
(2007) 12 MP CK 0027
In the Madhya Pradesh High Court

Thakurlal	Vs	APPELLANT
State of M.P.		RESPONDENT

Date of Decision : 07-12-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2008) ILR (MP) 170 : (2008) 2 MPHT 439

Hon'ble Judges : Shahi Kant Kulshreshtha, J; Manjusha Namjoshi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Kulshreshtha, J.—By this appeal, the appellant assails the legality, validity and propriety of the judgment dated 8-8-2001 passed by the learned Special Sessions Judge, Mandleshwar in Sessions Trial No. 77/2001 by which the appellant has been convicted for an offence punishable u/s 302 of the Indian Penal Code and sentenced to Rigorous Imprisonment for life and fine of Rs. 7,000/-. In default of payment of fine, the judgment directs the appellant to undergo simple imprisonment for 2 years. The appellant has also been convicted u/s 201 of the Indian Penal Code and sentenced to Rigorous Imprisonment for 3 years and fine of Rs. 2,000/-.

2. The appellant was prosecuted for having voluntarily caused death of his second wife Sunita on the night of 31st December, 2000 at about 9.00 p.m. The marriage of Sunita was solemnized with the accused in the month of April in the year preceding her death while first wife of the accused namely Shakuntala (P.W. 3) was living and accused, through the said nuptial had five children. It was not disputed that both, Sunita and Shakuntala, were living in the same house but in different rooms but they had separate kitchens. According to the prosecution, on 31-12-2000 at about 8.00 or 9.00 p.m., accused Thakurlal reported to the police vide Exh. P-25 that his wife had a quarrel with his first wife and when he returned home, he found that his second wife Sunita had died of burns. On the basis of this information, a case of sudden death was registered and after

summoning the witnesses, inquest was held on the body, of which memo Exh. P-2 was prepared. After inspecting the spot, spot map (Exh. P-14) was prepared and the statements of the witnesses were recorded. During the said investigation, the accused was made to remove his clothes, which were seized as they were smelling of kerosene. The investigation revealed that because the deceased Sunita had not cooked for Shakuntala and her children, the accused had quarrelled with the deceased and during the course of the said quarrel, he had poured kerosene on her and set her on fire. It was also stated that the accused had made extra-judicial confession in this behalf before the witnesses.

3. The dead body of Sunita was forwarded to hospital for post-mortem examination and after examining the body, the Autopsy Surgeon Dr. Basant Kanungo (P.W. 6) gave autopsy report (Exh. P-13). According to the report, the mode of death was asphyxia due to respiratory failure as a result of extensive burns. It was stated that the extent of burn was 100% varying from 2nd to 3rd degree. The details of the burns were mentioned in the autopsy report (Exh. P-13), which read as under:

Head:- Total burn 9% hair burnt and singed skin completely burnt cuticle peeled off.

Chest:- Total burn 36% skin burnt and blackened cuticle peeled off and abdomen (front and back).

Both upper extremities total burn 8% skin completely burnt cuticle peeled off. Perineum completely burnt hair burnt and singed 1%.

Both lower extremities:- Completely burnt on both sides skin blackened cuticle peeled off. Burn 36%. Total burn 100% Degree of burn II to III degree. All burns antemortem.

4. The accused and his first wife were also sent for medical examination and were seen by Dr. Kamal Kishore Kansotiya (P.W. 13) who gave report (Exh. P-23) in respect of Shakuntalabai, first wife of the accused and Exh. P-24 in respect of the accused. As per Exh. P-23, Shakuntalabai had sustained one contusion measuring 1 inch x 1 inch on the left thigh and another contusion measuring 1/2 inch x 1 inch on the right thigh. The report (Exh. P-24) reveals that the accused had a burn blister on the tip of right hand finger and an abrasion due to nail mark on the left cheek.

5. The prosecution alleged that Shakuntala and her children on having shifted to Village Babalia, there ensued quarrel between the accused and his first wife Shakuntala, with the result, she left his house and shifted to Village Gujarmohana. It was also stated that because his second wife, deceased Sunita did not cook meals for Shakuntala and her children, accused got enraged and after an altercation with Sunita, he poured over her the kerosene and set her on fire and with a view to extricate himself from the consequences of his act, he gave false information to the police that she had died during his absence. It was

stated that the fact that the accused had burn marks on his finger and also had an abrasion on his face, were the evidence to belie that he was not present at the time Sunita was burning. It was in these premises that the accused was prosecuted for the above offences.

