

Ganeshlal

Vs

State of Maharashtra

Criminal Appeal No. 732 of 1991

(N. M. Kasliwal, K. Ramaswamy JJ)

10.04.1992

JUDGMENT

K. RAMASWAMY, J. –

1. This appeal is under Section 2 of Supreme Court Enlargement of Criminal Jurisdiction Act, 1970. The appellant along with his parents, sister, maternal uncle and uncle's daughter were charged for the offence under Section 302 read with Section 34 and Sections 201 & 203 read with Section 34 IPC of the murder of his wife Kanchana. In S.T. No. 125 of 1984, the Additional Sessions Judge, Akola by judgment dated February 10, 1987 acquitted all of them. On appeal, the appellant alone was convicted under Section 302 and Section 201 IPC and sentenced to undergo rigorous imprisonment for life and three years respectively by judgment dated October 30, 1991 of the High Court of Bombay, Nagpur Bench, Nagpur.

2. The material facts that lie in short compass are thus :

Kanchana was married to the appellant in the year 1975. In course of time the appellant's father became rich, while her parent's family remained poor leading to constant humiliation. The sister of Kanchana, Vanmala, PW 5, was also married in the same village, Mangrulpir. On September 3, 1983, PW 5 went to the deceased family at about 10.00 to 10.15 a.m. and invited the mother-in-law of the deceased and Kanchana to attend "Teej" function in her house for which the mother-in-law refused to accept the invitation and also did not permit Kanchana to attend the function which resulted in exchange of words etc. when she was coming out, she heard abuses against the deceased and somebody being beaten. After extending invitations to two or three people when she came back home and was entering her house, PW 9, her maid servant came running and told her that Kanchana was dead. Thereafter she gave information to her father, PW 4, and others at Amravati. A-6, maternal uncle of the appellant, went to the Police Station and lodged First Information Report, Ex. 73, that while Kanchana was drying wet clothes on the top floor, there was short circuit in the house resulting in her death. Mohanlal PW 4, on receipt of the news reached the appellant's house at Mangrulpir at about 4.00 p.m. On seeing the condition of the dead body he too laid complaint of murder. In the meanwhile the police registered the crime. The police reached the spot at about 12.50 p.m. A. S. I. Jadhao, PW 14 along with Head Constable Sharma, PW 11 conducted investigation. He drew the Panchanama, Ex 65, the scene of offence, attested by PW 7 and another. He recovered the burnt articles, ornaments etc. and sent the body for autopsy. It was further investigated by S.I., PW 15. Subsequently it was entrusted to

the C.I.D. and PW 16 Kshir Sagar conducted the investigation and laid the charge-sheet. It may be relevant to state at this stage that initially the crime was registered under Section 306 read with Section 34 I.P.C. Later it was converted and the charges were framed by the Sessions Court under Section 302 read with Section 34 I.P.C.

3. The prosecution placed reliance on the evidence of PW 4 and PW 5 to prove motive for the crime. PW 6, the Compounder and PW 8, tea-stall owner, PW 9, maid servant of PW 5 to prove the conduct of the accused together with the medical evidence and also chemical examiner's report. It also relied on the report Ex. 73 lodged by A-6. The case rests on circumstantial evidence. The circumstances relied on by the prosecution are as follows :

4. The motive, namely the affluent circumstance of the accused party, the relative poor financial position leading to ill treatment of Kanchana. The treatment meted out to Kanchana in the presence of Vanmala, Followed by beating. PW 9, maid servant informing of the death. PW 6 spoke of the appellant's conduct, corroborated by PW 8, of standing at the grill gate, which is the only entry into the house and preventing the people to go into the house stating that there was a short circuit and to save them; indifferent attitude of the in-laws and other inmates and keeping mum, their leaving the deceased alone in the third floor in flames; emitting of kerosene smell; and their non-disclosure on inquiry for the cause of the death. PW 10, the Engineer, Electricity Department spoke that there was no short circuit; the conduct of the appellant and also the first information report given by A-6, the medical evidence that the death was due to shock and suffocation. The chemical analyst report and evidence of scene of offence by PW 7

