
(2007) 10 AHC CK 0034
In the Allahabad High Court
Case No : Criminal A. No. 3180 of 1982

Shahbuddin

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 304

Citation : (2008) 1 ACR 730

Hon'ble Judges : S.C. Nigam, J; M. Chaudhary, J

Bench : Division Bench

Advocate : N.I. Jafri and M. Islam, for the Appellant; Karuna Nand Bajpayee, for the Respondent

Judgement

M. Chaudhary, J.—This is a criminal appeal filed on behalf of the accused-Appellant from judgment and order dated 18th of December, 1982, passed by VI Ith Additional Sessions Judge, Meerut in x, State v. Shahbuddin Sessions Trial No. 406 of 1979 convicting the accused-Appellant u/s 304, I.P.C. and sentencing him to imprisonment for life and a fine of Rs. 5,000 thereunder with default stipulation.

2. Facts necessary for disposal of this appeal as unfolded during the trial in nutshell are: Bundu, resident of Berun Sarai, police station Farlana, district Meerut married his daughter Shakila with Shahbuddin, resident of village Bana within the limits of police station Inchauli, district Meerut some 12-13 years ago. Since Shahbuddin was a lewd and lascivious person and had developed illicit relations with a lady, his relations with his wife Shakila were not cordial and he used to beat her mercilessly now and then. Whenever Bundu learnt that her daughter was beaten by Shahbuddin he used to go to her matrimonial home and fetch her to his house and then the accused used to go with his kith and kin and take Shakila with him. Once when Shakila was pregnant Shahbuddin beat her mercilessly resulting in her abortion. About two years and four months ago

Shahbuddin took Shakila from his house. On 14th of July, 1976, Bundu learnt from his grandson that Shakila was admitted in Pyarey Lal Sharma Hospital, Meerut sustaining injuries with acid and then he went to the Hospital. Condition of Shakila was quite precarious and she could speak little with difficulty. She told to her father Bundu by signs and gestures that Shahbuddin caused her injuries by pouring acid in her mouth forcibly. After few days Shakila died due to injuries in the Hospital.

3. Autopsy conducted on the dead body of Shakila by Dr. Vinai Maitin, Senior Eye Surgeon, P. L. Sharma Hospital Meerut on 24th of July, 1976 at 2.45 p.m. revealed belownoted ante-mortem injuries:

Chemical burn in an area of 12 cm. x 11 cm. on front of face and right side. Lips and nails were cynosed.

On internal examination brain and its membrane, both the lungs and pleura, intestine, liver, spleen and both the kidneys were found congested. There were mucosal burn on internal wall of stomach and oesophagus and these organs were also congested.

The doctor opined that cause of death could not be ascertained. Viscera preserved.

4. It appears that after post-mortem Bundu lodged an F.I.R. of the occurrence at police station Inchauli and also sent applications to Higher Authorities but due to influence of some relatives of Shahbuddin nothing was done. Bundu also remained under shock due to death of his young daughter Shakila. Then Bundu filed a complaint in the Court of Special Judicial Magistrate, Meerut on 4th of February, 1978. After proceeding with the complaint the Magistrate committed the case to the Court of Session.

5. After framing of charge against the accused the prosecution examined Anwar (P.W. 4) and Bhusi (P.W. 5) as eye-witnesses of the occurrence. P.W. 1 Bundu, P.W. 3 Rahimuddin and P.W. 6 Kabir are witnesses of dying declaration made by Shakila to them. P.W. 7 Devendra Kumar, Record Keeper Police Office, Meerut, deposed that the complaint sent by Bundu to the Senior Superintendent of Police, Meerut in the year 1976 was not traceable as such complaints are used to be weeded out after two years. His statement was recorded in the Court on 23rd of April, 1982 P.W. 8 Constable Narain Singh stated that on 24th of July, 1976 dead body of Shakila in a sealed cover alongwith necessary papers was handed over to him for being taken for its post-mortem. P.W. 2 Dr. Vinai Maitin who conducted autopsy on the dead body of Shakila on 24th of July, 1976 proved the post-mortem report deposing that the death was likely to be caused due to ante-mortem chemical burns sustained by Smt. Shakila.

