
(1999) 04 MP CK 0048
In the Madhya Pradesh High Court
Case No : Criminal App. No. 338 of 1988

Madan @ Madhu	Vs	APPELLANT
State of M.P.		RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2001) 1 MPJR 8 : (2001) 1 MPLJ 347

Hon'ble Judges : Rajeev Gupta, J;N.P. Singh, J

Bench : Division Bench

Advocate : Rajendra Singh with R.K. Shukla, for the Appellant; R.A. Robertson, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Gupta, J.

The appellant has been convicted u/s 302/201, Indian Penal Code by judgment dated 9-2-88 of I Addl. Sessions Judge, Raipur in S.T. No. 185/86. He has been found guilty of committing murder of his wife Saroj on 22-4-1986 by strangulating her and further attempting to destroy the evidence of murder by setting her to fire after pouring Kerosene oil on her body.

The conviction is based on circumstantial evidence only. Saroj met her death within one year of her marriage with the accused wherein the accused was demanding a scooter, a gold chain, bus fare from her father Durgaprasad. However Durgaprasad was able to give only the bus fare and wrist watch and some money. The accused continued to demand scooter and gold chain and was unhappy with the deceased and her parents for not meeting the demand. The accused was residing in Dhamtari with his wife Saroj and his brother Anoop and sister Vimla. On the day in question at about 1-30 p. m. his brother and sister had gone out to meet their other brother Mahesh in Dada Dharmshala and at that time the accused strangulated her and set her body on fire and thereafter

started crying on which the Mohalla people came and put off the fire on the body of the deceased by throwing sand on her. He also suffered some superficial burns on his hands and knees. He lodged a report at police station that his wife committed suicide. It was a false report. In the postmortem examination of the body a post of two doctors found that the cause of death was strangulation and the burn injuries. There was no carbon in her nostrils or in the air passage. The circumstances relied upon by the trial court in convicting the accused were as under--

(i) That he was in the house when his wife burnt and there was nobody else in the house when she died.

(ii) She died of strangulation and burn injuries were postmortem which suggested that somebody after strangulating and killing her set the body to fire by pouring kerosene oil.

(iii) There was kerosene oil on the body.

(iv) The accused had lodged the false report that she committed suicide.

(v) The accused had been demanding scooter and gold chain from her parents at marriage and since thereafter and was unhappy with her and her parents because the demand was not fulfilled.

The defence set up by the accused during the trial was that he was sleeping in one room of the house and his wife was in the other room. He suddenly heard shrieks of his wife and rushed there and saw his wife burning. He wrapped her with his own body and arms to control the fire but could not do so. His hands and legs were burnt. Even his lungi was burnt. He rushed out and raised cries when people came and extinguished the fire by throwing dust on the fire. His case was that she was still moving when the people came and some of the people who came and appeared as witnesses saw her moving. So she had not died before getting burnt and she in fact committed suicide. He had denied any demand of scooter, chain and other demands made from her parents. It was suggested that other family members were also in the house i.e. his brother and his sister and so presumption that he was alone with his wife and he committed the murder, cannot be raised.

The prosecution has examined 21 witnesses of which PW Dr. Bajpai has examined the accused on 22-4-1986 at 4 p.m. and found superficial burns on the both legs and dorsum of foot. He also found superficial burns with blister 1x1 cm. oval at medial aspect of left elbow joint. Burns covered 5% of the body and according to the doctor they could heal within 2-3 weeks, if not complicated. PW 20 Dr. Qadeer had conducted the postmortem examination on the body of Saroj. The autopsy was conducted on 5-35 p.m. on 22-4-1986. The cause of death was asphyxia and could be due to throttling. Intensive burns were postmortem. The time of death was opined within 48 hours. Smell of Kerosene oil was present on the body. Rigor mortis was present. The burns were 80%. They were deep and

superficial. The tongue was protruding out and congested. There was frothy bleeding from nose and mouth. Hands were clenched. Scalp hairs were partially burnt in interior part, eye lashes, eye brows, public hairs were partially burnt. Full face, neck, chest, abdomen all sides except axila burnt. Both buttocks, thigh, half legs were burnt. Mucus membrane of larynx was congested and foam was mixed with blood. Trachea had foam with blood in it. Left heart was empty and right was full of blood. There was semi digested food present in the stomach. Lines of demarcation and vesicle were not present. The burns were found postmortem. Doctor stated that the cause of death was throttling. The body was still fresh and there was no fracture of any of the bones of the neck or larynx and trachea. He opined that protruding of tongue does not occur due to burning of the body. He explained that his opinion that burns were postmortem was based on absence of line of demarcation and vesication. It was a body of healthy lady.

