
(2003) 11 AHC CK 0217
In the Allahabad High Court
Case No : Government Appeal No. 1539 of 1993

State of U.P.

APPELLANT

Vs

Ravindra Kumar Gupta

RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 222
Penal Code, 1860 (IPC) — Section 302, 306

Citation : (2004) 1 ACR 164

Hon'ble Judges : Onkareshwar Bhatt, J; M.C. Jain, J

Bench : Division Bench

Advocate : S.P. Singh, K.C. Saxena and H. B. Singh and R.S. Maurya, A.G.A, for the Appellant; V.K. Gupta, Ajay Rajendra, Somesh Khare and Ravindra Nath Rai, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—The State has come up in appeal against judgment dated 22.5.1993 recorded by Sri V. N. Chaddha, the then Vth Additional Sessions Judge, Varanasi in Sessions Trial No. 223 of 1985 acquitting the accused Respondent Ravindra Kumar Gupta of the charge of Section 302, I.P.C. relating to the murder of his own wife Shakuntala.

2. The relevant facts may be related shortly to appreciate the discussion that has to follow. The genesis of the prosecution case was the F.I.R. lodged at P.S. Cantt. district Varanasi on 5.6.1985 at 7.25 a.m. by Radhey Shyam Gupta brother of the deceased the incident having taken place the same day at about 5 a.m. in Ardeli Bazar at a distance of about 3 kms. from the police station.

3. The deceased had been married with the accused Respondent about 14 years before the incident. At the time of marriage, because of weak financial status of her parents, they could not afford the dowry as per the expectations of the accused Respondent. However, their condition improved, subsequently Vijay Laxmi younger sister of the deceased was married on 16th May, 1985 at

Khalilabad which they could perform with greater expenditure and better dowry. The accused Respondent and deceased had also attended that marriage. The couple had three children. The accused Respondent turned jealous noticing that better dowry had been given in the marriage of younger sister of his wife. Quarreling and expressing his displeasure, he returned from Khalilabad on 19.5.1985 against the wishes of his in-laws.

4. He was living as a tenant in house No. S6/108, Ardeli Bazar, P.S. Cantt., district Varanasi and was engaged in the profession of advocacy. He was harassing and nagging his wife with repeated thrashing to get Rs. 10,000 and other articles from her parents. She was being threatened of her death. She informed her parents side of her woes and misery orally and through letters. She had also informed them that her husband had illicit relations with some lady and was ill-treating her on this account too to get rid of her. She apprehended danger to her life at his hands. On 3.6.1985, through an acquaintance Pradeep Kumar Singh P.W. 3 she had sent a letter to her brother Radhey Shyam Gupta P.W. 1 (informant). She implored her brother thereby to take her from her husband's home. Alarmed, on 3.6.1985 Radhey Shyam Gupta P.W. 1 (brother of the deceased) sent his younger brother Dev Prakash P.W. 2 to her. In the presence of Dev Prakash also, the accused Respondent quarreled with the deceased and assaulted her. When Dev Prakash tried to intervene, he gave beating to him also. He returned to his elder brother Radhey Shyam Gupta P.W. 1 and narrated to him the entire happening. Dev Prakash P.W. 2 was medically examined also on 3.6.1985 at 3.30 p.m. and as per the medical examination report Ext. Ka-12, a lacerated wound 1 cm. x 1.2 cm. x skin-deep on front of head just 6 cm. over the bridge of nose, surrounded by traumatic swelling was found on his person. The injury was simple and caused by blunt object. The matter was reported by him to police also through Ext. Ka-2 alongwith copy of letter of his sister which she had sent through Pradeep Kumar Singh the previous day.

5. As the situation worsened, on 4.6.1985 at about 6 p.m., Radhey Shyam Gupta P.W. 1 went to his sister's house to bring her back with him. The talks with the accused Respondent did not yield any result and the latter insisted for further talks the following day. He decided to stay at his sister's house during the night. His sister told him secretly that in case of his not taking her with him, her husband would kill her.

6. In the night, Radhey Shyam Gupta P.W. 1 slept in one room and his sister's family at another place on the open roof on western side (over Chaurasiya Medical Store) in the same house. At about 5 a.m. on 5.6.1985 Radhey Shyam Gupta P.W. 1 woke up on shouts. From the roof of second floor, the landlord and his two servants were shouting that the accused Respondent had just gone away after burning his wife. He went upstairs and saw his sister lying badly burnt with smelling of kerosene. He wrote down the F.I.R. and lodged the same at the police station. On the case being registered, the investigation was started by S.I. Bhagwant Prasad Arya P.W. 8. Ram Shiroman, C.O. P.W. 10 was the second

Investigating Officer and it was concluded by his successor C.O. Praveen Singh P.W. 11.

