

(2007) 03 UK CK 0022
In the Uttarakhand High Court
Case No : Criminal Appeal No. 101-A of 2003

Rishi Kumar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 06-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374(2)
Penal Code, 1860 (IPC) — Section 201, 302, 34
Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2007) 4 UC 472

Hon'ble Judges : Prafulla C. Pant, J; Dharam Veer, J

Bench : Division Bench

Advocate : S.P.S. Panwar, assisted by Sri H.C. Pathak, for the Appellant; Amit Bhatt, Asstt. Government for Respondent State, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Prafulla C. Pant, J.—This appeal, preferred u/s 374(2) of the Code of Criminal Procedure, 1973 (herein-after referred as Code of Criminal Procedure), is directed against the judgment and order dated 23-05-1988, passed by learned II Additional Sessions Judge, Saharanpur, in Sessions trial No. 09 of 1986, whereby the accused /Appellant Rishi Kumar was convicted u/s 302 and 201 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and sentenced to imprisonment for life u/s 302 of I.P.C., and two years rigorous imprisonment u/s 201 of I.P.C. Both the sentences were directed to run concurrently.

2. Heard learned Counsel for the parties and perused the entire evidence on record.

3. Prosecution story, in brief, is that accused/Appellant Rishi Kumar is a medical practitioner practicing at Manglore, within the limits of Tehsil Roorkee (Tehsil Roorkee was part of District Saharanpur, which is now part of District Haridwar of Uttarakhand). Deceased Kusumlata was wife of Rishi Kumar and she was also a medical practitioner. Both of them used to run a clinic and lived in a house in

Mohalla Kayasthan, within limits of Police Station Manglore, Roorkee. On 20-04-1985, one Madan Lal Aggarwal, brother-in-law of accused/Appellant Rishi Kumar gave a report (Ext. A-2) at Police Station Manglore that Smt. Kusumlata, wife of Rishi Kumar, has committed suicide by setting herself on fire. This information was recorded by the police in the general diary, at about 7:55 P.M., as report No. 46 (copy of extract of which is Ext. A-8) by Head Constable Mangal Singh (P.W. 12). On receipt of the report Sub Inspector Ram Gopal Mugaria (P.W. 15) made certain enquiries from Madan Lal and sent some police force to the place of incident. He also went to the spot and prepared site plan Ext.A-12, after inspecting the dead body. In the meantime, information was received by Brahm Swaroop (P.W.2), uncle of the deceased Kusumlata, on telephone, at about 6:00 P.M. in his shop situated at Loha Bazar, Saharanpur that accused/Appellant Rishi Kumar has murdered his wife. When he tried to know about the identity of the person calling, the phone got disconnected. P.W.2 Brahm Swaroop, immediately communicated the information to P.W. 1 Rakesh Kumar Mittal (brother of the deceased), P.W.3 Pooran Chand (father of the deceased), Mahendra Kumar, Anand Swaroop and other members of the family. All the relatives of Kusumlata proceeded for Manglore from Saharanpur and reached there, at about 8:00--8:30 P.M. Rakesh Kumar Mittal (P.W.1), who was at Ghaziabad, reached Manglore at about midnight. When they reached in the house of accused/Appellant Rishi Kumar, Kusumlata was found dead in a sitting posture with the support of a wall in a small bathroom, in burnt condition. Her tongue was protruding out from her mouth. Rakesh Kumar Mittal (P.W.1), when reached Manglore, at about midnight, enquired from accused/Appellant Rishi Kumar about the incident on which Rishi Kumar confessed the guilt having killed his wife by strangulating her and thereafter set her on fire. P.W.1 Rakesh Kumar Mittal noticed scratch on the cheek of accused/Appellant Rishi Kumar. He then prepared a first information report (Ext.A-1) and handed it over to P.W. 15 Sub Inspector Ram Gopal Mugaria. The first information report was registered at the Police Station Manglore and a case crime No. 90 of 1985 was registered relating to offence punishable u/s 302, 201 of I.P.C. The Investigating Officer Ram Gopal Mugaria through Constable Babu Ram called photographer Ravinder Kumar and got the snaps Ext. I, Ext. III to Ext. XXV of the dead body from various angles. The Investigating Officer thereafter took the dead body of Kusumlata in his possession, at about 8:00 A.M. on 21-04-1985, and got prepared inquest report (Ext.A-13); police form No. 13 (Ext. A-14); sketch of the dead body (Ext. A-15) and letter (Ext.A-16) to the Chief Medical Officer, requesting him for postmortem examination of the dead body. The dead body in a sealed condition was sent through Constable Raj Pal Singh (P.W. 10) and Constable Jagpal Singh along with papers for postmortem examination. The postmortem examination was conducted by P.W.8 Dr. H.K. Paloria and Dr. S.C. Goel, on 21-04-1985, at about 1:30 P.M. The team of doctors prepared the autopsy report (Ext. A-5) and opined that Smt. Kusumlata had died due to asphyxia, as a result of throttling. During investigation, the Investigating Officer recovered a kerosene container at the instance of accused/Appellant Rishi Kumar and prepared memo (Ext. A-16), on

