

(1996) 03 MP CK 0076

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 60 of 1990

Onkar Singh and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

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

Citation : (1996) 2 DMC 66

Hon'ble Judges : Subhash Balwant Sakrikar, J;D.B. Shukla, J

Bench : Division Bench

Advocate : Amar Singh, for the Appellant; K.K., G.A., for the Respondent

Judgement

S.B. Sakrikar, J.—The appellants have directed this appeal against the judgment of conviction and order of sentence dated 8th February, 1990, rendered by II Additional Sessions Judge, Alirajpur in S.T. No. 267/88, thereby convicting the appellants for the offences punishable under Sections 302/201 IPC and sentencing them for life imprisonment and five years RI respectively and further ordering to run these sentences concurrently.

2. The prosecution case, in brief, is that appellant No.1 Onkarsingh was residing in village Ambua together with his wife deceased Mery Rawat, in a Government Quarter. Onkarsingh was employed in the Government Hospital, Ambua as a Computer In-charge, and his wife deceased Mery was also working in the P.H.C. Ambua on the post of Lady Health Visitor .It is stated that appellant Onkar had illicit relations with appellant No. 2 Bayatibai, who was daughter of one Sajjansingh Chouhan, who was working as a driver in the Hospital at Ambua. It is stated that due to illicit relations with Bayatibai, appellant No. 2, the relations between the accused/appellant and deceased Mery Rawat became strained. On 2nd Oct., 1988 in the morning at about 6.00, some of the villagers saw burning flames and smoke coming out of the house of the appellant No.1 Onkarsingh. The villagers and employees of the Health Department residing in the vicinity, rushed to the house of Onkarsingh. It is stated that doors were closed from inside of the

house. When the doors were opened both the appellants were found present inside the house. On being asked, appellant Onkarsingh informed Dr. Gehlot (PW1) and other witnesses stated that his wife died due to burning. The witnesses found that body of deceased Mery was burning in the inner side of the house Dr. Gehlot (PW 1) informed the Police, Ambua about the incident on the basis of which, Merg report Exh.P/9 was written at Police Station, Ambua. Police Ambua immediately reached the place of incident and prepared the inquest report of the dead body of the deceased. Photographs of the dead body were also taken. The dead body of the deceased was sent for post-mortem examination at P.H.C., Ambua where Dr. R.N. Mandwaria alongwith his colleagues Dr. (Mrs.) Pratima Mukherjee and Dr. B.R. Khangar, conducted the autopsy and submitted post-mortem report, Exh. P/2.

3. On receipt of post-mortem report, it was found that deceased Mery died of Asphyxia as a result of throttling. Doctor opined that death was homicidal in nature. On receipt of post-mortem-report, offence was registered against the appellants under Sections 302, 201 IPC. During the course of investigations, Police Ambua recorded the statements of relevant witnesses and on completion of investigations, challan was filed against the accused/appellants in the Court of JMFC, Alirajpur. Trial Judge framed the charges against accused/appellants Under Sections 302 in the alternative 302/34, 306 and 201 IPC. Onkarsingh was also charged u/s 498A IPC. On the basis of evidence, produced on behalf of prosecution, the trial Judge found both the appellants guilty for the offences under Sections 302 and 201 IPC and sentenced them as above. Aggrieved by the judgment of conviction and order of sentence, the appellants have filed this appeal.

4. We have heard Mr. Amarsingh learned Counsel for the appellants and Mr. K.K.Gupta learned Government Advocate for respondent/State.

5. Learned Counsel appearing for the appellants, contended that there is no eye witness of the incident. The facts and circumstances emerged from the evidence of the prosecution, indicate that the deceased Mery died as a result of some accident or she has committed suicide and, therefore, the trial Judge has committed an error in holding the appellants guilty for the offences punishable under Sections 302, 201 IPC. It is also contended on behalf of appellant No. 2 Bayatibai that from the evidence available on record, no case under Sections 302, 201 IPC is made out against the appellant and, therefore, both the appellants deserve acquittal.

6. In opposition, learned Counsel appearing for the respondent/State, supported the judgment of conviction and order of sentence passed by the Trial Court.

7. It is contended on behalf of the prosecution that circumstances proved against the accused persons clearly indicate that the accused /appellants are only responsible for causing murder of deceased Mery and thereafter with an intention

to screen from legal punishment, they attempted to destroy the evidence to wit, burnt the body of deceased Mery.

