
(2003) 07 PAT CK 0069

In the Patna High Court

Case No : Criminal Appeal No. 136 of 1999(DB)

Hira Kumar Verma @ Amrendra Kumar Sinha

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-07-2003

Acts Referred:

Citation : (2003) 07 PAT CK 0069

Final Decision : Dismissed

Judgement

P.K. Sinha, J.

1. The Sole appellant, convicted u/s 302 of the Indian Penal Code ("the Code" in short) and u/s 498A of the Code, having been sentenced to imprisonment for life and rigorous imprisonment for one year, respectively, had faced trial with three other lady-accused who, however, were acquitted by the learned Trial Court, prosecution having failed to prove its case against them beyond reasonable doubts though all the four were charged, together, u/s 302 read with Section 34 of the Code as well as u/s 498A of the Code. The case of prosecution, as coming out of the F.I.R. (Exhibit 1) lodged by Ram Chandra Prasad, father of the deceased Shobha Devi, is that Shobha Devi was married with the appellate in June, 1988 and after living in "sasural" for 10 to 15 days came back to his house. After "rukhsadi" she lived in "sasural" for three years but in 1991 the appellant demanded Rs. 15,000/- for doing business which demand could not be satisfied, resulting in torture to his daughter at which she fled to him and complained that her "sasural" people including the husband had tortured her for non-fulfillment of the demand. After a few months, the informant came to her "sasural" and requested the appellant to take back his daughter assuring that he would pay money when he was able to lay hand on it, but they made him flee away after receiving assault. But, after two months his daughter was sent to her "sasural", on demand of the appellant. 2. It was also claimed that in the year 1994 the appellant had developed intimacy with the sister-in-law of his elder brother whereafter also the victim was tortured which he did not stop despite

informant's attempt to induce reason into him. In November, 1995, informant's wife brought back the victim but two to three months before the occurrence she again went to her "sasural". About two three days before, one Ajay Kumar Singh told him that he was not allowed when he went there, to meet Shobha Devi who was kept confined in a room and was tortured. On 15.6.1996 the informant with his family went to see his daughter but found her dead at the Kahalgaon Hospital, the doctor informing him that the preceding night she was brought in dead condition by the appellant and his brother. It will appear that in course of trial a defence was taken, as would appear from the suggestion thrown to P.W. 6, the informant, that his daughter used to be ill and died in the hospital in course of the illness whereafter he was informed of that and on that information he had proceeded to Kahalgaon. The appellant also pleaded innocence and false implication.

3. Eight witnesses have been examined on behalf of the prosecution and six on behalf of the defence. P.W. 3, Umesh Yadav, was declared hostile by the prosecution but we will come across part of his deposition while dealing with the prosecution evidence. Dr. N.N. Bhagat, who had held autopsy on the dead body is P.W. 8 whereas Nirmal Kumar Singh, the investigating officer is, P.W. 7. Nand Kishore Verma, P.W. 5, principal in a private school, is son of the informant, whereas P.Ws. 1, 2 and 4 are Devraj Singh, Suresh Thakur and Jai Prakash Mandal informant being P.W. 6.

4. Stress was laid in course of the arguments by the learned Counsel for the appellant to the point that abundant evidence had come on the record, including that of the prosecution witnesses, that the deceased had died of illness and that for treatment she was brought to the hospital by none other than the appellant himself. Evidence of prosecution witnesses in that regard was pointed out. P.W. 1, though claiming that he did not know how she had died, said in cross-examination that the deceased used to be ill and had died in the hospital. P.W. 2 claimed that she was brought to the Sadar Hospital at Kahalgaon as she was not well and she died there in course of treatment. He also said that he had not heard that appellant used to assault her nor did he hear that both had a congenial relationship. P.W. 3, who was declared hostile claimed that on her being ill the deceased was brought to the Sadar Hospital at Bhagalpur where she died. He denied the statement attributed to him by the prosecution as made u/s 161 of the Code of Criminal Procedure, saying that he had not given such statement. However, the admitted position, even in the evidence of the witnesses, is that the deceased had died at Sadar Hospital at Kahalgaon, not at Bhagalpur. P.W. 4 said that he had heard that Shobha Devi had died in the hospital in course of treatment but claimed that he had not heard that appellant had assaulted her.

