

(2017) 03 RAJ CK 0103
In the Rajasthan High Court
Case No : 799 of 2008

Manoj @ Raju s/O Shri Ram Swaroop Sharma

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 498A](#), [Section 1767-306](#)

Citation : (2017) 03 RAJ CK 0103

Hon'ble Judges : Gopal Krishan Vyas, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : Rajeev Bishnoi, J.P.S. Choudhary

Final Decision : Dismissed

Judgement

1. The instant appeal is directed against the judgment dated 29.9.2008 passed by Additional District and Sessions Judge (Fast Track) No.1, Udaipur in Sessions Case No 2/2008 by which the accused-appellant is convicted under Section 302 of IPC with life imprisonment and with a fine of Rs.5,000/- in default thereto further to undergo for six month simple imprisonment.

2. The contents of Ex.P.1 F.I.R. No.611/2007 reads as under :-

"VERNACULAR MATTER OMITTED"

This F.I.R was submitted by Smt. Kanta Srimali

wife of Shri Prabhulal Srimali on 27/11/2007 at 11.45 a.m. at Police Station Ambamata, Udaipur, which was registered under Sections 498A, 306 of IPC and investigation was made, post investigation I.O submitted charge sheet and trial court arrived at the aforesaid findings of guilt, during the trial, prosecution produced twenty witnesses and defence also produced one witness.

3. Heard submissions of rival sides, learned amicus-curiae representing the appellant has contended that learned trial Court has committed error in examining the evidence and has not correctly appreciated the evidence, appellant-accused never committed alleged offence, but performed all the death rituals with social norms. The nuptial was through affairs, so reason of any discord or demand does not arise. The couple was living quite comfortably and begot kids out of the wedlock, theory of Sambal Seva Mandir and women organizations is concocted and hatched to malign the dignity of the appellant in order to harass, there is no iota of truth in the alleged story and findings of the trial Court are not correct, so the appeal be allowed and the impugned findings of guilt be set aside, in support of submissions, learned counsel for the appellant has placed reliance on the judgment Jose @ Pappachan vs. Sub Inspector of Police, Koyilandy & Anr . (2016) 10 Supreme Court Cases 519.

On the other side, learned public prosecutor has contended that the medical evidence is supported with other evidence, which establishes that the appellant-accused killed his wife and there were several injuries found on her body and she was killed and was found to have strangled, appellant was trying to perform last rites latently, but Seva Mandir Women activities timely informed police authorities and on postmortem

the things were found contrary, there was family discord, deceased had also approached Sambal Seva Mandir for protection and an application to this effect was also earlier moved by the deceased, upon which reconciliatory efforts were made and the accused-appellant assured that nothing untoward will happen in further, saying so he took away his deceased wife from Seva Mandir, who was subsequently eliminated within few days. There is reliable and clinching evidence against the accused-appellant, so there is no wrong in the findings of learned trial Court, appeal lacks merit, so it be dismissed.

4. Perused the record and gone through the evidence cautiously, which is as under:-

PW. 2 Kanta Srimali-complainant author of F.I.R.

Ex.P.1 has said that the event relates to 27/11/2007 at about 9 a.m., a message was communicated from Dewali that "Bansati Devi" W/o Manoj Kumar died and without informing to anybody, her husband Manoj Kumar was taking the body to crematorium and they suspected that Manoj killed her. Six years back, they were married and after marriage, Manoj used to beat his wife and a report was lodged at thana Ambamata and at Mahila thana as well as at Seva Mandir, she has further said that on receiving the information, they visited the spot and suspected that the lady was killed by Manoj, then Ex.P.1 report was lodged at thana Ambamata, which is Ex.P.1, Ex.P.2 is Panchnama, she has also said that on witnessing the corpse signs were there on the neck and signs of injuries were also there on the head and elbow as well as on feet, after that neighbours performed her last rites in her cross-examination, she has said that Basanti was witnessed by them in mohalla meetings and the information was given to her by Lata Jhala.

