a child who was not even able to speak, this apparently being the reason why, though present at the scene, he was not called in to depose at the trial.

21. The theory of grudge on the part of maternal uncles of PW-1 and PW-2 towards the appellant is not proved to such an extent as to give rise to a possibility of they being hell bent on falsely implicating the appellant in a trumped up charge of murder of his own wife. The fact remains that the deceased had suffered injury. The argument of the appellant that the deceased had suffered only one injury is factually not correct. As noted earlier, the autopsy report shows more than one injury, the prime injury having proved fatal, it having caused external haemorrhage in the head region.

22. The theory of fall is based on assumption. Even the appellant does not say that he had himself seen the deceased falling. Even he would not say that, within his knowledge, the deceased had gone down to correct the booster pump. In fact, there is not a single witness brought to prove such facts. The defence witnesses have talked of they having seen the body of the deceased lying outside and it having been taken upstairs. One of the said witnesses is under the control of the deceased since he was his tenant at that point of time. Be that as it may, the children had been silenced after they had seen the assault on

the person of their mother by their father during the night after which they had been put to sleep. The deceased had suffered injury in the head and she bled to death on this account. No one would have seen what had happened after the children had been put to sleep. The possibility that the appellant himself may have dragged the woman outside so as to put her in the stairs in an endeavour to create a scene to show that she had fallen there is too strong to be discarded.

23. Undoubtedly PW-1 was too small a child to be expected to put her signatures on the statement (Ex.PW-1/A) which formed the basis of the FIR. She is on oath to say that she does not know how to write in English. But then, even if her statement is to be kept aside, the deposition of her brother (PW-2), then a 14 year old child, apparently a child who had attained maturity and understanding of what was going on, cannot be trashed. He is categorical in stating that he was not deposing under any tutoring. It may be that the brothers of the deceased may have engaged some counsel to assist in the legal proceedings. But, from this itself, it cannot be deduced that the only role the counsel would have carried out would be to falsely tutor the witnesses. The testimony of PW-2 against his own father is worthy of reliance since it coincides well with the attendant circumstances. The plea to this effect propounded by the public prosecutor finds support from the decision in *Satish & Anr. vs. State of Haryana (2018) 11 SCC 300.*

24. The theory of the injury that proved fatal, having been suffered by a fall has been ruled out by the autopsy doctor inasmuch as he would say that if there was a fall there would be other injuries as well.

The evidence of PW-2 categorically brings home that his mother was hit several times, the injury on the head having been inflicted with the rolling pin (a blunt weapon). This deposition is corroborated by the proof of scuffle as is shown by the tell-tale signs in the form of broken bangle pieces and blood having spilled inside the room (Ex.PW-6/A). This evidence is further re-inforced by the autopsy opinion. There was no need for the weapon of offence to be sent for medical opinion or forensic scrutiny in view of the nature of injuries and available ocular evidence.

25. In the foregoing facts and circumstances, there are no such serious contradictions, in the testimony of PW-1 and PW-2, as could go to the root of the matter. The trial Judge having taken a very fair and balanced view, the judgment which is under challenge does not call for any interference. Given the fact that a young woman suffered death as a result of physical assault at the hands of her own husband, in the presence of their own children under the roof of the house where she expected, to be safe, shows that the sentence meted out to the appellant by the trial court is far too lenient and, therefore, does not call for any interference.

26. The appeal is, thus, dismissed. The interim bail granted to the appellant pending the hearing on the appeal is cancelled. He is directed to surrender to jail forthwith.

27. A copy of this judgment shall be transmitted with the trial court record to the concerned criminal court which shall ensure that the order on sentence is duly enforced and executed. For this, the trial judge will have the authority in law, if need be, to issue necessary

process. The station house officer of police station Dabri shall render all assistance in this task.

28. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 30,2018/nk