5. Now, on this point the evidence of defence witnesses may also be considered. D.W. 1 is Dr. N.N. Mishra who has deposed that he had examined Shobha Devi on 6.8.1995 (the date of occurrence being 14.6.1996) and she again was seen

by him on 20.8.1995. The prescription is marked Exhibit A. D.W. 2, Dr. Ashok Kumar Singh claimed to have done pathological examination of blood, etc. of Shobha Devi on 29.4.1996. The reports submitted by him have been marked Exhibit "B" series. D.W. 3 was then working as Sweeper in the Kahalgaon Hospital where he was on duty on 14.6.1996, as claimed, and said that about 8.00 P.M. this appellant brought his wife to the Hospital in ailing condition and was seen by Dr. Mahesh Prasad Singh, who examined for 10 to 15 minutes and said that she had already died. Thereafter, the appellant with the help of Gunjan Ravidas a compounder, kept the dead body on the Verandah, the appellant telling that he also had informed the in-laws and would fake away the body when they came. This witness further said that the next day in the morning the police came and took away the dead body of which the inquest report was also prepared. In cross-examination he showed his ignorance as to whether or not the appellant had informed the police.

6. D.W. 4, Ganeshwar Paswan, said that on 14.6.1996 he had gone to fetch medicine from a shop near the hospital where the appellant met him and told that he had come for treatment of his wife. He said that doctor also had visited his wife. D.W. 5 is Dr. Sadanand Tiwari who had conducted some pathological tests. His reports were marked Exhibit "C" series. D.W. 6, also a doctor, proved Exhibit "D" series relating to treatment of Shobha Devi, one dated 7.3.1992 and other dated 24.4.1996. It was with the help of these evidences that the learned Counsel for the appellant stressed that the death occurred due to illness as admitted even by the prosecution witnesses and that at least created doubt about the allegation of the prosecution.

7. In this regard, evidences of some other witnesses may also be seen. P.W. 5 said that 2 to 3 days before the occurrence they came to know that Shobha was not well hence they reached Kahalgaon on 15.6.1996 and came to know that Shobha was in the hospital where they went. There they saw her dead body, blood oozing from the nostrils and mouth, doctor telling him that Shobha was brought in the night in dead condition and hence no treatment was given. According to this witness, that very day they had informed the police and the police brought the dead body to the police station where inquest report was prepared on which he also had signed. This witness denied that his sister, the deceased, used to remain ill.

8. The informant in his evidence said, while supporting the allegations made in the F.I.R. that on 15.6.1996 when he went to Kahalgaon he found none in the house and came to know that she had been taken to the hospital and at the hospital he saw her dead on Verandah, the doctor telling that the lady was brought the preceding night in dead condition. The learned Counsel for the appellant had rightly pointed out that even the doctor, said to have given such information to P.Ws. 5 and 6, was not examined as a witness hence the evidence in that regard was hearsay. What these two witnesses have said about doctor telling them is indeed hearsay but what these witnesses wanted to make out had

obviously been admitted by the appellant through the evidence of D.Ws. 3 and 4, who both said that this appellant had brought his wife, though for treatment, to the hospital, P.W. 3 further telling that Dr. Mahesh Prasad Singh had seen the lady and told that she had died. Therefore, the fact that has been admitted by the defence witnesses was hardly needed to be proved by the prosecution.

9. To find credence in such evidences, we must go through the evidence of P.W. 8, the doctor who had conducted autopsy at the dead body on 16.6.1996 at 11.45 a.m. and had found following ante-mortem injuries on her person

"(i) Multiple bruises on left elbow 1 (1/2)" x 1" on lower lip, left and right leg 2" x 3/4" on lower part, on right knee 1" x 1/2", on back 6" x 1", supra scapular region on right side 3" x 1", both thighs 3" x 1", on face left cheek.

(ii) On dissection of neck extravasation of blood in neck tissue, fracture of cornea of thyroid bone left side, haematoma in the tissues, tracheal ring loosened, mucosa congested."

10. The doctor opined that the injuries were caused by hard and blunt substance, and the injury on the neck was due to pressure and cause of death, which had taken place within forty-eight hours, was asphyxial shock. The postmortem report was proved by the witness, and marked Exhibit 3. We do not find anything on the record to impel us not to accept the evidence of this witness. There is no circumstance to show that this witness had any reason to give a coloured report. Therefore, the evidence of this witness conclusively proved that the deceased who is shown to have been brought at the hospital by her husband had died homicidal death, not because of any illness. The evidence of this witness proves that not only that she was done to death by throttling, but that she also had suffered assault, upon her resulting in infliction of various injuries. Therefore, notwithstanding other evidence to the contrary this most important evidence about the cause of death amply proves that Shobha Devi was brutally murdered around the time as claimed by the prosecution.

11. Now the question that would arise is whether the appellant can be held guilty of such a murder. It was rightly argued by the learned Counsel for the appellant that no evidence has come on record showing that the appellant was seen committing the murder of his wife. That is, to say, there is no direct evidence to that. This is a case of circumstantial evidence and, therefore, this Court has to examine the evidence in order to find out as to whether all the links in the chain are so complete so as to indicate that the appellant and appellant alone would have murdered the deceased. For this some other aspect as coming from the evidence may be seen.

