
(1994) 01 AHC CK 0098
In the Allahabad High Court
Case No : Criminal Appeal No. 2253 of 1979

Ram Prasad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 04-01-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1994) 2 AWC 955 : (1994) 2 DMC 410

Hon'ble Judges : Palok Basu, J;Kundan Singh, J

Bench : Division Bench

Advocate : V.S. Singh, for the Appellant; G.A., for the Respondent

Final Decision : Dismissed

Judgement

Palok Basu, J.—The appellant Ram Prasad, who was aged around 40 years at the trial, has been found guilty of having committed the murder of his wife Smt. Shanti Devi, who was aged about 35 years. The charge against the appellant was that in the night between 5/6.12.1977 the appellant in furtherance of the common intention with his brother Ram Swarup committed the murder of Smt. Shanti Devi in his house situate in the town of Sumerpur, Police Station Sumerpur, district Hamirpur.

2. The prosecution case is that the appellant had no son through Smt. Shanti Devi but had only four daughters, out of whom only Manorama (the informant) was married. The appellant had about 40 bighas of agricultural land in Sumerpur and about 70 bighas in the nearby village Patara. Yet another 70 bighas in village Patara was jointly owned by the appellant Ram Prasad and his brother Ram Swarup, The appellant wanted to transfer some land to Virendra Singh, his nephew, i.e., son of Ram Swarup. The deceased Smt. Shanti Dev-1 objected to it because she was hopeful of begetting a child in the near future. She was, however, insisting that if the transfer had to be made, then it should be made in favour of her daughters instead of the son of the brother of her husband. On this a quarrel had taken place in the preceding day. Smt. Manorama, the eldest of the

four daughters of the deceased, was sleeping in a room in the upper storey in the night between 5/6th December, 1977. Some disturbance awakened her and she noticed that her mother was not on the cot where she was also sleeping. In the morning she inquired from her father (the appellant) who told that Smt. Shanti may have went away. However, she searched in the vicinity but could not find her mother. She then noticed that one of the rooms was locked from outside and at this she asked her father to open the lock. The appellant refused to give the key. At this she said that she would call the police and get the room broken open. Then the appellant gave the key of the room to the mother of Karan Singh and on opening the room it was found that body of Smt. Shanti Devi was hanging in the room from the roof.

3. An F.I.R. was consequently written by Smt. Manorama and lodged at Police Station Sumerpur on 6-12-1977 at 11-40 a.m. against her father, the appellant, and also against Ram Swarp, her uncle. P.W. 3 Kripal Singh, Station Officer, Police Station Hamerpur, was present at the Police Station when this F.I.R. was lodged. It was in his presence that a case was registered by Head Constable Shiv Varan Singh. Thechick report and general diary entries have been proved by this witness as Exts. Ka 4 and Ka 5. P.W. 3 Kripal Singh took up the investigation at once. He recorded the statement of informant Manorama then and there and also recorded the statement of Head Constable Shiv Varan Singh and thereafter proceeded for the spot on reaching the spot he prepared an inquest report on the dead-body of Smt. Shanti Devi, prepared challan Lash and Khaka Lash, all of which have been proved as Exts. Ka-6, Ka-7 and Ka-8, Some ornaments on the body of the deceased were taken out and a memorandum was prepared vide Ext. Ka-3. The body was found hanging with a rope. From near the body a blood stained knife was also recovered. He also took plain and blood stained earth and prepared a memo Ext. Ka-9. Thereafter he sent the dead-body of Smt. Shanti Devi for postmortem examination through Constable Deoraj Tiwari. He then examined the spot and prepared site plan Ext. Ka-10. He recorded the statements of Gomti, Sunena and others. The appellant was, however, not traceable, who surrendered in Court on 9-1-1978. After completing the investigation a charge sheet was filed against the appellant only and a final report was submitted as against Ram Swarup, the brother of the appellant. From the statement of the said witness P.W. 3 Kripal Singh it transpires that he was satisfied that in the night of the incident said Ram Swarup was present to the house of some Advocate and consequently he did not find it necessary to file a charge sheet against him.

4. P.W.2 Dr. V.N. Mehrotra performed the postmortem examination on the dead body of Smt. Shanti Devi on 7-12-1977 at 9.15 a.m. and found the following ante-mortem injuries on her person :--

(1) Contusion 4 cm. x 4 cm. in front of right knee joint just below the patila bone. Skin is reddish in colour and on cutting the skin over the injury coagulated blood was found.