5. Strenuous attempt was made in the grounds of appeal and also vehemently contended by Shri U. R. Lalit, the learned Senior Counsel for the appellant, that one of the Judge (Justice A. A. Desai) who decided the appeal, argued against the appellant as an Assistant Government Pleader and despite having been brought to his notice, the learned Judge disposed of the appeal suggesting, thereby, that the appellant was not meted out fair treatment. We find no force in the contention. It is true that the record now placed before us would show that way back in 1984 as Assistant Government Pleader, Shri Desai appeared against the appellant in a bail application and other proceedings. Might be that the learned Judge had forgotten about his appearing against the appellant. It might also be possible that it was not brought to his notice when the Bench heard the appeal. Finding that the matter went against the appellant, he turned round and desperately raised the contention. However, to remove the feeling of injustice due to above factor and to satisfy ourselves of the merits, we have heard the appeal as if it is a first appeal against the judgment of the Sessions Court. The appellant engaged Shri U. R. Lalit and Shri R. K. Jain, Senior Advocates, apart from a band of Junior Advocates assisting them. We ourselves minutely considered the entire evidence afresh and reached our own independent conclusions.

6. The crucial question in this case is whether Kanchana died due to suicide or homicide. The situs is the third floor of the house of the appellant. The occurrence took place at 10.30 a.m. No outsider had access into the house that too except through the grill gate in the ground floor. In the first floor, parents and sister of the appellant live. The second floor was in the occupation of the appellant and the deceased and the third floor consists of one room and open varandah. The occurrence had taken place in the room on the third floor. Thus it would be apparent that it is a custodial death. The Doctor specifically stated that she died due to suffocation and shock by inhaling carbon monoxide. It would thus be clear that the door was closed at the time when this occurrence had taken place. There is no evidence or even suggestion that the deceased had any tendency to commit suicide or affected with any psychosis for committing suicide. It is also clear from the evidence that the door

was not bolted from inside. Unless the doors from outside were closed and made the victim alone remain in the room, it would be difficult to the smoke confining to the room. From evidence it is clear that the deceased went to the top floor to dry up wet clothes. The deceased was of a weak constitution. Her arms and feet were not burnt. She was found lying on back in a supine position. Her back and clothes on back were not burnt. There is evidence on record that there was a bucket with water and wet clothes in the room. There is no evidence of any struggle by her as there are no injuries to her back or feet or rubbing the ground. Kerosene tin was found and there are no signs of kerosene sprinkled in the room. The instinct of self-preservation at the height of agony must lead in an attempt to put out the flames at least with hands. Thus it would appear that, while the deceased was drying the clothes, her palms were wet, somebody must have come from behind, caught hold of her palms and another her legs, and she was made unconscious. The means used to make her unconscious is not available either from medical evidence or circumstances. She was made to lie down in a supine position on the ground. Thereafter, kerosene appears to have been poured from the tin brought by someone and set her fire. It is indisputable that kerosene smell was found in the room and she died due to burns. Kerosene tin was also found in the house. The walls and ceiling became blackish which would clearly show that a large quantity of kerosene was poured on her after she became unconscious due to which her clothes were soaked of kerosene. After fire was lit there was heavy smoke screen. That will be visible when we find that the roof and walls became blackish. The witnesses have also seen from outside for about 10 to 20 minutes that smoke was coming from the room. These circumstances clearly establish that the death was not due to suicide, but one of homicide. The contention that no kerosene was found in any other parts; the doors to the room from stairs were not closed from outside in case of murder she should have run away from the room opening the latch; she was determined to commit suicide for humiliation caused to her and PW 5 Vanmala her sister in not allowing her to go to PW 5's house and that there were no signs of external injuries and, therefore, the death was due to suicide is fallacious and the High Court has rightly negated the same.

7. The next contention that the prosecution all through proceeded with the assumption that accused abetted suicide, punishable under Section 306 I.P.C. and that, therefore, it is not a case of murder has no substance.

