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**Court :** Delhi

**Decided On :** May-15-2012

**Judge :** Pradeep Nandrajog & Siddharth Mridul

**Appeal No. :** CRL.A.No.1397 of 2010

**Appellant :** Bhupender @ Kale

**Respondent :** State

**Judgement :**

PRADEEP NANDRAJOG, J.

1. Appellant Bhupender was tried for strangulating, followed by slitting the neck of his wife Sunita @ Babli, with the intention of causing her death at their matrimonial house C-110, Gopal Nagar, Najafgarh, New Delhi between 4 P.M. to 5 P.M. on September 24, 2007. He was also tried for harassing and torturing Sunita on account of insufficient dowry brought. The immediate motive for murdering Sunita was the appellant's suspecting her fidelity.

2. Vide impugned judgment dated November 11, 2010, Bhupender has been convicted for the offence of having murdered his wife, but on account of material improvements made by the relatives of Sunita with respect to the allegations of appellant harassing and torturing Sunita for a dowry demand, the appellant has been acquitted for the offence punishable under Section 498A IPC.

3. Thus, we would not be noting such evidence as would relate to the charge of dowry harassment.
4. The duty officer at PS Najafgarh recorded DD No.64B, Ex.PW-21/E at around 6:50 P.M. that information over wireless had been received from the Police Control Room that a lady had been murdered at Najafgarh. As deposed to by SI Gurmeet Singh, accompanied by Constable Jai Prakash, he left the police station with a copy of DD No.64B and reached house No.C-110, Gopal Nagar, Najafgarh, New Delhi at around 07:15 P.M. and found the main door of the house opened and in the drawing room saw a lady in a pool of blood and saw a blood stained knife, Ex.P-1, nearby. He summoned the Executive Magistrate of Najafgarh, Sunil Sehgal PW-2 and by that time Sumer PW-3, the brother of Sunita, reached the spot and made the statement Ex.PW2/A to Sunil Sehgal stating therein that Sunita was married to Bhupender on June 26, 2003. Initially she had no problem in her married life except that once she had picked up a quarrel with her younger brother-in-law, Lalit. His sister had a problem with her husband when he got married in the year 2007 when Bhupender started demanding a motorcycle from them.
5. Making an endorsement Ex.PW-18/A beneath Ex.PW2/A, as deposed to by SI Gurmeet Singh he got the FIR registered.
6. From the spot the blood stained knife was seized as per seizure memo Ex.PW2/H, blood sample was lifted on a piece of gauze as per seizure memo Ex.PW2/H2. Blood stained cloths were seized as per Ex.PW2/H3. Rough site plan Ex.PW21/A was prepared and the dead body was sent to the mortuary for post-mortem.
7. The next day the post-mortem was got conducted and as per post-mortem report Ex.PW1/A, it was opined that there was an attempt to strangulate the deceased inasmuch as a ligature mark was found on the neck. Cause of death was the neck being slit.
8. Statements of Rajesh PW-6 and Karamwati PW-7 both of whom are neighbours of the appellant and the deceased were recorded under Section 161 Cr.P.C, which

inculpedated Bhupender who absconded from his house and was arrested on September 29, 2007 i.e. five days after the incident and as deposed to by Inspector Mahender Singh PW- 21, he made a disclosure statement Ex.PW20/A and from the cremation ground at Jharoda Road, New Delhi got recovered a polythene bag contained a blood stained feerozi coloured shirt, a grey coloured pant and electric wire, which were seized vide Ex.PW3/C.

9. Site plan to scale Ex.PW17/A of the scene of the crime was thereafter got prepared by Ct. Hardeep Singh, the Assistant Draughtsman. The blood sample of the deceased and the clothes got recovered by the appellat were sent for serological examination, and as per report Ex. PW21/F, human blood of the same group as that of the deceased was detected on the pant. Human blood was detected on the shirt but group whereof could not be detected.

10. It is apparent that the prosecution rested its case on five pieces of incriminating evidence. Firstly, the motive for the crime. Secondly, conduct of the appellat absconding till he was arrested after five days. Thirdly, human blood of the same group as of the deceased being detected on the pant got recovered by the appellat after he was arrested, which pant, as per his disclosure statement was worn by him when the crime was committed. Fourthly, the recovery of the lead wire which could be the possible ligature material with which the deceased was attempted to be strangulated. Lastly, the most incriminating part, the testimony of Rajesh, PW-6 and Karamwati, PW-7.

