
(1999) 02 SC CK 0146
In the Supreme Court Of India
Case No : Criminal Appeal No. 472 of 1991

State of U.P.

APPELLANT

Vs

Shyam Sunder

RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Citation : (2000) 10 SCC 57

Hon'ble Judges : K. T. Thomas, J;D. P. Mohapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.T.THOMAS, J.-Yogwati, a housewife was butchered in her nuptial home by cutting her neck, chest and spinal cord. Her death followed instantaneously. Her brother-in-law Shyam Sunder was prosecuted for the murder. The Sessions Judge who tried him found him guilty of the offence under Section 302 IPC and convicted him thereunder and sentenced him to imprisonment for life. When he appealed to the High Court of Allahabad a Division Bench thereof allowed the appeal and set aside the conviction and sentence passed on him. Against the said order of acquittal the State of Uttar Pradesh has preferred this appeal by special leave.

2. The prosecution story, in brief, can be narrated: Yogwati and her husband Ram Sanahi were living together in their house at Ranikher Village, Mohanlalganj (Lucknow District). Respondent Shyam Sunder and PW 1 Ram Sanahi had some disputes over division of family properties. It aggravated to hostility between them. When some household articles were partitioned, the brothers quarrelled with each other in which deceased Yogwati, naturally, took the side of her husband. This infuriated Shyam Sunder. On 26-1-1981 while Yogwati was taking her food at about 9.00 a.m. Shyam Sunder inflicted blows on her with an axe. At that time her husband Ram Sanahi was chatting with a neighbour Shatrughan (PW 3) just outside the gate of the compound. He overheard the sound of the commotion and the cry of Yogwati and then he along with Shatrughan rushed to

the house and witnessed the remaining part of the occurrence in which Shyam Sunder inflicted blows with an axe on the fallen victim. Another neighbour Guru Prasad (PW 4) also came to the scene in the meanwhile. Shatrughan and Guru Prasad succeeded in overpowering the assailant, but by the time Yogwati had slouched her head.

3. First information was lodged by Ram Sanehi (PW 1) at 1.45 p.m. at the police station. The investigating officer reached the place of occurrence and took Shyam Sunder into custody and seized the axe with which the offence was committed.

4. The prosecution examined three witnesses to prove the occurrence. They are PW 1 Ram Sanehi (husband of the deceased), PW 2 Janak Dulari (an eighteen-year-old girl residing in the neighbourhood) and PW 3 Shatrughan (the other neighbour who rushed into the house along with PW 1). The prosecution also examined PW 4 Guru Prasad who became an attester to the records prepared by the investigating officer who visited the scene on the day of occurrence.

5. The defence strategy adopted was to put forth a counter-version of the occurrence as thus: Shyam Sunder had carnal relationship with Yogwati to the chagrin of PW 1 Ram Sanehi. Quite often there were skirmishes between the brothers on account of this. PW 1 while returning from his agricultural field on the said morning found Shyam Sunder and Yogwati in liaison together when the time was around 6.00 a.m. He lost his balance and took up an axe and attempted to finish Shyam Sunder then and there. But Shyam Sunder escaped from the raging swish and fled from the place. Then Ram Sanehi turned against his infidel wife and finished her off by inflicting a lot of blows on her person with the axe.

6. The father of Shyam Sunder was examined on the defence side and he supported the defence version. The trial Judge rejected the evidence of DW 1 as "unrealistic and unconvincing". But the trial court relied on the evidence of the three eyewitnesses in full and accepted the prosecution case as true. Consequently, the trial court convicted Shyam Sunder of the offence under Section 302 IPC and sentenced him as aforesaid.

7. The Division Bench of the High Court, on the contrary, found the evidence of DW 1 more convincing than the testimony of the prosecution witnesses. We have been taken through the entire material evidence. We are of the considered view that the reasoning adopted by the High Court is unconvincing and unsustainable from any point of view. The judgment of the High Court passed on the strength of such reasons has resulted in a miscarriage of justice warranting interference by this Court.

8. The reasons which the Division Bench of the High Court put forward in recording the order of acquittal are the following:

1. As the post-mortem examination revealed three ounces of undigested food in

the stomach of the dead body, the story of the prosecution that the deceased was taking her meal just before she was killed "seems unnatural because in that case the recovery of undigested food in the stomach was not possible". 2. The injuries noted by the doctor who conducted the post-mortem examination are not consistent with the version given by the eyewitnesses. 3. The evidence of Janak Dulari, PW 2 should not have been believed on her own admission in cross-examination that "I did not go to the house of Yogwati". 4. The prosecution has failed to examine material witnesses like Jang Bahadur who was admittedly a resident of the neighbourhood. 5. The statement of DW 1 renders the story of Ram Sanahi (PW 1) incredible. 6. If actually the incident had happened as stated by the prosecution there is no reason for PW 1 Ram Sanahi and PW 3 Shatrughan not to make any attempt to round up the assailant. 7. There was considerable delay in lodging the FIR which had vitiated the entire case.

9. While dealing with all the above reasons we can easily demonstrate that none of them would stand scrutiny. The first reason that undigested food material could not have been found if the prosecution version is true, is far from convincing (as a matter of fact the doctor has found only "semi- digested food material" in the stomach). If the victim had taken her meal just before the incident, any doctor conducting post-mortem examination would necessarily have found either undigested or at least semi-digested food material in the stomach. On the other hand, if the incident had happened at 6.00 a.m. (as suggested by the defence) the victim should have taken her breakfast before sunrise, for such semi-digested food material to be available in the stomach during the autopsy. We are dismayed at the above reasoning adopted by the High Court for discarding the prosecution version.