6. The prosecution examined 14 witnesses to prove its case while the accused examined himself as D.W. 1 and his witness Dayaram as D.W. 2. From amongst the witnesses examined by the prosecution, Jairam (P.W. 1) a witness to the inquest and seizure of the burnt mattress and quilt while Bondar (P.W. 2), Shakuntala (P.W. 3), Gangaram (P.W. 4) and Radheshyam (P.W. 5) turned hostile and did not support the prosecution. Naveenchand Jain (P.W. 9), Ajay (P.W. 10) proposed to be examined to prove that the accused had made extra-judicial confession also did not support the prosecution case. Rakesh (P.W. 12) also did not support the case of the prosecution in respect of extra-judicial confession. In the above factual matrix, the case of the prosecution hinges on the testimony of Dr. Basant Kanungo (P.W. 6), Anita Chauhan (P.W. 7), sister of the deceased, Manjubai (P.W. 8), tenant of the accused and Rajubai (P.W. 11), mother of the deceased Sunita.

7. At this stage we deem it necessary to clarify that the evidence of the prosecution is purely circumstantial right from the beginning and, therefore, we have to see whether the circumstances relied upon by the prosecution points to the guilt of the accused and are incompatible with any hypothesis of his innocence. Also, whether the circumstances make a complete chain, which rules out the innocence of the accused and proves his guilt. The circumstances enumerated by the prosecution have been discussed by the learned Special Sessions Judge in Paragraphs 44, 64 and 65.

8. As per the finding, learned Trial Judge has observed in Paragraph 64 of the impugned judgment that there had been quarrel between the accused and the deceased as deposed to by Manjubai (P.W. 8). It has further been observed that it was unnatural that first wife Shakuntala (P.W. 3) would come to the village to leave it only a short while thereafter and it was also considered strange that Shakuntala had sustained injuries in both her thighs as per report (Exh. P-23) and Manjubai (P.W. 8), tenant of the appellant had clearly deposed to the circumstances in which the incident took place. Learned Trial Judge, however, discarded the evidence with regard to the extra judicial confession. It was also observed that since the deceased had sustained 100% burns, it could not have been a case of suicide.

9. We propose to deal with the last circumstance first. We have also referred to the medical evidence namely the evidence of Dr. Basant Kanungo (P.W. 6) and his report (Exh. P-13). It appears that the learned Trial Judge has got himself swayed by the fact that the report states that it was a case of 100% burns and thus, the possibility of it being a case of suicide was ruled out. According to the learned Judge, had it been a case of suicide, it was not possible for the deceased to have completely drenched herself in kerosene and then to set herself afire. We

are constrained to observe that the approach of the learned Trial Judge was misdirected. Before proceeding to consider the aspect further, we may point out that the degree of burns and the extent of burns are counted on the basis of the formula "Rule of Nines". The said formula is reproduced hereunder for better understanding of the factual matrix:

"RULE OF NINES" FOR ESTIMATING PERCENTAGE OF BODY SURFACE INVOLVED IN BURNS

Anatomic area	Percent of body surface
Head	9
Right upper extremity	9
Left upper extremity	9
Right lower extremity	18
Left lower extremity	18
Anterior trunk	18
Posterior trunk	18
Neck	1

In Modi's Medical Jurisprudence and Toxicology, Twenty Third Edition, calculation of the burns in relation to the varying ages has been laid down as under:

Area	Age	1 yr	5 yrs.	10 yrs.	15 yrs.	adul	0 yrs.
----- A = ? of Head 9 ? 8 ?							
6 ? 5 ? 4 ? 3 ? B = ? of one Thigh 2 ? 3 ? 4 4 ? 4 ? 4 ? C = ? of one Leg 2 ? 2 ?							
2 ? 3 3 ? 3 ? -----							

10. From a bare reading of the formula adopted for finding the extent of the burns, it is clear that the formula does not require that the part on which burns have been caused should have been completely affected. Thus, even if smaller portion of the head is burnt, the percentage of the body surface would remain 9 subject to the provision made for head, thigh and leg, as also in the case where the whole part is affected by burns. The above chart also provides 9% burns in the case of right upper extremity, but it does not contemplate or imply that whole body should have been affected by burns as there is no system of reducing the percentage, if the part is not wholly burnt. What is contemplated is that the limb which is affected should be taken to have been burnt to the extent of percentage mentioned against each area of the body. Under these circumstances, it was not necessary that there should have been 100% burns in case of each and every part of the body for coming to the conclusion that the extent of burns was 100%.

11. We may also clarify that in case of burns, even if a part is smeared with kerosene, the burnt portion extends to other part of the body which may not have been covered by kerosene poured over the body. Learned Judge has totally ignored that even if the smaller portion was smeared with kerosene, the possibility of the burns extending to the parts which were dry, was not ruled out. Under these circumstances, merely on account of the extent of burns being 100%, the learned Judge could not have rule out the possibility of the death having been caused by suicide. The burn marks found on the finger tip of the accused as per report (Exh. P-24) by Dr. Kamal Kishore Kansotiya (P.W. 13) are also not conclusive of the fact that the accused poured kerosene over the deceased and set her on fire. Even if his explanation that he was not present in the house at the time of the incident is not believed, the prosecution cannot succeed by merely referring to the insignificant burns on the tip of the finger of

the accused Thakurlal. We may also point out that had the death preceded with grappling or quarrel, the deceased would not have let off the accused by causing only one nail mark.