6. The accused pleaded not guilty denying the alleged occurrence altogether. He stated that on the alleged noon he was not at his house as he used to work at his drycleaning shop at town Lavar ; that his wife Shakila was a mental case and

used to consume anything she liked and that his father Bashir got her admitted in P. L. Sharma Hospital on 14th of July, 1976. He further stated that he had got two daughters, elder daughter Sehnaz aged about 8 years and the younger one aged about six years and that they told him that Shakila took acid of her own. The accused examined D.W. 1 S.I. Pooran Giri in his support.

7. D.W. 1 S.I. Pooran Giri deposed that in July, 1976 he was posted at police station Inchauli ; that he knew accused-Shahbuddin ; that dariyaft hal regarding the death of Shahbuddin's wife was registered at the police station ; that the crime regarding her murder by Shahbuddin was investigated by him but since he did not find any substance in the case he submitted final report and that he could not say if the final report was accepted by the Court or not as he was transferred in October, 1976 from the police station.

8. On a conspectus of the parties' evidence the learned trial Judge believing testimony of the witnesses examined by the prosecution held the accused guilty of an offence punishable u/s 304, I.P.C. and convicted and sentenced him as stated above.

9. Feeling aggrieved by the impugned judgment and order the accused-Appellant preferred this appeal for redress.

10. Heard Sri N. I. Zafri, learned Counsel for the Appellant and Sri Karuna Nand Bajpayee, learned A.G.A. for the State Respondent.

11. After going through the impugned judgment and record of the case we find that the learned trial Judge has written a well discussed and well reasoned judgment and we find no good reason to interfere therewith.

12. P.W. 1 Bundu, complainant and father of the deceased is not an eye-witness of the occurrence but narrating all the facts he deposed that since Shahbuddin was not a man of character and had developed illicit intimacy with a lady he used to treat his wife Shakila cruelly and beat her mercilessly now and then ; that once when she had pregnancy of four months he beat her mercilessly resulting in her abortion and fled away leaving her in the house ; that at that time she stayed with him at his house for about eight months and thereafter on interference of some well-wishers he sent her with Shahbuddin ; that the day his daughter Shakila was admitted in the Hospital due to chemical burn injuries his another daughter's son Sabir told him that since Shahbuddin administered acid to his daughter Shakila she was admitted in the Hospital that the next day as he reached the Hospital he saw that face of Shakila was burnt and she could speak slightly with difficulty and that some eight days thereafter she died in the Hospital due to burn injuries. He also deposed that her daughter Shakila told him by signs and gestures that after catching hold of her Shahbuddin poured acid in her mouth. It appears that Bundu gave several applications to higher authorities including I.G., S.S.P. and the Government but in vain. Ultimately he filed complaint in the Court of Special Judicial Magistrate, Meerut that his daughter Shakila was done to death by her husband Shahbuddin by administering acid to

her.

13. P.W. 4 Anwar and P.W. 5 Bhusi appeared as eye-witnesses of the occurrence. P.W. 4 Anwar who used to work as a cook in marriages, parties etc. deposed that at about 1-2 p.m. the alleged noon he was cooking food in a marriage at some distance from the house of Shahbuddin that on hearing the hue and cry he reached the scene of occurrence and saw that one lady was catching hold of Shakila by her hairlock and Shahbuddin was pouring acid in her mouth forcibly and that thereafter she became unconscious and Shahbuddin slunk away. He further stated that he knew Shakila, wife of Shahbuddin since before as she was married to Shahbuddin. P.W. 5 Bhusi corroborated him stating likewise. He deposed that his daughter was married to Chirag Ali in close neighbourhood of Shahbuddin at village Bana, that the alleged noon he had gone to the house of Chirag Ali to see his daughter ; that at about 1-2 p.m. on hearing the hue and cry he and his son Chirag Ali went to the scene of occurrence and saw that one lady was catching hold of Shakila by her hairlock and Shahbuddin was pouring acid in the mouth of Shakila ; that Shakila received burn injuries at her face and that receiving the burn injuries she fell down and became unconscious. He further stated that on being called the village Pradhan reached the scene of occurrence, that Shahbuddin fled away from that place and the village Pradhan told the persons present there not to raise hue and cry thereabout and take Shakila to the Hospital. Both these witnesses were subjected to searching and gruelling cross-examination but nothing tangible could be elicited therefrom to shake their credibility. Both these witnesses appear to be truthful and straightforward witnesses. None of these two witnesses had any animus against the accused so as to implicate him in the case falsely.