10. We noted the injuries recorded in the post-mortem certificate and they are undoubtedly in consonance with the testimony of the eyewitnesses. The following are the incised injuries which PW 5 Dr Nagaich, who conducted the autopsy, had recorded:

1. Incised wound 5 cm x 3 cm x bone-deep on left side of the base of neck, 3 cm above the left clavicle with clear-cut margin. 2. Horizontally placed incised wound 10 cm x 3 1/2 cm x chest cavity deep on right side of the chest with clear-cut margin. 3. Incised wound 4 cm x 1 cm x muscle-deep on the frontal aspect of left arm 7 cm below the top of left shoulder with clear-cut margin. 4. Incised wound 3 1/2 cm x 1 cm x bone-deep at the base of left middle finger including the left between middle and index finger with clear margins. 5. Incised wound 4 cm x 1 cm x muscle-deep 3"/2 cm above the knee present on lateral aspect left thigh. 6. The skull was found fractured and the brain congested.

11. Learned Judges of the High Court, perhaps by a mistaken impression on reading the post-mortem certificate, have observed that there was only one incised wound and therefore there are no corresponding injuries for the blows inflicted by the assailants after the victim fell down. Suffice it to say that the said observation is not supported by the evidence on records.

12. A reading of the testimony of PW 2 (Janak Dulari) makes it very impressive that the young girl on hearing the sound had rushed up to see what was going on in the immediate neighbourhood. But unfortunately the Division Bench discarded her evidence by misreading it as though she had said in the Court that "I did not go to the house of Yogwati" when we read her testimony we found the sentence like this "I was not on visiting terms with that house" (the deposition in the original language in which it was recorded is read out to us and the aforesaid translation is accepted by both counsel). The High Court did not appreciate PW 2's version that she scaled over the wall to reach the place of occurrence. It was dubbed as "incredible" by the learned Judges. We cannot overlook the broad probabilities, that she is a young girl of 18 and when she heard the unusual sound or cry for help from across the compound wall the impulsive reaction of a person of her age would have been to collect as much speed as possible to reach the place to see what was going on. When she noted a cot kept standing on the wall she used it conveniently for scaling over the wall. Why should it be felt that she should not have done like that? After all it is her choice. Perhaps she would have done so as a reflex action in the given situation. We disapprove the reasoning of the Division Bench for dubbing PW 2's version as incredible.

13. There is no good reason for castigating the prosecution for not examining more witnesses to speak about the occurrence. The prosecution has already examined three persons from the neighbourhood who reached the place of occurrence on hearing the noise. Why should the list of prosecution witnesses be multiplied and the workload of the trial court be escalated unnecessarily? At any rate non-examination of more witnesses is no ground for discarding the witnesses already examined. The High Court has therefore gone wrong in advancing such a reasoning for sidelining worthy evidence of eyewitnesses like PW 2 and PW 3.

14. The High Court went wrong in believing that the assailant was not caught by PW 1 or PW 3 immediately. Perhaps the first reaction of them was to remain stunned for a while particularly after seeing a bloodthirsty man acting like a devil holding a lethal weapon. If they did not dare to go near him then how can that conduct be dubbed as unnatural ?

15. At any rate there is no justification for showing preference to the evidences of DW 1, the father of the accused for reasons more than one. First is, he is the father of the accused with whom he resides now. Such a person would in all probability, be vitally interested in rescuing his son from this case. Secondly, if DW 1 happened to witness the occurrence what did he do? There is no explanation why he did not bring the true facts to the notice of the authorities. The fact that the investigating officer did not include him in the list of eyewitnesses would show that he would have told the officer that he did not see any part of the occurrence. It is extremely remote that he would have given the present version to the police then. As against the above broad features it was unfortunate that the High Court has leaned to accept the testimony of a witness

like DW 1. The trial court had given cogent reasons for depicting his testimony as "unrealistic and unconvincing".

16. By blaming PW 1 for not lodging the FIR earlier than 1.45 p.m. on the said day we are reaching neither here nor there. We cannot shut our eyes to the reality that for PW 1 it was his wife who was butchered right in front of his eyes. If he had taken a couple of hours to regain his composure to go to the police station for lodging the complaint it only sounds as normal conduct of a bereaved husband in the aforesaid circumstances. We find no justification for the High Court to use that short delay for denouncing the core of the prosecution story.

17. By upholding such totally unsustainable reasons the High Court has interfered with a well-considered judgment of the trial court and caused a miscarriage of justice by rendering an unjustified acquittal.

18. Learned counsel for the respondent accused contended that the motive attributed to the accused for such a high-handed action on his sister-in-law is too fragile. It may be so. We cannot fathom the mental disposition of the assailant, nor could we rule out the possibility of some cause of immediate provocation for the assailant. It would be known only to the deceased and her assailant. The deceased is not alive to tell us what was that provocation. The accused did not disclose it to us. So we are unable to appreciate the contention that the provocation was not sufficient enough for the ghastly act perpetrated by the assailant.

19. We therefore allow this appeal and set aside the impugned judgment and restore the conviction and sentence passed by the trial court on the respondent Shyam Sunder. We direct the Sessions Judge, Lucknow to take necessary and prompt steps to put the respondent Shyam Sunder back in jail for undergoing the remaining portion of the sentence.