

Mulakh Raj and Others

Vs

Satish Kumar and Others

Criminal Appeal Nos. 22 to 25 of 1983

(Kuldip Singh, K. Ramaswamy JJ)

10.04.1992

JUDGMENT

K. RAMASWAMY, J. –

1. The four appeals arise out of common incident. They are disposed of by common judgment. The complainant, the brother of the deceased Shashi Bala filed two appeals and the State filed other two appeals by special leave granted by this Court against the judgment of the Division Bench of Punjab and Haryana High Court dated November 25, 1981 acquitting Satish Kumar, the first respondent of the conviction and sentence under Sections 302 and 201 IPC on the charge of murder of Shashi Bala, his wife, and also in the same judgment confirmed the acquittal, by the Sessions Court, of Gulshan Kumar, brother, Ramji Das, the father and Smt. Kartaro Devi, the mother of Satish Kumar. Shashi Bala, a beautiful young lady of 20 years was married to Satish Kumar, the first respondent, on March 1, 1979 and she met with a homicidal death on August 10, 1980 in her marital home. The crucial question in this case is whether it was suicide as contended by the defence or homicide as stated by the prosecution and who is the author of the murder. The facts lie in a short compass. They are stated as under.

2. As stated the deceased was married to the first respondent on March 1, 1979 by her brother Harbans Lal, PW 15. She was given usual presentation of the gold ornaments, utensils, television set etc. She gave birth to a male child and by August 10, 1980 the boy was 3 months old. PW 15 gave on June 8, 1980 Rs. 5000 to her as against Rs. 10,000 requested for. He received a telegram on August 10, 1980 at Sasuna, Punjab state that Shashi Bala died. He immediately came to Uklana Mandi, Haryana State at about 9.00 p.m. on August 10, 1980 and found Shashi Bala dead. It is his case that Satish Kumar made extra-judicial confession that the deceased was strangled for not getting the dowry of their demand and that she was burnt to destroy the evidence and sought pardon of him. He sent for his people. A compromise was mooted to which he was not agreeable. The complaint was laid with the police on August 11, 1980. PW 1 Dr. Sher Singh held the autopsy and found that the death was due to asphyxia. The police laid the charge under Section 302 read with Sections 34 and 201 IPC against all the respondents. The prosecution adduced evidence of PWs 9 and 15 of the motive of demand for more dowry; extra-judicial confession and recoveries etc. The defence set up by the respondents was that the relationship between the deceased and the first respondent was cordial. No demand for dowry was ever made. The first respondent arranged marriage of Parmila, sister of the deceased with one Gopal, his cousin which later was broken down due to which the deceased became gloomy. In support thereof they produced a letter of torn pieces (Ext.E.). Therefore, it is their case that the deceased poured kerosene on herself and set fire and committed suicide. It is their further case that while the first respondent, his brother and father were in the shop in the afternoon, they were informed of the suicide committed by the deceased. By the

time they came home they saw some people bringing the dead body from the upstairs. They also participated in bringing the dead body to the ground floor and kept the body on a slab of ice and informed PW 15 and others by telegram and also the police. The police did not record his statement. The police took them into the custody on the same day and found that they did not commit any crime.

3. PW 1, the Doctor, who conducted post-mortem in his evidence stated that the deceased dies due to asphyxia, as a result of strangulation, which was ante-mortem and sufficient to cause death in the ordinary course of nature. The burn injuries were 95 per cent on the entire body except on the feet and that the burn injuries were post-mortem. The Sessions Judge disbelieved the extra-judicial confession spoken to by PW 15 and others. The Sessions Court accepted the evidence of PW 1, the doctor, and other circumstantial evidence and found that Satish Kumar, husband of the deceased strangled the deceased and the deceased was burnt to destroy the evidence. Giving the benefit of doubt to the brother and the parents of the respondent they were acquitted. The first respondent was found guilty of murder and was convicted for the offence of murder under Section 302 and for screening the evidence of murder, S. 201 IPC and was sentenced to undergo rigorous imprisonment for life and one year respectively and both the sentences were directed to run concurrently by the judgment dated April 23, 1981.