12. P.W. 1 in his evidence said that the appellant lived separately from his parents, only with his wife and children. He also said that about 4 to 5 years back the appellant had separated from his family. During cross-examination he said that the appellant has four brothers, but was separated from them since 4 to 5 years.

13. P.W. 2, in cross-examination, said that the appellant lived with his wife, separately from her other family members and his parents, and that his brothers and sister lived in separate house. P.W. 3 who was declared hostile also said in cross examination that the appellant and his wife had separated from their family around the year 1990. In cross-examination P.W. 4 also said that the appellant has separated from his family members and lived in a separate house. Though P.W. 5, the brother of the deceased, denied that other family members had separated and lived separately (paragraph 16) but in course of cross-examination also said that the appellant and his deceased wife were joint with family members at the time of occurrence, but sometimes they also separated. This he also repeated in paragraph 30 of his deposition. Therefore, even an interested witness like P.W. 5 could not deny that the appellant also lived separately. Such evidences, therefore, establish the fact, mostly brought out in course of cross-examination of the witnesses, that this appellant lived separately with his wife. P.W. 6 said (paragraph 8) that at the time of occurrence the deceased had two children, a son, three years old and a daughter half the age of her brother who, therefore, hardly could have come forward as witnesses.

14. Therefore, from the evidence we find that it stands proved that at the time of occurrence the appellant lived separately with his wife, the deceased, and that the deceased on the date of occurrence had met a homicidal death, medical evidence proving that she was not only throttled to death but was also subjected to physical assault on different parts of her body. From the evidence, including that of the defence witnesses, it also stands proved that it was this appellant alone who had brought the dead body on 14.6.1996 to the hospital where she was seen by a doctor and declared dead. The defence witness has also proved that, thereafter, the dead body was kept on the Verandah by the appellant with the help of a compounder. From the evidence of the informant and his son it would also appear that at that place the next morning her dead body was found totally unattended. The evidence would show that, thereafter, they had informed the police and had filed a case and the dead body was then removed from that place.

15. Besides these circumstantial evidence there are other circumstances such as the conduct of the appellant which speak a volume against him. Since it has amply come in evidence that at the time of her death she was living with the appellant and it was the appellant who had brought her to the hospital, it must be presumed that the appellant was aware of her physical condition. If he had nothing to do with her death, the natural conduct of a husband would have been to attend upon the dead body of his wife, not leaving that unattended and since she had some apparent injuries as also noted in the inquest report as well in the postmortem report, the most natural conduct of a husband would have been to inform the police or other authorities if he had nothing to hide, but the circumstances coming in the evidence would show that he left the dead body unattended and there is nothing on the record to show that he informed any of the authorities. The negligence of the attending physician is also apparent who

did not inform the police though, if he had attended upon the deceased, he must have come to know that that was a medico-legal case. Having been living separately with his wife, he had the best opportunity to commit this crime and if he had nothing to do with the murder, then he was one person who should have come clean and explained the circumstances under which his wife received such ante-mortem injuries, instead he had attempted his best to explain away the death with specious plea that she was ill, and had died of illness. These strongly show that he and he alone was the culprit.

16. A question would arise as to why he should murder his wife. The motive as coming in prosecution evidence is that some time after her marriage he had demanded Rs. 15,000/- from the informant which when was not paid, he subjected his wife to torture. Another reason that was sought to be brought on the record was that he had become intimate to the sister-in-law of his elder brother. However, there is inadequate evidence on the record to substantiate this second reason. Insofar as the demand of money was concerned, the informant has supported that and has stood the test of cross-examination on that point.

17. Learned Counsel, however, pointed out that P.W. 5 had claimed that the demand was made in the marriage itself whereas the prosecution case, as supported by the informant was that it was subsequent. It was also pointed out that P.W. 5 had admitted (paragraph 17) that the appellant has never demanded Rs. 15,000/- from him. But this evidence of P.W. 5, we do not find to be in contradiction to the evidence of P.W. 6. It is nowhere the prosecution case that any money was demanded from the brother of the deceased. It was the informant's case the money was demanded from him. After lapse of time, since money was not demanded directly from P.W. 5, some discrepancy as to when the money was demanded could have come in the evidence of P.W. 5, but that hardly can take away the effect of the evidence of P.W. 6 on this point.

18. Moreover, in between husband and wife who are not having a congenial relationship, as in this case, such incident may happen for a number of reasons, even a trifling matter may assume vast proportions resulting in assault, and even strangulation.

