

(2011) 04 DEL CK 0312
In the Delhi High Court
Case No : Criminal A. No. 995 of 2009

Ram Naresh @ Lala

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 428
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 04 DEL CK 0312

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Rameshwar Dayal, Bhupender Chaturvedi and Gaurav Kumar, for the Appellant; Sanjay Lao, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—By virtue of the impugned judgment dated 11.05.2009 delivered in Session Case No. 19/2008 by the learned Additional Sessions Judge, Delhi, the Appellant Ram Naresh @ Lala has been held guilty for the offence punishable u/s 302 IPC for the commission of murder of Suman, who was residing with him as his wife in a room on the second floor of House No. 37A, Gali No. 1, Chanderlok, which fell within the jurisdiction of Police Station Mansarovar Park on the night intervening 21/22.07.2004. The Appellant is also aggrieved by the order on sentence dated 13.05.2009, passed by the said Additional Sessions Judge, whereby the Appellant was sentenced to a term of imprisonment for life and also to pay a fine of Rs. 5,000/-, in default whereof, he was to further undergo imprisonment for a period of 6 months. The benefit of Section 428 of the Code of Criminal Procedure was given to the Appellant.

2. The case of the prosecution is that the Appellant Ram Naresh @ Lala and the deceased Suman were living as husband and wife, though not actually married, in a room on the second floor of House No. 37A, Gali No. 1, Chanderlok, Delhi. It

is the case of the prosecution that the Appellant was in a habit of consuming liquor and thereafter entering into quarrels with Suman and even beating her at times. The prosecution case further is that Suman had a brother Raju (PW7) who was also residing in Delhi, but at Pooth Kalan, Rohini, Delhi. She also had a nephew by the name of Ravinder who was a minor at the time of the incident. It is the case of the prosecution that Suman had come from a village in Auraiyya, U.P. along with her said nephew Ravinder, to Delhi. They had initially stayed with Suman's brother Raju, at Pooth Kalan. However, they had thereafter shifted to the Appellant Ram Naresh's room at Chanderlok, Delhi. However, some time before the date of the occurrence, Suman's nephew Ravinder had stopped residing with Ram Naresh @ Lala. This being the position, according to the prosecution, at the time of the incident it was only Ram Naresh @ Lala and Suman who were residing in the room which Ram Naresh had taken on rent on the second floor of the said premises. The case of the prosecution further is that on 21.07.2004, both the Appellant and Suman were seen quarrelling by the other tenants and the owner of the said house. They were also seen on the terrace of the said house where they were said to have gone off to sleep. Thereafter, the other inmates of the house went off to sleep in their respective rooms. The case of the prosecution further is that in the morning of 22.07.2004, PW2 Ram Rani, who was a tenant in an adjoining room on the second floor and who was working with Suman in the same factory, had sent her younger daughter to call Suman. The daughter had returned to tell her mother that Suman was not responding to her calls and was not getting up. Thereafter, PW2 Ram Rani is said to have gone into the room and found that Suman was lying dead on the sofa and her body was cold. Thereafter, other inmates of the said house also came to learn about the death of Suman. The Appellant, however, was not found to be in the house. He was arrested only on 23.07.2004 at about 5.00 p.m.

3. The learned Counsel for the Appellant submitted that this was a case of circumstantial evidence and that before the prosecution could establish the guilt of the Appellant, the prosecution had not only to make out a clear case of proving each of the circumstances but also of further establishing that the said circumstances taken together formed a complete chain which pointed unerringly towards the guilt of the Appellant. It was the contention of the learned Counsel for the Appellant that neither the circumstances nor the chain has been established. First of all, the learned Counsel for the Appellant submitted that the prosecution has not been able to even establish as to whether the death of Suman was homicidal or suicidal. He referred to the testimony of PW8 Dr Arvind Kumar, who is the doctor who conducted the post mortem examination, to point out that the said doctor has not given any definite opinion as to whether the death of Suman was the result of murder or suicide. He also referred to the testimony of PW8 to indicate that the said doctor could not even give a definite opinion about the ligature mark present over the neck as to whether it was caused due to hanging or strangulation. It was also pointed out by the learned

Counsel for the Appellant that the rope which was alleged to be the murder weapon was not shown to the doctor at the time of the post mortem examination to elicit any opinion from the said doctor as to whether the death could have been caused by it.

4. He further pointed out that subsequently the rope (Ex. PW8/B) was shown to the doctor and his opinion was taken, which was to the effect that the ligature mark as mentioned in the post mortem report could not have been caused by the rope given for examination. In other words, even the murder weapon, that is, the rope which the prosecution was seeking to establish, was discarded by virtue of the opinion of the said doctor.

