
(1991) 05 AHC CK 0005
In the Allahabad High Court
Case No : Criminal Appeal No 470 of 1988

Mahraj Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-05-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162
Evidence Act, 1872 — Section 32(1), 5
Penal Code, 1860 (IPC) — Section 201, 302, 34, 498A

Citation : (1992) 34 ACR 289

Hon'ble Judges : K.Narayan, J;H.G. Mital, J

Bench : Division Bench

Advocate : T. Rathore, A.B.L. Gaur, P.C. Misra and V.K. Birla, for the Appellant;

Judgement

K. Narayan, J.—4 persons, namely, Nathoo Singh, Smt. Lado, Mahraj Singh and Kaloo were tried on the charges for offences u/s 302/34, 201 and 498A IPC by the I Additional Sessions Judge, Etah in ST No. 361 of 1986 and ST No. 203 of 1987. By the judgment and order dated 24-2-1988 accused Mahraj Singh was found guilty and convicted of the offence u/s 302, 201 and 498 IPC and sentenced to imprisonment for life, RI for 5 years and for 3 years respectively. The other accused were acquitted. Aggrieved by the conviction and sentence, Mahraj Singh has come up in appeal before this Court.

2. It may be mentioned that Kalloo is a brother of Mahraj Singh and Nathoo and Smt. Lado are their parents. The charges related to the alleged death of Smt. Charan Devi somewhere between Holi and 12-4-1986. Smt. Charan Devi was married to Sri Mahraj Singh some where in 1983 and went to her Sasural some six months before the alleged death of Smt. Charan Devi, for the first time, in Bidai commonly known as Gaona.

3. The case of the prosecution has been that when Sri Ram Singh father of Charan Devi went to the house of Mahraj Singh and Nathoo on 12-4-1986 just to see his daughter, he was told that both Mahraj Singh and Smt. Charan Devi had

gone to some relations. He was also told by Shiva Ram, Hakim Singh and Bankey Lal residents of the same village that they had heard some shrieks of Smt. Charan Devi when she was taken by Nathoo, Smt. Lado, Mahraj Singh and Kalloo towards the canal and ever since they had not seen Smt. Charan Devi. A first information report with the above facts and also a fact that when Ram Singh questioned Nathoo and others about the incident of Shrieks, he was not given any satisfactory reply and was also threatened that he should leave the place immediately otherwise he shall also be put to the same fate. The FIR to this effect was lodged on 16-4-1986 at 4.30 p.m. at the police station Mirehchi, District Etah.

4. The accused had pleaded not guilty and their contention has been that Smt. Charan Devi had gone to her parents place before Holi and had some quarrels with her mother whereupon she attempted to commit suicide by jumping into the well. She was saved and in some quarrels there was also some injuries on her nose by her mother, whereafter she eloped from her parents place, and they have brought this prosecution in order to avoid any persuasions by the accused to deliver the ornaments etc. which were taken away by Smt. Charan Devi with her.

5. The prosecution has examined (PW 1) Ram Singh the father of Smt. Charan Devi (PW 2) Bankey Lal (PW 3) Siya Ram Arya, (PW 4) Hakim Singh and (PW 5) Smt. Mahadevi.

6. PW 1 Ram Singh and PW 2 Smt. Mahadevi are the father and mother of Smt. Charan Devi. They had stated about the motive of the crime. Although, motive is not a material part, in any case, it has some relevancy. Before proceeding with the evidence in this behalf, we shall make it clear that whether the motive was made out, or not or was sufficient or not, would not obtain for appreciation of other evidence which we are going to deal with below. Since that evidence was led, it seems worthwhile to record the observations by this Court in respect thereof. The alleged motive being in the nature of demand of dowry, it will also be worthwhile to mention that the alleged occurrence has been of March, April, 1986 when Section 304B had not been put on the statute books.

7. The evidence of (PW 1) Ram Singh was to the effect that he was told by Smt. Charan Devi that Nathoo and Mahraj Singh desired Rs. 2000/- and a buffalo. It was also stated by him that Nathoo had asked for Rs. 2000/- in order to get some employment before the Bidai and he had declined the same. So far as his statement about this demand by Nathoo and Mahraj Singh is concerned, it has to be considered on the basis of the cross-examination etc. His statement in this behalf that his daughter Smt. Charan Devi told him that she was beaten by Kalloo, Nathoo, Mahraj Singh and Smt. Lado because he had not given the buffalo and the money, is in our opinion, not admissible in evidence. It was urged on behalf of the State that this could be admissible in evidence as an exception to the bar against hearsay evidence u/s 32(1) of the Indian Evidence Act. We will pause here and proceed with law in this behalf.

8. u/s 32(1) of the Evidence Act, a statement made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, are admissible. Here the beating if any was not the cause of the death. The alleged mental attitude of the accused for the dowry may be a motive for murder but the fact that she was given beating earlier to get dowry would not be a cause of the death and hence any statement made by her in this behalf would not be covered by the Section. We would not dilate upon this aspect as even otherwise their statements cannot be given much value.

