

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16.12.2017

Date of Decision : 5th January, 2018

+ **CRL.APPL. No.1074/2016**

RUBY BEGUM alias RINA SAMINAAppellant

Through: Mr. Joginder Tuli, Mr. Ashu K. Sharma, Ms. Joshini Tuli and Ms. Oshin Belove, Advocates

Versus

STATE (NCT) OF DELHI ... Respondent

Through: Mr. Ravi Nayak, APP for the State with SI Narender Kumar, PS Rajouri Garden and Inspector Ram Niwas, SHO/Roop Nagar.

+ **CRL.APPL. No. 1132/2016**

RAKESH MEHRA alias NANDUAppellant

Through: Mr. S. K. Sethi, Advocate.

Versus

STATE Respondent

Through: Mr. Ravi Nayak, APP for the State with SI Narender Kumar, PS Rajouri Garden and Inspector Ram Niwas, SHO/Roop Nagar.

CORAM:

HON'BLE MR. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. The above appeals have been filed by the appellants, namely Ruby Begum alias Rina Samina and Rakesh Mehra alias Nandu challenging the judgment and order dated 11.07.2016 convicting the appellants for the offences punishable under Sections 302/392/404/34 of the Indian Penal Code and the order dated 20.07.2016 sentencing

the appellants to undergo a rigorous imprisonment for life and a fine of Rs.10,000/- (Rupees Ten Thousand only) each for offence under Sections 302/34; 5 years and a fine of Rs.10,000/- (Rupees Ten Thousand only) for the offence under Sections 392/34 each and a further sentence of 2 years with a fine of Rs.5,000/- (Rupees Five Thousand only) for offence under Sections 404/34. All the sentences were ordered to run concurrently.

2. The case of the prosecution is that DD No. 25A (Ex. PW3/C) was received at Police Station Rajouri Garden on 17.07.2010 at 6:50 p.m. that “*Ghar Kee Naukrani Nai Ghar Kee Lady ka Gala Kaat Kar Maar Diya*” (the maid of the house had silted the neck of the lady of the house and killed). Inspector Ram Niwas (PW-22) alongwith Ct. Prabhat (PW-11) reached at J-3/82, 1st Floor, Rajouri Garden and met Mr. Pawanmeet Singh Anand (PW-1). They found the dead body of the deceased (Smt. Rajinder Kaur, w/o late Sh. Gurcharan Singh) lying inside one room on the double bed with the tongue protruding from mouth and with a sharp cut on the right side of the neck. Goods of the almira was scattered outside. Inspector Ram Niwas called the crime team and got the scene of the crime inspected. He also recorded the statement of Pawanmeet Singh Anand (PW-1) who informed him that the deceased is his mother-in-law and the neighbor of the deceased had called him on his mobile and told him that his mother-in-law is not feeling well. On receiving this call he reached the house at around 6:30 p.m. and saw the deceased lying dead on the bed with her tongue protruding and a sharp cut on the right side of the neck. He

further stated that a domestic help namely Rina, aged 32/35 years had been working for the deceased since last 2 days and was missing. He further stated that certain jewelry and a mobile No. 9310972126 has been found missing from the house. He further stated that the domestic help had earlier worked for the deceased in her previous house in No. N-2, Rajouri Garden where the deceased had on various occasions warned her as she had a habit of stealing from the house. He further stated that his brother-in-law (s/o deceased) Parminder Singh (PW-2) was mentally little weak, however, he had informed him that while he was sitting outside, the domestic help, Rina, was working inside. When Parminder Singh asked Rina, she informed him that she was cleaning the cupboard and the deceased was sleeping and should not be disturbed. Thereafter Rina had left the house.

3. On basis of the above statement, rukka (PW-3/B) was prepared and FIR No. 221/2010 under Section 302/397/404/34 IPC was registered.

4. The dead body was removed and the inquest proceedings were conducted resulting into a postmortem report (EX PW-23/A). As many as twelve injuries were also found on the body, which are detailed as under:-

1. Bruises present over the upper 2/3rd part of the left arm, three in number, muscles deep, size 2.0 x 1.4 cm to 4.7 x 2.2 cm, dark reddish brown in colour.