8. That apart, it appears that the investigation made by the local police initially did not proceed on the correct lines and no sincere effort appears to have been made to collect the evidence of the material facts. The investigation was later on entrusted to the C.I.D. on November 10, 1983 in pursuance of an order dated November 3, 1983 passed by superior officers. PW 16 Sri Kshir Sagar, Inspector C.I.D. conducted the investigation and recorded the statements of some more witnesses. Ultimately he handed over the charge of investigation to Mr. Deshpande (PW 18), Dy S.P.-C.I.D., Crimes on u December 16, 1983. Mr. Deshpande also recorded the statements of some more witnesses and collected the other material evidence and after verifying and careful consideration of all the evidence, he added the charge under Section 302 I.P.C. Thereafter charge-sheet was submitted in the Court of Judicial Magistrate, First Class, Mangrulpir on September 18, 1984 who committed the case to the Court of Sessions Judge, Akola for trial. The Sessions Court framed the charges under Section 302 read with Section 34 I.P.C. Thus, the fact of registering the case initially by the local police under Section 306 I.P.C. loses all significance. It cannot be disputed that the Sessions Court was fully competent to frame charge under Section 302 read with Section 34 I.P.C. At the trial, if the evidence adduced by the prosecution is sufficient to bring home the offence under Section 302 I.P.C., the conviction thereon does not become illegal.

9. It is next contended that the parents, sister, maternal uncle and uncle's daughter, A-1, A-3 to A-6

having been acquitted the appellant cannot be convicted under Section 302 I.P.C. The question therefore, is whether it is the appellant alone who has committed the offence or parents, sister and two others also are participis criminis. It is true as contended for the appellant that the evidence on record is not sufficient to arrive at an immediate motive to commit the crime and the case depends on circumstantial evidence. But in circumstantial evidence also when the facts are clear it is immaterial that no motive has been proved. Men do not act wholly without motive. Failure to discover the motive of the offence does not signify the non-existence of the crime. The failure to discover motive by appropriate clinching evidence may be a weakness in the proof of the prosecution case, but it is not necessarily fatal as a matter of law. Proof of motive is never an indispensable factor for conviction. In *Atley v. State of U. P.* (AIR 1955 SC 807, 810 : 1955 Cri LJ 1653), this Court held that where there is clear evidence that the person has committed the offence, it is immaterial where no motive for commission of the crime has been shown. Therefore, even in the case of circumstantial evidence, absence of motive which may be one of the strongest links to connect the chain would not necessarily become fatal provided the other circumstances would complete the chain and connect the accused with the commission of the offence, leaving no room for reasonable doubt, even from the proved circumstances. Therefore, the evidence of PW 4 and PW 5 partly with regard to the motive may not be sufficient to bring home the strong immediate motive. But the evidence of PW 5, Vanmala, that on the fateful day, she went to her sister's house situated at a distance of 40 to 50 ft. from her house and that she extended invitation to Kanchana and Kanchana's mother-in-law to attend the "Teej" ceremony in her house was not disputed in the cross-examination. It was around 10 to 10.15 a.m. It is not necessary to dilate the conversation for refusal to attend the ceremony but suffice to state that the appellant was present at that time. When Vanmala came down from the first floor, she heard exchange of words and somebody being beaten. After extending invitation to some people when she returned home, her maid servant, PW 9, after some time came and told her that her sister died. From her evidence in this behalf, there is no contradiction, but there is an omission of hearing exchange of words and somebody being beaten, in her statement recorded under Section 161 CrPC. Giving allowance to omit this part of the evidence i.e. exchange of words and hearing the beating of somebody, the fact remains that at 10.30 a.m. Kanchana died. It is established from evidence of Vanmala, PW 5 that she saw her sister Kanchana alive at about 10 to 10.15 a.m. in the company of her husband, in-laws, sister-in-law in the house and within a few minutes thereafter she was reported dead while in the house solely occupied by the accused-appellant and his family members.

