

Smt. Lichhamadevi

Vs

State of Rajasthan

Criminal Appeal No. 40 of 1986

(K. Jagannatha Shetty, G. L. Oza JJ)

02.08.1988

JUDGMENT

JAGANNATHA SHETTY, J. –

1. This is an appeal under Article 134 (1)(a) of the Constitution from a judgment of the Rajasthan High Court given on November 20, 1985. Lichhamadevi the appellant was tried for an offence under Section 302 IPC for the murder of her daughter-in-law. She was acquitted by the Sessions Judge, Jaipur city. Upon appeal by the State, the High Court reversed the order of acquittal and sentenced her to death.

2. The prosecution story of the case may now be briefly stated : Pushpa was the daughter of Sita Ram (PW 9). She was married in the kitchen. Upon hearing her pathetic cries, the neighbours rushed, but not her relatives in the house. The neighbours took her to the hospital where she died the next day. It is said that the relation between Pushpa and her mother-in-law (the appellant) had become strained on account of unsatisfied dowry demand. Over-bearing mother-in-law appears to be the master of the house. She used to harass Pushpa quite often. To avoid harassment, Pushpa left her husband's house and remained with her parents. About 4-5 days before the incident she returned to her in-law's house. On January 29, 1977, at about 4-5 p. m. Pushpa was cleaning utensils on the roof of the house. It is said that the appellant lifted one bhagone (pan) and struck over the forehead of Pushpa causing injury and expressing at the same time that she felt like burning her alive. In the same night at about 8 o'clock the neighbours saw the flames coming out of tin shed which was used as kitchen of the house. People also heard a cry 'bachao-bachao'. Bhanwarlal (PW 3) who was the next neighbour shouted and attracted others who all rushed and found that the doors of the kitchen were closed with an iron chain fastened from outside. Fumes and fire were billowing out of the kitchen. Din Dayal (PW 4), Lalit Kishore (PW 5) and Sushil Kumar (PW 6) tried to enter the room. One of them removed the iron chain and opened the door. They found a woman in flames. They took her outside and found that she was Pushpa. She needed urgent medical attention. They called the appellant and Jagdish but they refused to associate themselves. Thereupon, Lalit Kishore took Pushpa to Swami Man Singh Hospital and got her admitted in an emergency ward.

3. Dr Goel (PW 1), who admitted Pushpa in the hospital found that Pushpa was in a critical condition. The doctor advised that she needed blood transfusion. Lalit Kishore returned home and conveyed to the inmates what the doctor said. The appellant came out with her barbaric attitude and appears to have told Jagdish not to arrange blood to Pushpa. Pushpa breathed her last at about 10 a. m. on the next day.

4. Pushpa, before her death, was said to have stated at about 5.30 a. m. that her mother-in-law

poured kerosene on her and set fire. It was recorded as Ex. P-52 by Sop Singh (PW 14) and attested by two other witnesses. Similarly statements were also alleged to have been made by Pushpa to her father and to Dr Goel.

5. Dr Goel conducted the post-mortem examination and found the following injuries on the person of the deceased :

First, second and third degree superficial burns with line of redness and blackening of shin, singeing of the hairs, peeling of the superficial skin involving scalp, face, both upper extremities, neck, chest front, and back of chest, abdomen, back both lower extremities.

6. According to the doctor, all the burns were ante-mortem in nature. He has opined that the cause of death was severe burns, which were sufficient in the ordinary course of nature to cause death.

7. There are some disturbing features in this case which we must mention before examining the merits of the matter. The investigation in this case did not proceed as it ought to and there appears to be soft-peddalling of the whole case. During investigation the appellant herself has stated that her son Madan might have burnt Pushpa. He is the elder brother of Jagdish. Madan was also seen by the neighbours behind the kitchen and running downstairs at the time when Pushpa was in flames inside. The police, however, did not prosecute him. Jagdish the husband of Pushpa appears to have no human qualities. He was a silent spectator to all the dastardly attacks on his wife. He had not even the courtesy to take his wife to the hospital. He did not even make arrangement for securing blood when Pushpa was struggling for life. He positively dissociated himself as if he had nothing to do with Pushpa. His tacit understanding with those who have perpetrated the crime is so apparent that it could not have been ignored. Yet he was not charge-sheeted. This indifferent attitude of the investigating agency should be deprecated.

8. We have carefully examined the material on record in the light of the arguments addressed by counsel on both sides. There cannot be any dispute that Pushpa was subject to constant harassment by the appellant and her husband for not satisfying the dowry demands. Sita Ram (PW 9) the father of Pushpa has testified the events leading to her death. He has stated that Pushpa left her husband's house and remained with him to avoid cruelty from her in-law's house. Only 4-5 days before the unfortunate incident she returned from her father house. Din Dayal, Lalit Kishore and Sushil Kumar are neighbours of the appellant. Their evidence is mutually corroborating. They have deposed that when they heard the cry inside the kitchen 'bachao-bachao', they rushed to the place along with Bhanwar Lal (PW 3). They found the doors of kitchen were closed with an iron chain from outside. It was Sushil Kumar, who removed the chain and opened the doors. Pushpa was taken out. She was found to be in a critical condition. The neighbours requested the appellant and her relatives to take Pushpa to hospital but none came forward to extend any assistance. So cruel indeed.

