

(1996) 07 MP CK 0034

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 219 of 1990

State of M.P.

APPELLANT

Vs

Baburam and Another

RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 306, 498A

Citation : (1997) 1 DMC 558

Hon'ble Judges : Shambhoo Singh, J; R.D. Shukla, J

Bench : Division Bench

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

Judgement

R.D. Shukla, J.—This judgment shall also dispose of Criminal Appeal No. 53/90 (Ram Kumar and Anr. v. State of M.P.) as both the appeals arise out of the same judgment.

2. Both these appeals are directed against the Judgment and Order dated 22.11.1990 of the Additional Sessions Judge, Jhabua (Alirajpur), passed in S.T. No. 255/88, whereby while acquitting accused Baburam and Ramkumar under Sections 302 & 201 r/w Section 34, IPC for having committed murder of Bhagwandevi, convicted them under Sections 306 and 498A of the IPC for abetting suicide and for having committed cruelty on Bhagwandevi and sentenced each of them to imprisonment for 7 years and 3 years.

3. It is not in dispute that deceased Bhagwandevi was married to Ramkumar 10 years prior to the incident. They were having no issue. A dowry of nearly Rs. 20,000/- was given to Ramkumar and Bhagwanbai during marriage. Bhagwandevi died of burn injuries on 27.2.88 in Village Bhabra. Accused persons were residing in the same house. Accused Ramkumar was working as an employee in Public Health Centre at Bhabra, though, he and his father (accused Baburam) were permanent residents of Kukthari, Tehsil Porsa, District Morena. Baburam had come to his son Ramkumar 2-3 days prior to the incident.

Jawaharlal Jain (PW 4) was next neighbour of Ramkumar.

4. Prosecution story, in brief, is that accused Ramkumar was working as Dresser in P.H.C. Bhabara. He was residing in a Government quarter near Municipal Office, Bhabra. His wife Bhagwandeви was residing with him. Other accused Baburam and (father of Ramkumar) had come to reside alongwith them few days prior to the incident. Residents of the locality and the neighbours of Ramkumar located smoke coming out of his quarter. Alarm being raised, persons assembled. The door was broke open. Bhagwandeви was found almost with 100% bum inside the room and was dead.

5. On 27.2.88 accused himself lodged a report in the Police Station alleging that his wife Bhagwandeवि has committed suicide and died. Marg No. 1/88 was registered by P.S. Parmar, S.O. Shri Parmar visited the spot, made preliminary investigation and, thereafter, registered an offence under Sections 302/201, IPC vide Crime No. 29/88. It appears the investigation was, thereafter, entrusted to PW 10 Ajit Tiwari, Sub-Inspector, who arrested accused persons, got prepared map from Patwari vide Ex. P4 and recorded statements of witnesses Ramtubai, Rajkumari, Pramod Kumar Choudhari and Dr. Surendra Singh. During preliminary enquiry body of Bhagwandeवि was found almost with 100% bum inside the room. The same was sent for post mortem examination.

6. Dr. Faiyaz Hussain conducted autopsy on the body of Bhagwandeवि with the assistance of Lady Asstt. Surgeon Dr. Anusuya Gavali and Dr. B.L. Khangar and found as follows:

Rigor Mortis was present all over the body. 100% bum with charring of skin at several places, few vesicles present over the left cubital fossa and on waist. Pieces of burnt garments found adhering to burnt skin. Whole scalp hair burnt from front and top. Nails purple. Teeth clenched. Tongue protruding out and caught between the teeth. Conjunction deeply congested. Comon hazy. Dried secretions seen on left cheek and secretions & mocous black and blood tunded present in the nostrils.

Transversely placed ligature mark seen on a front end side of neck at the level of thyroid cartilage about 1/6" wide.

Following external injuries were found:

Irregular abrasions seen over left supra clavicular region 1" ? 1/4" infra clavicular region 1"?1/2" and on left anterior axiliary fold 1/2"x1/4".

Blood running out of left ear.

On internal examination:

(i) Monongis, brain and spinalcord were contested;

(ii) Trechea, mucosa were congested. Mucus and charcoal particles present in it.

(iii) Both the lungs were congested.

- (iv) Right side of heart was full and left was empty.
- (v) Stomach contained small quantity of fluid food.
- (vi) Liver and kidneys were congested.