We have extracted these portions of medical opinion as they are being put forward as defence for suggesting that the death could have occurred by burning without causing the lines of demarcation and vesicle on the burnt body and that the accused had tried to extinguish the fire of the deceased.

The F.I.R, given by the accused is significant. It is Ex. P-23 recorded on the statement of the accused by inspector (PW 21) S.K. Munlakvar. In this the accused mentioned that his younger brother and sister had gone to Dada Dharmshala to see his younger brother Mahesh. He and his wife were in the house. He was sleeping in the inner room while his wife was sleeping in the front. On 1.05 p.m. he heard shrieks of his wife. He went there and saw his wife burning. He held her body in his arms but his lungi caught fire. So he came out and shouted. The nearby people came and threw sand on the fire and thus fire was extinguished. He said that his wife committed suicide and the body was lying in the room. This report was made on 2-05 p.m.

The contention of the counsel for the appellant is that the conduct of the accused is natural. He had given a true story to the police. There was no proper investigation. His burnt lungi seized by the investigating officer shows that the accused tried to save her and she committed suicide for unknown reasons. It is asserted that PW19 Kritika & PW 3 Shivdayal had admitted that when they reached the room where Saroj was burning they had seen her hands moving. They had also seen the accused weeping and crying. They stated that the girl breathed last in their presence. So the argument is that absence of lines of demarcation and vesicle is possible even in death by simple burning.

The trial court had dealt with these arguments. These 2 witnesses were cross examined by the prosecution as hostile on various aspects. They are neighbours of the accused. They had stated in their statements to police that they had seen the head of the girl moving and that she breathed last in their presence. According to Shivdayal he was first neighbour who reached there and then others came. The reasonings of the trial court appears sound. The postmortem examination was by two doctors and both had given that opinion. of course, the

other doctor did not appear in the witness box. It was unnecessary for the prosecution to call both the doctors. The opinion is definite as was asserted by Dr. Qadeer in his evidence. There are four reasons for the opinion that the burns were postmortem. These are:

- (a) Absence of any soot or carbon particle in any portion of the breathing system
- (b) tongue/protruding suggesting throttling.
- (c) death due to asphyxia,
- (d) absence of line of demarcation and vesicle in the wounds caused by burns, the nature of that was superficial and deep.

We find that the opinion of these autopsy surgeons is unassailable and is acceptable. The presence of the accused in the house is admitted by him in the report made by him. He gave false report, since this report is not incriminating in nature, on its basis not FIR had been recorded. The FIR had been recorded only after the autopsy report was received by the police. This was recorded as intimation of unnatural death by suicide. The fact that the accused and his wife were alone in the house is also admitted by the accused in this report. These circumstances which are relied upon by the trial court are proving the guilt of the accused. There is no dispute that the deceased was wife of the accused and was living in his house. Regarding his report to police the accused said that he did not know what report was made by him but he admitted that he had gone to the police station and made a report.

The accused has examined 4 defence witnesses of which DW 1 Saraswati wants to show that after the incident deceased's mother when she visited them was staying in the house of the accused that they had spent a lot on doctors and police. This was rejected by the trial court, rightly. DW 2 Budhesh who claims to be neighbour of the accused, said that there was never any quarrel between the deceased and the accused. DW3 Dr. Purohit of Central Jail, Raipur and DW4 Amit Day, a convict in jail, said that this accused was treated for his burns on his legs and elbow of both arms. He remained admitted from 27-4-86 to 23-5-86 in jail hospital. The argument is that the burns suffered by the accused were quite serious and they support his contention that he had tried to save his wife from burning. The argument is that the trial court has explained that he might have suffered them to show to the outer world that he tried to save the wife. It is urged that such a conduct would be unnatural on the part of the accused.

