
(2005) 11 RAJ CK 0048
In the Rajasthan High Court
Case No : Criminal Appeal No. 705 of 2000

Ranvir and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 307, 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2006) 2 DMC 29 : (2006) 1 WLC 490 : (2005) WLC 11

Hon'ble Judges : V.K. Bali, J; Shashi Kant Sharma, J

Bench : Division Bench

Advocate : Hemant Gajraj, Gourav Annandka and Suresh Dhanwal, for the Appellant; B.N. Sandu, Public Prosecutor, for the Respondent

Judgement

V.K. Bali, J.—Whereas appellant Ranvir has been found guilty for offence u/s 302. IPC and sentenced to undergo imprisonment for life as also to pay a fine of Rs. 5,000 and in default of payment of fine to further undergo RI for one year having intentionally caused death of his young wife with advanced pregnancy, his real brother Ummed Singh has been held guilty for offence u/s 201, IPC and sentenced to undergo RI for a period of four years as also to pay a fine of Rs. 1,000 in default of payment of fine, to further undergo RI for six months for screening the offence of murder committed by his brother. They were held guilty and sentenced, as mentioned above, vide judgment recorded by the learned Additional Sessions Judge, Jhunjhunu dated 8.11.2000. It is against this common order of conviction and sentence that whereas Ranvir has filed D.B. Criminal Appeal No. 705/2000, Ummed Singh has filed S.B. Criminal Appeal No. 666/2000.

2. The incident with regard to death of Sunita wife of appellant Ranvir was reported by none other than Ummed Singh, brother of appellant Ranvir and appellant in Appeal No. 666/2000. While lodging FIR on 16.7.1999 at 8.05 a.m. he stated that on 16.7.1999 at 6.00 a.m. Sunita wife of his younger brother Ranvir Singh, aged 19 years was filling water in a cooler which was already on,

when thud of her falling down and crying came which attracted him, Smt. Sajjna, Chana Devi and Mahakori Devi. They all ran and saw that Sunita was grasping for breath and her tongue was protruding from her mouth. They took her to hospital Bagad where the doctor declared her dead. Dead body of Sunita was lying at the house. She was married on 30.12.1998. She died because of electric shock. Within two hours from the time Ummed Singh lodged report, as mentioned above, Sunidhar, brother of the victim Sunita, also lodged report Exhibit P-10 at 12.05 p.m. wherein he stated that his sister was married with Ranvir son of Hemaram on 30.12.1998. On 16.7.1999 he received information from Bagad that Sunita had died because of electric shock upon which he along with his parents went to Bagad and saw the dead body of Sunita at the house of his brother-in-law Ranvir. They found marks on her neck caused either by a rope or by some other means and it appeared that her death had been caused because of throttling. They also found injury marks on her neck, feet and waist. His sister had been killed by his brother-in-law by throttling. His sister was 18 years of age and was married about six months ago.

3. In its endeavour to bring home guilt against the appellants, prosecution examined Dr. Natthu Singh as PW 1 who stated that on 16.7.1999, Medical Board was constituted consisting of himself. Dr. Karan Singh Ola and Mrs. Mukul Arya. They had conducted post-mortem on the dead body of Sunita on 16.7.1999 at 12.30 p.m.. Dead body of Sunita was identified by her husband Ranvir. He stated that the death had been caused within 6 to 12 hours from the time when the post-mortem was conducted. Tongue of the deceased was protruding out and there was froth coming out of her mouth. On all four sides of her neck, there were ligature marks. Following injuries were found on the dead body of Sunita:

1. Ligature mark around neck present, dark brown colour, 1 cm width extending upto posterior aspect of neck, more on anterior aspect underlying blood vessels ruptured frothy fluid present in trachea.
2. Bruise 1.5 cm x 1 cm below the chin.
3. Bruise 1 cm x 1 cm on Rt. Intraclavicular region.
4. Multiple bruises over 2 cm x 2 cm area on lower part of neck.
5. Multiple abrasions on lower part of back over area of 1 cm x 7 cm.
6. Abrasions above posterior aspect of both legs just above heels.
7. 1 cm x 2 cm abrasion on posterior aspect of Rt. hand.

Marks of ligature on neck, dissection, etc.

Ligature mark around neck present, about 1 cm breadth all around the neck upto posterior portion.

4. A male child of 28 weeks was found in the foetus. In the opinion of the medical board, death had been caused because of strangulation (asphyxia).

Death had been caused within 6 to 12 hours. All the injuries found on her dead body were ante mortem in nature. Due to asphyxia, death of child was natural. Doctor further stated that strangulation could have been caused by a plastic rope as well. In the cross-examination, he stated that along with ligature mark, abrasion could also possibly be caused.