12. This takes us to the other evidence on which the prosecution has placed reliance. We have also pointed out that the learned Special Sessions Judge has not believed the testimony with regard to the extra-judicial confession. The remaining testimony remains confined to the testimony of Anita Chauhan (P.W. 7), sister of the deceased, Manjubai (P.W. 8), tenant of the accused and Rajubai (P.W. 11), mother of the deceased.

13. To begin from the beginning, Anita Chouhan (P.W. 7) has testified that her sister and the first wife Shakuntala were living in the same house but in different rooms. She has stated that the accused used to come drunk and beat Sunita and whenever Sunita came to her in Village Balsamundra, she used to complain about it. She had also shown burn marks. She has further stated that on 1-1-2001, accused talked to her over the phone at 7.00 a.m. and informed that his first wife and her father had set her sister on fire. When she rushed to the place of the incident, she took the accused aside and asked him as to what was the factual position. The accused informed her that since Sunita had not cooked food for Shakuntala and her children, he had poured kerosene over her and set her on fire. In her cross-examination, she has admitted that her sister had written a letter (Exh. D-2) to the accused to the effect that if the accused did not marry her, she would commit suicide. She has also resiled from the statement to the police that the accused had told her over the phone that her sister had been burnt by Shakuntala and her father.

14. Manjubai (P.W. 8), tenant of the accused, stated before the Court that on the date of incident, accused knocked her door at about 8.00 or 8.30 p.m. and stated that he had been ruined as Sunita her poured over herself kerosene and committed suicide. He had also asked for a motorcycle so that he could rush to the police station and report the matter. She has, however, deposed that at about 7.00 or 7.30 p.m. she heard voices indicating quarrel between the accused and his wife Sunita. In Paragraph 15 of her deposition, she has clearly admitted that her police statement had been read over to her by SHO before she took the witness box.

15. Rajubai (P.W. 11) is the mother of deceased Sunita. She has stated that Anita had learnt over the phone that her sister had sustained burns. Accordingly, they rushed to the village of the accused where the accused admitted that he had caused the burns. She has stated that Anita had not told her that Shakuntala had caused burns to the deceased.

16. We may refer to the deposition of the accused Thakurlal and other witness Dayaram (D.W. 2). It is trite that the defence witnesses are also entitled to the same weightage as the prosecution witnesses. The accused had deposed that between him and the deceased, there was a love marriage. On 31-12-2000, his

first wife had come to his house at about 4.00 p.m. and he had left the house at 6.00 p.m. to go to the market. When he returned, he noticed that Sunita was in flames. Accordingly, he took up water and tried to douse the fire. He then rushed to his tenant Manju and asked for a motorcycle, but since he did not receive any help from the persons of the locality, he went to Village Gurjarmohana to arrange for a motorcycle and came back to Bablai. He could, with great difficulty reach the police station at 4.00 a.m. and when he wanted that this report be recorded, Chowkidar was sent out and a demand of Rs. 40,000/- was made. He was also assaulted by the police. The evidence of Dayaram (D.W. 2) discloses that he had received a telephone from the police station making demand of money.

17. We have already referred to the circumstances which conclude that grounds on which the learned Special Judge had refused to believe the accused that it was a case of suicide, were non-existent. Learned Special Sessions Judge was persuaded by the facts not substantiated by the record. The calculation of the burns as 100% did not imply that each and every portion of the limb for which calculation is to be made, was affected by fire. The finding that it was not possible for the deceased to have poured sufficient kerosene over her body to have access to each and every part of her body was infirm in the light of the fact that even if a smaller part of the body or the limb was covered by any inflammable substance, the spread of flame may also travel to such parts which are dry. With regard to the evidence of cruelty and the information having been given about the suicide of the deceased, suffice would be to say that immediate information to the relatives of the deceased indicates that the accused did not want to hide the incident.

18. We are not at all satisfied with the finding of cruelty and strained relations between the accused and his second wife as projected through Anita Chouhan (P.W. 7), Manjubai (P.W. 8) and Rajubai (P.W. 11). We have already observed that circumstantial evidence should be such as each circumstances points to the guilt of the accused and the circumstances taken together form a complete chain, which points to the guilt of the accused and is incompatible with any hypothesis of his innocence. The circumstances relied upon by the prosecution, apart from being insufficient, do not make out a complete chain inconsistent with the innocence of the accused. Under these circumstances, we are of the view that although the evidence creates a strong suspicion against the accused, as he was the only person present in the house, the suspicion cannot take the place of proof.

19. Accordingly, this appeal is allowed. The conviction and sentence passed against the accused are set aside and he is acquitted of all the charges. The accused is in jail. He be forthwith released, if not required in connection with any other matter.