11. Now, it was not the case of the prosecution that either PW-6 or PW-7 saw the crime.

12. As deposed to by Rajesh PW-6, he was sleeping, after returning from his duty at the Call Centre on September 24, 2007 when around 05:45 P.M. his wife woke him as she heard some noise on the street behind their house. He reached from where the sound was coming and saw two-three persons pushing the door of the house of Bhupender. As the door could not be opened, a neighbour provided a ladder and he entered the house using the ladder and opened the bolt of the main gate from inside. Two-three persons entered the house and noted the wife of the accused lying in a pool of blood and a cloth piece obstructing the flow of blood to

outside the room at the door frame. The accused was not found available at that time.

13. Rajesh was not cross-examined inspite of opportunity given.

14. Karamwati PW-7 deposed that she was a neighbour of the accused and around 6:00 P.M. when she was watching the television, she heard noise and saw the mother of the accused and some persons raising an alarm to open the door of the house. She provided a ladder. One person went inside with the help of the ladder and opened the door of the house.

15. Ami Lal, PW-19 posted as Deputy Commandant, CRPF deposed, with reference to the record, that the appellant was a Constable with CRPF and was on leave for 23 days with effect from September 08, 2007 till September 30, 2007.

16. Holding appellant guilty, the learned Trial Judge has held that the testimony of Ami Lal establishes, and we prefer to note the exact words, in para 74 of the impugned decision: 'The testimony of this witness shows that at the time of occurrence the accused was on leave and was at home i.e. at his place of residence i.e. the spot.'

17. Now, the testimony of Ami Lal, simply establishes the appellant being on leave and not at his house.

18. It is unfortunate that the learned Trial Judge has slipped into the judgment a fact against the accused, which if otherwise proved, would be fatal to the accused. Indeed, the next fatal blow struck by the learned Trial Judge is in para 91 of the impugned decision, wherein it has been observed, and for which we prefer to quote from the impugned decision:

'Once the accused person was present at his residence with his wife, the burden shifted on to the accused person under Section 106 of the Evidence Act, to point out as to who entered his house and then (sic.) committed the murder in question.'

19. Neither witness of the prosecution has deposed that the appellant was present in the house or was seen by anyone of them when the offence was committed.

20. In this connection, it may simply be highlighted by us that as per Rajesh PW-6 and Karamwati PW-7, the door of the house was locked from inside and Rajesh had to use a ladder to open the bolt from inside. Inspector Mahender Singh PW-21, who had reached the spot soon after SI Gurmeet Singh had reached the spot and had prepared the site plan Ex.PW- 21/A threw more light on the subject when he clarified that a ventilator above the door was the place used by Rajesh to open the bolt from inside. He admitted not having investigated as to wherefrom in a house bolted from inside the accused could escape.

21. Ex.PW-17/A, the site plan to scale would reveal that there is only one entry into the room where the dead body of the deceased was found i.e. the drawing room and behind said room is a bedroom; completing the 2 room tenement.

22. That only dead body of the deceased was found inside the two-room living house and the only means of entry was locked from inside, and had to be opened through the ventilator, would obviously mean that the assailant inside had escaped from somewhere, and that somewhere could only be a window. It is regretful that the Investigating Officer made no attempt to find out as to wherefrom the assailant escaped and brazenly admitted, when cross-examined, that he did not investigate as to wherefrom, from a house bolted from within, the assailant escaped.

23. Nobody has deposed that the appellant was inside the house. Nobody has deposed that the appellant was seen running away.

24. The learned Trial Judge has stretched the testimony of Ami Lal by introducing a fact not deposed to by Ami Lal. As per Ami Lal, appellant was on leave for 23 days from September 08, 2007 till September 30, 2007. This does not mean that the appellant was in his house at around 06:30 -06:45 PM when the crime was committed.

25. The main pillar on which the learned Trial Judge has convicted the appellant has fallen.

26. No witness of the prosecution has deposed that the appellant suspected the fidelity of his wife. Thus, the motive alleged by the prosecution has not surfaced.

That the appellant was harassing the deceased on account of dowry, is a charge which has failed because the witnesses of the prosecution have made material improvements on their previous statements.

