

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

% *Judgment Reserved on: October 17, 2014*
Judgment Delivered on: October 30, 2014

+ **CRL.A. 1534/2011**

ACHEY LAL

..... Appellant

Represented by: Mr.Vivek Sood, Ms.Vandana
Bhatnagar, Ms.Jhanvi Mahan,
Mr.Jaideep Tandon and
Mr.Prem Prakash, Advocates.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP for the
State with SI Mukesh Kumar,
PS Civil Lines.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Achey Lal is convicted for causing the offence punishable under Sections 376/302 IPC by the impugned judgment dated September 27, 2011 and vide order dated October 01, 2011 directed to undergo Rigorous Imprisonment for a period of ten years and to pay a fine of ₹5,000/- and in default of payment of fine to undergo Simple Imprisonment for one month for offence punishable under Section 376 and to undergo imprisonment for life and to pay a fine of ₹5,000/- and in default of payment of fine to undergo Simple Imprisonment for one month for offence punishable under Section 302 IPC.

2. The case of the prosecution being based on circumstantial evidence it has to be ascertained whether the deceased died a natural death or a

homicidal death and whether forcible sexual intercourse was committed with her or not.

3. Learned counsel for the appellant assailing the judgment contends that as per the post-mortem report the death was due to a natural cause of action, thus the appellant cannot be convicted for causing the murder of the deceased Sharda and at best the appellant could have committed forceful intercourse but the same was not forcible and contrary to the wishes of the deceased. Hence he is entitled to be acquitted even for offence punishable under Section 376 IPC.

4. On December 31, 2010 a PCR call was received from mobile phone No.9891271617 informing that a lady who was working at their house was found dead when the other maid went to call her from her house and Police be sent. The said PCR call was recorded vide DD No.18 at Police Post, Majnu Ka Tila at 12.50 PM on December 31, 2010. When Inspector Rakesh Kumar, PW-27 reached the spot he found the body of a female covered upto the breast by a blanket lying in the room. One Nokia mobile phone (IMEI No.356902033673200) was lying near the pillow. The lady was naked from breast to feet and ASI Yashwant and Constable Sudhir had caught the accused who disclosed his name as Achey Lal. The Salwar and her woollen innerwear were also opened upto her feet. One quarter bottle of Bonnie Scot was lying near her legs. They examined the girl Manisha who was at the spot and had called the police. The spot was inspected and photographed by the Crime Team. A muffler was also found near the private parts of the deceased which was also seized.

5. Manisha PW-5 stated that she was doing Ph.D from Delhi University and Sharda the deceased was living at House No.L-11, Majnu Ka Tila along

with her husband on rent. Sharda used to go in the neighbourhood to work as a maid. On December 30, 2010 Sharda had taken ₹20/- as loan from her mother and assured that she would clean her house in return thereof. On that day at about 12.30 PM she had come to the house of Sharda to ask her to do the work. When she reached at the house of Sharda she found that the door was open. She knocked at the door but got no answer. She pushed the door and called Sharda. She found Sharda lying on a bed on the floor and was not responding. When she tried to wake up Sharda, she gave no response. She found that Sharda's shirt was upto her neck and had a blanket on some part of her body. When she did not respond she thought that she was unconscious and went outside the house. People collected. In the meantime, one man aged 45 years Achey Lal who was in intoxicated condition was found inside the room. When they all wanted to go inside the room, Achey Lal stopped them at the door to prevent them from entering the room and stated that Sharda was like his mother and had not died and was sleeping after taking liquor. Thus she called the police. When the police came they handed over Achey Lal to the Police.