(2) Contusion 3 cm. 2 5 cm. in front of left leg in its upper most portion over bony prominence. It is blue in colour. On cutting the skin coagulated blood was found.

(3) Incised wound 6 cm. x 1.4 cm. x skin deep over the dorsum of right of dorsum of right hand between index and middle finger. Wound starts from the middle of phalynx of middle finger upto the knickels. Margins are not very clear out.

(4) Skin at the tip of right thumb, index finger and middle finger is nibbled at the tip,

(5) Ligature mark 1.5 cm. wide present round the neck but interrupted on right side by 5 cm. behind the ear ligature mark starts below right mastoid bone found in front of the neck in-front at the level of larynx towards the left of neck and going backwards. Base of the ligature mark is hard. Margins are acchymosed. Ligature marks a deep furrow in the neck."

5. On an internal examination he found petochial haemorrhage present in the substance of brain. Trachia and larynx congested. He found coagulated blood in the lungs. Heart was found empty in the left but full in the right side. Stomach was found empty but pasty food in the small intestines. Faecal matter was present in the large intestines. He found spleen, liver and kidney congested. In the opinion of the Medical Officer death was caused due to asphyxia caused by strangulation about one or one and a half lay before the postmortem examination. The prosecution has also filed the reports of the Chemical Examiner and of the Serologist which have been marked as Exts. Ka-12 and Ka-12 and Ka-13 giving positive reports about the existence of human blood on the blood detained earth, the knife and the clothes of the deceased.

6. The prosecution examined Smt. Manorama P.W.-1 as the only witness of fact in the instant case and discharged all other witnesses mentioned in the charge sheet on the allegation that they have been won over by the accused. However, the defence has examined Shyam Singh D.W.-1, who was initially shown as a prosecution witness. Placing implicit reliance on the statement of Smt. Manorama, who is the daughter of the appellant, the learned trial Judge has convicted the appellant order Section 302 I.P.C. and sentenced him to imprisonment for life. Aggrieved, this appeal has been preferred by him. Sri V.S. Singh, learned Counsel for the appellant and Sri S.P. Tiwari, learned Additional Government Advocate for the State have been heard at sufficient length. The entire record has also been thoroughly scrutinized. Sri V.S. Singh has raised three arguments. Firstly, that the statement of Smt. Manorama (P.W.-1) does not conclusively show that the appellant alone lay committed the murder of Smt. Shanti Devi. Secondly, that even if Smt. Manorama's statement is believed, if may; at the most, go to indicate that the appellant is guilty of the offence u/s 201 I.P.C; and not Section 302 I.P.C. thirdly, that Ram Swarup having been named in the First Information Report & a final report having been filed against

him, who stands on the same footing as the appellant, therefore, the appellant should be acquitted. All the three arguments have been suitably replied by Sri Tiwari.

7. Before coming to the three points advanced on behalf of the appellant, it may be stated here that it is very rare that a daughter comes to depose against her own father. It is all the more rare that a married daughter comes and makes statement against her own father. Then it becomes rarest of rare occasion when she lodges F.I.R. against her own father alleging that he was responsible for having liquidated her mother. There will have to be some special reasons when the Court may not like to place reliance on the testimony of the own daughter of the accused-appellant. Ordinarily the criticism which at times may weigh with the examination of other witnesses is generally not to be considered safe and sufficient criticism for discarding the testimony of the own daughter of an accused. The other point requiring special mention in the instant case would be that Smt. Manorama was already married and had absolutely no motive to falsely depose against her own father. Searching cross-examination has been directed towards her and the detailed criticism of Sri V.S. Singh shall be taken up hereinafter. It has come in the statement of Smt. Manorama that her parents, i.e., the appellant and the deceased, had altercation only a day prior to the incident with regard to the transfer of land. The deceased was not prepared that her husband should transfer it in favour of his nephew rather than his own daughters. It is admitted in the cross-examination that virtual transfer had not till then taken place. Smt. Manorama has made a categorical statement that she was sleeping over a cot placed near that of her mother and that her mother was having another daughter on the same cot. At about 2.30 in the night on account of some disturbance she got awakened and found that the mother was not present on the cot. She says that she was thereafter not able to sleep any more and got up in the morning and then made inquiry from her father about the presence of the mother because she could not find her in the house. The statement of Smt. Manorama further is that when she made initial inquiry from her father he said that her mother may have gone away or escaped (Bhag Gayee hogi); this, Manorama went in the near vicinity to search her mother but she could not find the face of her mother and again came back and inquired from her father. Then she noticed that the room which was usually kept unlocked was locked from out-side. On some suspicion having come in her mind she asked her father to open the lock. The appellant refused to do so and kept silent. Smt. Manorama said then that she would report the matter to police and get the door broken open. After all this was done, the appellant gave the key of the lock of the room to his Mausi and then the room was opened when the dead-body of Smt. Shanti Devi was found hanging inside the said room.