22-04-1985. After interrogating the witnesses, the Investigating Officer submitted charge sheet (Ext. A-11) not only against accused/Appellant Rishi Kumar, but also against his father Atma Ram and Km. Shashi (said to be a nurse in the clinic of the accused/Appellant Rishi Kumar) for their trial in respect of offences punishable u/s 302 read with Section 34 of I.P.C. and u/s 201 of I.P.C.

4. The Magistrate on receipt of the charge sheet, appears to have committed the case to the court of Sessions, for trial, after giving necessary copies to the accused, as required u/s 207 of the Code of Criminal Procedure Learned II Additional Sessions Judge, Saharanpur after hearing the prosecution and the defence, framed charge against all the three accused relating to offences punishable u/s 302 read with Section 34 and that of one punishable u/s 201 of the I.P.C. All the three accused namely, Rishi Kumar, his father Atma Ram and Km. Shashi pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W.1 Rakesh Kumar Mittal (brother of the deceased); P.W.2 Brahm Swaroop (uncle of the deceased); P.W.3 Pooram Chand (father of the deceased); P.W.4 lady constable Santosh; P.W.5 Dr. Som Dutt Sharma (who examined the accused Rishi Kumar and found scratch mark on his face); P.W.6 Kala; P.W.7 Inspector Jitendra Kumar Sharma (who partly investigated the crime); P.W.8 Dr. H.K. Paloria (one of the members of the postmortem examination team); P.W.9 Anand Swaroop Mittal (another uncle of the deceased); P.W. 10 Constable Raj Pal Singh (who took the dead body in sealed condition for postmortem examination); P.W.11 Sub Inspector Har Prasad Verma (who arrested the accused on 22-04-1985 and got recovered the kerosene container at the instance of the accused); P.W. 12 Head Constable Mangal Singh (who made entries in the general diary); P.W.13 Sub Inspector Girish Chandra (who submitted the charge sheet); P.W.14 Yogendra Kumar Mishra (Assistant of the photographer Ravinder Kumar) and P.W. 15 Ram Gopal Mugaria (Investigating Officer, who investigated the crime). The oral and documentary evidence, adduced by the prosecution, was put to the three accused u/s 313 of Code of Criminal Procedure, in reply to which all the three accused alleged the same to be false. In defence, D.W. 1 R.N. Raturi, Pharmacist of sub-jail, Roorkee and D.W.2 Jagdish Prasad Sharma, Chief Pharmacist of Har Milap Misson Hospital, Haridwar were got examined. After hearing the prosecution and the defence, the trial court found charges as against Atma Ram and Km. Shashi not proved, as such, acquitted both of them. However, the trial court found accused/Appellant Rishi Kumar guilty of charge of offences punishable u/s 302 and 201 of I.P.C., and after hearing the parties on sentence, sentenced him to imprisonment for life u/s 302 of I.P.C. and to rigorous imprisonment for two years u/s 201 of I.P.C. Aggrieved by the judgment and order dated 23-05-1988, convict Rishi Kumar preferred this appeal before the Allahabad High Court in the year 1988, from where it is received by transfer to this Court u/s 35 of the U.P. Re-organization Act, 2000, for its disposal. (As Tehsil Roorkee is now part of State of Uttarakhand).