10. Thereafter we have the evidence of PW 6, Moti Ram, who admittedly is a Compounder in Dr. Chitlange Nursing Home, which is situated adjacent to the house of the appellant. Therefore, he is a natural witness. It is his evidence that at about 10.30 a.m. he heard the voice of the appellant stating "kakaji close down" "kakaji close down". The appellant was at the grill holding it. It is already stated that the grill is the gateway into the house and to the staircase. He went to the appellant's house; the appellant prevented entry into the house; PW 6 pushed him aside and went inside the house. The appellant's parents, sister and A-5 were in the first floor. When he enquired, they did not disclose anything when asked for specifically the mother of the appellant also did not speak anything. Only his father said that Kanchana was burning. When PW 6 went to the third floor, he saw Kanchana burning, having no clothes on her person and she was in flames and her thighs were burning. He smelt kerosene and thereafter he went away. It is true that there was a delay of nearly 2-1/2 months in recording his statement but it goes explained as the investigation did not proceed in the desired lines initially and only after PW 6. The dispensary used to open by 10.00 a.m. and his presence is natural. He has no axe to grind against the appellant or any of the members of his family. He is also an independent witness. It is true that he was a Compounder working with Doctor

Chitlange, brother-in-law of PW 5. There is nothing on record nor even suggested that the family members of PW 5 were inimically disposed towards the accused. It was suggested to PW 5 which was admitted that appellant's mother visited PW 5 when she sustained an injury which would show that both families were on cordial terms. So PW 6 being a neutral witness his evidence cannot be doubted due to delay. It is true that this Court in *Balakrushna Swain v. State of Orissa* ((1971) 3 SCC 192 : 1971 SCC (Cri) 313 : AIR 1971 SC 804), held that the evidence of witness recorded at late stage must be received with a pinch of salt. Delay defeats justice. But each case has to be considered on its own facts. In view of the above facts we have scanned his evidence carefully. We are satisfied that he is a truthful witness. The High court is well justified in placing reliance on his evidence. In fact material part of his evidence was not subjected to cross-examination, except suggesting that he was deposing falsely. Under these circumstances he is a truthful and reliable witness. His evidence clearly shows that neither the appellant, nor any member of the family though were present in the house, attempted to save Kanchana but were simply sitting in the first floor unmoved by even the ghastly murder and the appellant was guarding at the grill gate preventing the people from entering into the house falsely stating that there was short circuit. This evidence receives corroboration from the evidence of PW 7 and PW 8. PW 7, Brij Lal, Panch witness stated that the grill door was closed and the door was guarded by one person. He went into the house and then to the top floor. He saw the deceased. The ceiling of the room above the dead body became black, the walls became blackish and the burnt clothes were smelling with kerosene. One basket with wet clothes was lying in the room. He also saw kerosene tin. PW 8, Liakat Ali, is another independent witness. He owns a tea hotel opposite just about 30 to 40 ft. from the house of the appellant. His statement was recorded on the next day. In his evidence he stated that in the beginning he saw smoke coming from the 3rd floor and later he saw a crowd collected in front of the house of the appellant. He also went there. He saw the appellant shouting that there was an electric short circuit in the building and was requesting the people to save them. He was standing at the grill gate and when the witness tries to enter the house, the appellant prevented him. He pushed the appellant aside and went inside the house. In the first floor, he saw the appellant's mother, sister and father sitting. On enquiry they did not speak anything but directed to go upstairs. When he went, he saw the body of the deceased in the room burning. The only omission in his statement under Section 161 CrPC was regarding his asking the mother and sister of the appellant and their directions to go upstairs. He admitted that his stop belonged to PW 5's family. Admittedly he too had no enmity with the appellant or his family, nor even suggested. As stated earlier, the family of PW 5 had also no enmity. Under these circumstances PW 8 being also an independent witness, his evidence inspires confidence to believe him as a truthful witness. The High Court was right in believing his evidence. From the evidence of PW 6 and PW 8 it is clear that the appellant was falsely exclaiming that these was a short circuit and requesting the people to save them. At the same time he was preventing the people from getting into the house. They saw the appellant and other accused in the house without attempting to save the life of Kanchana. It may be relevant to state that the earliest version of A-6 in Ex. 73 report given to the police was that the deceased was drying the clothes at that time. Due to short circuit she received shock and died. This theory is now found to be false from the evidence of PW 10, the Electrical Engineer. It is also now not set up as defence even before us. Evidence of PW 7, the panch witness, and Assistant Sub-Inspector, PW 14, PW 6 and PW 8 clearly establishes that in the room on the third floor, the deceased was seen burning and that the door was open from outside. The contention that the deceased had access to open another door from inside into the staircase from the room and that it is not a case of homicide, is false in view of the facts narrated hereinbefore.