8. The criticism of Sri V.S. Singh regarding this part of the prosecution story is two fold-(1) the theory of key having been in possession of the appellant should be rejected because it appears to have been made only to give colour to the prosecution case and (2) there was no reason for the appellant to keep the dead

body inside the room after he had committed the murder under unnoticed circumstances.

9. It may be stated here that in the instant case there is no direct evidence of murder. Unless this part of the prosecution story about the key having been handed over by the appellant is believed,, the prosecution will find it difficult to establish its case. The fact, however, remains that Smt. Manorama has very categorically stated that about 3 days prior to the incident the key of the room was taken by the father. She has further said that after the incident was over, the key and lock were kept inside by her. The question is why this statement of the own daughter of the appellant should not be believed. Is there any reason why the daughter should be found to be deposing falsely against her own father ? If the answer is in the negative, then this part of the statement of Smt. Manorama does not create any doubt or suspicion in the mind of the Court. It is noticeable that Smt. Manorama is a married lady and would not have dared to follow the mother in the night because normally marital obligation might have also been one of the reasons which may have been thought of by her justifying the absence of Smt. Shanti Devi at her cot at about 3 a.m. Even if father had the company of the mother in night hours, no criminal intention consequently should be attributed normally by the daughter. Therefore, when in the morning the mother was not noticed by her daughter, naturally she would inquire from her father the whereabouts of the mother. In the circumstances, if the appellant had not been knowing the real fate of his wife, he would not have given false explanation to his daughter that the wife may have escaped from the house. This false explanation extended by the father to the daughter on inquiry about the mother is a strong circumstance to suggest his guilty mind and that is an attempt to waylay the daughter from binding the truth about the commission of the crime.

10. It was when the key was made available by the appellant that the room could be opened. It has been brought out in the cross-examination of Smt. Manorama that the entire house was locked from inside and no outsider could, therefore, enter the house during night hours. It has further been brought out in the cross-examination that Ram Swarup, uncle of P.W.1 Smt. Manorama and brother of the appellant, was living in village Patara and not in the house in question in village sumerpur. Consequently, the presence even of the uncle inside the house in the fateful night is completely ruled out. Therefore, the only other inhabitants in the house could be the three minor daughters of the appellant. The date of the incident is 6th of December, 1977, which is the coldest part of the year. Under the circumstances, it is proved that the appellant had exclusive knowledge of the fact that the dead-body of his wife was inside the house where from it was taken out by the Investigating Officer when he had been informed of the incident. The availability of the key with the appellant and his efforts to come out with a false explanation about the absence of the mother initially and then giving out the key of the room from where the dead-body of his wife was recovered leads only to one conclusion that the appellant was guilty of

commission of having liquidated his wife sometime after 2.30 a.m.

11. The postmortem examination report has been noted above. It leaves no room for doubt that sufficient pressure was put on the chest and stomach region of the lady with the result that both the lungs had blood inside and even the intestines had blood mixed with secretion. It is beyond the contemplation of another human mind as to what had really transpired between the husband and the wife just before commission of the murder as a result of which she fell prey to the notating manner of criminality of the husband. The husband and wife in the instant case were young enough for normal marital life and the mode and method chosen by the appellant to commit crime is more than obvious in the present case when we have a close look of the injuries of the deceased. As noted above, the strangulation with enough pressure on the chest and stomach region have been found to be the cause of death of the lady. There was and could have been no occasion for the wife to anticipate such an action inside the room and that too from the hands of her own husband and, therefore, the question of any retort or retribution or action or acting under the impulse of self preservation was out of question because the husband had by that time would have finished the life of the lady. Consequently, the two arguments of Sri V.S. Singh about improbability in the narration of the incident stated to by Smt. Manorama are hereby rejected.

