

Mangal Vs. State

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Court : Delhi

Decided On : Oct-18-2011

Judge : Veena Birbal, J.

Acts : Code of Criminal Procedure (CrPC) - Section 313; Indian Penal Code (IPC)
- Sections 302, 376

Appeal No. : CRL.A. 1119 of 2010

Appellant : Mangal

Respondent : State

Advocate for Pet/Ap. : Mr. Sumit Verma

Judgement :

1. This appeal is directed against the judgment dated 27th November, 2009 passed in Sessions Case No.52/2008 by the learned Additional Sessions Judge, Delhi, arising out of FIR No.432/2005 registered at Police Station Kotwali u/s 302/376 IPC wherein the appellant has been convicted for both the offences. The appeal is also directed against the order on sentence dated 3rd December, 2009 whereby the appellant has been sentenced to a term of rigorous imprisonment for life and to pay a fine of `5000/- and in default of payment, SI for five months for the offence u/s 302 IPC and appellant is further awarded sentence of rigorous imprisonment for the period of ten years and also to pay a fine of Rs.3000/- and in default of payment of fine, to further undergo SI for three months for the offence

punishable u/s 376 IPC. It is also ordered that both the sentences shall run concurrently. The benefit of section 428 Cr.P.C has also been given to the appellant by the learned ASJ.

2. The case of the prosecution is as under:-

Appellant Mangal Singh was working as a seasonal employee for the past 10-12 years with Kuldeep Kumar, PW-4 who was doing the work of selling chat pakori. For the period of work, Kuldeep Kumar, PW-4 used to provide a room to Mangal Singh on the first floor of his house i.e., House no.272, Gali Kunj Dariba Kalan, Chandni Chowk, Delhi. Appellant used to reside in the said room during the period of his work. Kuldeep Kumar, PW- 4 was living on the same floor with his family in another room. There were other tenants in the said building also. The complainant Rakesh, PW-3 was living as a tenant with his family in one room with his family on the second floor of the said house. Appellant used to work with Kuldeep Kumar, PW-4, during festival seasons. On 4th October, 2005 during Navrataras, appellant Mangal had come to Kuldeep Kumar, PW-4 for working as a helper and started residing in a room of the first floor in the aforesaid premises. On 7th October, 2005, Mangal Singh had brought his daughter, namely, Lavi aged 12 years in the said house and she also started living in the room of appellant. On 10th October, 2005, at about 1 A.M., Rakesh, PW-3 along with his children had come back to his room on second floor after seeing 'Ram Lila'. At about 2/2.30 am, he had bolted the door and went to sleep. After 5-7 minutes, he had heard as if appellant was scolding his daughter in the

'stair case'. The complainant Rakesh, PW-3 had enquired as to who was there. Appellant said that it was he. After 2-3 minutes, he heard as if some heavy object had fallen down the stairs. He switched on the light of stairs and enquired as to what had happened. Thereupon appellant replied from first floor that a bucket had fallen down. Thereafter, Rakesh, PW-3 went to his room and closed the door and went to sleep. After sometime, he heard appellant weeping on the first floor. Thereupon Rakesh, PW-3 went to first floor and saw appellant weeping in front of the room of Kuldeep Kumar, PW-4 while holding his daughter Lavi in an unconscious state. The appellant was saying to Kuldeep Kumar, PW-4 that his

daughter Lavi had sustained injuries by fall on the stairs. Bimla Rani, PW-11, wife of Kuldeep Kumar PW-4 was also there. They had taken appellant along with Lavi to a nearby Marwari Hospital in Kinari Bazar but the same was found closed. Thereafter, Lavi was taken to LNJP Hospital in a TSR. Rakesh, PW-3 also reached LNJP Hospital on a rickshaw where she was declared as having been brought dead. There some marks on the neck of Lavi were seen. On enquiry being made, appellant Mangal stated that Lavi was not his daughter and was born to his wife from his brother-in-law (Sadu) from their illicit relation. The appellant had also stated that he had killed Lavi by pressing her throat.

