
(2016) 05 DEL CK 0076
In the Delhi High Court
Case No : CRL.A. No. 845 of 2001

Satya Pal Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-05-2016

Acts Referred:

Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 7 ADDelhi 263

Hon'ble Judges : Mr. Pradeep Nandrajog and Ms. Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Anurag Jain, Advocate, for the Appellant; Mr. Varun Goswami, APP, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J. (Oral) - Charged for murdering his wife Gyanwati, Satya Pal Singh has been convicted for offence punishable under Section 302 IPC and directed to undergo imprisonment for life vide judgment and order on sentence both dated September 22, 2001.

2. Sanjeev Kumar S/o Satya Pal Singh and Gyanwati, maker of the FIR stated that his father Satya Pal Singh was earlier working in DTC but because of addiction to smack, he was removed from service. His father used to demand money from his mother and beat her daily. On the night intervening March 15-16, 1999 he along with his two brothers was sleeping in their room and his parents in the other room. Around 2.30 AM in the night he woke up to urinate but could not open his room because the same was latched from outside. On peeping from the window he found his father in the courtyard and when he asked his father why his room was latched, without saying anything, his father opened the latch. After urinating, Sanjeev slept. When he got up at 5.45 AM in the morning, again his room was latched. He banged the door and after some time, a papaya seller who was in the gali opened the main gate and latch of his room.

When he came out of his room and went to his parent's room, he saw his mother Gyanwati lying on the floor in a pool of blood. Near her body, one scissor and Pana (chabi-pana) were found. His mother had injury mark on the neck. He suspected that his father who was not at home at that time had killed his mother.

3. Post-mortem on the body of Gyanwati was conducted by Dr. S.K. Verma PW-7 who found the following injuries on the deceased:-

(1) Nine punched lacerated wound present on left side neck occupying an area of 5.5 x 3 cms placed 3 cms lateral to midline and lowermost was 1.5 cms above upper border of left clavicle. The wounds were of different size, the smallest was 0.7 x 0.1 x 0.3 cms, while the largest was 2.3 x 0.5 x 1.5 cms (in the middle 4th from the lowest) going upto the left carotid artery and producing a tear in it. The blood was present in and around the wound.

(2) A reddish contusion of size 3 x 3 cms placed on right side anterior shoulder placed 4.5 cms below shoulder tip.

(3) Reddish abrasion of size 5 x 3 cms present over left leg just below the patella interiorly.

(4) Reddish abrasion of size 2.5 x 1 cms present over left mastoid process.

(5) Lacerated wound of size 2 x 1 cm x scalp deep placed over right parietal region 4 cms to the right of midline and 9.5 cms above the right mastoid process with blood around and in the wound.

(6) Lacerated wound of size 2.5 x 0.5 cms x scalp deep present over right frontal region adjacent to midline blood in and around wound present.

(7) Reddish contusion of size 3 x 2 cms over middle of forearm over medial aspect.

4. Dr. S.K. Verma opined the cause of death to be due to injury No. (1) produced by a blunt penetrating object which was sufficient to cause death independently and collectively with other injuries. Time since death was about half day. On a subsequent application received, he also opined that injuries No. (4), (5) and (6) were possible by the pana and injury No. (1) was possible by the scissor.

5. Challenging the conviction, learned counsel for the appellant contends that the appellant was not present when the incident took place as he had gone to his sister's house for which he examined two defence witnesses Trimal Singh DW-1 and Krishan Bihar DW-2. However, the defence plea has not been accepted by the learned Trial Court despite the fact that even prosecution witness Sanjeev Kumar PW-5 who lodged the FIR stated that the appellant was in the habit of running away from the house. Thus, it was a case of blind murder which was foisted on the appellant.

6. We have noted the statement of Sanjeev Kumar PW-5 son of deceased and the appellant on the basis of which the FIR was registered. Appearing as PW-5

Sanjeev Kumar deposed in sync with his statement on the basis of which FIR was registered. He also stated about the recovery of pana and scissor besides the shirt of the appellant which was soaked in blood. In cross-examination, this witness though admitted that his father had undergone treatment for his mental illness at various hospitals and used to leave the house frequently during night hours on account of his mental illness, however these were answers to general questions. In cross-examination, he reiterated having seen his father at 2.30 AM on the night of March 15-16, 1999 when he woke up for urinating and that he had questioned his father as to why he had bolted the door of his room from outside. Sanjeev Kumar reiterated that his father unlatched the door and left away without answering his question and that he was probably preparing the tea.

7. We may note that as per Dr. S.K. Verma PW-7 the post-mortem was conducted at around 2.35 pm on March 16, 1999 and time since death was nearly 12 hours. Thus, the time though approximate is roughly the same when Sanjeev Kumar got up at 2.30 am in the intervening night of March 15-16, 1999 and his door was latched. He slept again in around 10-15 minutes as per his version. Though general suggestions have been given to Sanjeev Kumar about his father leaving the house frequently during night hours and suffering from mental illness, there is no specific suggestion that on the intervening night of March 15-16, 1999 his father was not at home.