She has further said that it was told to her by Lata Jhala that marriage of Manoj was performed 5-6 years back. She has also said that she witnessed the dead body on Mokshrath and several people were there around it. Police took away the dead body to mortuary and Manoj was taken to police station. She has further said that the FIR was written by her before C.I. at thana and has denied that it was scribed on dictation of C.I. She has further said that she signed on panchnama in the hospital at 6.00 p.m. and postmortem was conducted after panchnama, dead body was obtained by area people.

5. PW-1 Smt. Lata has said that on 27.11.2007, a lady residing near the house of Manoj came and informed that Basanti @ Maulika was murdered, then she asked to initiate police action, she refused saying that Manoj used to hurl abuses after consuming liquor and was habitual of beating Basanti. She has further said that then she informed Amba Mata Police regarding the murder of the lady. Manoj has called a "moksh rath", prior to arrival of police and had got the body laid there with support of labours. She has further said that she got the moksh rath stopped through Bhanwar Ji Comrade, Kanchan Devi and Leela Devi and then she phoned to her office, pursuant to it, Smt. Kanta Shrimali, Rukmani Devi and Lali Devi came and policemen also came there and took Manoj and his mother to Amba Mata Thana and carried away the body to hospital for medical. FIR Ex.P/1 was lodged through Secretary. She has further admitted her signatures on Panchnama Ex.P/2 and Police Report Ex.P/1. She has said that she had seen the dead body, which was having bruises on neck, arms and legs; elbows were also injured and blood was there in the foot fingers, there were signs of fingers and thumbs on the neck.

She has also said that Manoj used to threat through his knowns, in her cross-examination, she has said that she knows Basanti for last five years because she used to pass from there and often complained, while sitting outside her house that her husband was liquor addict and used to beat her and was not working and this was conveyed to her 6-7 months ago. Expressing her ignorance against the relatives and actual earlier place of deceased's residence, she has said that she heard that "Basanti" was married with Manoj and Basanti told her that Manoj often beats her. She has said that Manoj did not convey regarding hanging but had said that Basanti died of stomach-ache. She has also said that Basanti was having two kids and Ex.P/1 was written by Smt. Kanta Shrimali before several women activists including Rukmani Devi, Leela Devi and Heera Bai and they visited mortuary alongwith police. She has also said that the body was having signs of fingers and thumbs and the body was postmortemed by doctor. She has further said that all the women had been to mortuary. She has further said that she did not see Manoj killing Basanti and has also said that four labours were there on moksh rath, "Manoj himself loaded the body and sat alone thereon". She has further said that she has tendered her statements for sake of independent and transparent inquiry.

6. It is pertinent to mention that FIR was lodged by "Sambal" Seva Mandir, Mahila Alp Avas Grah Activist, a women rehabilitating agency stated to be aided by Central Social Welfare Board.

7. PW-3 , a neighbor of accused Manoj has said that on date of 29th, policemen of Amba Mata had been there and asked for co-operation and has admitted his signatures on Ex.P/3

spot map. He has also said that after calling moksh rath, Manoj was taking her dead body alone, then people stopped and several individuals gathered. He has also said that police had conveyed regarding existence of "fan" inside, on that basis hanging was suspected.

PW-4 is a photographer who has said that he was called by Amba Mata Police Station. Photographs are Ex.P/5A to Ex.P/20A and negatives are Ex.P/5 to Ex.P/20, bill relating to the photographs is Ex.P/21, "A" to "B" is his signatures.

8. PW-5 Heeralal is a saw-miller who has said that his mill care-taker had informed him regarding timber purchase, so, he asked to deliver the same. He has further said that five quintal timber wood was given for cremation, in his cross-examination he has said that two days later to the sale, police came for his statements. Dunga Ram, the care-taker was just asked to deliver the timber after weighing.

9. PW.6 Shri Jagdish Meena has said that the matter relates three months back and a call on the phone of "Mokshrath" came and Manoj Sharma name was conveyed, he went with the vehicle there, Manoj Sharma brought the body, in the meanwhile area people told not to take the body, he has further said that four people had brought the body then area people said that you would not leave till police action is complete, then police people came and the body was taken to hospital mortuary and after leaving the body there, he left.