5. Before further discussions, it is pertinent to mention here, the ante mortem injuries and postmortem burn injuries found on the person of the deceased, at

the time of postmortem examination, as mentioned in Ext. A-5;

1. Lacerated wound 5 cm x 1 cm X muscle deep in longitudinal direction on dorsal of right foot on its outer-half. Dried blood present in wound margins.
2. Lacerated wound 2 cm x 0.5 cm on the distal phalanx of right great toe on dorsal aspect. Dried blood was present in wound margins.

Notes:

Postmortem burn present all over the body except both feet. There is No. line of redness. No. vesication. No. evidence of any reparative process was seen.

Additional remarks:

1. Extra vasion of blood was present on the in deep tissues of neck on left side neck in its middle and left part in an area of 6 cm x 4 cm.
2. Extra vasion of blood was present in deeper tissues of neck on right side in middle and lower part in an area of 4 cm x 2 cm."

The Medical Officers have also recorded that second and third rib on left side on the front of chest were found fractured. It is also observed in the postmortem report that tongue of the deceased was protruding out and swollen. Eyes prominent and open. Pupil dilated. The Doctors also found the bloody foam escaping out from the mouth and the nostrils. Vaginal discharge coming out. Scalp hairs partially burnt. The two Doctors, who conducted the postmortem examination, observed that the death was caused due to asphyxia as a result of throttling.

6. Following are the circumstances relied by the prosecution against the Appellant Rishi Kumar to establish the charge framed against him:

1. Smt. Kusumlata died homicidal death in her husband's house.
2. Appellant Rishi Kumar is husband of Smt. Kusumlata (deceased).
3. Appellant did not give any report to the police about death of his wife, nor did he inform the parents of the deceased about the death of their daughter Kusumlata. (However, Appellant's sister's husband Madan Lal gave a report (Ext.A-2) to police that Kusumlata has committed suicide by setting herself on fire.
4. Postmortem examination report (Ext. A-5) shows that Kusumlata has died due to asphyxia as a result of strangulation, burn injuries were found postmortem (not ante mortem).
5. P.W.2 Brahm Swaroop, uncle of the deceased and P.W.3 Pooran Chand, father of the deceased, who were one of the first to reach from the paternal side of the deceased at the place of occurrence found that the tongue of the deceased was protruding out from her mouth. This fact gets corroboration from the

postmortem report (Ext. A-5).

6. Appellant Rishi Kumar made extra judicial confession before P.W.1 Rakesh Kumar Mittal, brother of the deceased, in the midnight in the presence of P.W.9 Anand Swaroop Mittal.

7. Second and third rib on the front of the chest of the deceased were also found broken. Had the deceased made an attempt to commit suicide by setting herself on fire, such injuries could not have been caused.

8. There was a scratch mark found on the face of accused Rishi Kumar which suggests that the deceased might have caused it to save herself from strangulation.

7. Mr. S.P.S. Panwar, Senior Advocate appearing on behalf of the Appellant, pressed following points to show his innocence:

1. No. motive has been established for commission of the crime which is relevant in a case of circumstantial evidence.

2. According to the prosecution witnesses of fact, back of the deceased was touching the wall of the bathroom, as such, the burn injuries would not have been possible in that portion on the back of the deceased, while actually the burn injuries were found not only on the front side but also on the back.

3. There is No. explanation why P.W.2 Brahm Swaroop and P.W.3 Pooran Chand did not lodge the first information report, immediately after reaching Manglore, and why they waited for P.W.1 Rakesh Kumar Mittal, brother of the deceased, who reached from Ghaziabad, at about midnight.