2. Bruises present over the inner aspect of the right forearm at its medial part, four in number, muscle deep, size 1.9 x 1.0 cm to 3.0 x 2.0 cm, dark reddish brown in colour.
3. Bruises present over the outer aspect of right forearm at its lower end, three in number, muscles deep, size 1.8 x 1.1 cm to 2.8 x 2.0 cm, dark reddish brown in colour.
4. Bruise present over the right lateral side of the lower lip, size 1.8 x 1.2, on cut section seen collection of clotted blood, dark reddish brown in colour.
5. Tip and posterior part of the tongue contused, size 1.0 x 0.8 cm to 1.8 x 1.2 cm, dark reddish brown in colour.
6. Multiple bruises present over the ring and middle finger (at its dorsal aspect) of left hand, size 1.0 x 0.8 cm to 1.5 x 1.0 cm, dark reddish brown in colour.
7. Bruise present 2.0 cm above from the left joint of the both lip, muscle deep, size 2.8 x 1.6 cm, dark reddish brown in colour.
8. One superficial clean incised cut mark present over the mid part of chin extending below towards right lateral side of neck, regular margin, skin deep,

obliquely placed both end tapering, size 7.0 x 0.8 cm, base and margin covered with clotted blood, dark reddish brown in colour.

9. One superficial clean incised cut mark present over the anterior aspect of left shoulder, regular margin, skin deep, obliquely placed, both end tapering size 5.0 x 0.7 cm, base and margin covered with clotted blood, dark reddish brown in colour.

10. One clean incised cut mark present over the right antero-lateral aspect of neck, horizontally placed, regular margin, muscle deep, size 7.5 x 1.6 cm, lateral (right) angle acute and medial (left) tapered, base and margin covered with clotted blood, dark reddish brown in colour.

11. Multiple nail marks present over the left anterior aspect of the neck, just lateral to the thyroid cartilage, 8 in number, separate to each other by 0.5 to 1.0 cm of size 0.4 to 0.6 mm, dark reddish brown in colour.

12. Multiple nail marks present over the right anterior aspect of the neck, just lateral to the thyroid cartilage, 2 in number, separate to each other by 0.8 cm of size 0.6 & 0.8 mm, dark reddish brown in colour with one bruise of size 2.2 x 1.4 cm, base covered with clotted blood, dark reddish brown in colour.

All injuries were opined as ante mortem and same in duration.

5. The cause of death was opined as Asphyxia produced by manual compression of neck. This manual compression of neck was opined as sufficient to cause death in ordinary course of nature.

6. The post mortem report therefore, clearly showed that the deceased had resisted before being strangled to death.

7. Search was made for the appellants, however, they could not be traced. On 20.07.2010 Inspector Raj Kumar (PW-24) received secret information that the appellants were hiding in Jalandhar, Punjab. He along with SI Manoj (PW-19), SI Charan Singh, Constable Sunil and others formed a raiding party and went to Jalandhar, Punjab. From there they apprehended the appellants and were brought back to Delhi. Inspector Raj Kumar (PW-24) directed the appellant, Ruby Begum to be taken to her home B-3/105, Raghbir Nagar, while the appellant, Rakesh Mehra was taken to the office of Special Staff, Tagore Garden. IO inspector Ram Niwas (PW-22) was also informed about the apprehension of the appellants and was called to the office of Special Staff. On interrogation appellant, Rakesh Mehra disclosed about his involvement alongwith his wife, Ruby Begum, in the case whereupon he was arrested and his disclosure statement (EX PW 16/C) was recorded. The appellant, Rakesh Mehra was thereafter taken to his house B-3/105, Raghbir Nagar where on his pointing one black polythene containing Jewellery articles, wrist watch, mobile phone and cash were recovered from the diwan type bed lying in the

internal room of the house. The said articles were seized vide memo (PW16/D).