PW.7 Smt. Nisha Field is a significant witness being counsellor of "Sambal" Mahila Alp Seva Mandir, she has narrated enlightening factual aspects regarding on-going couple strife and hearing of the same and further resolving their dispute through counselling and she has said that on 13/12/2005,

Basanti Sharma came to their Seva Mandir Office, her case form is Ex.P.23, its photocopy is Ex.P.23A, which contains her signatures and C to D is signature of Basanti and has said that contents from E to F as written in Ex.P.23 are correct and copies of this were given to police people of thana Ambamata, she has further said that Ex.P.24-letter, contains signatures of Shakutala Co-ordinator worked under her, so she knows her signatures, its photocopies are Ex.P.24A, she has further said that first interview report is Ex.P.25, which contains her signatures from A to B, its photocopy Ex.P.25A and phone report is Ex.P.26, its copy is Ex.P.26A, she has further said that she had written a letter to Manoj, which is Ex.P.27, its copy Ex.P.27A, contains her signature from A to B and joint meeting report is Ex.P.28, its copy is Ex.P.28A, meeting was conducted on 25/12/2005, which contains signature of Manoj Sharma from A to B and C to D are Basanti's signature, photocopy E to F contains her signatures, she has further said that on 24/11/2007, Basanti and Manoj were called and couple was negotiated upon, its report is Ex.P.29, its copy is Ex.29A, which contains signatures of Manoj from A to B, its photocopy is Ex.P.29A, which contains C to D her signatures.

10. She has further said that first, meeting was conducted on 13/12/2005 and during that time "Sevarthi Basanti" had told that her husband used to beat her after consuming liquor and "Saas" also beats and threat to oust from home and after that her husband Manoj was called and reconciliatory efforts were made, husband of Sevarthi assured that he wanted to live with her wife and no further beating will be given, she has further said that on the wish of Sevarthi, compromise was made and it was reduced into writing and they were permitted to go to live together.

11. On 07/01/2006, follow-up was made by her and Sevarthi herself came in their office for follow-up, she had again complained of some annoyance and vexes, she has further said that she told her that her husband was still beating her and daunting to oust and she expressed doubt that she will be ousted from house and the premises might be given to his sister, so again counselling was conducted and it was advised to her not to bother on count of premises and live there after gaining confidence and love by winning over the hearts of others.

12. "She has further said that lastly on 21/11/2007, she had come to them then she was badly anxious and complained that she was detained in the room for last three days and could only be there by escape with difficulty, her "husband and Saas" got her detained there, she has further said that it was also informed that her husband was beating her for last three days and had apprehended that if she goes there, then she will be killed, but for sake of her kids, she was inclined to go there, she has further said that it was advised to her that she could stay there for sometime, if such untoward was suspected by her, but she did not yield".

13. She has further said that her husband was contacted and a letter was sent to him and again reconciliatory dialogue was made on 24/11/2007 then, her husband Manoj had assured that he will go on work and will not beat her nor will consume liquor, she has further said that :-

"VERNACULAR MATTER OMITTED"

She has further said that :-

"VERNACULAR MATTER OMITTED"

and has also said that :-

"VERNACULAR MATTER OMITTED"

and has denied not to conduct any counselling.

14. PW.8 Santosh has accepted his thumb impression on Ex.P.30. PW.9 Arvind is a landlord of accused person and has accepted renting his house to the accused for last one year and while cross-examined, he has said that in the morning, he heard that Basanti got hanged by fan.

15. PW.10 Dr. Smt. Rashmi Khatri a member of postmortem board has said that the body of deceased Basanti was having nine injuries and has said that acamysis was there on the trachea and larynx, hemorrhage was around trachea and hyoid bone was fractured from right, injuries were fresh and were ante-mortem and were caused by some blunt object, they were simple from 1 to 5 and injury No.6 to 7 were grievous, which were life threatening and because of that death by choking resulted and according to the opinion of the board, the cause of death was asphyxia and she has further said that:-

"VERNACULAR MATTER OMITTED"