19. Immediately before her death she was tortured, is evident from the medical evidence. As already stated, the circumstances coming in evidence, clearly show that it was appellant and appellant alone who was in a position to commit the crime.

20. All these circumstances, in our opinion, complete the chain of circumstances, including the conduct of the appellant, and prove that it was the appellant who had committed the murder of his wife.

21. Lastly one point was urged on behalf of the appellant that if he was the assailant he was hardly supposed to bring the dead body to the hospital. It was also submitted that his other relatives who, according to the evidence of the Investigating Officer, live nearby were produced as witnesses.

22. Insofar as the last point is concerned, even the relatives were made accused and even if the close relatives of the appellant had heard or seen something, they were hardly expected to turn against their own close relative. So far as bringing body to the hospital is concerned, obviously the husband was not an accomplished criminal. If such an offence, as in this case, has been committed by the husband within the confines of his house then he may act according to his mental condition obtaining at that time. Some cool-headed would plan to dispose of the body surreptitiously. Still some other would think of a story as to how

some other had entered into the house and had committed the crime. Still some would try to prove their innocence by doing exactly what this appellant had done, that is, to bring the body to the hospital to show that she was so brought as she was ill. Indeed this is how the defence story has been developed in this case only to be punctured by the evidence of the doctor.

23. Learned Counsel for the appellant has relied upon a decision of the Apex Court in the case of Sukhram Vs. State of M.P., In that case two accused were convicted by the Trial Court u/s 302 read with Section 34, and u/s 436 read with Section 34 of the Code. Co-accused was acquitted by the High Court, giving benefit of doubt. Their Lordships observed that in such circumstance the appellant's conviction for two substantive offences read with Section 34 of the Code could not be sustained because that was a case where the co-accused was a named person who had been acquitted, and by reason of that the appellant could not be held to have acted conjointly with anyone in the commission of the offences. Learned Counsel pointed out that the appellant was charged along with three accused u/s 302 read with Section 34 of the Penal Code, hence he could not alone have been convicted u/s 302 of the Code while other co-accused were acquitted by the Trial Court. However, the facts are a bit different. In that case two accused were convicted under alternative charges under Sections 302 and 436 both read with Section 34 of the Code, whereafter one was acquitted by the High Court. In this case the accused were charged u/s 302 read with Section 34 of the Penal Code but the Trial Court did not find the prosecution case to have been proved beyond reasonable doubts against three of the accused, but so proved against the appellant, hence the learned Court convicted the appellant alone u/s 302 of the Penal Code. Moreover, having done so will not appear to be such an irregularity but which is not curable, particularly in view of the fact that for such conviction appellant does not appear to have prejudiced in any manner. Under law, no doubt, for every distinct offence a separate charge has to be framed u/s 218 of the Code of Criminal Procedure subject to exceptions such as under Sections 219 and 220 of the Code of Criminal Procedure. u/s 464 of the Code of Criminal Procedure, however, no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has, in fact, been occasioned thereby.

24. Moreover, under Sub-section (2) of the Section 221 of the Code of Criminal Procedure if in a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of Sub-section (1) of Section 221, he may be convicted under the offence which he is shown to have been convicted, although he was not charged with that.

25. In the circumstances of this case, the husband could have been alternatively charged with murder simpliciter, u/s 302 of the Code, which offence is found to have been committed. Moreover, if non-framing of charge u/s 302 of the Code is not shown to have caused a failure of justice, the irregularity would be curable and not vitiated the findings of the Trial Court. A decision of five Hon"ble Judges of the Supreme Court, in this regard, in the case of Willie (William) Slaney v. State of Madhya Pradesh 1995 (2) SCR 1140, may be seen.

26. Insofar as this case is concerned, the charge clearly indicated that appellant was being tried for offence relating to the murder of his wife. The entire evidence was recorded in his presence. Obviously the appellant was not misled by non-framing of the charge u/s 302 of the Code since he also examined defence witnesses to prove that the deceased was not murdered, but had died of illness. In his examination u/s 313 of the Code of Criminal Procedure first question asked was--(English translation) "the prosecution evidence against you is that on 14.6.1996, having formed common intention with others, you had killed your wife Shobha Devi in your house". Obviously the appellant denied that. Asking the question that he had done so having formed common intention with others, is redundant since no such evidence has come on record, but even then the appellant was clearly asked about whether he had killed his wife, Shobha Devi, in his house, the evidence having come on record that he was living separately with his wife.

27. It will, therefore, appear that by non-framing of the charge, as aforesaid, no miscarriage of justice had taken place, nor the appellant was in any way prejudiced.

28. In view of the circumstances, as appearing in the case and discussed by us above, we are of the view that the judgment of the lower Court needs no interference. This appeal, therefore, is dismissed.