14. Regarding the dying declaration made by the deceased, P.W. 1 Bundu deposed that next day when he reached the Hospital condition of Shakila was quite serious and she could speak slightly with difficulty as her mouth was burnt and that she told by signs and gestures that by catching hold of her hairlock Shahbuddin poured acid in her mouth. P.W. 3 Rahimuddin, behnoi of the deceased who resided in front of P. L. Sharma Hospital, Meerut deposed that the alleged day when Shakila was admitted in the Hospital he went to see her and on being enquired she naming her husband told by signs and gestures that her husband poured that corrosive substance in her mouth. He also deposed that accused-Shahbuddin never went to the Hospital to see his wife Shakila. P.W. 6 Kabir deposed that Sabir, son of his brother-in-law who used to reside in front of the Hospital informed him that Shakila was admitted in the Hospital ; that next day he went to see her and as he enquired as to what happened she told "Sahaab.... Sahaab" ; that then he asked her if Shahbuddin did all that ; that then she nodded replying in the affirmative and told by signs and gestures that Shahbuddin poured that corrosive substance in her mouth forcibly that at that time her face and mouth were burnt and her clothes were also burnt and that at that time Bundu and his samdhi Bashir and Shabrati were also present there. In this case except post-mortem report no other record could be brought on the

record as probably it was destroyed. However, from the evidence on the record and admission made by accused-Shahbuddin this much is established that on 14th of July, 1976 Shakila was admitted in P. L. Hospital, Meerut by her father-in-law Bashir as she had sustained chemical burn injuries due to acid.

15. Now the only point for consideration is if she was administered acid by her husband Shahbuddin as alleged by the prosecution or she consumed the same of her own as alleged by the accused. A perusal of the post-mortem report goes to show that autopsy revealed chemical burn in an area of 12 cm. x 11 cm. on front and right side of her face (Ext. Ka-1). It evidently goes to show that acid was administered to her forcibly because as she resisted acid fell on her face. This medical evidence lends credence to the testimony of P.W. 4 Anwar and P.W. 5 Bhusi. Further, it does not stand to reason that being mother of two little daughters she would have consumed acid of her own volition leaving her daughters on the mercy of their irresponsible father for their sustenance.

16. Accused-Shahbuddin took the plea of alibi as he stated in his statement recorded u/s 313 of the Code of Criminal Procedure that at the time of occurrence he was not present at his house, but there is nothing on the record to substantiate the plea of alibi taken by the accused-Appellant. No probable case was even made out by the accused-Appellant to support his plea of alibi. Accused-Shahbuddin also stated that Shakila was a mental case and used to take anything she liked. But no evidence has been produced on the record to show that he ever consulted any doctor regarding his wife's alleged mental ailment. None of the prosecution witnesses has been given a suggestion even in the cross-examination that Shakila was a mental case and could consume anything. Section 106 of the Evidence Act lays down that if any fact is within the special knowledge of any person, the burden of proving that fact is upon him. Accused-Shahbuddin failed to establish probability even of any of the pleas aforesaid. Evidence has come on the record regarding ill-treatment meted out to Shakila by her husband Shahbuddin on account of his illegitimate relations with some lady.