9. Smt. Mahadevi (PW 5) had not stated anything about any direct talk between her and any of the accused, (PW 1) Ram Singh has further stated that on the last visit when Mahraj Singh had come to fetch Smt. Charan Devi, had given to understand that in case a buffalo and money was not given, even the corpse of Smt. Charan Devi would not be available. If it was a fact, it should have ordinarily been known to the mother also. Skipping that aspect, another important factor is that in case he was really told about it in these words, he should not have or at least as a prudent father, should not have sent his daughter to the in-laws. The facts also did not find any mention in the FIR not only that, no such fact was communicated to the investigating officer. It is strange that in this case, the investigation officer has not been examined.

10. This omission to state a material fact and yet omission on the part of the court not to examine the investigating officer as a witness, needs some discussion. In explanation to Section 162 Code of Criminal Procedure an omission to state a fact or circumstances in the statement referred to in Sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. But for that the accused has to be given an opportunity to make it out as an omission. In order to give him an opportunity in this behalf the examination of the investigating officer was a must and since he has not been examined, this aspect of omission could not be got properly proved by the accused. There is nothing like burden upon the accused and his interest is always to be watched by all persons who become part of the prosecution and trial as independent person. The court as well as the investigating officer should not give an impression that they are interested, one way or the other and their behaviour should always be such as to look after the lawful rights of the accused as well. An investigating officer generally has no personal knowledge in the crime which he investigates but has to be examined for among other reasons for giving the accused an opportunity to make out other facts which may be of use to him.

11. So far as the value of the omission is concerned it need hardly be said that this omission in the report and subsequently in the statement u/s 161 Code of Criminal Procedure, would give rise to an impression that this aspect has been thought of in order to give the entire case a colour of dowry death. It was a

material aspect which, if had been there could not have been omitted and in fact its existence as said above would deny the possibility of Smt. Charan Devi going to her in-laws with Mahraj Singh on the last occasion. No father would like to send his daughter to the place of in-laws after getting threats that she would be done to death there ; as he had shown in his place that he was not going to make good the demand. Thus this omission is a material contradiction denying the prosecution contentions from the very inception.

12. After the above evidence of motive the main question remains as to whether the murder had been committed at all or not. In order to prove the murder the first issue would be if Charan Devi had died or whether the death of Smt. Charan Devi been proved to have occurred. The total evidence in support of the contention of death of Smt. Charan Devi were the statements of the witnesses. Her dead body or anything suggesting the death had not been found or produced before the court. The evidence of death suggested in the case was of statement of (PW 1) Ram Singh to the effect that when he went to see his daughter after Holi she was not there and was told by Nathoo that Charan Devi and Mahraj Singh had gone some where in the relations. He came back home and went again on 12-4-1986 when Hakim Singh, Siya Ram and Bankey Lal told him that Smt. Charan Devi had been beaten and taken towards canal by Nathoo, Mahraj Singh and Kalloo. He has further stated to have gone to the house of Nathoo with this information and has stated to have been told by Nathoo and Mahraj Singh to leave the place otherwise he would also meet to same fate. He could not get Smt. Charan Devi at home. So far as his statement is concerned, it is material only to the extent that Smt. Charan Devi was not there. For the rest, it was the statement about the information given to him by Siya Ram, Hakim Singh and Bankey Lal. Apart from reliability of this witness the statement of (PW 2) Bankey Lal, (PW 3) Siya Ram and (PW 4) Hakim Singh were not of much use to the prosecution. The statement of Bankey Lal and Mahraj Singh were to the effect that they did not know if Smt. Charan Devi was alive or not, that they had not said anything to Ram Singh and all that they could say was that she was not in the village. It is a common case, though, both these witnesses were declared hostile and permission obtained to put leading questions to them, all that was done was that the statement u/s 161 Code of Criminal Procedure was put to them and a denial obtained that they had never said such thing to the investigating officer; They cannot be said to be liars as even the statement u/s 161 Code of Criminal Procedure has not been proved as the investigating officer has not been examined. We do not think that any useful purpose towards proof of death could have been achieved by proving the statement u/s 161 Code of Criminal Procedure but at least it could be said that these witnesses were not speaking the truth. The position now boils to a situation that they had not stated anything to Ram Singh or to the investigating officer and this is a position when Hakim Singh, Bankey Lal and Siya Ram were shown to be a relation of Ram Singh in the cross examination of (PW 1) Ram Singh. Even the statement of (PW 4) Hakim Singh was only to the effect that he had heard that the wife of Mahraj

Singh had died but he did not know she died nor he had ever said anything to Ram Singh.

13. Thus, there has not been even an iota of evidence to suggest the death of Smt. Charan Devi. The mere fact that she was not available at the place of in-laws, would not give rise to any presumption and will be more so when the defence version is that she was already with her parents and had eloped from there.