5. Apart from this, the learned Counsel for the Appellant has further stated that as per the Appellant's answers to questions while recording his statement u/s 313 Code of Criminal Procedure. It is apparent that the Appellant was not even present at the time of the occurrence. He also submitted, with reference to Ex.PW10/C which was the statement given by PW5 Ramshree, who is the mother of the deceased Suman, at the time of inquest proceedings, that Ram Naresh @ Lala had given a phone call to her on 22.07.2004 at about 10-11.00 a.m. and told her that Suman had hanged herself. Therefore, it was the contention of the learned Counsel for the Appellant that this corroborated the theory of suicide which was a possibility in view of the opinion of the doctor PW8 Dr Arvind Kumar who had conducted the post mortem examination. The learned Counsel for the Appellant also submitted that as per the FIR Ex.PW9/A there is clear evidence that in the room in which Suman's body was found, there is an iron girder on which there is a hook for hanging a ceiling fan but there was no ceiling fan. From this, the learned Counsel for the Appellant sought to make a submission that Suman perhaps committed suicide by putting the rope through the hook and hanged herself there.

6. The learned Counsel for the Appellant also submitted that PW4 Raghuraj and PW 6 Ram Kishan Panchal who were cited by the prosecution as witnesses for the extra judicial confessions allegedly made by the Appellant had turned hostile and that part of the story of the prosecution was also belied. It is in this backdrop that the learned Counsel for the Appellant submitted that the prosecution has not been able to prove its case beyond reasonable doubt.

7. Mr Lao appearing on behalf of the State supported the impugned judgment and order on sentence and submitted that even though the opinion of the doctor PW8 Dr Arvind Kumar is not definite as to whether the death of Suman was as a result of murder or suicide, the other circumstances clearly point towards murder and not towards suicide. He further submitted that since it is established that the death of Suman was homicidal, there is no escape for the Appellant. He made this statement on the basis of the fact that it has been established in evidence that the Appellant Ram Naresh and Suman were residing together in the said room as husband and wife for several months prior to the incident. He also submitted that it has come in evidence and particularly by virtue of the

testimonies of PW1, 2 and 3 that on 21.07.2004 it is only Ram Naresh and Suman who were residing in the said room. He also submitted that these three witnesses i.e. PW1, 2 and 3 have clearly stated that they had seen Ram Naresh and Suman quarrelling at around 9.30 p.m. on 21.07.2004 and that thereafter they had gone to the terrace and gone off to sleep at about 10.30 p.m. He further submitted that it is also established that when Suman's dead body was discovered in the morning of 22.07.2004, the Appellant was missing and he continued to be missing till his arrest on 23.07.2004 at about 5.00 p.m. The fact that the Appellant was absconding, according to the learned Counsel for the State, is also a circumstance which would go against the Appellant unless an explanation is offered for the same. According to Mr Lao, the Appellant had an opportunity to explain his absence but he has not done so in his statement recorded u/s 313 Code of Criminal Procedure For all these reasons, the learned Counsel for the State submitted that the impugned judgment and order on sentence ought not to be interfered with and the appeal ought to be dismissed.

8. We have heard the arguments of the counsel for the parties and have gone through the entire evidence on record.

9. We find that insofar as PW4 Raghuraj and PW 6 Ram Kishan Panchal are concerned, they were introduced by the prosecution as witnesses for the alleged extra judicial confession made by the Appellant before them. Unfortunately for the prosecution, both these witnesses have resided from their earlier statements recorded u/s 161 Code of Criminal Procedure They have not supported the prosecution case in court. Therefore, the prosecution cannot derive any advantage from these two witnesses. The other material witnesses, to our minds, are: PW1 Ram Singh, who is the owner of the house in question; PW2 Ram Rani, who is a tenant in the adjoining room on the second floor; PW3 Sanjay, who is also a tenant in the second floor of the said house; and PW8 Dr Arvind Kumar, who is the doctor who conducted the post mortem examination.

10. We begin by considering the testimony of PW8 Dr Arvind Kumar. He has stated clearly that Suman's death was caused due to asphyxia as a result of compression of the neck by a ligature. He further stated that no definite opinion about the ligature mark present over the neck could be given as to whether it was caused due to hanging or strangulation. Further, he stated that at the time when he conducted the post mortem examination, no rope was shown to him and, finally, that he could not give any definite opinion as to whether it was a case of murder or suicide. He has also stated that the time since death was between 24 to 36 hours prior to the conduct of the post mortem examination which was done on 23.07.2004 at about 12.00 noon. This would make the time of death around midnight of 21/22.07.2004.