16. PW.16 Anis Ahmed another doctor conducting autopsy and member of the Board. Dr. Anis Ahmed has said that on 27/11/2007, he was medical jurist and had conducted postmortem of Basanti Devi wife of Manoj Sharma, he has narrated that the body was having seven injuries and all the injuries were antemortem caused by blunt object and injury Nos.6 and 7 were grievous and life threatening, death was due to asphyxia and has said that postmortem Ex.P.32 is written by him, which contains his signatures, significantly on a Court question, this medical expert has said that the injuries as mentioned in Ex.P.32 from 1 to 7 may not cause from fan hanging and if a

person hangs by fan, then death may result because of knot hanging, on his cross-examination, he has also said that:-

"VERNACULAR MATTER OMITTED"

17. PW.11 Raghuveer Singh has said that a letter was seized on 1/12/2007 and cover of Sari was also seized on 03/12/2007, the seizure letter is Ex.P.33, which contains his signature from A to B and Sari seizure is Ex.P.34, fard seizure is Ex.P.33, spot map is Ex.P.35 and fard seizure is Ex.P.34, its spot map is Ex.P.36, which contains his signature.

PW.12 Hari Singh constable has said that on 1/12/2007, he was a constable at Ambamata Police Station and had gone with S.I. Raghuveer Constable to the house of accused Manoj, on his information an letter was given by him from the pocket of his jacket, its fard jabti is Ex.P.33 and paper seized is Ex.P.37, in his cross-examination, he has also said that room from where Ex.P.33 was recovered., was having a joint-photo Couple installed of Manoj and his wife.

PW.13 Prem Obrawal has denied recovery of any Sari, but has accepted his signature on Ex.P.34 from C to D and has also said that the spot recovery memo of Ex.P.36 contains his signatures.

18. PW.14 Dal Chand has said that he was head constable at thana Ambamata on 07/12/2007 and in pursuance to oral order of SHO, he had given two sealed packets to constable Hansraj for depositing in the FSL and these packets were entered in Ex.P.38 at S.No.474, which contains his signature from C to D, its copy is Ex.P.38A, he has further said that Hansraj rendered its receipt after depositing it.

19. PW.15 Narendra Singh has said that on 03/12/2007, he was a constable at Police Station Ambamata, on

that day SI Shyamlal deposited two sealed packets pertaining to case No.611/07, which were entered in Malkhana register Ex.P.38 at serial No.474, the copy of it is Ex.P.38A.

PW.17 Hansraj constable has said that on 06/12/2007, he was posted at Police Station, Ambamata and after obtaining two packets from Malkhana incharge, got Ex.P.39 forwarding letter issued from SP Office, which contains his signatures and the packets were deposited with F.S.L Udaipur on 07/12/2007 in perfect condition vide Ex.P.40 receipt, which was rendered to the Malkhana incharge, who entered in the register, admitting Ex.P.41 he has further said that the packets were deposited in perfect sealed condition and has admitted his signatures on Ex.P.38 Malkhana Register from G to H.

20. PW.19 Bhagwat Singh Hinger SHO of Ambamata thana has said that on 27.11.2006, he was posted at Ambamata thana, on that day at 10.45 Smt. Kanta W/o Prabhulal presented a report Ex.P.1 before him, which contains his endorsement and signatures, which was registered as FIR No. 611/2007 under section 498A and 306 of IPC, its chalk report is Ex.P. 47, which contains his signatures, while cross-examined he has said that who had written the said report is not known to him, it was presented before him as written.

PW.20 Bardi Bai midwife has said that she knows Manoj and Basanti and she had conducted delivery as a midwife to Basanti, she has further said that "Manoj said her regarding death of his wife and came to her and asked her to accompany, she went to Manoj's residence and found that Basanti was lying dead there, mother of Manoj was sitting beside and she was weeping and she has further said that on observing the body, she got puzzled and left".

21. PW.18 Shyam Lal is an investigating officer, who has ratified documentary exhibits of investigation and has narrated conducting of investigation and the chronology thereof he has also said documents and exhibits relating to Seva Mandir from Ex.P.23A to 29A, he has also asserted process of recovery and facts pertaining to recovery and information as provided by the accused under Section 27 of Evidence Act. He has also said that he had seen injuries on the body of the deceased Basanti and details relating thereto has been mentioned in Panchayatnama and has said that on the basis of postmortem report and investigation he had found case made out under Section 302 of IPC in lieu of 306 of IPC.