The injuries, ligature marks and burns were antemortem. Injuries might have been caused by hard, blunt and rough object. The death occurred within 24 hours to 36 hours of his examination. Burns (depth and extent) were sufficient in ordinary course of nature to cause death. The doctor who conducted postmortem preserved the viscera for chemical examination and opined cause of death to be syncope due to extensive and deep burns. He prepared report Ex. P 2. Two gold ear rings, two silver bangles, one nose ring, six glass bangles, and six rings from toes were removed and sent to police under sealed packet.

7. After investigation both the accused persons were prosecuted. Both of them denied the guilt. Accused Ramkumar pleaded that he had gone on duty. He was not present in the house. Baburam pleaded that he had gone to hospital, after taking bath. He purchased some Bidi and such other articles in the market. Thereafter, he came to know about the fire. Police had reached the place of incident prior to his arrival to the house.

The learned trial Judge visited the spot and prepared a note/and/thereafter, acquitted both the accused under Sections 302 & 201/34, IPC, but has convicted and sentenced them as above. Hence, the State has filed Cri. Appeal No. 219/90 against the acquittal while Cri. Appeal No. 53/90 has been filed by the accused challenging their conviction.

8. The contention of the learned Counsel for the appellant State is that the deceased and the accused persons were living in the same house, Bhagwandevi died of burn injuries and had ligature marks and injuries which are homicidal in nature and, therefore, a natural inference against the accused persons ought to have been drawn.

As against it, learned Counsel for the accused persons has submitted—that persons of the neighbourhood found smoke coming out of the house. There are adjacent quarters. No alarm was raised. The door was broken open and thereafter Bhagwandevi was found dead with burn injuries. Under the circumstances the guilt cannot be fastened on the accused persons and they have rightly been acquitted.

While challenging the conviction under Sections 306 and 498A, IPC learned Counsel for the accused, Mr. Jai Singh has submitted that the marriage had taken place nearly 10 years before the incident; the fact of cruelty has not been supported by the brother of the deceased, the presumption which otherwise could be drawn in case of marriage within 7 years cannot be drawn in this case and, therefore, the fact of abatement of suicide and cruelty has wrongly been found proved by the learned trial Judge.

8. We have taken to the evidence on record. The first point that arises for determination in the case is whether the death of Bhagwandeви was homicidal ?

Dr. Faiyaz Hussain in para 14 of his statement has very clearly stated that the death was homicidal in nature. This fact has not been challenged seriously. The post mortem report also shows ligature marks. The doctor has opined that Bhagwandeви may have become unconscious and, thereafter, she has been set to fire or she may have been strangled after setting her to fire so that she may not raise alarm. It is evident that ligature marks have been caused to prevent Bhagwandeви from raising alarm or from creating sound for attracting residents of other quarters adjacent to the quarter of the deceased. Now, therefore, it will have to be seen as to whether the homicidal death has been caused by Baburam and Ramkumar jointly or severally or whether they or any of them caused disappearance of evidence for screening the offender?

9. So far as provisions of dowry death of Ghagwanbai is concerned, the same is not attracted in this case, as the marriage has taken place nearly 10 years before the incident. The prosecution has failed to prove that the death occurred within 7 years after the marriage.

10. Shitlaprasad (PW 7), the brother of deceased has stated that during marriage they have given dowry of Rs. 25,000/- in cash and coins to Ramkumar, but he has not supported the case of the prosecution as to the cruelty and he was declared hostile. However, PW 8 Jwalaprasad, who claims to be distantly related to Bhagwandeви as uncle, has stated that on a day nearly 2 years prior to her death Bhagwandeви had come to her father's house in the night and informed her father that the accused persons are demanding Rs.10,000/-ora motor-cycle. He has further stated that accused Baburam had come to take back Bhagwandeви and the father of Bhagwandeви requested him not to treat her badly and he will try to fulfil their demand. He (father of Bhagwandeви) further promised to help them in getting service to Ramkumar, but the same time he has stated that after Ramkumar got service the father of Bhagwandeви gave him a golden ring. That shows probably that thereafter Ramkumar was satisfied.