9. It was Lalit Kishore who took Pushpa to the hospital and got her admitted. Dr Goel who received Pushpa and admitted her in the emergency ward has testified that neighbours brought Pushpa and no relative accompanied her. He has stated that Pushpa was in a serious condition. He has deposed that upon his questioning, Pushpa told him that her mother-in-law had burnt her. It is true that Dr Goel has not recorded this statement in the medical register but that is no ground to disbelieve him. Dr Goel is a disinterested person. The High Court has accepted his version and we have no reason to reject it. Dr Goel himself out from the doctor whether Pushpa was in a position to give her statement or to. Moreover, the statement before the doctor was not recorded as a dying declaration.

It was a communication by the patient to the doctor who treated her. He is a government doctor on duty in the hospital at that time. Nothing has been elicited from his cross-examination that he was interested in our inimically disposed towards the appellant.

10. The statement of Dr Goel is corroborated by the Ex. P-2 recorded by Sop Singh (PW 14). Sop Singh was the first Investigating Officer. He has stated that Pushpa was not found to be conscious when he first observed her at about 10 o'clock and again at 2.30 in the night. He remained nearby the hospital throughout that night. At about 5 a. m. in the morning when he reached the hospital he found Ramesh Chandra (PW 2) and Lallu Lal (PW 13) were sitting beside Pushpa and trying to awake her. When they called 'Pushpa-Pushpa' she became conscious and when questioned she replied that her mother-in-law after pouring kerosene oil lighted fire on her. He recorded that statement and obtained the signatures of PW 2 and PW 13. That in fact formed the basis of the FIR in this case.

11. There is no reason to discard the testimony of Ramesh Chander and Lallu Lal. The evidence of these witnesses clearly indicates that Pushpa was conscious at the time when she uttered those words which were recorded by Sop Singh. Their evidence receives full corroboration from Sita Ram the father of Pushpa. He rushed to the hospital and saw his daughter struggling for life. He called 'Pushpa-Pushpa-Pushpa'. She once responded and asked for water. He tried to take water from a nearby patient. But the patient told him that the doctor has advised not to give water. He saw Pushpa with restlessness. He assured Pushpa that water would be brought to her. He has stated that on his further enquiry, Pushpa told him that her mother-in-law had put kerosene oil on her and burnt her.

12. It is true that there is no dying declaration properly recorded in its case but the statement Ex. P-2 recorded by Sop Singh and proved by the testimony of Ramesh Chander and Lallu Lal can be taken for the purpose of corroboration of the prosecution version. The evidence of Dr. Goel cannot be doubted and indeed, it is worthy of acceptance in toto. The evidence of Din Dayal, Lalit Kishore, Sushil Kumar practically remains unchallenged. There is equally no reason to disbelieve the evidence of Sita Ram.

13. It is undoubtedly a dastardly and diabolic murder. The fact that the kitchen doors were closed and fastened from outside itself is an indication that the appellant and her family members were solely responsible for this crime. The appellant in our opinion, is rightly convicted.

14. This takes us to the question of sentence. The normal sentence for murder is now imprisonment for life and not sentence of death. The court must give special reasons for awarding death sentence in any given case. Special reasons mean special facts and circumstances obtained in the case justifying the extreme penalty. This Court in *Bachan Singh v. State of Punjab* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] has indicated certain guidelines to be applied to the facts of each individual case where the question of imposing death sentence arises. It was observed that death sentence need not be given except in rarest of rare cases. In *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : (1983) 3 SCR 413 : 1983 SCC (Cri) 681] this Court again indicated some more principles for guiding the discretion of courts for awarding death penalty. It was observed that a balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage.

15. The case before us is not an accidental fire causing the death. This is certainly a case "being put on fire by someone". The deceased having been burnt is not in dispute. It is a case of bride burning. This Court in *State (Delhi Admn.) v. Laxman Kumar* [(1985) 4 SCC 476, 504, para 49 : (1985)

Supp 2 SCR 898, 931 : 1986 SCC (Cri) 2] has observed that in the case of bride burning, death sentence may not be improper. We agree. The persons who perpetrate such barbaric crime, without any human consideration must be given the extreme penalty. But in the present case, we do not think that the High Court was justified in awarding death sentence on the accused-appellant. In 1977 she was acquitted by the trial court. In 1985 the High Court reversed her acquittal and gave the extreme penalty. It was after a gap of eight years. When there are two opinions as to the guilt of the accused, by the two courts, ordinarily the proper sentence would be not death but imprisonment for life. Apart from that, there is no direct evidence that the appellant had sprinkled kerosene on Pushpa and lighted fire on her. There must have been other persons also who have combined and conspired together and committed the murder. It is unfortunate that they are not before the court. From the judgment of the High Court, it is apparent that the decision to award death sentence is more out of anger than on reasons. The judicial discretion should not be allowed to be swayed by emotions and indignation.

16. In our opinion, having regard to all the facts and circumstances of the case, this is not a fit case for awarding death sentence.

17. In the result, we allow the appeal in part, set aside the death sentence awarded to the appellant, and instead sentence her to imprisonment for life.

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