5. Sunidhar, the first informant who was examined as PW 8, Smt. Yogi, mother of the deceased examined as PW 9 and Heera Ram father of Sunita, examined as PW 11 gave vivid and consistent account how their daughter was tortured by Ranvir appellant after marriage. PW 8 Sunidhar while supporting contents of the FIR lodged by him also stated that whenever Sunita would come from her in-laws, she would tell him that her husband used to beat her; he would come drunk late at night and would abuse her. He would demand hot food and if he was not to get the same, Sunita would be subjected to beating. He along with his father had gone to Jatawas, Bagad and made complaint to in-laws of his sister and requested them not to trouble Sunita but his father was also given the same treatment. When his mother went to the in-laws of her daughter after a month, his sister bitterly cried after embarrassing her mother and told her that her husband would beat her, come drunk late at night and demand hot food. Appellant Ranvir abused his sister in presence of her mother and also told Sunita that how dare she tell all these things to her mother, he would burn her alive. When he had gone a month ago to his sister, then also, she had told him that the appellant used to beat her, would come drunk late at night and demanded hot food from her. As mentioned above, parents of deceased. Smt. Yogi and Heeraram had made similar statements. Prosecution also examined Surendra Singh (PW 4) and Pradeep Kumar Sharma (PW 6) respectively. Both were constables in police department. Appellant Ranvir pursuant to disclosure statement made by him is said to have got recovered a rope Exhibit P-5 from the roof of the house where the cooler was fitted. It was recovered from a box lying in the room. There is no need at all to give further details of the evidence led by the prosecution but to state that the prosecution had also examined Bimwari I ,al (PW 10) who was an employee in the power house. He stated that he had checked the cooler on 16.7.1999 which had no current and that Onad Singh, ASI had deposed with regard to the steps that he had taken while investigating the case.

6. When examined u/s 313, Cr.P.C, whereas appellant Ranvir besides denying the incriminating circumstances appearing against him, further stated that at the time of occurrence he was not present in the house, Ummed Singh while denying incriminating material put to him also stated that on 16.7.1999 when he came to the house after easing himself, he found that a lot of people had collected at his house and they told him that Sunita had died because of electrocution and then he made report to the police.

7. Appellants led evidence in defence and examined Ramesh (DW 1) a neighbour who is stated to have gone to call appellant Ranvir after coming to know that his

wife had died. He stated that Ranvir was not at home at that time. Maturam Verma(DW 2), brother-in-law of Ranvir, endeavoured to show that Ranvir was not present at the house at the time of occurrence. DW 3 Ram Swaroop is the owner of the vehicle. We are not giving statements made by these witnesses in any details as nothing based upon their testimony has been urged before this Court.

8. We have heard learned Counsel appearing for the parties and with their assistance examined records of the case.

9. Learned Counsel for the appellant Ranvir contended that the prosecution led no evidence that might connect him with the commission of crime. The only evidence with regard to recovery of rope pursuant to the disclosure statement made by appellant Ranvir needs to be rejected as the prosecution joined two constables namely Surendra Singh (PW 4) and Padeep Kumar Sharma (PW 6) in investigation when rope is said to have been recovered. Once witnesses of the same locality could be available, they ought to have been joined in investigation. The statements made by PW. 4 and PW 6 who were constables of the police department need to be disbelieved, further contends learned Counsel. It is further urged that the rope was recovered immediately when the police had visited the spot and which is clearly made out from the statements of witnesses and, therefore, recovery of rope said to have been made pursuant to the disclosure statement made by appellant Ranvir is all a madeup affair. Once evidence with regard to recovery of rope is excluded, no evidence is left out on the basis of which the appellant Ranvir could be connected with the crime. It is significant to mention that insofar as appellant Ummed Singh is concerned, no arguments with regard to his involvement u/s 201, IPC have been raised. The only contention raised on his behalf is, however, that sentence of four years needs to be suitably reduced.

10. In the context of facts and circumstances of the case, however, we do not find any merit in the present appeal. It may be recalled that no sooner, brother of Suniti.1 came to know about her death, he lost no time in lodging the FIR. Within three hours when Sunita died, he reported to the police that it was a case of homicidal death. He found ligature mark on the neck of his sister besides other marks of violence on her body. Sunita on the dint of medical evidence is proved to have been murdered. She died because of strangulation. Other injuries received by her clearly suggest that she resisted the murderous assault on her. She appears to have fought for her life even though vainly. Homicidal death of Sunita in contrast to accidental death sought to be projected by the appellants, speaks volumes of involvement of the appellants in the commission of crime. It was one thing for them to have stated that they would not know the reason as to how Sunita died or who killed her and yet another thing to come up with the cause of death which is proved to be false on the basis of unclinching medical evidence. Conduct of the appellants in the facts and circumstances of the case is in itself a circumstance pointing towards their guilt. It is significant to mention that whereas in the first instance, they tried to make it look like that Sunita had