8. Appellant, Ruby Begum, also, upon interrogation made a disclosure statement (EX PW-16/G) in respect of one gold chain, a diamond pendent and a pair of ear tops which she was wearing at the time of her arrest, which were seized vide memo (EX PW16/H) and also disclosed that these were of deceased lady.

9. It is further the case of the prosecution that on 23.07.2010, the appellants were again taken to Jalandhar, Punjab where the appellant, Rakesh Mehra got recovered a blood stained jeans pant from House no. 529, Gopal Nagar, near Ravidass Mandir, Jalandhar, Punjab. On 24.07.2010, blood stained cloths of appellant, Ruby Begum were recovered on her instance from house no. B-3/105, Raghubir Nagar. The call details of mobile phones of both the appellants confirmed that at the time of the incident they were present in the area of Rajouri Garden.

10. The appellant, Ruby Begum has denied that she was working as a house maid with the deceased. She further submits that she has been falsely implicated in the case and a false case of recovery of jewelry items etc., has been made against her.

11. The appellant, Rakesh Mehra, further submits that there is absolutely no evidence linking him to the case. He submits that the prosecution has been unable to prove any connection of his with the offence. Even the alleged recoveries of articles has been falsely

attributed to him and even if the prosecution case is to be believed, Ruby Begum, was first taken to the house and it was much later that the appellant, Rakesh Mehra, was taken there from office of the Special Office. He submits that it is totally unbelievable that during this period the recovery of the articles, even if the prosecution case is to be believed, would not have been made at the instance of the appellant, Ruby Begum. He further submits that the story of recovery of blood stained jeans pant from the house at Jalandhar, Punjab is also unbelievable as he had been arrested from there; as per the prosecution, the pant was not lying concealed but in the open and, therefore, would have been recovered, had it been there on the day of his arrest.

12. We have considered the submissions of the counsels for the appellants. The present is a case where there is no eye-witness to the offence. The case, therefore, is based on circumstantial evidence. The circumstance against the appellants can be summarize, as under:-

- a) Ruby Begum was working as a house maid of the deceased;
- b) On the day of the incident Ruby Begum was present in the house along with deceased and Mr. Parminder Singh (PW-2), son of the deceased;
- c) She made the son of the deceased to go out for a while on pretext of buying some powder from the market.
- d) When Parminder Singh came back she informed him that the deceased was sleeping inside her room and should not

be disturbed. She further told him that she was cleaning cupboard as per the instructions of the deceased;

- e) It was only after she left that Parminder Sigh found the deceased lying on the bed with her tongue protruding out and her throat slit;
- f) On the calling of the neighbor, the son-in-law of the deceased, Pawanmeet Singh Anand (PW-1) came to the house. He called the police and given the statement (EX PW-1/A) suspecting the involvement of Ruby Begum in the offence;
- g) The CDR record shows the presence of appellant, Rakesh Mehra in the vicinity of the house of the deceased with repeated calls being made with each other i.e., the two appellants.
- h) Ruby Begum and appellant, Rakesh Mehra left the city within hours of the offence. They first travelled to Ghaziabad and thereafter to Jalandhar, Punjab;
- i) The recovery of stolen articles was made at their instance from their house at Raghubir Nagar;
- j) The cloths recovered at their instance had blood stains as per the FSL report.

13. The testimony of Parminder Singh (PW-2), son of the deceased is most vital to the case. Though he is admitted to be mentally little

weak, his testimony is cogent and reliable. He has stated that at about 12 noon the deceased had called the appellant Ruby Begum through telephone. On her calling the appellant came to the house and started doing the household work. At around 4 p.m. the appellant, Ruby Begum gave him an amount of Rs. 50/- and asked him to bring some powder from the market as she is suffering from some pain. When he came back, though he knocked at the door, the appellant, Ruby Begum did not open the door for a considerable time. Later when she opened the door, Parminder Singh asked about his mother (the deceased) on which the appellant stated that she was sleeping inside the room. He further stated that the room had been bolted from outside; the appellant call her husband i.e., Rakesh Mehra. She further told Parminder Singh that the deceased was cleaning the cupboard. After the appellant had left, he opened the door of the room and found the deceased lying on the bed with her tongue coming out of her mouth and blood coming out of her neck. He called the neighbors. His cross-examination was rather short and his testimony remained unshaken.