27. As regards the recovery of a pant and a shirt on which human blood was detected; and on the pant the blood group detected was that of the deceased, suffice would it be to state that the confessional statement made by the appellant that these were the clothes he was wearing when he committed the crime is inadmissible in evidence. The prosecution had to prove through evidence allundi that the shirt and the pant in question was worn by the appellant when the crime was committed. Further, the recovery is from an open spot, accessible to the public. The recovery does not inspire any confidence. This would also relate to the recovery of a wire at the instance of the appellant, which is alleged to be the ligature material.

28. That the appellant absconded may be an incriminating circumstance, but it is to be remembered that even innocent persons, fearing arrest abscond. The possibility of the appellant learning in the colony that his wife had been murdered in the house and her brother had made an incriminating statement to the police, could be one of the reason on account of which appellant absconded.

29. If we examine the decisions of the Supreme Court on the point of death of a wife in her matrimonial house, we find that the decisions can be classified into undernoted 4 broad categories:-

I. In the first category fall the decisions where it is proved by the prosecution that the husband was present in the house when the wife suffered a homicidal death and rendered no explanation as to how his wife suffered the homicidal death. (See the decisions reported as *State of Rajasthan Versus Parthu* (2007) 12 SCC 754, *Amarsingh Munnasingh Suryavanshi v State of Maharashtra* AIR 2008 SC 479, *Ganeshlal v State of Maharashtra* (1992) 3 SCC 106, *Prabhudayal v State of Maharashtra* (1993) 3 SCC 573, *Dynaneshwar v State of Maharashtra* (2007) 10 SCC 445, *Trimukh Maroti Kirkan v State of Maharashtra* (2006) 10 SCC 681, *Bija v State of Haryana* (2008) 11 SCC 242 and *State of Tamil Nadu v Rajendran* (1999) 8 SCC 679).

II. In the second category are the decisions where the prosecution could not prove the presence of the husband in the house when the wife suffered a homicidal death but the circumstances were such that it could be reasonably inferred that the husband was in the house and the husband failed to render any satisfactory explanation as to how his wife suffered a homicidal death. The circumstances wherefrom it could be inferred that the husband was in the house would be proof that they lived in the house and used to cohabit there and the death took place in such hours of the night when a husband was expected to be in the house i.e. the hours between night time and early morning. (See the decisions reported as *State of UP v Dr Ravindra Prakash Mittal* (1992) 3 SCC 300 and *Narendra v State of Karnataka* (2009) 6 SCC 61).

III. In the third category would be proof of a very strong motive for the husband to murder his wife and proof of there being a reasonable probability of the husband being in the house and having an opportunity to commit the murder. In the decision reported as *Udaipal Singh v State of UP* (1972) 4 SCC 142 the deceased wife died in her matrimonial home in a room where she and her husband used to reside together. The accused-husband had a very strong motive to murder the deceased which was evident from the letter written by him to his mistress, which letter clearly brought out the feeling of disgust which the accused had towards the deceased. The accused had the opportunity to commit the murder of the deceased as there was evidence to show the presence of the accused in the village where the house in which the deceased died was situated at the time of the death of the deceased. Noting the facts that the accused had a strong enough motive and an opportunity to murder the deceased, noting that there was no evidence that the appellant was seen in his house by anybody, the Supreme Court convicted the accused.

IV. In the fourth category are the decisions where the wife died in her matrimonial house but there was no evidence to show presence of the husband in the house at the time of the death of the wife and the time when the crime was committed was not of the kind contemplated by the decisions in category II and was of a kind when husbands are expected to be on their job and there was either no proof of motive or very weak motive being proved as in the decision reported as *Khatri*

Hemraj Amulakh v State of Gujarat AIR 1972 SC 922 and State of Punjab Vs. Hari Kishan 1997 SCC Cri. 1211.

30. Instant case falls in the last category. The time when the crime took place was evening time and anybody could have entered the house and after committing the crime fled.

31. The appellant would be entitled to the benefit of doubt, if not anything more.

32. The appeal is allowed. Impugned judgment and order dated November 11, 2010 is set aside. The appellant is acquitted of the charge of having murdered his wife.

33. Since the appellant is in jail we direct that a copy of this decision be transmitted forthwith by the Registry to the Superintendent, Central Jail, Tihar for necessary action.

34. Trial Court Record be returned.

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