11. Ramawatar (PW 9) has also turned hostile. He has simply stated only the admitted fact that a dowry of Rs. 25.000/- was given to Ramkumar in the marriage. He does not state about ill-treatment. Jawaharlal Jain (PW 4), a neighbour of accused Ramkumar has stated that occasionally there happened to be dispute between Ramkumar and his wife, but no serious dispute was seen by him. He has denied the fact of assault and beating by Ramkumar. Thus, the fact of continuance of cruelty does not stand proved. It appears after Ramkumar got the Service and his demand was partially satisfied by father of Bhagwandeви he stopped further demand.

12. This is not in dispute that Ramkumar was residing atongwith his wife Bhagwandeви in two rooms" house. Jawaharlal and Ramtubai are his neighbours, as has been stated by PW 2 & PW 4 and admitted by the accused persons. There

was no dispute that father of Ramkumar i.e., accused Baburam came nearly 3-4 days prior to the date of incident and he was also residing alongwith his son Ramkumar. This is also not in dispute that on the previous night of the date of incident three persons i.e. Baburam, Ramkumar and Bhagwandeви were the occupants of the house. On the date of incident it appears that same Ministers of M.P. Government had come to the town and, therefore, the police and many persons were busy in making arrangements and looking after law and order.

13. Ramkumar had gone on duty in the morning. This is found proved from the statement of PW 4 Jawaharlal Jain, who has stated in para 9 of his statement that Ramkumar was on duty in the hospital. PW 5 Dr. Surendra Singh Bundela, Veterinary Surgeon has also corroborated this fact in answer to question No. 94 has stated that Ramkumar had gone on duty earlier. Ramkumar also in answer to question 94 has stated that he was on duty in the hospital and he heard about the fire and smoke from his house while on duty in the hospital. Dr. Surendra Bundela who appeared as defence witness has also stated that Ramkumar was present in the hospital and work of hospital begins at 8 a.m. It is noteworthy that incident happened at 9 to 9.30 a.m. Thus, after Ramkumar had left the house for attending his duty in the hospital the only occupants who remained in the quarter were Baburam and Bhagwandeви.

14. PW 1 Ramtu, though a hostile witness, had admitted in para 11 of her statement that Ramkumar had gone to the hospital in the morning, Bhagwandeви was in the house and accused Baburam was sitting out of the quarter and he left the quarter after sometime, and after taking bath. This fact has been admitted by Baburam. Baburam was the last person to leave the quarter. PW 3 Ramkumari has also turned hostile, but both of them i.e., Ramtu and Ramkumari stated that she saw smoke coming out of quarter of Ramkumar after Baburam has left the quarter.

15. PW 4JawaharlalandPW6PramodKumarhave stated that after locating the fire from inside the house of Ramkumar and on hearing the alarm they reached in front of the quarter alongwith other persons. The door was closed from inside, as such, the same was broke upon. Bhagwandeви was found almost dead with bum injuries all over her body. This fact has weighed upon the mind of the learned trial Judge and as such the fact of possibility of suicidal death was accepted. But, looking to the statement of Dr. Faiyaz Hussain and the presence of homicidal ligature marks that finding of the learned trial Judge appears to be incorrect. As observed in earlier paragraph this is proved beyond reasonable doubt that Bhagwandeवि had homicidal death. She was strangulated possibly with the help of rope or some soft long cloth and become unconscious because of strangulation and was set to fire thereafter. Now, therefore, it will have to seen as to whether it was possible for the culprit to have left the house from back side by bolting the front door from inside ?

16. Investigating Officer in the case could not be examined, however, the learned trial Judge himself made spot inspection in presence of the parties and their

Counsel and note was prepared. We have perused the note prepared by the learned trial Judge. In page 2 of the note prepared by the learned trial Judge a clear observation has been made that there is a window on the back side of the house. It has no grilles. It is only at the height of 2" from inside and 4" from outside. He has further observed that the beryl bolt comes down to the clamp if it is closed from outside and with little force. This indicates that the culprit or the person who committed murder could very well go out of the room from the window and could bolt it by pulling it from outside with force and jerk.

17. Ramtubai and Ramkumari (daughter of Ramtubai), though hostile, have stated that accused Baburam left the house after Ramkumar had gone on duty. It appears both of them were won over and thereby they have added one sentence in their statement and stated that Bhagwandevi took a bucket of water from the tap situated in the open space and garden after Baburam has left the place. This part of the statement of these two witnesses appears to be incorrect. In the police statement they have very clearly stated that Baburam left the house in the last. They have nowhere stated that Bhagwandevi took bucket of water from the water tap after Baburam had left the house. This part of the statement of these two witnesses is in improvement.