14. Second important witness in the case is the son-in-law of the deceased, Pawanmeet Singh Anand (PW-1). He reached the place of incident upon being called by the neighbor. Though he is not an eye-witness to the incident, his immediate statement to the police was that the brother-in-law, Shri. Parminder Singh (PW-2) had informed him about the happenings of the day; presence of Ruby Begum in the house; her suspicious movements and reason to suspect her. It is based

on his statement to the police (EX PW-1/A) that the FIR was registered on the same day.

15. Though the appellant Ruby Begum has denied that she was working as a house maid of the deceased, we find no reason to suspect the statement made by Parminder Singh (PW-2), Pawanmeet Singh Anand (PW-1) and Smt. Jaswinder Kaur @ Jyoti (PW-6), the daughter of the deceased who all have stated about her employment with the deceased and also the fact of her presence in the house on the day of the incident.

16. In *State of Rajasthan Vs/ Chandgi Ram and Others* (2014) 14 SCC 596 it was held as under:-

“17. It was contended that all the witnesses were family members of the deceased and being interested witnesses, their version cannot be relied upon in toto. When we consider the same, we fail to understand as to why the evidence of the witnesses should be discarded solely on the ground that the said witnesses are related to the deceased. It is well settled that the credibility of a witness and his/her version should be tested based on his/her testimony vis-à-vis the occurrence with reference to which the testimonies are deposed before the court. As the evidence is tendered invariably before the court, the court will be in the position to assess the truthfulness or otherwise of the witness while deposing about the evidence and the persons on whom any such evidence is tendered. As every witness is bound to face the cross-examination by the defence side, the falsity, if any, deposed by the witness can be easily exposed in that process. The trial court will be able to assess the quality of witnesses irrespective of the fact whether the witness is related or not. Pithily stated, if the version of the witness is credible, reliable, trustworthy, admissible and the veracity of the statement does not give scope to any doubt, there

is no reason to reject the testimony of the said witness, simply because the witness is related to the deceased or any of the parties. In this context, reference can be made to the decision of this Court in Mano Dutt v. State of U.P. Para 24 is relevant which reads as under:

“24. Another contention raised on behalf of the appellant-accused is that only family members of the deceased were examined as witnesses and they being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party.”

(emphasis added)”

17. PW-18, HC Amar Jit Singh has stated that on 17.07.2010 he was posted at police control room head quarter and at 6:42 p.m. he received communication from the control room that at J-3/82, Rajouri Garden, 1st Floor near Gurudwara (place of the incident) “*Ghar Kee Naukrani Nai Ghar Kee Lady ka Gala Kaat Kar Maar Diya*” (the

maid of the house had silted the neck of the lady of the house and killed her). He forwarded this information to PCR van and west district control room. He provided the copy of PCR form as EX PW-18/A. The same records above the name of the appellant Ruby Begum @ Rina as the maid. The same, therefore, is a contemporaneous account of the incident which was recorded immediately after the discovery of the dead body of the deceased and had no scope of any improvement or concoction.

18. The Call Details Record (CDR) of mobile phone No. 9555361530 registered in the name of Tilak Raj s/o Chaman Lal was produced by Rajiv Shardha (PW-21), Nodal Officer, Reliance Communication Limited. Tilak Raj is the father of the appellant Rakesh Mehra. The CDR further shows presence of Rakesh Mehra in Rajouri Garden on the day of the incident from 12:13:36 to 16:18:3, thereafter his presence is shown at Raghbir Nagar i.e., his residence from 16:49:47 to 17:33:23. Thereafter, he is on the move and via WHO office at IP extension, he moves to Ghaziabad where he stays till 18.07.2010 and thereafter moves to Jalandhar, Punjab from where he is finally brought back to Delhi by the Special Staff. The CDR further shows repeated calls between the two appellants on 17.07.2010.