He has further said that on the basis of investigation, he had found that offence was committed and on getting it confirmed accused Manoj Sharma was arrested vide Ex.P.42

22. Perusal of statements made under Section 313 of CrPC discloses that defence of alibi has been raised by the accused which does mismatches with the available testimony.

23. DW.1 Surya Veer Singh Sharma has said that Basanti Devi and Manoj Kumar were living happily, but he has also said that character of Basanti was not good and candid. He knows Basanti on Mokshrath and Manoj Sharma was not even informed, on information when Manoj Sharma came and opposed it, then a false case was registered against him by these ladies, in his cross-examination, he has also said that on that day, he was not present at home and was away to his duty, just after this statement, he has again said that he was present at home, contradicting his earlier version, he has also said that it is correct that he did not participate in cremation, testimony of this witness

does not inspire confidence and appears to be rather flimsy, rather it also goes to say that deceased's alleged character of easy virtue could have been a reason for discord and deliberate beatings.

24. Ex.P.48 FSL report shows that Ex.P.1 article

1 packet marked as "A" saree and article 2, packet marked as "B" about the pieces of cutting bed cover (saree) have been found stained with "A" group blood.

25. Ex.P.32 autopsy report has got details of

injuries, which were found antemortem and have been detailed as under :-

1. Abrasion 2X1 cm left side forehead-red.

2. Three abrasions 0.3X0.3 each on right angle of mouth, rt side upper lip area near rt rhinal rd.

3. Abrasion 2X1 cm left lower eye lid lat - red

4. Abrasion 2X2 cm outside of left elbow lat - red

5. Bruise 5X4 cm rt. hyperemesis (rt hand) red

6. Bruise 4X2 cm just left lateral to larynx - red

7. Bruise 4.5X 2 cms just rt lateral to Thyroid cartilage - red

26. On the instance of information provided

under Section 27, of the Evidence Act Ex.P.37, a letter addressed to accused Manoj Sharma by "Sambal", Short Stay Home, Seva Mandir, Udaipur has also been recovered, which reads as under :-
"VERNACULAR MATTER OMITTED"

27. Perusal of this letter shows that "Sambal",

Short Stay Home, Seva Mandir, Udaipur had sent this letter to

Manoj Sharma sharma, calling him to attend their office on

23/11/2007, which goes to reveal that matrimonial dispute was

there between the couple and deceased Smt. Basanti Sharma

went to "Sambal", Short Stay Home, Seva Mandir, Udaipur

complaining the same seeking their help, on which Manoj Sharma was summoned by "Sambal" Stay Home, Seva Mandir, Udaipur's counsellor for hearing in order to resolve Couple acrimony.

28. Analysis of entire evidence establishes that there was an ongoing couple relation strife and the deceased was being regularly harassed, which constrained deceased Basanti to seek help of "Sambal" to sort out their sour-relations and strife, the deceased, while lodged such a grievance before Sambal then, Seva Mandir service providers called accused-appellant Manoj for settlement of their ongoing strife and this aspect has also emerged from the testimony of Sambal, Seva Mandir lady worker counsellor PW.7 Nisha Field, who has ratified and confirmed veracity of Ex.P.27, Ex.P.28 and Ex.29 and Ex.P.29 shows that such a compromise was arrived at between the couple on 24/11/2007 and the couple decided to live together without further acrimony, likewise such an understanding was earlier arrived at between the parties through, "good-offices" of Sambal Seva Mandir on 25/12/2005.