died because of electrocution but when it transpired that it will be impossible to believe the theory propounded by them and the medical evidence had established it beyond shadow of doubt that she did not die because of electrocution but was strangled, they shifted their stand from electrocution to Sunita committing suicide. Suggestions were given to the witnesses that she was a lady of bad character and was pregnant before her marriage and for that reason, she committed suicide. It appears that the suggestions in the manner nfnresaid came to be given to the witnesses taking clue from the FIR that she was married six months before her death and from the medical evidence wherein the doctor stated that she had a foetus of 28 weeks. No doubt, 28 weeks would go beyond six months and it appears that, it is for that reason that an attempt was made to show that Sunita was pregnant before her marriage. While, however, doing so, appellants forgot that the first informant might have stated that his sister was married six months ago, but he had also given the exact date of marriage as 30.12.1988 and on the date of death, a period, of 6/2 months had gone which almost synchronised with the date of marriage. It is further interesting to note that the appellant Ummed Singh in the first information lodged by him stated that he along with others had himself seen Sunita falling down because of electrocution whereas when his statement was recorded u/s 313, Cr.P.C. he stated that he had only heard that she had got electric shock. This shifting of stand again appears to have been made after coming to know that theory of electric shock would be thoroughly exposed.

11. Coupled with this conduct regarding cause of death of Sunita due to strangulation which is proved to the hilt, it has been consistently stated by Sunidhar (PW 8), Bogi (PW 9) and Heera Ram (PW 11) that in short span of married life of Sun ita, she was subjected to great deal of cruelty at the hands of her husband Ranvir. The appellant would come drunk late at night and demand hot food. He would often beat his wife. The entreaties made by her and the parents fell on deaf ears. Torture of Sunita continued unabated. It is proved that Sunita died at night and in wake of the torture meted out to her it would be probable to conclude that she was given beating for the same cause even though, this time unfortunately, it resulted into her death.

12. It is thus a case where cause of death or motive that actuated appellant Ranvir to commit the crime and the conduct which is also relevant in determining the guilt, is proved to the hilt. That apart, facts which are the occasion, cause or effect, immediate or otherwise, or relevant facts or facts in issue, or which constitute the state of things under which they happened or which afforded an opportunity for their occurrence or transaction, are relevant. Illustration "D" appended to Section 307 reads as under:

The question is, whether A poisoned B. The state of B's health before the symptoms ascribed to poison, and habit of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

13. In the present case, appellant Ranvir had an opportunity. He was at house at

the time when Sunita died. The plea of alibi raised by him could not be substantiated. There was an occasion for him to commit the crime. There was also cause for him to commit the crime. Presence of appellant Ranvir on the date and time when Sunita died, his habit of beating her in night, the theory of death because of electrocution having been exposed, death of Sunita being homicidal, there being an opportunity available to him to cause death, complete absence of any other cause of action, in considered view of this Court clearly point towards involvement of appellant Ranvir in committing murder of his wife. In view of the discussion made above, even if contention of the learned Counsel for the appellants is to be accepted that no disclosure statement was made by the appellant Ranvir pursuant to which rope with which murder was caused, was recovered, there would be still sufficient evidence to prove guilt of the appellant Ranvir beyond shadow of reasonable doubt. We may, however, hasten to add that the rope about which witnesses have stated as found in the room on the date of occurrence itself is not the crime rope. The police might have taken in possession some other rope whereas the rope recovered on the disclosure statement of appellant Ranvir was different one. PW 8 Sunidhar stated that when the SHO had seen the luggage in the room, they had got a rope also. He had seen the rope in the hands of SHO. From this statement made by him it cannot be said that it was the same rope which was recovered on the disclosure statement made by the appellant. Likewise statement of PW 11 Heera Ram that the police had seen the entire luggage lying in the room and that the police had also gone on the roof, where a belt, bangle, a hair-clip and rope was found could not suggest that it was the same rope which was recovered on the disclosure statement made by appellant Ranvir. It is true that the police should have endeavoured to join independent witnesses in the matter of recovery of rope but in case such as one in hand, where a newly wedded wife died at the house of husband or in-laws, there was hardly any witness available who might depose against the husband and his relations. Witnesses of the locality are normally known and are thick with the accused. What we have stated above would be demonstrated from this very case as all witnesses of the locality who were examined indeed turned hostile. In such a case, therefore, police cannot be faulted in joining police personnel in investigation and the defence could draw no benefit on that count unless police is shown to be biased against the accused or interested in success of the prosecution case.

14. In view of the discussion made above, we find no merit in the appeal preferred by Ranvir. Insofar as appeal filed by Ummed Singh, brother of Ranvir is concerned, the same is allowed only to the extent that in our view, interest of justice would be served if sentence of the appellant Ummed is reduced from four years to two years. Ordered accordingly. But for the modification as mentioned above, the appeal filed on behalf of Ummed Singh is also dismissed.