7. The dead body of the deceased was subjected to post-mortem after completion of necessary formalities, which was conducted by Dr. V. K. Bhargava P.W. 7 on 6.6.1985 at 2.30 p.m. She was aged about 32 years and about 1-1/2 days had passed since she died. She had extensive burns and had died due to shock as a result of extensive burn injuries. The dead body was smelling of kerosene.

8. The defence was of denial. According to the accused Respondent, his brother-in-law had planted a false case against him. As per him, his wife had committed suicide as she was in very low spirits because of a forecast made by an astrologer that her husband (he himself) would not live beyond 35 years of age. It was also his defence that his wife had kept two letters at the sill of the window of the landlady along with a Dhoti, blouse and Rs. 15. The articles and Rs. 15 were to be given from her side in the marriage of a girl in the family of the landlady. The letters were given to him by the landlady after he was released from jail. He designated as forged the complaint dated 3.6.1985 which was relied upon by the prosecution as having been given by the brother in-law at the police station. No letter was sent by his wife to her brother through Pradeep Kumar on 2.6.1985, according to him. His case was that in his absence the Investigating Officer B.P. Arya and his two brother in-laws got forged the letter.

9. The prosecution, in all, examined twelve witnesses. The accused Respondent also examined two witnesses-Handwriting Expert Vikas Srivastava D.W. 1 and Photographer Sajjan Singh D.W. 2. Photographer Sajjan Singh D.W. 2 had taken photographs of the documents compared by the Handwriting Expert Vikas Srivastava D.W. 1.

10. The evidence of the prosecution, apart from the medical and formal evidence including that relating to the investigation, consisted of testimony of Radhey Shyam Gupta P.W. 1 informant, the second brother of the deceased Dev Prakash P.W. 2, Pradeep Kumar Singh P.W. 3 who had allegedly carried letter from the deceased to Radhey Shyam Gupta P.W. 1 on 2.6.1985 and Amit Kumar Gupta P.W. 9 son of the deceased and the accused Respondent who was present in the house when the incident took place. He was a child witness aged about 9 or 10 years on 28.4.1988, on which date his evidence was recorded. He was subjected to be voir dire whereafter his testimony was recorded on the certification of the trial court that he very well understood the questions and was capable of giving evidence. He, being minor, no oath was administered to him. His testimony was to the effect that in the evening preceding the incident, his father had dragged his mother up-stairs. He had followed them. His father had instructed him to go downstairs. He abided and came down to his younger brother in the room. His maternal uncle was also staying in the house that night. His younger maternal uncle Dev Prakash woke him up in the morning and informed him that his mother had died. He had then gone with his younger maternal uncle. He also

stated that about fifteen days before the incident, they had gone in the marriage of his "Mausi" and on the very next day he, his parents and his younger brother had returned to Varanasi. After returning from marriage, his father used to repeatedly assault his mother. It was also in his statement that after waking up, he had seen his father also in the room but could not say as to for what length of time he was there.

11. To pick up the thread, on the appraisal of evidence the learned trial Judge found that it was not established that the accused Respondent has committed murder of his wife. The evidence and circumstances, according to him, only created doubt that it could be so. The possibility, as per the finding of the trial court, could not be ruled out that she committed suicide. He accordingly recorded the impugned judgment which is assailed by the State by means of this appeal.

12. We have heard Sri R. S. Maurya, learned A.G.A., from the side of State in support of the appeal and Sri Ajay Rajendra assisted by Sri V. K. Gupta on behalf of the accused Respondent. The submission of learned A.G.A. is that the evidence on record is wholesome conclusive establishing the accused Respondent to be the murderer of his wife and the learned trial Judge was unnecessarily obsessed by the aspect of doubt. The learned Counsel for the accused Respondent, on the other hand, countered the submission of learned A.G.A. and supported the finding of acquittal recorded by the learned trial Judge. The record of the lower court has also been summoned which has been carefully perused by us. We intend to address ourselves to the important relevant aspects of the matter to arrive at the conclusion, i.e., whether to sustain or reverse the impugned judgment that is under challenge before us.