29. Ex.P.29 is a vital document, which indicates that three days retro to the incident a compromise took place through the efforts of Sambal, Seva Mandir between the couple to live together and Ex.P.29 is well proved by PW.7 Smt. Nisha Field, who has specifically narrated in her testimony that on 24/11/2007 Basanti and Manoj Kumar were called to have a dialogue between the parties and its report is Ex.P.29, which contains signature of Manoj from A to B with respect to this the witness has also said that on 24/11/2007 a settlement process-talk was got conducted in which, Manoj had assured that he would not consume liquor ahead, attend his job and would

not perpetrate beatings, she has also said that when on 27, while they were to proceed for follow-up, the lady was killed, so far as investigation is concerned everything relating to the documents pertaining to Sambal, Seva Mandir in context to matrimonial dispute and filing of grievance before Sambal, Seva Mandir and efforts made by this institution for dialogue and to resolve the dispute, are also ratified and confirmed by the investigating officer, the defence has produced DW.1 Surya Veer Singh, who has rather accepted a fact of alleged unchastity of deceased, by saying that deceased Basanti Devi was not enjoying a good character and such was a say in the area, which also hints and fortifies vindictive motive to eliminate the suspect, which too has not been discharged by the accused-appellant.

30. As per testimony of PW.20 Bardi Bai a midwife, Manoj came to her to come to his home because his wife died and PW.6 Jagdish Kumar Meena driver of Mokshrath has also said that the Mokshrath was called by Manoj Sharma and he went to buy cremation timber as per the say of PW.5 and entire evidence shows that he got four labours to carry and keep the dead body in the Mokshrath latently, it has also emerged from the evidence that instead of truth he just narrated to the masses that his wife died of alleged stomach ache, which shows that significant truth was concealed by accused-appellant.

31. According to the medical report body of deceased was having multiple injuries and doctor has specifically opined being PW.16 Dr. Anis Ahmed that injuries as mentioned in Ex.P.32 from injury No.1 to 7 were antemortem and injury Nos. 6 and 7 were fatal and injury Nos 1 to 7 may not be caused by hanging with "Fan" by self hanging.

32. PW.10 Dr. Rashmi Khatri has also said that

hyoid bone of the deceased was found fractured, she has also opined that the "cause of strangulation was found to be choking by hand".

Chain relating to link evidence pertaining to deposit of samples of the seizure has also remained unsegregated.

33. Analysis and appreciation of entire aforesaid reveals that the case of the prosecution has remained proved with trustworthy and reliable evidence and it is apparent that the deceased was subjected to beatings and harassment. She presented her grievance before the Sambal, Seva Mandir again only three days back, she was brought from that institution, where she constrained to lodge temporarily with an assurance that she will be given amicable treatment and the appellant will mend by not indulging in consuming liquor and will resume working and soon in a span of three days, she lost her life in tragic way with the hands of her own spouse.

34. It has been distinctly emerged that the deceased died within seven years of her marriage and she was under the pangs of continuous harassment and beatings and only three days retro to the incident a compromise was arrived at between the couple and accused gave assurance of smooth life without any beatings. Presumptions prescribed under the Evidence Act in view of Section 106 and 113B also goes against the Appellant-Accused.

35. Prosecution has been able to prove its case, in catena of judgments, it has been observed by Hon"ble Supreme Court that befitting sentence must be penned down in order to permeate message that perpetrator of crime are to face, similar kind of stringent punishment.

36. In *Sevaka Perumal v. State of T.N . (1991) 3 SC*

471, the Hon"ble Supreme Court has cautioned :-

"Undue sympathy to impose inadequate sentence would do more harm to the justice (delivery) system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the Courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every Court to award proper

sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

and Hon"ble Supreme Court has held in Abdul

Waheed vs. State of Uttar Pradesh, 2015 Supp AIR (SC)

2154 undue sympathy will do harm to criminal justice system and

in Purushottam Dashrath Borate & Anr vs. State of

Maharashtra, 2015 0 AIR (SC) 2170, Hon"ble the Supreme

Court has observed that sentencing policy should aim to protect

the society and stamp out criminal proclivity and Court should

remain stern where required.

Prosecution has tendered clinching and reliable

evidence, which is duly supported with the medical evidence,

hence there is no error in the impugned judgment.

We are of the view that learned trial Court has not

committed any error or perversity in ordaining the judgment

impugned, so findings passed by learned trial Court does not

require any interference.

Hence, the appeal lacks merit and is hereby

dismissed.