4. Asphyxia could have been caused by suffocation also.

5. At the time of postmortem examination the hyoid was not found broken.

6. There is No. connecting evidence on the record, to connect the recovered kerosene container mentioned in Ext.A-6, with the commission of crime.

7. Contradictions in the statements of witnesses as to the arrival of the Investigating Officer at the place of incident pointed out.

8. As far as the motive for commission of crime is concerned, it is settled principle of law that it is not essential to be proved to hold a person guilty of the charge framed against him. The motive is a matter relating to state of mind, Apart from this, in the present facts and circumstances of the case, when the homicidal death has taken place inside the house of the accused/Appellant, where only members of his family had the access to be there, it cannot be said that the prosecution witnesses of fact had any opportunity to be there to throw light on the point of motive as the witnesses had reached after the incident had taken place.

9. P.W. 1 Rakesh Kumar Mittal, brother of the deceased, has stated on oath that

his sister Kusumlata got married to the accused Rishi Kumar in November 1979. Narrating the prosecution story he told that both accused and the deceased were doctors and run clinic in which Km. Shashi (one of the accused acquitted by the trial court) was the nurse. This witness states that on 20-04-1985, he received a telephone call in Ghaziabad, from Saharanpur, that his sister Kusumlata has been burnt to death. The family members at Saharanpur told him that they are proceeding towards Manglore and asked the witness (P.W.1) to reach there. P.W.1 Rishi Kumar Mittal further stated that around 11:30-12:00 midnight he reached Manglore and by that time he saw his family members had already reached there and his sister was lying dead in a bathroom. Her back was touching the wall of the bathroom and left leg was bent. Her tongue was protruding out. There was a mark of injury and blood on the toe of the right foot. The witness further states that when he went in the drawing room and met Rishi Kumar and asked him why he had done this shameful act, Rishi Kumar begged to be pardoned and admitted having killing Kusumlata by strangulating her, where after he set her on fire after sprinkling the kerosene. At the end of his examination-in-chief, P.W.1 Rakesh Kumar Mittal states that Kusumlata had two children, one girl aged 4 1/2 years and another son aged 2 1/2 years.

10. Statement of P.W.1 Rakesh Kumar Mittal is fully corroborated by the statement of P.W.2 Brahm Swaroop, uncle of the deceased, who received the telephone call from Manglore that Kusumlata has been killed by setting her on fire. This witness has stated that he made telephone calls to other family members and Rakesh Kumar Mittal, from Manglore and proceeded with Pooran Chand (father of the deceased) and Ors. for Manglore where they reached around 8:30 P.M., on 20-04-1985. This witness has further stated that he received call from Manglore at Saharanpur about the death of Kusumlata, at about 6:00 - 6:15 P.M. What has been stated by P.W.1 Rakesh Kumar Mittal gets further corroboration from the statement of P.W.3 Pooran Chand, father of the deceased, who states on oath, that around 6:15 P.M., his brother Brahm Swaroop received a telephone call about the death of Kusumlata and on getting information from him he along with Brahm Swaroop, Mahendra Kumar, Anand Swaroop, Ashok Kumar, Bharat Bhushan proceeded for Manglore where they reached around 8:00 P.M. This witness further states that they found Kusumlata dead in a bathroom in a brunt condition. This witness has further corroborated that tongue of the deceased was protruding out from her mouth. P.W. 3 Pooran Chand, further states that his son Rakesh Kumar Mittal reached from Ghaziabad around 11:30-12:00 midnight. This witness has further stated that Madan Lal, who gave report (Ext. A-2) to the police that Kusumlata has committed suicide, is Rishi Kumar's sister's husband.