13. Having regard to the post-mortem report of the deceased, it is beyond the pale of controversy that the deceased died an unnatural death by burning. There is no controversy as to the time, date and place of the incident also. The only question is whether it was homicidal or suicidal death. It is important to note that there is no eye-witness of the alleged burning of the deceased by the accused Respondent. The statement of informant Radhey Shyam Gupta P.W. 1 is that when he came out of the room at about 5 a.m. on hearing shouts, he saw landlord Ganesh and two servants Kamal and Ramji crying hoarse that the accused Respondent had burnt his wife and had just gone away. The truth of the matter is that none of them has been examined as witness. No plausible explanation has been assigned for withholding them. Anyway, the factum of non-examination of any of them would alone not justify the throwing away of the prosecution case overboard. It goes without saying that at times the guilt is proved to the hilt by circumstantial evidence. Therefore, what is required is to test in the circumstances relied upon by the prosecution in support of its case that it was a murder perpetrated by the accused Respondent.

14. What is established by the testimony of the informant Radhey Shyam Gupta P.W. 1, Dev Prakash P.W. 2 (both brothers of the deceased) and Amit Kumar

Gupta P.W. 9 (child witness) son of the deceased and the accused Respondent is that the accused Respondent is a greedy person and wanted to fork out money from his in-laws through his wife, though he had been married 14 years before the incident and the wedlock had given birth to three children--two sons and one daughter, the daughter being at the place of her maternal grand parents at the time of incident. He was increasingly irked and annoyed by the recent performance of the marriage of younger sister of his wife in which his in-laws had incurred more expenditure and had given better dowry than to him in his marriage. Expressing his displeasure, he had returned back with his family from the house of his in-laws immediately after that marriage without proper send off. His wife had even written a letter to her elder brother Radhey Shyam Gupta P.W. 1 on 2.6.1985 and sent the same to him through Pradeep Kumar Singh P.W. 3, describing her misfortune and agony that her husband was jealous and was assaulting her with abuses and threats to murder her unless she was to bring more dowry. She had implored him to take her back, apprehending danger to her life and it was the reason that her younger brother Dev Prakash P.W. 2 had gone to fetch her on 3.6.1985. However, his visit did not bring about any betterment. The accused Respondent abused and assaulted the deceased in his presence and also pushed him aside when he tried to intervene. On 4.6.1985 the elder brother Radhey Shyam Gupta P.W. 1 himself went to the house of his sister to fetch her with him. According to him, the accused Respondent stated that he would talk in this behalf the following day and he stayed there whole night as his sister, away from the sight of her husband, told him that she would be killed by her husband, if he did not take her away with him. In our opinion, this proof alone would not justify jumping to the conclusion that in the morning of 5.6.1985, the accused Respondent sprinkled kerosene on his wife on the roof and burnt her alive.

15. The prosecution story in this behalf we should say, is fraught with inherent improbabilities. The accused Respondent was law knowing person, himself being a practising lawyer. It was improbable and illogical that he would decide to murder his wife by burning at a time when her own brother was staying at his house and that, too on open roof in a busy locality in the month of June in full gaze of the neighbours. Some of them must have naturally been present at the roofs of adjoining houses in the month of scorching heat of June. The version of Amit Kumar Gupta P.W. 9 (son of the deceased and accused Respondent) is that in the preceding evening also, there had been a quarrel between his mother and father and the latter had dragged her to the roof and he had followed them, but he (his father) had asked him to go down stairs. According to him, he had then come downstairs. There can be no manner of doubt that the relations between the couple were strained and igniting cause was the recent marriage of the younger sister of his wife performed by his in-laws in which they had given better dowry with better expenditure evoking his jealousy.

16. So far as two letters relied upon by the accused Respondent are concerned which, according to him, he got from his landlady after being released from jail, in which she allegedly indicated her decision of committing suicide and which she

had allegedly kept at the sill of the window of the landlord, we are not inclined to believe such cock and bull story. The accused Respondent had fictitiously forged them to create a false defence in an over-zealous attempt. There was no evidence as to when and who actually handed over the said letters to him after he had allegedly been released from jail on parole. The very source of his getting hold of them went without any explanation. Had the person handing over the same to him been produced as a witness, his testimony could be tested on the anvil of reliability. The said letters being kept aside, the burden still lay on the prosecution side to show, by direct or circumstantial evidence, that the accused Respondent had committed murder of his wife. On thorough and judicial scrutiny of the evidence and attending circumstances, we do not think that it had been so proved.