11. From this evidence it is clear that the accused appellant and his family members were present in

the house at the time when the deceased was burning due to fire lit after pouring kerosene on her and they made no attempt to save her. The contention that the Doctor had stated that the death was instantaneous and nothing was left for the appellant and the other family members to save her, is unacceptable. The normal ordinary human conduct would be that when one of their inmates, namely Kanchana was in flames, they would have made every endeavor to save her life, if it were a case of suicide, and call the people to come to their rescue to save her life or at least would have sought first aid from PW 6, who is next door neighbor, to save the life of the deceased. No such attempt was made nor even attempted. On the other hand the appellant's earliest attempt was to misguide that Kanchana died due to short circuit. This attempt was buried fathom deep from the evidence of PW 10, Electrical Engineer. Then set up the plea of suicide. We have Ex. 73, the first information report, immediately lodged by A-6 with the police. We need not go into the question as to what extent the admission by a co-accused would be used against the appellant. Suffice it to state that in his examination under Section 313 CrPC, the appellant admitted that A-6 went to the police station and gave FIR Ex. 73, to the Head Constable, PW 11 and that A-6 stated that the deceased caught fire while she was handling the wet clothes for drying, due to short circuit. In Ex. 73, it was also stated that this information was conveyed by the appellant himself. This admission is not only relevant fact under Section 8 of Evidence Act as res gestae but a most important circumstance against the appellant. The indifferent and hard-hearted conduct are also important circumstance. It was also admitted that the walls in the room became blackish due to smoke. It is settled law that the conduct of an accused in an offence previous and subsequent to the crime are relevant facts. Absence of any attempt to save the life of the deceased Kanchana while she was burning and was charred to death, their conduct in not attempting to give any medical aid, the conduct of the appellant immediately after the deceased was soaked with kerosene and lighting fire after closing the door A-6 obviously opened it after ensuring that she had died, the appellant's coming down and standing at the grill gate on ground floor; the appellant shouted that uncle A-6 should close down falsely proclaimed that there was short circuit; implying to scare away the people from attempting to save Kanchana. These are most telling and relevant crucial facts apart from repulsive inhuman conduct. The false plea of suicide is yet another relevant fact. When the death had occurred in their custody the appellant is under an obligation in Section 313 CrPC statement at least to give a plausible explanation for the cause of her death. No such attempt was even made excepting denying the prosecution case. These facts completely are inconsistent with the innocence, but consistent with the hypothesis that the appellant is a prime accused in the commission of gruesome murder of his wife. The circumstantial evidence thus discussed is complete and consistent with the only conclusion that the inmates alone committed the crime and the appellant was one among them.

12. The evidence on record does establish that more than one would be participant to murder Kanchana. The absence of an appeal against acquittal of A-1 and A-3 to A-6, namely, Hiralal, Ayodhyabai, Premlata, Aruna and Rameshwar, all of them or who among them shared common intention with the appellant is obviated. The appellant is the principal perpetrator of the crime or one among them shared common intention to murder Kanchana. The conviction of the appellant is accordingly altered to one under Section 302 read with Section 34 I.P.C. The appellant is convicted for the murder of his wife, Kanchana under Section 302 read with Section 34 I.P.C. and is sentenced to undergo rigorous imprisonment for life. The conviction under Section 201 is set aside. The judgment and order of the High Court is confirmed with the above modification. The appeal is accordingly dismissed.

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