19. PW-2, Shri. Parminder Singh also deposes about the presence of the appellant, Rakesh Mehra in the house of the deceased. In their statement under Section 313 CrPC the appellants do not give any explanation of their presence in the vicinity in the house of the

deceased or as to why they left Delhi and went to Ghaziabad and thereafter to Jalandhar immediately after the incident. These circumstances would attract the presumption under Section 106 of the Indian Evidence Act, 1872 which is reproduced herein below:-

“106. Burden of proving fact especially within knowledge- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him”.

20. Explaining the applicability of Section 106 of Evidence Act to Criminal Trials, Supreme Court in Sucha Singh Vs. State of Punjab (2001) 4 SCC 375 held as under:-

“17. Recently this Court has held in State of W.B. v. Mir Mohd. Omar that the principle embodied in Section 106 of the Evidence Act can be utilized in a situation like this. Shri U.R. Lalit pleaded for reconsideration of the said legal position. According to him, the ratio laid down in that decision is not in tune with the well-accepted principle of criminal law that the accused is entitled to keep his tongue inside his mouth as the burden is always on the prosecution to prove the guilt of the accused. To meet the said contention it is appropriate to extract the following observations from that decision:

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major

beneficiaries and the society would be the casualty.”

18. Learned Senior Counsel contended that Section 106 of the Evidence Act is not intended for the purpose of filling up the vacuum in prosecution evidence. He invited our attention to the observations made by the Privy Council in Attygalle v. R. and also in Stephen Seneviratne v. R. In fact the observations contained therein were considered by this Court in an early decision authored by Vivian Bose, J., in Shambhu Nath Mehra v. State of Ajmer. The statement of law made by the learned Judge in the aforesaid decision has been extracted by us in State of W.B. v. Mir Mohd. Omar. It is useful to extract a further portion of the observation made by us in the aforesaid decision:

“33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.”

19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the

prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference”.

21. Coupled with the above is the recovery of the articles belonging to the deceased from the house of the appellants and at their instance. It has been argued that no such recovery was made at the pointing of the appellants. It is specially argued by appellant, Rakesh Mehra that even as per the prosecution he was taken to the office of the Special Staff on being brought from Jalandhar while the wife Ruby Begum was taken to their home. It is, therefore, submitted that the recovery, if any, would have been at the instance of Ruby Begum and only to implicate Rakesh Mehra in the incident, the same is being shown to have been made at his instance.

22. We, however, find no reason to doubt the recovery of the articles at the instance of the appellant in the present case. The appellants were found at Jalandhar and were brought by the Special Staff to Delhi. It is upon interrogation of the appellant Rakesh Mehra at the office of the Special Staff that he disclosed about his involvement in the incident, where upon, he was taken to his house and the recovery of the articles was made at his instance. The same has been duly proved from the testimony of SI Sanjay Kumar (PW-16), SI Manoj Kumar (PW-19), Inspector Ram Niwas (PW-22) and Inspector Raj Kumar (PW-24). The testimony of the above witnesses

could not be shaken in their cross-examination and was consistent with each other.

23. As far as recovery of blood stained cloths i.e., pant at the instance of appellant Rakesh Mehra and the salwar suit at the instance of the appellant Ruby Begum are concerned, the same were proved from the testimony of Inspector Shankar Lal (PW-6 renumbered PW-6A), HC Rajbhir Singh (PW-14) and woman Constable Seema (PW-13). No suggestions were put to them that these clothes did not belong to the appellants. Ms. Manisha Uppadhaya (PW-25) Assistant Director Biology, FSL, Rohini, Delhi proved the Biological and serological report that had opined the presence of human blood on the clothes so recovered at the instance of the appellants.

24. In view of the above we find that the prosecution was able to make out a complete chain of evidence showing the involvement of appellants in the crime and therefore, find no merit in the present appeals. The same are accordingly dismissed.

25. Copy of the order to be sent to Tihar Jail for updating of records and intimation to the appellants. Trial Court Record be sent back.

NAVIN CHAWLA, J

MUKTA GUPTA, J

JANUARY 05, 2018/rv