

(2018) 08 DEL CK 0137

In the Delhi High Court

Case No : Criminal Appeal No. 685 OF 2017

Rajesh

APPELLANT

Vs

State Govt Of NCT Of Delhi

RESPONDENT

Date of Decision : 13-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302, 307

Citation : (2018) 08 DEL CK 0137

Hon'ble Judges : S. MURALIDHAR, J; VINOD GOEL, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J.

1. This is an appeal directed against a judgment dated 28th April 2016 passed by the learned Additional Sessions Judge-IV (Central), Tis Hazari

Courts, Delhi in SC No.97/2014 arising out of FIR No.55/2014 registered at Police Station (PS) Gulabi Bagh convicting the Appellant for the offence

under Section 302 IPC. The appeal also challenges the subsequent order on sentence dated 23rd May 2016 whereby the Appellant was sentenced to

imprisonment for life along with Rs.5,000/- fine and in default of payment of fine, to undergo simple imprisonment for two months.

2. The trial Court, in the order on sentence passed in the aforementioned case, noted that the deceased Reeta was the wife of the Appellant and there

were two minor children who were being looked after by the mother of the Appellant. The matter was, thereafter, referred to the Delhi State Legal

Services Authority (â??DSLâ??) to enquire into the matter and decide the requisite compensation to be paid to the minor children.

3. The Appellant was charged with murdering his wife Reeta on the intervening night of 9th/10th April 2014 in a jhuggi near the office of the Railway

Karmchari Union Office, opposite Gurudwara, Railway Colony, Kishan Ganj, Delhi. The criminal justice process was activated when a call was

received at 2:05 am at PS Gulabi Bagh by HC Inderjeet (PW-3) on 10 th April 2014 informing that a lady had been beaten in a jhuggi near the

Gurudwara, Kishan Ganj Railway Station. The said information was noted down as DD No.5A.

4. ASI Jaivir Singh (PW-37) reached the spot along with Ct. Sachin (PW-29) where he met Gyanwati (PW-1) (the mother of the Appellant and

mother-in-law of the deceased). He was told that the deceased, who had been beaten up, had already been taken to the hospital by the PCR van.

When PW-37 entered the jhuggi, he found blood stains on the wall and an old pillow on a plastic mattress lying on the wooden bench. According to

PW-37, when he enquired from PW-1 about the incident, she told him about a quarrel between the Appellant and his wife. PW-1 had been sleeping

outside the jhuggi with her grandson aged two and a half years when she heard the sound of crying. When PW-1 entered the jhuggi, she found

deceased Reeta in an injured condition with blood oozing from her face. Reeta was not completely in her senses. The Appellant was not present in the

jhuggi at that time.

5. Leaving PW-29 at the spot, PW-37 proceeded to the Sushruta Trauma Centre. Dr. Vinod Dahiya (PW-24) was working as the Medical Officer

there on 10th April 2014 when the victim was brought thereby by HC Kuldeep (PW-18). The victim was seven months pregnant. When he examined

her, PW-24 found incised wounds on the centre of the forehead, on the left side of her face lateral to left eye, incised wound extending from base of

nose left upper lip left cheek, left lower lip exposing underline muscle and bone, multiple incised wound on her chin, upper lip, lower lip, both hands

dorsum and two incised wounds on her neck on the left side. After providing her first aid, PW-24 referred the injured to the Senior Resident

(â??SRâ??). She was then admitted under the ENT Department of Lok Nayak Hospital.

6. The MLC (Ex.PW-13/A) of the deceased at the Lok Nayak Hospital shows that she was brought there at around 11:50 am on 10th April 2018 in

an unconscious state. She was not responding to verbal commands or painful stimuli. She was found to be pregnant and carrying twins. Multiple

wounds were found all over the face. The medical records further show that fractures were seen in the anterior walls of the right frontal tissues, nasal

bones, roof of nasal cavity, roof of the hard palate, and lateral walls of the right auxiliary sinus. Commuted fractures are seen on the left maxilla.

Fractures are also noted in the left parietal bone.