11. PW1 Ram Singh who, as pointed out above, is the owner of the house and is also a resident of the first floor thereof stated that there were three rooms on the second floor of the said house. Ram Naresh was a resident of one of the three rooms and was residing there with his "wife" and was paying a monthly

rent of Rs. 500/-. He also stated that one person used to come and visit them (Ram Naresh and Suman) from Pooth Kalan. He also stated that Ram Naresh was in a habit of consuming liquor. He further stated that on 21.07.2004 there was a quarrel between Ram Naresh and Suman and thereafter both of them went to the terrace of the house to sleep and he (PW1 Ram Singh) came down to his room and slept. He stated that it is in the morning that he came to know that Suman had died and her dead body was on the sofa of their room. He also stated that there is one gate in the house and that in the morning the gate was open. Of course, in cross examination a slight contradiction has been elicited by the defence counsel to the fact that Ram Naresh and Suman had gone to the terrace and that Ram Naresh had come down to his room. However, the fact remains that this witness has clearly testified that there was a quarrel between Ram Naresh and Suman and that thereafter both of them had gone to the terrace of the house.

12. He has also testified that in the morning Suman was found dead on the sofa of her room and that at that point of time Ram Naresh was missing from the house. The defence had given a suggestion to him that the deceased Suman had illicit relations with him. This suggestion, of course, was negated by the said witness.

13. PW2 Ram Rani, who was a tenant in the adjoining room, stated that Suman used to work with her in the same factory. On that date itself while returning from the factory Suman had come ahead and she remained in the market to purchase certain vegetables. However, when she reached the second floor she found that Suman was crying and she had told her that Ram Naresh had beaten her up after consuming liquor and that Suman had not prepared any food that night. She also testified that Suman along with Ram Naresh were last seen together by her on 10.30 p.m. on 21.07.2004. She further stated that in the next morning she sent her younger daughter to call Suman because they were to go to work to the factory. Her daughter returned and told her that Suman was not getting up whereupon PW2 Ram Rani went to Suman's room which was open and found her lying dead on the sofa and her body was also cold. While in cross examination she stated that Suman's nephew also used to reside with them but she denied the suggestion that the nephew was present on the date of the incident. In fact, she stated that the nephew had left one month ago.

14. PW3 Sanjay, who is also a tenant of one of the rooms on the second floor, stated that Ram Naresh had consumed liquor on 21.07.2004 and that a quarrel had ensued between Ram Naresh and Suman and that Ram Naresh had even slapped Suman in his presence. However, subsequently, both Ram Naresh and Suman went to the terrace. This witness further testified that at 10.30 p.m. he had seen both Ram Naresh and Suman on the roof. He also stated that after the discovery of the dead body of Suman the next morning, Ram Naresh was found absconding along with his bag.

15. Negating the suggestion given by the defence, the witness stated that

Suman's nephew was not residing with her.

16. In his statement u/s 313 Cr.P.C., the Appellant has mostly answered the questions by giving the answer "It is incorrect" or "I do not know". He also denied that Suman was his wife. However, he did not specifically deny that she resided with him. In the answer to question No. 4 he had stated that "On that day I left the room in the morning for plying the rickshaw and on the next day Appellants apprehended me at about 11-12.00 noon." However, the Appellant did not offer any explanation with regard to the death of Suman.

17. In fact, we may point out that the suggestions given by the learned defence counsel at the time of cross examination of the witnesses indicated that Suman had illicit relations with PW1 Ram Singh or that Suman's nephew had killed her or that it was a case of suicide, however, none of them were brought out in any of the answers given by him in his Section 313 Code of Criminal Procedure statement.

18. From the aforesaid evidence on record, it is clearly established that:

(i) The Appellant Ram Naresh @ Lala and Suman were living as husband and wife, though not actually married, in a room on the second floor of House No. 37A, Gali No. 1, Chanderlok, Delhi;

(ii) On 21.07.2004 and for some time prior to that date it is only Ram Naresh and Suman who were living in the said room;

(iii) Ram Naresh and Suman had a quarrel at around 9-9.30 p.m. on 21.07.2004 which was seen by PW1 Ram Singh, PW2 Ram Rani and PW3 Sanjay who were all natural witnesses being inmates of the same house;

(iv) After the quarrel, both Ram Naresh and Suman went to the terrace of the house;

(v) Ram Naresh and Suman were seen sleeping on the terrace of the house at 10.30 p.m. on 21.07.2004;

(vi) No other person slept on the terrace on that night;

(vii) Suman was found lying dead on the sofa of their room on the second floor;

(viii) The post mortem doctor PW8 Dr Arvind Kumar clearly opined that the cause of death was asphyxia as a result of compression of the neck by ligature;

(ix) At the time of discovery of the dead body of Suman and till his arrest on 23.07.2004 at 5.00 p.m., the Appellant was missing from the house.