17. Evidence has come on the record and the accused also stated in his statement recorded u/s 313 of the Code of Criminal Procedure that Shakila was admitted in the Hospital by Bashir, father of the accused. In our view, had Shahbuddin not administered acid to Shakila in all probability Bashir would have appeared as a defence witness to depose that Shakila consumed acid of her own because he could not have seen his own son Shahbuddin facing false accusation. Shakila remained admitted in the Hospital struggling for her life for about eight days after the occurrence but Shahbuddin did not go to Hospital even to see her and she was looked after by her father Bundu and father-in-law Bashir as deposed by P.W. 3 Rahimuddin. Rahimuddin (P.W. 3) was behnoi of the deceased but he is also saru of accused-Shahbuddin and had no animus against him. Accused-Shahbuddin himself admitted in his statement recorded u/s 313 of Code of Criminal Procedure that Shakila's burial ceremony was performed by her father and father-in-law and that her burial was not done by him. P.W. 3

Rahimuddin deposed that Shahbuddin did not attend even the burial ceremony of his wife Shakila. This post crime conduct of accused-Shahbuddin is incriminating speaking volumes against him and also goes to show that he fled away from the scene after the occurrence and remained busy in getting the case hushed up and subsided in collusion with the police.

18. It has been argued by the Appellant's learned Counsel that none of the persons from the vicinity has come forward to support the prosecution case against the accused. No doubt, it has come in evidence that some persons of the vicinity also witnessed the occurrence such as Chirag Ali, Alla Mehar and Bashir. However, Bashir being father of the accused could not be expected to appear as a witness against his own son. Regarding other witnesses of the vicinity, it is a matter of common experience that ordinarily neighbours who witness the occurrence remain reluctant to depose against the miscreant as they want to keep themselves aloof and do not want to antagonize the members of the family residing in the neighbourhood and incur their wrath specially when it is a family matter.

19. The Appellant's learned Counsel further argued that since the complaint was filed by Bundu, father of the deceased with inordinate delay the prosecution case should be discarded. No doubt, complaint was filed some two years after the occurrence but in the instant case it is not of much significance, because as admitted by accused-Shahbuddin himself Shakila was admitted in P. L. Sharma Hospital on 14th of July, 1976 due to acid injuries by his father Bashir though with the qualification that she consumed acid of her own and thus no prejudice is caused to the accused as such.

20. Lastly, the Appellant's learned Counsel also argued that since question regarding dying declaration made by Shakila through signs and gestures that Shahbuddin poured acid in the mouth of Shakila by catching hold of her by her hairlock was not put to him in his statement recorded u/s 313 of the Code of Criminal Procedure he was prejudiced in his defence. No doubt, said question was not put to the accused in so many words while his statement was recorded u/s 313 of the Code of Criminal Procedure, but the Appellant's learned Counsel has not been able to point out as to what prejudice was caused to the accused in his defence if that question was not put to him. A perusal of the statement of accused-Shahbuddin recorded u/s 313 of the Code of Criminal Procedure goes to show that a question was put to him that after the occurrence Shakila was admitted in the Hospital but he never went to the Hospital to see her. He replied that he did not know. This reply of the accused goes to show that he was not honest and straightforward in his conduct. However, even, if the evidence of dying declaration of Shakila is left out of consideration, there is the testimony of two eye-witnesses P.W. 4 Anwar and P.W. 5 Bhusi who had no axe to grind against him. Testimony of these two eye-witnesses stands corroborated by medical evidence and other circumstances stated above including his post crime conduct. In view of this ample and overwhelming evidence on the record we are

of the view that though it is unfortunate that an important question regarding dying declaration of Shakila was not put to the accused when his statement u/s 313 of the Code of Criminal Procedure was recorded but that omission alone on the part of the trial court will not entail rejection of the entire prosecution case and evidence.

21. For the aforesaid reasons the appeal is devoid of merit.

22. The appeal is dismissed and order convicting accused-Appellant Shahbuddin u/s 304, I.P.C. and sentenced thereunder as stated above is hereby affirmed. He is on bail. His bail is hereby cancelled. Chief Judicial Magistrate, Meerut is directed to get accused-Appellant Shahbuddin arrested and send him to jail to serve out the sentence imposed upon him.

23. Office is directed to send copy of the judgment and record of lower court to the court below immediately for ensuring compliance under intimation to this Court within two months from today.