3. Kuldeep, PW-4 had informed the police. An information was also received at PS Kotwali from LNJP Hospital through duty constable about the bringing of a dead body of a girl by his father. On the basis of said information, DD No.6A was got recorded. On receipt of copy of said DD, Inspector J.P.Raghav, Addl. SHO PS Kotwali reached at the said hospital where SI Jai Singh (PW-12) and Head Constable Rishi Pal (PW-8) met him. The MLC Ex.PW-20/A of Lavi was obtained. The police searched for the father of the girl i.e., appellant who got her admitted in the hospital but, he was not found. Rakesh, PW-3 and Kuldeep Kumar, PW-4 met Inspector J.P.Raghav PW-21 and narrated the circumstances of getting the deceased admitted to the hospital. Rakesh, PW-3 got his statement Ex.PW 1/B recorded. On the said statement, Inspector J.P.Raghav PW-21 had put his endorsement Ex.PW-1/C and got FIR Ex.PW-1/D registered. The clothes of the deceased were seized after completing necessary formalities. The crime team was also called at the spot i.e., first floor of the house no.272, Gali Kunj Dariva Kalan, Chandni Chowk and the site was got inspected. The photographer was also called and photographs of the spot were taken. The site plan was prepared by the I.O. Three jute mats (bori), and one pillow were seized from the spot vide memo Ex.PW-21/B after completing necessary formalities in this regard. The pulanda (bundle), containing the clothes of the deceased, which were seized by the Constable at the Hospital and some jewellery which the deceased was wearing at the time of incident, was also seized vide seizure memo Ex.PW-14/A&B, after completing necessary formalities. The mother Premwati (PW-17) of the deceased was also called on the same day i.e., 10th October, 2005 who had identified the dead body of her daughter. After postmortem examination, the dead body was

handed over to her mother. On 10th October, 2005, at 7.05 pm, a telephonic information was received by Inspector J.P.Raghav PW-21 from Kuldeep, PW-4 that appellant was present in the house. IO PW-21 along with other police officials went there and apprehended the appellant. After interrogation, appellant was arrested in the case. Appellant was medically examined. The statements of PWs were recorded. After completion of investigation, a charge sheet was filed before the learned Metropolitan Magistrate where copies were supplied to appellant. Thereafter, the case was committed to sessions. Learned Addl. Sessions Judge, Delhi framed charges against the appellant for having committed offences punishable u/s 302/376 IPC. Appellant pleaded not guilty to the same and claimed trial.

4. The prosecution in all had examined 21 witnesses. Out of which Rakesh, PW-3 was a tenant of one room on the second floor at the relevant time whereas the appellant was residing in a room on the first floor of the same house. Kuldeep Kumar, PW-4 is the landlord. Bimla Rani, PW-11 is the wife of Kuldeep Kumar, PW-4. Atul Sharma, PW-7 is the photographer who had taken photographs of the scene of crime. Smt. Prem Wati, PW-17 is the wife of appellant who had identified the dead body of Lavi. Remaining witnesses relate to police and medical evidence.

5. Incriminating evidence was put to the appellant in his statement under Section 313 Cr.P.C. and the same was denied by him. He had stated that he was an innocent person and was falsely implicated in the case. No evidence was led by the appellant in defence.

6. Relying upon the testimony of Kuldeep Kumar PW-4 and his wife Bimla Rani, PW-11, as having last seen deceased alive with the appellant on 9th October, 2005 shortly before her death at the night time and also their evidence and that of Rakesh, PW-3, as having seen appellant carrying his daughter on his shoulder in an unconscious state in the night intervening 9th and 10th October, 2005 at 2/2.30 A.M. and also considering medical evidence i.e., MLC Ex.PW-20/A, postmortem report Ex.PW-10/A of deceased, MLC Ex.PW-18/A of appellant, CFSL report Ex.PW-21/J&K and also considering that appellant has not offered any probable and satisfactory explanation about the circumstances/evidence appearing against

him, learned ASJ held him guilty for the offences punishable u/s 302/376 IPC and sentenced him as per order of sentence mentioned above.