8. Trimal Singh DW-1 cousin brother of appellant Satya Pal deposed that his house was in front of the house of appellant and that mental condition of Satya Pal was not good and at times he would leave his house without intimation of his family. He further stated that one day prior to death of his wife, children of Satya Pal were searching him. Even after the death of his wife, Satya Pal was not present. In cross-examination, this witness admitted that on the intervening night of March 15-16, 1999 he did not visit the house of Satya Pal nor he accompanied the family members to lodge a report about his missing and admitted that he was deposing at the instance of Satya Pal as he was his brother. Krishan Bihar DW-2 also stated about the mental condition of Satya Pal and that on March 15, 1999 Sanjay the younger son of Satya Pal was looking for him and on March 16, 1999 when he opened his shop, he came to know about the death of wife of Satya Pal. In cross-examination, he also admitted that he did not visit the house of Satya Pal in the intervening night of March 15-16, 1999.

9. Thus, both the defence witnesses were not aware whether Satya Pal was in the house or not on the intervening night of March 15-16, 1999. As against the defence witnesses, the prosecution by the evidence of Sanjeev Kumar has proved that Sanjeev saw Satya Pal on the intervening night of March 15-16, 1999 at 2.30 am when he opened the door of the room of Sanjeev which was latched and when Sanjeev woke up again at 5.00 am, he found the door of his room again latched and after coming out he found his mother dead. Thus, under Section 106 of the Indian Evidence Act, the onus shifts on Satya Pal to explain how his wife died.

10. This Court in the decision reported as (2010) 2 JCC 1563 Mukesh v. State authored by one of us Pradeep Nandrajog, J. noted the various decisions of the Supreme Court on the issue of onus on the accused under Section 106 of the Indian Evidence Act and held:

"52. Having examined the decisions of the Supreme Court on the point of death of a wife in her matrimonial house, we deem it appropriate to classify the said judicial decisions into undernoted 4 broad categories for the reason we are finding considerable confusion in the minds of the subordinate Judges as to the correct position of law:

I. In the first category fall the decisions where it is proved by the prosecution that the husband was present in the house when the wife suffered a homicidal death and rendered no explanation as to how his wife suffered the homicidal death. See the decisions reported as State of Rajasthan v. Parthu (2007) 12 SCC 754, Amarsingh Munnasingh Suryavanshi v. State of Maharashtra AIR 2008 SC 479, Ganeshlal v. State of Maharashtra (1992) 3 SCC 106, Prabhudayal v. State of Maharashtra (1993) 3 SCC 573, Dynaneshwar v. State of Maharashtra (2007) 10 SCC 445, Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681, Bija v. State of Haryana (2008) 11 SCC 242 and State of Tamil Nadu v. Rajendran (1999) 8 SCC 679;

II. In the second category are the decisions where the prosecution could not prove the presence of the husband in the house when the wife suffered a homicidal death but the circumstances were such that it could be reasonably inferred that the husband was in the house and the husband failed to render any satisfactory explanation as to how his wife suffered a homicidal death. The circumstances wherefrom it could be inferred that the husband was in the house would be proof that they lived in the house and used to cohabit there and the death took place in such hours of the night when a husband was expected to be in the house i.e. the hours between night time and early morning. See the decisions reported as State of U.P. v. Dr. Ravindra Prakash Mittal (1992) 3 SCC 300 and Narendra v. State of Karnataka (2009) 6 SCC 61.

III. In the third category would be proof of a very strong motive for the husband to murder his wife and proof of there being a reasonable probability of the husband being in the house and having an opportunity to commit the murder. In the decision reported as Udaipal Singh v. State of U.P. (1972) 4 SCC 142 the deceased wife died in her matrimonial home in a room where she and her husband used to reside together. The accused-husband had a very strong motive to murder the deceased which was evident from the letter written by him to his mistress, which letter clearly brought out the feeling of disgust which the accused had towards the deceased. The accused had the opportunity to commit the murder of the deceased as there was evidence to show the presence of the accused in the village where the house in which the deceased died was situated at the time of the death of the deceased. Noting the facts that the accused had a strong enough motive and an opportunity to murder the deceased, noting that

there was no evidence that the appellant was seen in his house by anybody, the Supreme Court convicted the accused.

IV. In the fourth category are the decisions where the wife died in her matrimonial house but there was no evidence to show presence of the husband in the house at the time of the death of the wife and the time when the crime was committed was not of the kind contemplated by the decisions in category II and was of a kind when husbands are expected to be on their job and there was either no proof of motive or very weak motive being proved as in the decision reported as *Khatri Hemraj Amulakh v. State of Gujarat* AIR 1972 SC 922 and *State of Punjab v. Hari Kishan* 1997 SCC Cri. 1211."

11. The present case clearly falls in category I of the illustration as noted above and Satya Pal having not discharged the burden under Section 106 of the Indian Evidence Act, we find no infirmity in the impugned judgment convicting him for the offence punishable under Section 302 IPC and order on sentence.

12. The appeal is dismissed.

13. During the pendency of the appeal, the sentence of Satya Pal was suspended vide order dated May 20, 2005. Satya Pal will surrender to custody and undergo the sentence. The bail bond and surety bond are cancelled.

14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

15. TCR be returned.