19. In the backdrop of these circumstances, which are clearly established beyond doubt, the only thing that needs to be confirmed is whether the death of Suman was suicidal or homicidal. This is because the doctor could not give a definite opinion as to whether the case was one of murder or suicide. Consequently, this question would have to be answered looking to the other evidence on record. Let

us assume that it is a case of suicide as was sought to be suggested before us by the learned Counsel for the Appellant. This much is clear from the opinion of PW8 Dr Arvind Kumar that the cause of death was asphyxia as a result of compression of the neck by ligature. The question of Suman strangulating herself is clearly ruled out as that is not possible. The only other way in which Suman could have committed suicide, given the manner of her death, was through hanging. A suggestion was made by the learned Counsel for the Appellant, referring to the FIR, that there was a hook in the room which was for the purposes of hanging a ceiling fan but there was no ceiling fan and that the same could have been used for suspending the rope from which Suman hung herself and committed suicide. Let us assume this scenario to be true for the time being. If it were so, then Suman would have died hanging and therefore her body would have been discovered in a hanging position. But this is not the case. Her body was found as if it was placed on the sofa. There was no rope or other ligature material wounds around her neck and it is obvious that once she had died she could not have come and laid down on the sofa. Therefore even if we were to believe the theory propounded by the learned Counsel for the Appellant that Suman somehow or the other managed to hang herself from the hook in the ceiling of the room, there is no explanation whatsoever as to how her body was found lying on the sofa. Somebody must have intervened and placed her body on the sofa. Nobody other than the Appellant could have done that. This is all the more so because all the witnesses namely PW1, 2 and 3 have testified in clear terms that there was only one gate in the house and nobody could have jumped into the house either over the wall or across the terrace. Furthermore, the Appellant in his Section 313 Code of Criminal Procedure statement, which we have already referred to above, clearly stated that he left in the morning of 22.07.2004 for plying his rickshaw. Thus, it is only he and he alone who could have placed Suman's body on the sofa. Consequently, it was for him to have offered an explanation as to how he found Suman's body. Had it been a case of suicide, he would have clearly stated that he found her hanging from the ceiling and that he had taken her down and then placed her body on the sofa. There is no such explanation. On the contrary, he has stated that he left in the morning for plying the rickshaw. This is clearly a circumstance which goes against the Appellant.

20. In fact, the above discussion clearly indicates that the theory of suicide is not at all compatible with the circumstances which are already established by the prosecution. It is only the theory of homicide which is compatible with the circumstances which stand established on the basis of evidence on record. And, if it is a case of homicide, as we believe it to be, then it is only the Appellant who could have caused the homicidal death of Suman and no other person. In this connection, we may also refer to the Supreme Court decision in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra, and particularly to paragraphs 15, 21 and 22 which read as under:

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution,

but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of Tamil Nadu Vs. Rajendran*, (SCC para 6); *State U.P. Vs. Dr. Ravindra Prakash Mittal*, (SCC para 39: AIR para 40); *State of Maharashtra Vs. Suresh*, ; *Ganesh Lal Vs. State of Rajasthan*, and *Gulab Chand Vs. State of Madhya Pradesh*,

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram Vs. State of Himachal Pradesh*, it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal Vs. State of Maharashtra*, the Appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the Appellant is under an obligation to give a plausible explanation for the cause of her death in his statement u/s 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the Appellant is a prime accused in the commission of murder of his wife. In *State U.P. Vs. Dr. Ravindra Prakash Mittal*,] the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written

by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him u/s 302 IPC. In State of Tamil Nadu Vs. Rajendran, the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.

21. In the facts of the present case, we find that Suman's body was discovered in the room in which only Ram Naresh and Suman were residing. There is no evidence to show that anybody else had entered the room after Suman and Ram Naresh were last seen on the terrace of the house at 10.30 p.m. on the night of 21.07.2004. It was for the Appellant to give an explanation as to how Suman's body was found lying on the sofa inside the room. This is all the more so because in his Section 313 statement he has stated that he left the house in the morning on 22.07.2004 for plying his rickshaw. Suman's death has been opined to have been caused around the midnight of 21/22.07.2004. This clearly indicates that if the Appellant were to be believed that he left for plying his rickshaw in the morning then, surely, he knew that Suman was already dead. Taking these circumstances together, we find that they unerringly point to the guilt of the accused and they are completely inconsistent with the plea of innocence.

22. Consequently, we find no reason to interfere with the impugned judgment and order on sentence. The appeal is dismissed.