7. Mr. Sumit Verma, learned counsel for the appellant has argued that appellant has been falsely implicated in the present case. It is contended that the learned trial court has relied upon the evidence of Rakesh, PW-3 and Kuldeep Kumar, PW-4 and Bimla Rani, PW-11 and medical evidence on record in convicting the appellant. It is contended that there are material contradictions in the evidence of prosecution witnesses i.e., PW-3 and PW-4 as to the manner in which Rakesh, PW-3 had reached the hospital. It is contended that Rakesh PW-3 has deposed that Kuldeep Kumar, PW-4 had accompanied the appellant and deceased Lavi to LNJP Hospital in a TSR whereas he had gone to the hospital in a rickshaw. On the contrary, Kuldeep Kumar PW-4 has deposed that he, his wife, the appellant, and deceased Lavi and Rakesh, PW-3, had gone to the hospital in one TSR. In cross-examination also, Kuldeep Kumar (PW-4) has denied that Rakesh (PW-3) had gone to the hospital in a rickshaw. It is further contended that Kuldeep Kumar PW-4 and Bimla Rani PW-11 have made different statements about the place of arrest of the appellant. Kuldeep Kumar (PW- 4) has stated that appellant was arrested from his house. On the other hand, Bimla Rani PW-11 has stated that from the hospital appellant was brought to the house by police. It is contended that both the witnesses have given different versions of place of arrest of appellant and, as such are not believable witnesses. Learned counsel appearing for the appellant has contended that in view of material contradictions in their evidence, they are not credible witnesses and their evidence is liable to be rejected. It is further contended that MLC Ex.PW-20/A does not support the case of the prosecution as regards allegations of rape are concerned. It is contended that no semen was detected in the vaginal swab of the deceased, as per CFSL report Ex.PW-21/J&K. Under these circumstances, it cannot be said that offence of rape has been committed.

It is further contended that Kuldeep Kumar (PW-4) in his evidence has deposed that about 200-300 persons were living in his house including four families. It is contended that Rakesh (PW-3) is not a witness having seen deceased last with the appellant. It is contended that from the evidence led by prosecution, it cannot

be said that prosecution has discharged its burden in proving its case beyond reasonable doubt. Under these circumstances, burden to explain the facts which were within knowledge of appellant cannot be shifted upon him. It is contended that as regards motive is concerned, prosecution has relied upon extra judicial confession. It is contended that same is not admissible in evidence, as admittedly, as per case of prosecution, same is alleged to have been made by appellant before the police. It is contended that in any event, appellant deserves to be given benefit of doubt and be acquitted in the present case.

8. On the other hand, Ms. Richa Kapoor, learned APP has contended that there is an unrebutted evidence that appellant was living in the first floor of house of Kuldeep Kumar (PW-4). There is no denial by the appellant that on the date of incident, his daughter was not with him. It is contended that evidence on record establishes that the appellant was present with his daughter at the first floor of the house on 10 th October, 2005 at 1.30 am-2 am. It is contended that evidence of Rakesh (PW-3), Kuldeep Kumar (PW- 4) and Bimla Rani (PW-11) establishes that they had seen the appellant holding his daughter in unconscious state in his lap at about 2 am and appellant was telling Kuldeep Kumar (PW-4) and Bimla Rani (PW-11) that his daughter had fallen down the stairs. As per MLC Ex.PW-20/A, there is no injury on deceased's body by a fall. Learned APP has further contended that in the statement of appellant u/s 313 Cr.P.C, appellant has stated that he has been falsely implicated in the case whereas Kuldeep Kumar (PW-4) and Rakesh (PW-3) have deposed that when appellant was carrying his daughter in an unconscious state, he had stated that she had a fall in the stairs and had to be taken to hospital. It is contended that the said evidence has gone unrebutted. No explanation has been given by him in this regard. Even the postmortem report Ex.PW-10/A establishes that rape has been committed upon Lavi. The MLC report Ex.PW-20/A and postmortem report Ex.PW- 10/A show ligature marks present around the neck. The CFSL report Ex.PW- 21/J&K also supports the case of prosecution, as such prosecution has discharged its burden and has proved its case beyond reasonable doubt, as such, the appeal is liable to be dismissed.

9. We have considered the submissions made and gone through the record.

10. It is an admitted position that the appellant was working with Kuldeep Kumar PW-4 as a helper and used to work during festival seasons. It is also admitted that the appellant had come to work with Kuldeep PW-4 during the festival of Navratras on 04.10.2005 and started residing in a separate room on the first floor in the house of Kuldeep Kumar PW-4 since that day. It is also the admitted position that Kuldeep Kumar PW-4 was living with his family in another room on the first floor of the said house. It is also the admitted position that on 07.10.2005 the appellant had gone to his native village and had brought his daughter Lavi who also started living with the appellant in the room provided to him by the Kuldeep Kumar PW-4. It is also not denied by the appellant that Rakesh Kumar PW-3 was another tenant in the same house who was residing with his family on the second floor. The material witnesses of the prosecution case are Kuldeep Kumar PW-4, his wife Bimla Rani PW-11 and Rakesh Kumar PW-3.

