

Sakharam

Vs

State of M.P.

Criminal Appeal No.370 of 1980

(Kuldip Singh, R. M. Sahai JJ)

12.02.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. Sakharam and Awadhrani, aged about 16 and 17/18 were together in a one room-house belonging to Sakharam's grand father in a village. Awadhrani was married to Sakharam's uncle (father's younger brother). A gun-shot was heard and the neighbours rushed to the room. Awadhrani was found lying dead on the floor with a gun-shot injury. Sakharam was standing nearby and was crying. On these facts the trial Court convicted Sakharam for the murder of Awadhrani and sentenced him to imprisonment for life. His appeal to the High Court was dismissed. Hence this appeal via special leave.

2. The appellant along with his father and grandfather was living in a village near Jabalpur. Awadhrani was the wife of Govindprasad, uncle of the appellant. Govindprasad was employed at Bhopal and Awadhrani was living with him. A few days before the incident appellant's grandfather had suffered heart attack and was shifted to Jabalpur Medical College. Appellant's father and mother were attending on his grandfather at the hospital. Awadhrani had come from Bhopal to Jabalpur to see her father-in-law. She stayed at Jabalpur for about 3/4 days and thereafter went to the village where the appellant was staying alone in the family house. After about 8/10 days of stay in the village on October 29,1968 at about noon time the neighbours heard a gun-shot sound from the house of the appellant. Mahadeo (P.W.4), one of the neighbours, was the uncle of the appellant. As soon as Mahadeo reached appellant's house, the appellant, while crying, told him "run uncle what was happened." The neighbours found Awadhrahi lying dead on the floor and a 12 bore gun lying on the bed. It is not disputed that the appellant's grandfather had two licenced gun's which were lying in the same room.

3. There is no direct evidence against the appellant. There is no reason, conscious or subconscious, for the appellant to commit the murder. They have been together in the one room-house for about 8/10 days. The appellant denied having committed the offence but gave no explanation as to how and under what circumstances the deceased got the fatal gun-shot injury.

4. At the trial it was suggested that the deceased committed suicide. Plea of alibi was also raised on behalf of the appellant. The Courts below, on appreciation of evidence, rejected both the pleas. We see no infirmity in the said findings of the Courts below and agree with the same.

5. The trial Court found that the following circumstances came to be established beyond doubt:-

1. That on the date and time of the incident the accused and the deceased were the only two occupants of the house consisted of one room.
2. That the accused when examined by Dr. V. P. Gupta July 1, 1992 was found capable of having sexual intercourse.
3. The deceased Awadhrani was found dead in the room which at the time of the incident was occupied by the accused and the deceased.
4. Soon after the incident when the witnesses visited the house, the accused who was present, did not assign any reason for the death of the deceased and kept quiet.
5. After the incident an attempt was made to show that the deceased died by committing suicide. A plea of alibi was also set up on behalf of the accused.

6. On the basis of the above circumstances the trial Court convicted the appellant for the murder of Awadhrani. The High Court upheld the conviction.

7. So far as the defence set up at the trial on behalf of the appellant is concerned that cannot be taken as a circumstance against him. The appellant himself did not raise any plea in his statement made before the trial Court. Simply because the pleas of suicide and alibi have failed at the trial no adverse inference can be drawn against the appellant. The guilt of the appellant has to be proved beyond reasonable doubt on the basis of the evidence produced by the prosecution.

8. It is no doubt correct that the appellant and the deceased were together at the time when gun-shot sound was heard and the witnesses who reached the spot thereafter found the appellant standing nearby the dead body and crying. It may, therefore, be reasonable to infer that the appellant was present at the time and place of occurrence but this circumstance alone is not sufficient to conclude that it was the appellant who fired the gun-shot and he did so with the intention of killing the deceased. The appellant and the deceased were living in the house for about 8/10 days prior to the occurrence. There is no evidence to show that he ever made any sexual advances towards the deceased. It is no body's case that before the gun-shot was fired any attempt to molest or outrage the modesty of the deceased was made. The appellant did not run away from the place of occurrence though he had ample opportunity to do so. There is nothing on the record to show that he could handle the gun. His telling Mahadeo while crying "run uncle what has happened" shows that the happening was beyond his Comprehension. It could be an accident while, fiddling with the gun.

9. There is absolutely no motive on the part of the appellant to murder the deceased. Absence of motive may not be relevant in a case where the evidence is overwhelming but it is a plus point for the accused in a case where the evidence against him is only circumstantial.

10. The appellant, on the date of occurrence, was a young boy and the deceased was his aunt in the same age group. Both were children as defined under the Children Act, 1960. When presumption of juvenile innocence is sought to be displaced by the prosecution on the basis of circumstantial evidence the circumstances must unmistakably prove the guilt beyond doubt.

11. We have given our thoughtful consideration to the circumstances relied upon by the Courts below. We have not been able to dispel our doubts. We are satisfied that the prosecution has not

been able to prove the charge against the appellant beyond doubt. We, therefore, allow the appeal and set aside the conviction and sentence of the appellant and acquit him. The appellant is on bail. His bail-bond is discharged. Appeal allowed.

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