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Court : Delhi

Decided On : Aug-02-1985

Reported in : 28(1985)DLT357

Judge : Malik Sharief-ud-Din and; Rajindar Sachar, JJ.

Acts : Indian Penal code, 1860 - Sections 302

Appeal No. : Criminal Appeal No. 44 of 1982

Appellant : Rajesh Parkash Bhatnagar

Respondent : The State

Advocate for Pet/Ap. : Anil Kumar,; amices Curiae and; R.P. Lao, Adv

Judgement :

Malik Sharief-Ud-Din, J.

(1) This appeal is directed against the conviction and sentence recorded by an Addl. Sessions Judge, Delhi against the appellant under section 302 Indian Penal Code sentencing him to imprisonment for life.

(2) The appellant was sent up for trial for having committed the murder of his wife, Laxmi by manual strangulation. The motive for murder is the suspected infidelity. The incident is dated the night intervening 19/20th February 1981 and the place of

incident is a room in premises No. 142-A Jagatpuri, New Shahdara, Delhi. The appellant along with his wife had shifted to that place about a week earlier to the date of incident. This premises is a two roomed tenement and one of the rooms on the date of incident was in the occupation of one Khem Chand Public Witness 2 who was residing in it along with his wife and children. Fir came to be registered at 11.30 a.m. on 20-2-1982 in pursuance of a statement of Khem Chand Public Witness 2 recorded by Shoban Singh S.I. Public Witness 10. The prosecution case further is that while Pw 2 Khem Chand and Public Witness 4 Parmal were on their way to inform the police they came across Public Witness 10 Shoban Singh S.I. just at a little distance from the place of incident and it was there that Public Witness 2 Khem Chand made a statement disclosing the facts leading to the incident. The facts are a few and limited and and are unfolded by Public Witness 2 Khem Chand.

(3) Khem Chand Public Witness 2 stated that on the date of incident near about mid-night while he was

(4) After recording the statement of Public Witness 2 Khem Chand, Public Witness 10 Shoban Singh S.I. sent the same for formal registration of the case and started investigation. He recovered some glass pieces of broken bottle and a broken bottle etc. found at the scene. He also prepared site plan etc. and also found the appellant having sustained an injury. The appellant was medically examined on the same day at 8.15 p.m. by one Dr. Tikku vide M.L.C. Ex. PW8/C and be was found to have sustained an injury in the nature of a small heamatoma over the left upper eye lid with mild tenderness 2 cm X 1 cm diffuse. The injury was opined to be simple caused by blunt object and the duration of the injury was about 15 hours.

(5) After preparing the inquest report, the dead body was sent for postmortem. Dr. L.T. Ramani, Public Witness 8 conducted postmortem on 21-2-1981 at 11.00 a.m. and opined that death was due to manual strangulation and duration was about 38 hours. This fact, however, is not in dispute.

(6) The stand of the appellant is that he was residing with his wife in this room and that Public Witness 2 Khem Chand was residing in the adjoining room. The

appellant also admits that his wife deceased Laxmi was not of good character and they used to quarrel on this account. He, however, states that at 8.30 a.m. on 20th February 1981 when he returned to his house after plying cycle Rickshaw during night he found police having arrived on the scene and he was taken into custody. He admits that be was medically examined but does not offer any Explanationn for the injury of his person. Further states that the witnesses have deposed falsely and he was falsely implicated.

(7) We have carefully considered the facts and the arguments advanced. The controversy falls within a narrow compass. The fact that deceased was of immoral character and the fact that the appellant used to quarrel with her on this is admitted though it is denied by the appellant that on that night bad accosted the appellant. In fact the defense suggestion is that the appellant was not in his room on that night and had been plying cycle Rickshaw throughout that night. The whole case is based on circumstantial evidence. Keeping in view the manner in which the offence was committed, no direct evidence was possible. The positive assertion of the appellant that he was not present in the room on that night is untenable. Normally he is expected to be with his wife at that hour of night. There is nothing on record to support his assertion that he was away. We find no reason to disbelieve Khem Chand Public Witness 2 who has no enmity with the appellant and has no reason to implicate him falsely. Khem Chand Public Witness 2 has categorically said that the appellant was in his room and had a quarrel with his wife. The testimony of Dw Sultan is faulty and vague and no reliance can be placed on it. This Dw seems to be a had character as he himself was in Jail. It is difficult to believe that having known the appellant casually Dw Sultan could have given him cycle rickshaw on hire without seeking necessary guarantee and assurance that it would be returned to him by the appellant. He does not know even the place of residence of the appellant. This stand of the appellant that he was not in his room on the night of incident as such is untenable and we have no hesitation in brushing it aside.