11. Kuldeep Kumar PW-4 in the initial portion of his evidence has stated about the employment and the room being provided to the appellant by him in his house. He has also deposed that appellant used to come during festival season and used to work with him as a helper and he was engaging him for the past 10-12 years. He has further deposed that in October 2005 during the beginning of Navrataras, he had engaged the appellant and accordingly he joined him on 04.10.2005 and started living in the room provided by him on the first floor of his house. On 07.10.2005 appellant had gone to his native village and brought his daughter Lavi, who at that time was 12 years of age. The appellant had told him that his daughter would be of help to his wife in domestic work and at night he would take her for the Ram Lila. Thereafter, deceased started living with him. He had also provided him 2/3 jute mats for the purposes of sleeping. He has further deposed that on the night of 09/10.10.2005, the appellant had taken Lavi and Ankita i.e., the daughter of Kuldeep Kumar PW-4 to the 'Ram Lila' show and had returned at about 12 mid night. At that time he was watching a film on the T.V. The appellant had stayed in his room for a while and thereafter had gone for sleeping in his room and had taken Lavi with him. Thereafter he had also gone to sleep. On the same night at about 2.30 am he was awakened by a knock on his door. On opening the door, he found the appellant standing with his daughter Lavi on his shoulder and the appellant had told him that Lavi had become unconscious after a fall from the

stairs. At that time he noticed that jute mats and pillows provided to the appellant were lying on the 'Jaal' (iron net) on the first floor and, in the meantime, Rakesh Kumar PW-3, who was a tenant on the second floor, had also come there and they had taken Lavi to a nearby Marvari Hospital but the same was closed so they had taken Lavi to LNJP Hospital where on examination the doctor had declared that Lavi was dead. At that time they had noticed strangulation marks on the neck of Lavi.

12. Bimla Rani PW-11 is the wife of Kuldeep Kumar PW-4. She has also deposed that appellant used to come to her husband to work as a helper during the 'Ram Lila' days. During those days, he used to reside in the room on the first floor of their house. She has supported the version of her husband Kuldeep Kumar PW-4 by deposing that the appellant had taken her daughter Ankita and his daughter Lavi to watch Ram Lila. She has further deposed that appellant had come at about 10 pm or earlier as she did not remember the exact time. After leaving her daughter, the appellant had gone to his room. At about 2-2.30 pm, the appellant had woken them up and told that Lavi had a fall from the stairs and had become unconscious.

13. In cross-examination of aforesaid witnesses, their deposition that the appellant had taken deceased and their daughter Ankita to 'Ram Lila' and thereafter had come with Lavi in their room to leave Ankita and thereafter had gone to his room with Lavi on the night intervening 9th and 10th October, 2005 has gone unrebutted. Even no suggestion was given to them that they were deposing falsely in this regard.

14. Rakesh Kumar PW-3 is another tenant of Kuldeep Kumar, PW-4 who at the relevant time was living on the second floor of the same house. He has deposed that on the date of incident he had returned at about 1.15 am to his home with his children as he had gone to see Ram Lila in the area of Chandni Chowk and it was in the night intervening Sunday and Monday and probably the date was 10.10.2005. After taking his meal he had gone to sleep. He had also closed the door of his room. At about 1.45 am, he felt as if somebody has just come outside the door of his room and he enquired as to who was there. The appellant replied

that it was he. On getting the reply, he thought that the appellant might have taken his daughter to the toilet which was on the second floor of the house just near his room. After few minutes, he heard a noise of some heavy object on the stairs. On being asked, the appellant told that a bucket had fallen down. He switched on the light and saw a bucket on the first floor with water splashed around it and he believed the appellant. After about 5 minutes he heard appellant weeping on the first floor in front of Kuldeep Kumar's (PW-4) room while holding his daughter Lavi unconscious in his lap and he also heard him telling Kuldeep Kumar PW-4 that his daughter had fallen down the stairs and requested him to carry her to the hospital. Thereafter, they had taken Lavi to the nearby hospital and from there she was taken to LNJP hospital. He had also noticed that Lavi was bleeding from her nose and mouth. He has also deposed to having made a statement Ex. PW1/B in the hospital to police on the basis of which FIR Ex.PW-1/D was recorded. He has also deposed that on being asked about the injuries on Lavi, appellant told that Lavi was the daughter of his brother-in-law i.e., Sadu. He also told that his 'Sadu' was having illicit relations with his wife and due to that relationship he was annoyed and as such he had killed Lavi.