11. P.W.9 Anand Swaroop Mittal, another uncle of the deceased, has further corroborated what has been mentioned by the aforementioned witnesses of fact. This witness has also corroborated that when Rakesh Kumar Mittal got annoyed at Rishi Kumar, he told Rakesh (sic) (in the fit of anger I have committed wrong, and in that rage I killed her by strangulating and then set her on fire by pouring

kerosene. Save me from the police). As such, the extra judicial confession made before P.W.1 Rakesh Kumar Mittal is corroborated from the statement of P.W.9 Anand Kumar Mittal. P.W.2 Brahm Swaroop has only stated that P.W.1 Rakesh told him around 01:00 A.M., that Rishi Kumar has confessed his guilt.

12. In his examination, P.W.1 Rakesh Kumar Mittal has stated that there was scratch mark on the face of the accused Rishi Kumar when he met him in the night of 20-04-1985. This statement of Rakesh Mittal that there was a scratch mark on the face of accused Rishi Kumar gets corroboration from the statement of P.W.5 Dr. Som Dutt Sharma, who examined Rishi Kumar medically, after his arrest on 22-04-1985. The said report (Ext. A-4) is on the record. P.W.4 Dr. Som Dutt Sharma has stated that the scratch mark found on the person of Rishi Kumar could have been caused by nails, on 20-04-1985, at about 4:00 P.M.

13. P.W.8 Dr. H.K. Paloria, was one of the two Medical Officers, who conducted autopsy on the dead body of Smt. Kusumlata. In the postmortem examination report (Ext. A-5) it is mentioned that the tongue of the deceased was protruding out and swollen, eyes were prominent and open, bloody foam escaping out from mouth and nostrils. In Ext. A-5, apart from the ante mortem injuries already mentioned above, it is also mentioned that the lungs of the deceased were congested. On cutting, bloody froth was found coming out. In column III, a remark is given in Ext. A-5, in which it is mentioned that extra vasation of blood present in the deeper tissues in the front of chest and left side in its upper part at the level of menubrium stern in an area of 6 cm x 4 cm. We have already mentioned that apart from this, the second and third rib were found fractured on the left side of the front chest. This witness has clarified that the burn injuries were postmortem (not ante mortem). Therefore, merely for the reason that hyoid was not found broken, it cannot be said that the opinion of the two doctors, that cause of death was asphyxia as a result of throttling, cannot be doubted.

14. From the evidence on record and the circumstances proved, it appears a case in which the deceased was strangled and thereafter attempt was made to burn her. It is quite possible that after the burn injuries were received, the dead body was kept in the bathroom by the time prosecution witnesses of fact reached Manglore. As such, though the back of the deceased was in a condition of support from the wall and it is not the case of prosecution that with that portion kerosene was poured and deceased was set on fire. Therefore, we see little force in the submission of learned Counsel for the Appellant that the burn injuries on the back were not possible in that portion. It is possible that burn have been caused before the dead body was kept in the bathroom.

15. From the replies of the accused/Appellant given u/s 313 of Code of Criminal Procedure when the prosecution evidence was put to him, he has admitted that he got married in the month of November 1979 to Kusumlata (deceased). It is also admitted that they were running a clinic in their house. However, he has denied that Km. Shashi was a nurse in his clinic.

16. As far as the contradictions pointed out in the statements of witnesses as to the reaching of the Investigating Officer at the spot in the morning at 6:30 A.M. is concerned, the contradictions appear to be natural one and not sufficient to doubt the facts established on record, as discussed above.

17. For the reasons as discussed above, and in the above facts and circumstances which are proved on record, the chain of circumstances mentioned above is complete, as against accused/Appellant Rishi Kumar. From the chain of circumstances read with postmortem report, scratch on the face of accused, and extra judicial confession, it is clearly established that none other than Appellant has committed the crime. We are in agreement with the finding of the trial court that the charge against the accused relating to offences punishable u/s 302 of I.P.C. and that of one u/s 201 of I.P.C. stand proved. Accordingly, the appeal is liable to be dismissed. The same is dismissed. Accused/Appellant Rishi Kumar is on bail. His bail is cancelled. He shall surrender forthwith before the court concerned. Send the lower court record back to the trial court concerned to ensure that accused/Appellant is sent to jail to serve out the sentence awarded against him.