7. It appears that the injured Reeta remained in the hospital for about ten days and ultimately died of cardio-respiratory arrest on 20th April 2014 at around 5:45 am.

8. SI Raj Singh (PW-36) was posted at PP Andha Mugal attached to PS Gulabi Bagh. The case was assigned to him on 11th April 2014. According

to him, on that day PW-1 came along with the Appellant to PP Andha Mugal and informed him that the Appellant had caused injuries to his wife at

the jhuggi. According to PW-36, during interrogation of the Appellant, he confessed the crime and was then arrested. He purportedly made a

disclosure statement and led the police party to a ganda nala near Gurudwara Railway Colony, Kishan Ganj where he purportedly threw the weapon

of the offence, i.e. a gandasa. However, the efforts made by the police to recover the said gandasa from the ganda nala were futile. An attempt was

again made on 12th April 2014 to recover the weapon but was unsuccessful.

9. The victim Reeta was found not fit for making a statement throughout the period of hospitalisation prior to her death. An FIR had already been

registered by this time against the Appellant for the offence punishable under Section 307 IPC. After the death of Reeta, Section 302 IPC was added

to the FIR.

10. The FSL report confirmed that the three broken teeth of the deceased which had been recovered from the spot were indeed of the deceased as

the DNA matched. The blood on the wall and the broken bangles also confirmed that the crime had taken place inside the jhuggi.

11. On the completion of the investigation, a charge-sheet was filed. As per the amended charge framed on 26th August 2014 the Appellant was

charged for causing the death of his wife who was also pregnant and gave birth to two still born male babies on 18th April 2014 both of whom died

due to the injuries caused to the deceased.

12. On behalf of the prosecution, 45 witnesses were examined. When incriminating circumstances were put to the Appellant he denied them and claimed to face trial. The only circumstance which he admitted was that he had taken the police officials to the ganda nala. All other questions were met with the standard reply of "I do not know". No defence evidence was led.

13. In the impugned judgment, the trial Court, after discussing the evidence, concluded that the prosecution had proved beyond reasonable doubt that it was the Appellant who caused injuries to the deceased resulting in her death. It was further held that the prosecution had failed to prove beyond reasonable doubt that the twin foetuses of the deceased were aborted or had died due to any of the injuries on her body. Thus, while the Appellant was acquitted with having caused the death of the minor foetuses of the deceased, he was convicted under Section 302 IPC for committing the murder of his wife. By a separate order on sentence dated 26th May 2016, the Appellant was sentenced in the manner indicated hereinbefore.

14. This Court has heard the submissions of Ms. Rakhi Dubey, learned counsel for the Appellant as well as Mr. Hirein Sharma, learned APP of the State.

15. The mother of the Appellant, Gyanwati Devi (PW-1), spoke about the Appellant being the person last seen with his wife in the jhuggi on the intervening night of 9th/10th April 2014. According to her, she was sleeping outside the jhuggi while the deceased was sleeping inside the jhuggi. She stated that "the accused might be there along with his wife. I heard the noise of weeping of Ankur. At that time, I found that Rajesh (husband of Reeta) was not inside jhuggi. Time I do not recollect. But it was midnight. I saw that Reeta was throwing her hand and feet. The accused Rajesh had taken meal at jhuggi in the night time. When I awoke in the morning, Rajesh was not in the jhuggi. I do not know how Reeta received injuries".

16. PW-1 also stated that she had asked Mani Ram (PW-2), who was working as a security guard of a nearby godown, to telephone her daughter Sunita (PW-8). Thereafter, PW-8 reached the jhuggi in an auto rickshaw along with her husband Rajesh (PW-4). The auto rickshaw driver, after seeing the condition of the injured daughter-in-law of PW-1, declined to take her to the hospital stating that it was a police case. Thereafter, a call was

made to the police and the injured was then taken by them to the hospital.