The evidence of Rakesh Kumar PW-3 also establishes that he had seen the appellant in the night around 2 am in front of room of Kuldeep Kumar PW-4 and the appellant was weeping and saying that his daughter had fallen from the stairs and was requesting for taking her to the hospital. Rather the deposition to the aforesaid effect has not been challenged in the cross- examination. The material evidence of this witness is also in consonance with the statement to police Ex. PW1/B.

15. From the evidence of Kuldeep Kumar PW-4 and Bimla Rani PW-11, it stands established that the deceased Lavi was last seen alive with the appellant on 09.10.2005 at night and he had taken her inside the room which was provided to him by Kuldeep Kumar PW-4 to sleep. The evidence of aforesaid witnesses as well as Rakesh (PW-3) also establishes that at about 2-2.30 am the deceased was seen on the shoulders of the appellant in an unconscious state and appellant had told Kuldeep Kumar PW-4 that his daughter had fallen down the staircase and had requested him to take her to hospital. The MLC Ex. PW10/A shows that she was

taken to hospital by the appellant. The endorsement Ex. PW1/C made by the IO PW-21 on the statement of Rakesh Ex. PW1/B which was recorded in the hospital by the IO on the basis of which FIR Ex.PW-1/D was recorded shows that Rakesh Kumar PW-3 and Kuldeep Kumar PW-4 were present in the hospital.

16. There is slight contradiction in the deposition of Kuldeep Kumar, PW- 4 and his wife Bimla Rani, PW-11 about the time at which appellant had returned home from Ram Leela on 9th October, 2005 with his daughter and the daughter of aforesaid witnesses, Ankita. As per evidence of Kuldeep Kumar, PW-4, appellant had come back at about 12 pm whereas as per Bimla Rani, PW-11, appellant had returned at about 10 pm. There is also some contradiction in the evidence of Rakesh Kumar, PW-3 and Kuldeep Kumar, PW-4 as to how Rakesh Kumar, PW-3 had reached LNJP Hospital. According to Rakesh Kumar, PW-3, Kuldeep Kumar, PW-4, his wife Bimla Kumari, PW-11 had taken appellant and his daughter to LNJP Hospital in a TSR whereas he had gone to the said hospital in a rickshaw. On the other hand, according to Kuldeep Kumar, PW-4, all of them had gone in a TSR to LNJP Hospital. It is not the case of defence that Rakesh Kumar, PW-3 had not reached LNJP hospital. The endorsement Ex.PW1/C of IO, PW-21 on statement of Rakesh Kumar Ex.PW1/B shows the presence of Rakesh Kumar, PW-3 and that of Kuldeep Kumar, PW-4 in the hospital and having met IO there. It appears that the same are due to lapse of time. The incident took place in the night intervening 9th and 10th October, 2005 whereas evidence of aforesaid witnesses was completed on 29th November, 2007. Further the contradictions pointed out are minor in nature and same do not demolish the case of the prosecution in any manner especially when the material evidence of aforesaid witnesses is not shaken in cross examination. The aforesaid contradictions do not make them unreliable witnesses, as is contended.