17. Rather, the possibility could not be ruled out that the accused broke down under adverse circumstances. She could not put up with unfavourable circumstances developing in her family owing to the greedy nature and conduct of her husband, rendering her life miserable for forking out money through her from his in-laws and because of weak willpower, she herself committed suicide. Ext. Kha-1 is a letter dated 7.3.1983 which she had written to her sister. Radhey Shyam Gupta P.W. 1 admitted in his testimony before the Court that the said letter was in the handwriting and with the signature of his sister. Its contents indicate that she was under mental tension and agony on this aspect also that an astrologer had made a forecast that the life span of her husband was only about 45 years. She was very much worried about it that her future was seemingly dark. So, the conclusion of the learned trial Judge on overall assessment of the evidence on record and related circumstances was not far-fetched. The possibility was very much there that the lady herself committed suicide under tension and depression, thinking that life did not hold any pleasure for her and it was better to die than to drag on a tension ridden existence.

18. It may also be pointed out that although the incident took place at the roof of the house and not inside it, but neither her brother (who was sleeping inside the house) nor neighbours sleeping on the nearby roofs in a busy locality (in the month of June) heard shrieks or cries. There were also no injuries on her person except burn injuries as per the post-mortem report. The situation was consistent with the hypothesis that sorrow and frustration got better of the lady and she committed suicide. Radhey Shyam Gupta P.W. 1 (brother of the deceased) thought to make best of the unfortunate incident by accusing her husband of burning her because of his recent reprehensible conduct of torturing her so as to force her to bring money and dowry from her parents after nearly 14 years of her marriage.

19. There is another circumstance indicating that it could be a case of suicide and not of murder by the accused Respondent. The statement of Radhey Shyam Gupta P.W. 1 is that when he had gone up-stairs on the roof on hearing shouts, he did not find the accused Respondent. He also stated that he did not see the

accused Respondent that day. The witness meant to suggest that after committing the crime the accused Respondent had run away. But the fact was that the accused Respondent was arrested on that very day by the Investigating Officer about a furlong away from his house. Had he committed murder of his wife, he would not have conducted himself in such a way as to hover around the place of incident to be arrested simply a furlong away from the site that very day. We also note that Amit Kumar Gupta P.W. 9 stated that after he had been woken up in the morning by his younger maternal uncle Dev Prakash, he had seen his father in the room. This statement of the son of deceased and the accused Respondent runs counter to what has been stated in this behalf by Radhey Shyam Gupta P.W. 1. The presence of the accused Respondent in the house after the incident is inconsistent with the theory of his guilt.

20. On thoughtful consideration, we are of the opinion that the view taken by the learned trial Judge that it could be a case of suicide was a possible view which cannot be deemed to be perverse, imaginary or arbitrary. The Apex Court has held in the case of Kalyan and Ors. v. State of U. P. 2001 (3) ACR 2659 (SC): 2002 SCC 780 that the High Court should refrain from disturbing finding of fact arrived at by the trial court, particularly when the interference is sought on mere possibility of an alternative view in respect of the evidence adduced in the case. When two views are possible, the reversal of acquittal by the High Court is not proper. In an earlier case of Shivaji Sahabrao Bobade v. State of Maharashtra AIR 1993 SC 2622, the Supreme Court has observed that certainly it is a primary principle that the accused must be and not merely may be guilty before the Court can convict and the mental distinction between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

21. We have also considered this aspect as to whether the accused Respondent can be convicted u/s 306, I.P.C. for abetment of suicide by his wife, because the circumstances driving her to do so were largely of his creation that he constantly tortured her and rendered her life most miserable. We find that it is not possible in view of the law laid down by the Apex Court in the case of Sangaraboina Sreenu v. State of A. P. 1977 SCC 690, that when the Appellant is charged and tried u/s 302, I.P.C., his conviction u/s 306, I.P.C. is illegal. The reason is that basic constituents of the two offences are of distinct and different categories. Section 306, I.P.C. cannot be said to be a minor offence in relation to an offence u/s 302, I.P.C. within the meaning of Section 222, Cr. P.C.

22. Resultantly, in view of the above discussion, we do not find it possible to reverse the finding of acquittal recorded by the learned trial Judge. The appeal is dismissed. The accused Respondent is on bail. He need not surrender.