(8) The other circumstances against the appellant are, firstly, that on the night of incident at about mid-night he picked up a quarrel with his wife deceased Laxmi and Public Witness 2 Khem Chand asked him not to disturb and soon thereafter

there was lull. This is a circumstance which is supported by the testimony of Public Witness 2 Khem Chand and there is no reason to disbelieve it. Second circumstance is that in the morning of 20th February 1981 when Khem Chand Public Witness 2 saw the accused outside the room and again asked him why he was disturbing them the accused is said to have told him he has done away with the cause of quarrel. Public Witness 2 Khem Chand then looks into the room and finds the deceased dead on the cot. This is positively deposed to by Khem Chand Public Witness 2 while Public Witness 4 Parmal who was again supposed to support the extra judicial confession has faltered and tried to help the accused. The third circumstance against the accused is that immediately on finding the deceased dead Public Witness 2 Khem Chand informed Public Witness 4 Parmal and some neighbours and accused was caught. This fact is not only supported by Public Witness 2 Khem Chand but is also evidenced by Public Witness 4 Parmal. The next circumstance is that the appellant had an injury on his person which is not explained by him and on medical examination its duration was found to correspond to the time when strangulation took place.

(9) There is absolutely no reason for us to distract PW2 Khem Chand. He seems to be a straight-forward man and has no earthly reason to falsely implicate the accused in such heinous crime. The suggestion to Khem Chand Pw 2 in cross-examination is that he was visiting the deceased as he had illicit relations with her and that there was a quarrel between him and the accused on this account. The accused, as is evidenced by his stant, has no such grievance against Khem Chand Public Witness 2 who was residing with his wife and children in the adjoining room. The fact that the appellant used to quarrel with the deceased because of her immoral character is admitted by the appellant and is also evidenced not only by Khem Chand but also by Parmal Pw 4 who was turned hostile. That further goes to strengthen our plea that Khem Chand Public Witness 2 is a truthful witness. The only grievance Public Witness 2 was having against the appellant was that he was disturbing their sleep by quarrelling with the deceased. The accused also has voiced no grievance against Public Witness 2 excepting taking a bald stand that he was speaking falsely. Public Witness 2 Khem Chand has said that in the morning when be came out of his room he saw the door of the room of the accused open and the accused was trying to go away after locking the

door but he and the neighbours did not allow him to escape.

(10) The stand of the accused that he was not in the room on that night is unacceptable not only on the basis of testimony of PW2 Khem Chand but also for the reason that if the wife of the appellant was alone in the room during night she would particularly in the cold of the month of February bolt the door from inside before going to bed. The suggestion that she might have got killed at the hands of her paramour is untenable. If she were a willing party to an illicit relationship there is hardly any reason for the paramour to kill her and then leave the room. If a stranger were to knock the door she would normally not open the door at that hour of night and the people residing in the adjoining room would have heard the knock. We are making a reference to this fact for the simple reason that in the morning the door of the room of the accused was open while she was dead and the accused was found trying to lock the door and escape. In these circumstances normal and logical inference would be that it was the accused, one of the images of the room, and none else who opened the door in the morning. We have seen the photographs of the dead body which were taken at the scene of the incident and noticed the deceased lying on the cot in a normal posture. Even her clothes are in normal condition which goes to indicate that she was strangulated while in sleep. PWs 2 version as such appears to be natural and we accept the same.

(11) To our mind, thereforee, it appears that the circumstances, in this case, though limited and a few form a chain so complete as to lead to an irresistible conclusion that the offence was committed by none else but the accused. We see no reason to agree with the contention that these circumstances coupled with the testimony of Khem Chand Public Witness 2 suffer from any infirmity and do not call for the conclusion that the accused rather than some one else is responsible for the commission of crime. This is particularly so in view of the failure of the accused to show that on the night of incident he was not in his room. Once we believe that the appellant was in his room he must explain how the death occurred.

(12) In the light of the observations we have made, we do not find any merit in this appeal. It is dismissed. The conviction and sentence passed against the appellant

are maintained.

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