18. As observed in earlier paragraph the death was homicidal and the smoke was seen coming out of the quarter few minutes after Baburam had left the place and on opening the door Bhagwandevi was found with burn injuries inside the room. This goes to show that Bhagwandevi has done away with by Baburam and was set to fire and left the room thereafter. The fire must have taken sometime in causing heavy smoke so as to be visible from outside the house and above the roof. It is after this (after passing few minutes) that Ramkumar saw smoke coming out from the quarter of Ramkumar. Since Baburam and Bhagwandevi were the only occupants of the two rooms" quarter at the time of incident and as Bhagwandevi died of homicidal injuries the natural inference that can be drawn is that Baburam is the perpetrator of crime and it is he who has committed murder of Bhagwandevi and left the place. It appears it is after this that Ramkumar was informed he has lodged report in the Police Station. Though, there is possibility that Ramkumar may have known about the murder but that in itself would not be sufficient to fasten him with the guilt of causing of disappearance of evidence for screening the offender who is his own father. This possibility cannot be ruled out that Ramkumar may have been informed subsequently and after seeing the door having been broke open and having found his wife dead with burn injuries as above he may have calculated and made a conjecture of his wife having committed suicide.

19. Where two inferences of a fact can be drawn, inference which is in consonance with the hypothesis of offence of the accused ought to be drawn as accused is presumed to be innocent and is entitled to benefit of every reasonable doubt. As observed above, since the possibility of Ramkumar having not known about the murder cannot be ruled out. He cannot be fasten with the guilt of

causing disappearance for screening the offender who is his father (by giving a wrong information of suicide having been committed by his wife).

20. Had the murderer been anybody else other than her relation like Baburam, Bhagwandevi must have raised alarm and caused resistance. It is a matter of common experience that instinct of self preservation is so strong in every human being that apprehending danger the person would raise alarm or cause resistance. In that situation the attendance of persons of locality or residents of adjacent quarters must have been drawn. Baburam being the father-in-law and the other occupant of the quarter had every opportunity of causing death by sudden strangulation and setting her to fire. It was for this reason that Bhagwandevi could not cause resistance and raise alarm.

21. Though, it is true that the Trial Court has an added advantage of watching The demeanour of the witnesses and, therefore, if the finding arrived at by the learned Trial Court appears to be probable the same ought not to be disturbed unless the same is found to be perverse. But, it is also a trite law that the High Court while dealing with the appeal against acquittal have all powers of appreciation of evidence. On appreciation we find that the finding of the learned trial Judge to that extent is perverse and as Baburam and deceased Bhagwandevi were the two occupants of the house after Ramkumar has left and Bhagwandevi was found dead almost immediately after Baburam left the quarter goes to show that Baburam alone is the murderer. We, are therefore, inclined to reverse the finding and we reverse it.

22. Thus, in our considered opinion, as Baburam and Bhagwandevi were the last occupants of the quarter, Bhagwandevi was found dead with homicidal strangulation and bum injuries immediately after Baburam had left the quarter thereafter it can be easily deduced that Baburam committed murder by strangulation or made Bhagwandevi unconscious thereby and thereafter set her to fire to give it a shape of suicide. Thus, Baburam is found guilty of murder and further guilty of causing disappearance of evidence for screening the offender (himself). In view of discussions above, the conviction of accused appellants under Sections 306 and 498A, IPC cannot be sustained and the appeal to that extent deserves to be allowed. But, at the same time appeal filed by the State also deserves to be partly allowed, so far as the guilt of accused Baburam is concerned.

23. As a result, appeal filed by the accused i.e. Cr. Appeal No. 53/90 partly succeeds, and they are acquitted of offence punishable Under Sections 306 and 498A of IPC.

Appeal filed by the State i.e. Cri. Appeal No. 219/90 also partly succeeds. Accused Baburam is found guilty under Sections 302 and 201, IPC for having committed murder of Bhagwandevi and for having caused disappearance of evidence for screening himself from the offence. He is sentenced to imprisonment for life u/s 302, IPC and sentenced to R.1 for 7 years u/s 201, IPC.

Both the sentences to run concurrently. Accused is on bail, his bail bonds are cancelled. He is directing surrender before the C.J.M. Jhabua on or before 1.8.1996 for serving out the remaining sentence.