6. The dead body of Sharda was sent for post-mortem to Dr.S.Lal, PW-1 who conducted the post-mortem of the body aged 65-70 years and authored the report Ex.PW-1/A noticed ante-mortem injuries in the form of reddish abrasion 1 x 0.5 cm on the anterior aspect of vagina just about the clitorius and multiple reddish bruises seen in and around the vaginal orifices, on inner mucosa with mild bleeding. On internal examination he found the brain congested, neck tracheal mucosa was congested and trachea contained gastric content that had reached upto secondary bronchiole of both lungs. The stomach contained semi digested food material with clear fluid and wall

was congested, smell of alcohol present. He opined the cause of death as asphyxia due to aspiration of gastric contents consequent upon forceful sexual intercourse which was sufficient to cause death in the ordinary course of nature. He opined that the injuries were ante mortem in nature and recent in duration. The injuries present in and around the vagina indicated sexual assault/intercourse before death and time since death was about six hours. The post-mortem on the body of the deceased was conducted at 3.55 PM and thus the death took place approximately around 10.00 AM.

7. On cross-examination Dr.Lal admitted that the lungs were congested because of the food (gastric contents) present in the trachea that had reached upto bronchiole of both lungs and that aspiration of gastric contents was caused due to forceful sexual intercourse. He denied that this was due to some self natural happening in the body of the deceased during her sleeping in a position that the food contents entered the bronchiole and that the same was not even possible by overeating.

8. In Modi's Medical Jurisprudence and Toxicology, Twenty-Second Edition at pages 273-274 it has been explained that choking and obstruction of the air passage from within is mostly accidental. It is pointed out that the vomited matter may regurgitate into the larynx, and by inspiratory efforts may be aspirated into the smaller bronchi and may cause suffocation. This is especially common in acute alcoholism and occasionally occurs during a fit of epilepsy or in a case of badly administered anaesthesia. The contents of stomach may also fall into the larynx and trachea after death owing to pressure of the gases of decomposition but they cannot reach the smaller bronchi. In the present case the post-mortem report shows that the deceased had consumed alcohol and was subjected to sexual intercourse. The finding

of the post-mortem Doctor is categorical that the aspiration of gastric contents was caused due to forceful sexual intercourse. Even the husband of the deceased Kishan Lal PW-17 deposed that Achey Lal had come to his house at about 8.00 AM and was carrying a quarter bottle of liquor. He along with the accused consumed that bottle whereafter he left the house along with Bhola and Ashok Kumar and reached Malka Ganj. Thereafter Achey Lal and his wife Sharda were at home and at 3.00 PM he came to know that his wife had expired. Though he denied that Bhola, Ashok Kumar and Achey Lal and his wife had taken liquor together as stated in his earlier statement however, it is proved beyond reasonable doubt from the post-mortem report that the deceased had consumed alcohol and was subjected to sexual intercourse. Achey Lal even if held guilty for causing the offence of Section 376 IPC cannot be held guilty for offence under Section 302 IPC as he neither had any intention nor knowledge that such a forceful act of sexual intercourse would cause the death of the deceased. Consequently he is acquitted for the offence punishable under Section 302 IPC.

9. As regards the offence punishable under Section 376 IPC the deceased was aged around 65-70 years, thus beyond the age of menopause. We find force in the contention of the learned counsel for the appellant that even if the sexual intercourse was forceful it was not forcible and contrary to the wishes and consent of the deceased. From the MLC of Achey Lal and the post-mortem of the deceased it is evident that both Achey Lal and deceased had consumed alcohol. The forceful penetration is evident from the injuries on the vaginal orifices. However, besides the injuries on the vagina there is no other injury mark on the body of the deceased or on the appellant to show that there was any protest by the deceased. Hence we are of the opinion that

it has not been proved beyond reasonable doubt that the appellant committed sexual intercourse with the deceased contrary to her wishes or her consent. Consequently the appellant is also acquitted of the charges under Section 376 IPC. The impugned judgment of conviction and order on sentence are set aside.

10. The appeal is accordingly disposed of.

11. The appellant, who is in custody, be released forthwith if not required in any other case.

12. T.C.R. be returned.

13. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 30, 2014
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