Learned counsel has also pointed out contradictions in the evidence of Kuldeep Kumar, PW-4 and that of his wife Bimla Kumari, PW-11 about the place of arrest of appellant. We have gone through the evidence in this regard. Kuldeep Kumar, PW-4 in cross-examination has stated that appellant had come to the house on 10th October, 2005 in the evening and he caught hold of him and thereafter, he and Rakesh Kumar, PW-3 informed the police, police arrived and arrested the

appellant. On the other hand, Bimla Kumari, PW-11 has stated that police had met the appellant in the hospital and thereafter he was brought at his residence and from there police had taken him. Constable Parveen, PW-5 had deposed that appellant was arrested from his house on 10th October, 2005 by the IO, PW-21. Even the IO, PW-21 has deposed to having arrested the appellant from the house of Kuldeep Kumar, PW-4. Their depositions were not demolished in cross-examination. Even in the endorsement Ex.PW-1/C of IO on the statement of Rakesh Kumar, Ex.PW1/B, on the basis of which FIR Ex.PW-1/D was recorded, it is clearly stated that appellant had not met him in the hospital. Even Constable Ranjit Singh, PW-14 who was the duty Constable in LNJP Hospital has deposed that appellant had slipped away from the hospital before the arrival of IO. In these circumstances, the contradiction pointed out is not very material in nature and does not make the witnesses unreliable.

17. There is no reason why Rakesh (PW-3) and Kuldeep Kumar (PW-4) and Bimla Rani (PW-11) would falsely implicate the appellant. It is not the stand of the appellant that they were having animosity with him and had falsely implicated him.

18. The depositions of Rakesh (PW-3), Kuldeep Kumar (PW-4) and Bimla Rani (PW-11) to the effect that appellant had told them that his daughter had sustained injury by fall is totally belied from the MLC Ex. PW- 20/A and postmortem report Ex. PW-10/A as there are no injuries on account of a fall in the aforesaid two reports. The said deposition is also not challenged in cross examination. The factum of telling a lie to the aforesaid PWs shows his involvement in the alleged occurrence.

19. The MLC Ex.PW-20/A of deceased Lavi has been proved on record by Dr.S.N.Basna, PW-20. As per MLC Ex.PW-20/A, Lavi was brought by appellant in the LNJP hospital on 10.10.2005 at 3 am. The doctor had declared her as having been "brought dead". The injuries noted in the MLC Ex.PW-20/A of Lavi are as under:-

"1. Contusion/mark of size approx. 10 cm x 1 cm present over neck extending from anterior border of Lt. muscle to posterior border of Rt. sternocleidomastord muscle.

1. Contusion mark of size approx 4 cm x 1 cm present

over nape of neck rt side.

1. Mild swelling present over genitals."

20. The post mortem report Ex.PW10/A of deceased is proved on record by Dr Sunil PW-10 of Santosh Medical College, Ghaziabad. The post mortem was conducted on 10.10.2005 at 3 p.m. As per said report, the probable time since death was 12 hours. The relevant portion of post mortem report Ex.PW-10/A is as under:-

EXTERNAL EXAMINATION (Injuries etc.)

1. Ligature mark, brownish, parchment like, 14 cm long and width varying from 1.2 to 2.7 cm present over front and both sides of neck. The mark extend from a point 6 cm below the right mastoid process, goes forward and medially, then crossing the midline of neck at the level of middle of thyroid cartilage. It then goes backward and laterally to end at a point, 8.8 cm below and in front of left mastoid process. The mark is horizontal and incomplete and total circumference of neck is 24 cm.

2. Multiple abrasions, crescentic shaped in an area of 3 x 1.9 cm present over right side of front of neck, 1.2 cm below ligature mark.

3. Abrasion, 1x0.2 cm, crescentic shaped present over right cheek, 6 cm inner to right lower ear lobule.

4. Contusion 5 x 4 cm, reddish in colour present over front of upper left thigh.

INTERNAL EXAMINATION:-

On dissection, effusion of blood present in subcutaneous tissue and muscles of neck underneath and adjacent areas of ligature mark with fracture of left fracture of left cornu of hyoid bone with effusion of blood present at fractured and larynx and trachea were constricted.

GENITALS

Fluid and clotted blood present in vaginal canal. Hymen was torned and vaginal wall showed tears at 3 and 5'o clock position.

OPINION:-

Death was due to asphyxia consequent upon ligature as well as manual strangulation via injuries no.1 & 2. All injuries were ante-mortem and recent in duration. Injury no.1 could be caused by some ligature, injury no.2 & 3 could be caused by nails and injury no.4 could be caused by blunt force impact. Injuries no.1 & 2 were sufficient to cause death in an ordinary course of nature individually as well as collectively. The genital findings were suggestive of recent sexual intercourse."