8. We have carefully perused the record and examined evidence of the prosecution. On perusal of the evidence of the prosecution, we are of the opinion that there is sufficient evidence on record which proves that the death of the deceased was not accidental or suicidal in nature but deceased Mery died of homicidal death as a result of throttling and then body of the deceased was burnt with an intention to destroy the evidence. (PW4) Dr. R.N. Mandwaria, who performed the autopsy on the dead body of the deceased has clearly stated in his statement that some redish bruises were found on either side of the neck of the dead body of deceased Mery. The bruises which were found on the neck of the dead body, were as under :

(1) Three bruises on the right side of the neck each one admeasuring lcm x 1 cm in size.

(2) One bruise was found on the left side of the neck admeasuring 1.5 cm x 1. cm in size.

It is further stated that bruises were ante-mortem in nature and their site and distribution was suggestive of throttling. Doctor also opined that death of the deceased was due to asphyxia as a result of throttling. Doctor also stated that the death of deceased Mery was homicidal in nature and occurred about 12-24 hours prior to the time of autopsy. There is no reason on record to disbelieve the statement of Dr. Mandwaria, who is a Government servant and an independent witness. His statement is corroborated by post-mortem report, Exh.P/2. In view of the above facts, in our opinion, the finding of the Trial Court on the point of homicidal death of the deceased is well founded and it cannot be dabolished.

9. In the present case, it is not disputed that the appellant Onkar Singh and deceased Mery were residing together in the same house at Village Ambua as husband and wife. Dead body of the deceased Mery was found burning at about 6.00 in the morning on the date of incident, inside the house of appellant Onkar Singh. Appellant Onkar Singh has not given any convincing explanation with regard to homicidal death of his wife, deceased Mery. The above facts are sufficiently proved from the statement of Dr. Gajendra Singh Gehlot (PW1) Hakimuddin (PW2), Suman (PW3) and Shankarla) (PW6) examined on behalf of the prosecution.

The Trial Court has rightly believed the statements of the above witnesses with regard to the above facts. In view of the aforesaid facts and in the circumstances of case, there are sufficient reasons to draw inference against the appellant Onkar Singh that he is the person responsible for causing homicidal death of his wife deceased Mery.

In our considered opinion, the Trial Court has properly evaluated the evidence of the obscution with regard to the appellant No. 1 and found him guilty for the

offence punishable under Sections 302, 201 IPC. The findings recorded by the Trial Court against the appellant No. 1 Onkar Singh are well founded and based on proper appreciation of the evidence and therefore, require no interference in this appeal.

10. So far as the appellant No. 2 Bayatibai is concerned, though from the evidence of the prosecution witnesses, her presence in the house of appellant/accused, Onkar Singh, in the morning at about 6.00 on the date of incident is established, but only because of her presence in the morning at the place of incident is not sufficient to infer that she is also responsible for causing homicidal death of deceased Mery. There is no direct evidence on record which proves that she has shared any common intention in the commission of murder of deceased Mery and therefore, her conviction u/s 302 IPC is concerned, cannot be sustained in law as well as on facts of the case, but so far as her conviction u/s 201 IPC is concerned, there are sufficient grounds and reasons for holding the appellant No. 2, Bayatibai guilty for the offence punishable u/s 201 IPC. From the statements of the prosecution witnesses it is found that in the morning at about 6.00 when witnesses reached the place of incident, at the relevant time, appellant No. 2, Bayatibai was also seen inside the house and the dead body of deceased Mery was burning in the inner Verandah of the house. In the above circumstances, natural conduct of appellant No. 2 Bayatibai would have been to inform this fact immediately to the neighbours or to the Police, when the Police Station is available in the same village, but appellant No. 2, Bayatibai, after witnessing such a serious incident, did not do anything and remained silent at the place of incident. This clearly shows that she also wanted to save the accused/appellant No. 1 from legal punishment for committing the murder of his wife, deceased Mery. This possibility cannot be ruled out that she had also participated in the act of burning of dead body of the deceased with an intention to screen the appellant No. 1 from legal punishment for committing homicidal death of his wife. -

11. In our opinion, conviction and sentence passed against the appellant No. 2, Bayatibai u/s 201 IPC is well founded and requires no interference.

12. In the result of the above discussion, appeal filed on behalf of appellant No. 1 Onkar Singh, is devoid of any merit or substance and the same is accordingly dismissed whereas an appeal filed on behalf of appellant No. 2, Bayatibai is partly allowed. Her conviction and sentence u/s 302 IPC is set aside but conviction and sentence passed against appellant No. 2, Bayatibai u/s 201 IPC is upheld. Both the appellants are on bail. Their bail bonds are cancelled and they are directed to surrender before CJM, Jhabua to serve out the sentences as ordered by this Court.