

State of Gujarat

Vs

Sonbai

Criminal Appeal Nos. 775 and 776 of 1979

(A. M. Ahmadi, Smt. M. S. Fathima Beevi, V. Ramaswami – II JJ)

14.03.1991

ORDER

1. Shakuntala, the first wife of Surendra, gave birth to two sons Jitesh and Dharmesh. Unfortunately, after her third delivery she passed away on December 28, 1976. Thereafter, Surendra married the present respondent, Sonbai, on June 26, 1977. The couple was residing in a single room of bungalow No. 30 in a Society situate at Dani Limda Ahmedabad. Both the sons by the first wife were also living with them. They were school going boys. On August 12, 1977, Dharmesh had returned from school and was seen playing outside his residence near the osri of bungalow No. 19, occupied by Shanker Rao and Tarabai. Tarabai asked him to go and wash his face as she found his eyes not clean. This happened around 5 p.m. At about 6 or 6.30 p.m. the respondent came out of her room and shouted for Tarabai as something had happened to Dharmesh. Thereupon, Tarabai and Kherunnissa went to the room of the respondent and there they found Dharmesh lying dead on a cot. The father of the child was informed and he returned from Calico Mills where he was working. The dead body of Dharmesh was buried at Saptarishi cremation ground on the bank of river Sabarmati. None had suspected foul play at that point of time.

2. Four days later on August 16, 1977, Jitesh returned from the school at about 4 a.m. and was seen playing in front of his residential premises by the neighbours. At about 5.30 p.m., the respondent-accused called Tarabai and others as she found Jitesh in critical condition. Tarabai and others went to the premises of the respondent-accused, examined Jitesh and found his body cold. A doctor was called who examined Jitesh and declared him dead. The residents of the Society had collected near the premises of the respondent-accused and someone informed the police on telephone about the mishap. On the arrival of the police, the dead body of Jitesh was sent for post-mortem examination which revealed strangulation marks on the neck. Suspecting foul play in the case of Dharmesh also, the police after completing the necessary formalities got the body of Dharmesh exhumed and sent it for post-mortem examination. The post-mortem examination revealed that his death was also due to strangulation as strangulation marks were noticed on his neck. The investigation then proceeded on the usual lines and the respondent-accused came to be separately charge-sheeted for the murders of both Dharmesh and Jitesh.

3. The trial court on an appreciation of the evidence tendered by the prosecution in both the cases came to the conclusion that both the boys were in the house with the respondent-accused and hence it could be only she who had throttled them. The trial court also took note of the fact that the defence version was not to the effect that any third party had entered the premises after the two boys had returned to the premises and before they were found dead. In this view that the trial court took the respondent-accused was convicted in both the cases for the murders of Dharmesh and Jitesh.

4. The respondent-accused preferred two separate appeal Nos. 80 and 81 of 1978 challenging the orders of conviction recorded against her. Both these appeals were heard by a Division Bench of the High Court, which took the view that the evidence revealed that on August 9, 1977 the respondent-accused had taken both the boys to her mother's residence in another locality and if it was her intention to get rid of them she had ample opportunity to do so before she returned to her residence in bungalow No. 30 at Dani Limda. The fact that she had taken both the boys to her mother's residence is not disputed. The High Court then proceeded to hold that there was a time gap between the return of the boys to the residence and their passing away and the prosecution had not ruled out the possibility of third party interference during the said time gap. In both the cases the star witness was Tarabai, who had seen the boys playing outside her residence before they went home. It is not in dispute that there was a time gap between their return to their residence and the respondent-accused calling Tarabai and others as she found the condition of the boys critical. The High Court, therefore, reached the conclusion that having regard to the time gap it is hazardous to conclude that the respondent and the respondent alone was responsible for throttling both the boys to death. The High Court, therefore, thought it prudent to give the benefit of doubt to the respondent-accused particularly because the prosecution had failed to attribute any motive to the respondent-accused for killing the two boys.