14. In fact, this aspect as to where she might have been also needed a little consideration. The statement of (PW 1) Ram Singh in the beginning was that he went to see his daughter just after Holi and was told that she and her husband both had gone to some relation. This was his contention in the FIR also. In the cross-examination, he gave another story that Smt. Charan Devi had gone to her in-laws about a month before Holi and he had gone to see her some 8 days before Holi. When both husband and wife were not found in the village and he was told that they had gone for service in Delhi. He again went after 5 or 6 days of Holi and when he asked Nathoo about them he was told nothing and then he went to his own relations only to be told that Smt. Charan Devi had not gone there. This story of Nathoo having been told him that the accused and Smt. Charan Devi had gone to relation, thus stands denied in the cross examination. He is said to have gone again on 12-4-1986 to be told by others about the shrieks. It is remarkable that despite so many efforts and that according to him he had sent Charan Devi in the face of threat extended by Mahajan Singh that he would not get even the corpse of Smt. Charan Devi, he did not even care to come to the police station till 16-4-1986. It may also be mentioned that according to the cross examination there was one more witness Hardeep Singh who had told him about the shrieks of her daughter but no effort was made to examine him.

15. The statement of (PW 1) Ram Singh shows that Smt. Charan Devi had visited her parents some three times after her Gaona and on the last occasion Mahraj Singh had come to fetch her. The statement of (PW 5) Mahadevi is to the effect that on the last occasion Smt. Charan Devi had stayed with them for 2 or 3 days, she had come along with Mahraj Singh and gone with him. This would be much different from the Bidai as stated by (PW 1) Ram Singh and once the last Bidai becomes doubtful, it can be thought that Smt. Charan Devi was with her parents and it may be that the suggestion of the accused is not wholly false.

16 We will again revert to the main issue as to whether the death of Smt. Charan Devi had been proved. In view of the above allegations, it would be too hazardous to think that Smt. Charan Devi has died. There is no evidence in this behalf and there is no presumption about the death merely because she has been a lady and there are suggestions of demand of some money or material. In fact, for the reasons already stated above, the statement of (PW 1) Ram Singh also does not inspire confidence, even as a matter of hearsay evidence. The trial court has obviously been mis-lead in appreciation of evidence and giving the

weight to the statement of (PW 4) Hakim Singh where he had stated that he had heard that Smt. Charan Devi had died. The prosecution itself did not even care to obtain the source of information. Death of course can be heard about by persons who are concerned with the deceased but that is generally in connection with last rites and rituals, when that may amount to proof. Where it has been heard only in a presumptive manner, it is of no consequence; It appears that the learned Sessions Judge was aware of the principles to be kept in mind while considering the circumstantial evidence but he has failed to apply the same.

17. The circumstantial evidence should be such as to lead to sole conclusion pointed out or suggested by one party or the other- In case there is a possibility of another conclusion favourable to the accused, that conclusion shall be drawn, and benefit given to the accused. In the instant case there were no proved facts. No body had stated as a part of evidence that Smt. Charan Devi was beaten, or was taken towards the canal as suggested in the first information report or the statement of (PW 1) Ram Singh, his statement in this behalf being inadmissible in evidence as hearsay. What then was the proved fact, from which any conclusion could be drawn.

18. We would also like to mention that the courts are not to take into account all that a witness undertakes to state on oath. After having taken oath he has to respect it, and it is the duty of the court to read only that much of the statement as is relevant and admissible under the provisions of the Indian Evidence Act. We need not quote decisions to say that Section 5 of the Indian Evidence Act has limited the meaning of the word evidence, and in so far as it relates to courts it means only admissible evidence and no other (emphasis supplied). The evidence of (PW 1) Ram Singh, (PW 4) Hakim Singh and (PW 5) Smt. Mahadevi on the point of death being hearsay and the other witnesses not having stated any thing about it, there was no evidence to suggest death of Charan Devi.

19. Last but not the least is the question of difference between evidence, as against this accused Appellant and other accused acquitted. The trial court has not given any reason of this distinction in reading evidence with different spectacles against the two sets, and we also see no good reason for it. The only reason, which we consider too lame can be that this accused happens to be unfortunate husband of Smt. Charan Devi.

20. The conviction of the accused Appellant u/s 201 IPC it appears has been recorded in bitter disregard to the law and without even caring to read the section for once. The section comes into operation when a person knowing or having reason to believe that an offence has been committed, causes the evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment. Firstly, it can never cover the main offender himself as the offender in this section has to be some other person, and secondly there has to be an offence by some person, when the brother, mother and father had not committed any offence, as deduced by the Sessions Judge, how could Mahraj Singh be held liable for disappearance of

evidence. Even if the court could accept the contention of Ram Singh as it was the fact would be that Smt. Charan Devi was beaten and despite her cries taken to the canal. What was the offence till then a simple hurt and what was the evidence-a bruise or two on her person, to which would disappear in natural course within few days. Beyond that there has been no evidence even in the hearsay manner.

21. The conviction of Mahraj Singh u/s 201 IPC therefore, cannot be justified as there was no evidence in this behalf and in any case, the charge of causing disappearance of evidence, the offence could not be fastened upon the main accused.

22. In result, this appeal should succeed. The appeal is allowed. The conviction and sentence recorded by the learned sessions judge against the accused Appellant are hereby set aside. He is in jail and shall be set at liberty forthwith unless wanted in some other case.