12. Coming to the next principal argument that on the admitted facts no offence u/s 302 I.P.C was made out, it may stated here that from what has been noted above the inference on the facts and circumstances of the present case is irresistible that it was the appellant and alone who was responsible for the murder to his wife and none else. Sri Singh has placed reliance on the case Baldev Singh Vs. State of Punjab, . After considering the evidence in the said case the Supreme Court has held that a charge u/s 302 I.P.C, with reference to the appellants therein was not made out and instead the charge could go only to the extent of proving Sections 302 and 366 I.P.C. It was held to have been proved that the charge u/s 201 I.P.C. was made out. In the said case several accused had already been acquitted by the Trial Court. Drawing parity and rejecting the so-called additional evidence against the appellant the aforesaid judgment was recorded by the Hon"ble Supreme Court. Consequently, the case is distinguishable and has no application to the facts of the present case. The other case cited by Nathu and Another Vs. State of Uttar Pradesh, . It was held in the said case that there was absolutely no evidence to prove that any of the accused had knowledge that any offence was committed in respect of the deceased. On this finding the appeal was allowed. The facts are, therefore, distinguishable and the said ruling has no applicability to the facts of the present case. The third case cited by Sri Singh is Jagabandhu Mahanta v. State of Orissa (1985 Cr.LJ 575). In that case the Division Bench of Orissa High Court took note of various omissions and improvements in the prosecution case and because of divergence between the initial case pleaded in the F.I.R. and deposed to in the Court, the High Court extended benefit of doubt discarding the evidence of P.Ws.

3 and 5 and allowed the appeal. The facts and circumstances of the said case are wholly different from the one in question in the instant appeal.

13. The last case cited by Sri V.S. Singh in that of State of U.P. Kapil Deo, reported in 1991 ACC 478. The Hon'ble Supreme Court has reiterated the law of circumstantial evidence to true effect that circumstances have to answer and establish the test where evidence is circumstantial it must be consistent with the sole hypothesis that the accused is guilty of the crime charged. With great respect, the principles laid down by the Supreme Court are attempted to be followed in this judgment and the circumstances noticed in the instant case lead to the only and irresistible conclusion that the appellant is author of the crime of doing away with the life of his wife. The only hypothesis is that the appellant himself has committed the murder of Smt. Shanti Devi and the circumstances noted above fully proved the prosecution case.

14. Apart from the aforesaid rulings, one decision of the Supreme Court which is close to the facts of the present case is Mulakh Raj, etc. Vs. Satish Kumar and others, . It has been held therein that what is required is not the quantitative but qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime. The Court must weigh the evidence of the cumulative effect of the circumstances and if it reaches the conclusion that the accused committed the crime, the charge must be held proved and the conviction and sentence would follow.

15. Mention must be made to another ruling of the Supreme Court in the case of State of U.P. v. Ravindra Prakash Mittal, reported in AIR 1992 SC 2345. It has been held therein that if the circumstances should, to a moral certainty, exclude the possibility of guilt of any other person other than the accused and those circumstances conclusively establish only the hypothesis of guilt the conviction should follow. The last principal advanced by Sri Singh is that his client's case should be equated with that of Ram Swamp has to be mentioned only to be rejected. As noted above, Ram Swarup was not even residing in this house where the murder has been committed. Smt. Manorama has stated that on the day of incident her uncle Ram Swarup had already left the place by about 4.00 p.m. whereafter he was not seen at all. Again, as mentioned above, during the night the entire house was locked and bolted from inside, with the result that no outsider could come inside the house. Moreover, the Investigating Officer had examined those witnesses who had said that Ram Swarup was present with them in the night of the incident and, therefore, he did not file the charge-sheet as against him. Hence the argument of Sri Singh that the appellant's case should stand on the same footing as that of Ram Swarup is wholly misconceived.

16. No other point was argued. As noted above, the testimony of Smt Manorama has been rightly relied upon by the learned trial Judge and made basis of convicting and sentencing the appellant.

17. Before parting with this case, a reference as to be made to the affidavit said

to have been filed in this Court by Smt. Manorama that she had deposed in the trial not of her free will. Such affidavits after 10 or 12 years of the actual deposition have only to be rejected as being too much of an after thought. There was a faint attempt on the part of Sri V.S. Singh that the instant case may be covered by Section 304 Part I or Part II of the Indian Penal Code. The said plea is not only not tenable but is misconceived and is rejected. The appeal consequently fails and is dismissed. The appellant is on bail. He will surrender to his bail bonds to serve out the sentence awarded. It transpires from the record that because of non-appearance of the appellant or his Counsel on the earlier occasion the appellant's bail was cancelled and he was directed to be taken into custody. If he has been taken into custody, he will serve out the sentence awarded.