21. The post mortem report Ex. PW-10/A clearly establishes that it was a homicidal death. The post mortem report Ex.PW-10/A shows that nail clippings of both hands of deceased were handed over to IO in a sealed envelope. During the course of investigation, the same were sent to CFSL. The CFSL report Ex.PW21/J & K shows that human blood was detected in the nail clippings of deceased. The same shows she was trying to save herself. The vaginal swab of the deceased as per aforesaid report also shows presence of human blood.

22. The MLC Ex.PW-20/A also shows mild swelling over her genitals. The post mortem report Ex.PW-10/A shows that the genitals finding are suggestive of recent sexual intercourse.

23. The underwear and baniyan Ex. P-4 and Ex. P-5 which were seized vide memo Ex. PW-4/A of appellant shows the presence of human blood of 'B' group which is the blood group of deceased. The three dirty gunny bags Ex. PW-21/B which were seized from the spot as per CFSL report Ex. PW-21/J&K also shows presence of human blood of group 'B' which is that of the deceased. All the evidence discussed above supports the case of prosecution.

24. In statement under Section 313 Cr.P.C. appellant has stated that he has been falsely implicated. No explanation is given by the appellant in his statement under Section 313 Cr.P.C. as to how the deceased had died. There is no explanation by

the appellant as to how there were injuries on her private part and other parts of the body as are noted in the MLC Ex.PW- 20/A and post mortem report Ex.PW-10/A. In Trimukh Maroti Kirkan Vs. State of Maharashtra 2006(10) SCC 681, the Supreme Court has held as under:-

"XX

21. In a case based on circumstantial evidence where no eye- witness 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 v. Rajendran MANU/SC/0606/1999 :

1999 CriLJ4552 ; State of U.P. v. Dr. Ravindra Prakash Mittal MANU/SC/0402/1992 : 1992 CriLJ3693 ; State of Maharashtra v. Suresh MANU/SC/0765/1999 :

(2000)1SCC471 ; Ganesh Lal v. State of Rajasthan MANU/SC/0694/2001 : 2002 CriLJ967 and Gulab Chand v. State of M.P. MANU/SC/0304/1995 : [1995]3SCR27].

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.....

..... "

25. The evidence of the material witnesses i.e. Kuldeep (PW4) and Bimla Rani (PW-11) clearly establishes that shortly before the commission of crime they had seen appellant taking his daughter Lavi in his room and thereafter Rakesh PW3 and the aforesaid two witnesses had seen him at about 2/2.30 a.m. carrying his daughter on his shoulders in unconscious state and was requesting Kuldeep Kumar (PW-4) for taking deceased to hospital and was telling them she had a fall which has been belied by the MLC Ex.PW-20/A. The medical evidence discussed above, CFSL report Ex. PW-21/J&K all supports the case of prosecution. Considering the overall circumstantial evidence on record, prosecution has discharged its burden of proving its case beyond reasonable doubt. The appellant owed a duty to explain how a dead body which was the result of a homicide happened to be on his shoulder. The absence of a credible explanation on his part, in the peculiar circumstances of this case, points towards his guilt.

26. As per the prosecution case, appellant had also made an extra judicial confession to Rakesh PW-3 and Kuldeep Kumar PW-4 that Lavi was not his daughter and was the result of an illicit relationship between his wife and brother-in-law and, as such, he used to hate Lavi and due to that reason he had killed her by pressing her throat. It is contended that the aforesaid witnesses have deposed that appellant had stated so to them in the presence of police officials. It is contended that in these circumstances the trial court ought not have considered the said piece of evidence.

27. The evidence on record shows that the aforesaid confession was made by the appellant to Rakesh Kumar PW-3 and Kuldeep Kumar PW-4 before the police. The witnesses were cross examined by learned APP. Even on being cross examined they have deposed that appellant had stated so in the presence of police. The trial court has not taken into consideration the said piece of evidence while convicting the appellant. Under these circumstances, the contention of the appellant has no force and is also rejected.

28. The circumstantial evidence discussed above leads to an inescapable conclusion that it is the appellant who has murdered his daughter Lavi after committing rape upon her. No case for interference is made out. Appellant has

been rightly convicted by the learned Addl. Sessions Judge, Delhi for the offences punishable u/s 302/376 IPC. Consequently, we find no merit in the appeal and the same is dismissed.

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