The evidence of PW 2 Gulab who is cousin of Durgaprasad, father of the deceased, PW 10 Shyambai, mother of the deceased, PW 16 Durgaprasad father of the deceased, PW 17 Arun Kumar a cousin of the deceased and PW 18 Rukhmani an aunt of the deceased, shows that the accused had demanded scooter and gold chain at the time ceremony of Anchal Pakrai at the time of marriage, which the parents of Saroj could not give and they gave only a watch and some money. Thereafter he had been demanding these things and was

harassing Saroj for non-fulfilment of the demands. Two instances have been narrated by them about harassment. On 17-2-1986 the accused celebrated his birth-day and invited the parents and uncle, aunts of the deceased. Then he insisted that they give a written apology for not fulfilling his demand of scooter and chain. He obtained signatures of Rukhmani on a blank paper except for writing 4 words which they did not remember what it was. On the second instance the deceased was taken by her father at Holi festival in 1966, the accused did not go to his Sasural to fetch his wife but sent some neighbourers. It was suggested to these witnesses that narration of these incidents was not made in the police statements u/s 161, Criminal Procedure Code and those facts were stated only in the court and these were improvements to implicate the accused. The trial court has accepted the harassment to the deceased by the accused because of non-fulfilment of demand of scooter and gold chain. The accused had stated that he had not gone to fetch his wife on holi festival. He admitted that he had called his parents-in law on his birth day. He further admitted that on Holi festival he had sent his brother to fetch his wife because he did not have time to go. It is worth noticing that his occupation is vending goods on Thela. The accused in his statement u/s 313, Criminal Procedure Code said that he celebrated his birth day. He had obtained a written apology from the mother and aunt of the deceased as they had not behaved properly with his family members. It appears to us clear that the evidence of these witnesses that the accused was unhappily with Saroj and with them also, is reliable. Durgaprasad has stated in his evidence that he received letters Exs. P-18 and P-19 from the accused and he had handed over those letters to police. The accused said that he did not know about these letters. The trial court noticed that the language of these letters is contemptuous against his father-in-law and his family members. It indicates that the accused was aggrieved with them. Ex. P-19 is dated 22-9-1985 and Ex. P-18 was sent in February, 86. In our view the trial court was justified in concluding that the accused was having a feeling of grudge against the parents of the deceased and was also unhappy with the deceased. He ignored her and did not go to fetch her at the time of Holi festival. All these factors show his state of mind. This incident occurred in his house on 22-4-1986. Although it is on record that his lungi was burnt, apart from the elbows of his hands and knees, it is strange that if he was wrapping his burnt wife when she was alive, his hands were not burnt and only elbows were burnt. Elbows are the outer part of the arms. Similarly, his legs were burnt on the front side below the knees. If a person wraps himself around a burning woman his other parts of body including the front of the body and hands and upper parts of his clothings would also burn. His explanation that he tried to save his wife has been rejected by the trial court. The evidence of Shivdayal and Kritika that the girl was alive when they reached there has been found false, and in our view rightly so. They have been won over by the accused. They are speaking falsely. He has no explanation to give how the wife died before she was burnt and who set her to fire. He was the only person in the house. The circumstances noticed by the trial court have been rightly found to be established beyond doubt. From these circumstances the only inference is

that he strangled her. What was the immediate cause we do not know. Only he or deceased could know about it and deceased is no more before us to tell the story. Thus we find that the accused has been rightly held guilty of murder of his wife by strangulation and then setting her body to fire. He is guilty of offence of murder punishable u/s 302, Indian Penal Code. The conviction is confirmed.

The only other question is whether he has been rightly convicted for offence u/s 201, Indian Penal Code. Section 201, Indian Penal Code defines the offence of giving false information to screen the offender or causing disappearance of evidence. In this case there is no disappearance of evidence as the body was still in the house but the accused had made a false report that the deceased committed suicide, by burning herself. Thus he misled the police to screen himself. This was an offence punishable u/s 201, Indian Penal Code. So he was rightly convicted for that section also.

In view of the above discussion the conviction of the appellant on both the counts by the trial court is confirmed. The sentence of life imprisonment for section 302, Indian Penal Code is the minimum sentence and sentence of R.I. for 5 years u/s 201, Indian Penal Code is also not excessive in this case. In any case it is to run concurrently with the other sentence. So the sentence is also confirmed. The appeal having no merit, is dismissed.