5. Counsel for the appellant submitted that the fact that two boys had died a homicidal death is clearly established from medical evidence. Both the boys had returned from school and were seen playing outside the residence by Tarabai, Kherunnissa and other neighbours. Dharmesh was sent back by Tarabai to wash his face at about 5 p.m. and the respondent-accused raised an alarm between 6 and 6.30 p.m. as she found the condition of Dharmesh critical. Jitesh was no doubt ill on August 15, 1977, i.e. on the previous day but he had gone to school and after returning from school was found playing outside his residence. The evidence is not clear as to when he returned to his residence, but here again the prosecution case is that the respondent-accused raised an alarm and called Tarabai and others as she found the condition of Jitesh critical. The doctor was called and he pronounced him dead. There is no doubt that the medical evidence as it stands shows that death was due to throttling. The main question which arises in both the cases is whether the respondent-accused had throttled them to death ?

6. True it is that the respondent-accused was residing in room No. 30. At the relevant points of time her husband was out on work. There is a time gap of an hour or so between the return of the boys to their residence and the alarm raised by the respondent-accused. The High Court was of the view that in the absence of evidence ruling out the presence of a third party it would be hazardous to hold the respondent-accused responsible for the crimes in question. The High Court came to the conclusion that the marriage had taken place on June 26, 1977 and the incidents in question occurred in the second week of August, 1977 i.e. hardly one and a half months after marriage. The neighbours do not depose that she was ill-treating the children. On the contrary, she had taken them with her to the residence of her mother on August 9, 1977. She had, therefore, the opportunity to do away with them if she so desired at that point of time. Besides, as the High Court points out she had no motive to kill them and justifiably brushes aside the husband's belated evidence of ill-treatment in one of the cases since he stood contradicted by his earlier statement to the police. The High Court then points out that there was a time gap between the return of the boys to the residence and the alarm of the respondent-accused. It did not approve the trial court's approach that it was the duty of the respondent-accused to show third party intervention as in its view it was well settled that the prosecution had to establish the guilt beyond reasonable doubt. The High Court, therefore, thought it hazardous to convict the respondent-accused on the slender circumstantial evidence tendered by the prosecution.

7. The manner in which the two infants died is bound to shock the conscience of the court but it is exactly for that reason that we must administer caution to ourselves not to allow ourselves to be carried away by the gruesomeness of the crimes. The respondent-accused was a young girl of 19 or 20 years on the dates of the incidents. Her marriage had taken place hardly a month and a half before the incidents. There is no reliable evidence to hold that she was ill-treating her stepsons. Her husband's belated statement, duly contradicted by his earlier version, is of no consequence so far as this aspect is concerned. If that is accepted she had no motive to kill the boys unless you infer that being a stepmother she must be full of hatred for the boys. In the absence of evidence manifesting such hatred we cannot jump to any such conclusion. The High Court was, therefore, right in concluding that the prosecution has not established by evidence that the respondent-accused had a strong motive to do away with both the boys. The High Court is also right that she had the opportunity to do way with both of them when she took them to her mother's house on August 9, 1977. Besides the prosecution version does sound somewhat artificial as it is difficult to believe that she would do away with both the boys in virtually identical manner in quick succession without waiting for some time to pass between the two incidents. There was no compelling reason for her to act in such haste. Then, as the High Court points, out the possibility of third party presence during the time gap has not been eliminated. In the circumstances the High Court though it would be hazardous to convict on the slender circumstance of the boys entering the room and being found dead after an hours time in the absence of positive proof that she alone could have done it. We do appreciate that a grave suspicion may arise against her but that is not enough. In the said circumstances if the High Court did not consider it safe to convict, we cannot hold that the High Court's view is so palpably wrong as to demand interference under Article 136 of the Constitution.

8. In the result, we dismiss both the appeals. Bail bounds to stand cancelled.

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