17. PW-1 admitted to producing the Appellant before the police on the following date i.e. 11th April 2014. However, PW-1 resiled from her earlier

statement to the police on all other aspects. Therefore, the APP was permitted by the trial Court to cross-examine her. In her cross-examination by

the APP, PW-1 denied having stated to the police that it was the Appellant who had caused injuries to his wife; that she had asked the Appellant to

bring an auto rickshaw; that he had gone to fetch auto rickshaw but did not return; that he had run away to Ghaziabad; that he had finally come back

on 11th April 2014 whereafter PW-1 reached the police.

18. However, she admitted in her cross-examination that

“it is correct that the accused used to sleep with his wife in jhuggi and he was seen in the jhuggi at night time and took the food in the night. But

after the incident, he was not found in jhuggi. He met me on 11th April 2014 at 2:30 pm”.

19. The above statement in the cross-examination is sufficient proof that it was the Appellant who was last seen by the deceased on the intervening

night of 9th/10th April 2014. PW-1 also produced a disability certificate of the Appellant (Marl DX-1). According to her, the Appellant had suffered

an accident about 14 years ago and after that accident, he was in the habit of sleeping out of the house without informing PW-1. Apparently, the

Appellant was helping PW-1 in her tea stall which she ran just outside the jhuggi. While PW-1 looked after the tea stall, the deceased was serving

food to all the family members. PW-1 admitted that “the deceased had served dinner to the accused on the night on the incident in question”.

20. It must, at this stage, be noted that case of the prosecution is that the Appellant attacked the deceased when she refused to have sexual

intercourse that night. However, this has come only in the form of the disclosure made by the Appellant which is obviously inadmissible in evidence.

This part of the prosecution case, therefore, was unable to be proved. This, however, did not affect the case of the prosecution since all other

circumstances were proved beyond reasonable doubt.

21. The other witness who has fully supported the prosecution is Mani Ram (PW-2). Apart from corroborating PW-1 about having requested him to

make a call to PW-8, he stated that in his presence, PW-8 asked PW-1 what had

happened to Reeta. PW-1 is then supposed to have said: "Tere

bhai Rajesh ne ise maara he, use auto lene bhaja he per abhi tak nahi aya". In his cross-examination, PW-2 stood firm and denied the suggestion that

he did not reach there or that PW-1 did not tell anything to PW-8.

22. The medical evidence more than adequately proved that the death of the deceased was a result of the numerous injuries on her face and she

never regained consciousness and after being admitted in a severely injured condition on 10th April 2014. Dr. Anju Rani (PW-23), who performed the

post-mortem examination, opined that the cause of death of the deceased was cranio-cerebral damage consequent upon trauma to the head via injury

no.1 which was sufficient to cause the death in the ordinary course of nature". The post-mortem report (EX.PW-23/A1) depicted the said evidence.

According to PW-23, injury nos.16, 17, and 19 were caused "by impact with sharp edged weapon". PW-23 has also confirmed that there were

signs of recent abortion, i.e. the delivery of two male fetuses which were found dead. A separate opinion was given by PW-23 confirming that 18

injuries could have been caused by a farsa. Consequently, the prosecution is able to prove that the death of the deceased was homicidal.

23. As already noticed, the FSL report confirmed that the death of the deceased had taken place inside the jhuggi on the intervening night of 9 th/10th

April 2014. With PW-1 having confirmed that is the Appellant who was present with the deceased during the intervening night while she slept outside

the jhuggi, the prosecution was able to prove each link in the chain of circumstances which unmistakably showed that it was the Appellant and no one

else, who had caused the fatal injuries to the deceased.

24. It was urged by the learned counsel for the Appellant that the trial Court has not taken into account the impact of the disability suffered by the

Appellant. The Court finds that in para 107 of the impugned judgment, the trial Court has in fact discussed this specific aspect and come to the

conclusion that the said certificate did not prove in any manner that the Appellant was mentally disabled. As rightly noticed by the trial Court, there

was no alternative theory suggested as to how the deceased may have suffered the injuries in the facts and circumstances of the case.

25. For the aforementioned reasons, the Court is unable to come to a conclusion different from that reached by the trial Court. This Court finds no

ground to interfere with either the judgment of conviction or the order on sentence. The appeal is accordingly dismissed. The trial Court record be returned forthwith together with a certified copy of this judgment.