4. The narrative of the facts clearly establishes that the young beautiful lady, aged about 22 (sic 20) years, who had intense and passionate love for the first respondent yearning to have long and happy marital life was exterminated hardly one year and five months after the marriage. As per doctor's evidence, she died of asphyxia, as a result of strangulation, and that 95 per cent burn post-mortem injuries were found over the dead body except the feet. Admittedly this was done in the residential home of the respondent. The crucial question whether the theory of suicide propounded by the defence and as accepted by the High Court is true and believable. Undoubtedly this case hinges upon circumstantial evidence. It is trite to reiterate that in a case hinges upon circumstantial evidence, the prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime. If any other reasonable hypothesis of the innocence of the accused can be inferred from the proved circumstances, the accused would be entitled to the benefit. What is required is not the quantitative but qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime. If the conduct of the accused in relation to the crime comes into question the previous and subsequent conduct are also relevant facts. Therefore, the absence of ordinary course of conduct of the accused and human probabilities of the case also would be relevant. The court must weigh the evidence of the cumulative effect of the circumstances and if it reaches the conclusion that the accused committed the crime, the charge must be held proved and the conviction and sentence would follow.

5. The crucial question is whether medical evidence of the doctor is reliable and acceptable and whether death due to suicide is probable? Due to 95 per cent burns PW 1, the doctor, did not find any visible ligature marks on the neck. Eyes were half closed. The mouth was closed. Blood stained froth was coming from both the nostrils. Tongue was swollen and cynosed. On dissection of neck there was infiltration of blood in the upper part of the neck in front below chin. On further dissection he found fracture on right cornua of hyoid bone at the junction with its body and an opening the larynx and pharynx, he noted blood-stained froth in their cavities, they were ante-mortem in nature. The stomach was empty. Peritoneum, organs of generation plora, walls, ribs and cartilages were congested. The right side of heart was full of dark blood and left side contained scanty blood. Except both the feet there were burns all over the body. There was no line of redness. There were false vesicles. At places such vesicles were full of air, the base of which was yellow, dry

and hard, not red and coppery. The burns were ante-mortem and it was 95 per cent. As stated earlier he opined that the death was due to asphyxia by strangulation which was sufficient to cause death in the ordinary course of nature. He opined that deceased must have been dies on August 10, 1980 between 2.00 to 3.00 p. m. For suggestions given to the doctor by the defence counsel in the cross-examination that if the deceased had sprinkled kerosene on her and had set fire and while in the agony if she runs hither and thither and in that process if she fell in such a condition that her throat comes in contact with a protruding part of the wall resulting constriction of the windpipe he categorically negated that such a fall of the victim would cause only partial constriction and it is not possible to cause fracture to the hyoid bone. He further stated that the dath could not be due to suffocation. He also ruled out the possibility that the hyoid bone is not likely to be fractured by fall against hard surface. He also stated that the burns were post-mortem because there were no soot present in the trachea or wind pipe. Thus he positively ruled out the theory of alternatives or suicide.

6. Let us consider whether the factual findings at the post-mortem examination of the deceased and the evidence of Dr. Sher Singh is supported by medical jurisprudence. Taylor's Principles and Practice of Medical Jurisprudence, Thirteenth Edition 1984 by Keith Mant, Vol. I stated at p. 282 that asphyxia being a condition in which there is an inadequate supply of oxygen to the tissues. It may be defined as a state in which the body lacks oxygen because of some mechanical interference with the process of breathing. At p. 283 it was further stated that cyanosis indicates the blue colour of the skin, mucous membranes and if internal organs, notably spleen, liver and kidneys. The capillary dilation that accompanies a reduction in oxygen tension promotes stasis and therefore a vicious cycle suboxygenation of the blood commences. The return of blood to the heart is diminished. The resultant impaired oxygenation leads to further capillary dilation, further stasis, with deepening cyanosis - probably results from a combination of stasis and hypoxia. Fluid exudes into the tissue spaces.

7. At p. 286 it was also stated of the distinction between suffocation and strangulation that conditions associated with mechanical asphyxia include suffocation where the interference with the process of breathing is at the level of the nose or mouth; strangulation where there is compression of the neck, either by (a) the human hand (manual strangulation or throttling); (b) a ligature. In paragraph 6 he stated that in each of these categories the obstructive process at the various level will result in the development of the symptoms and the signs associated with asphyxia previously described. At p. 287 of general features of asphyxia, it was stated that the head and face may show intense congestion and cyanosis with numerous petechiae. Blood exudes from the mouth and nose. Blood tinged frothy fluid is present in air passages. Mucus may be found at the back of the mouth and throat. The lungs which are of particular interest, usually show in addition to congestion of inter-alveolar capillaries, the presence of the oedema fluid in the alveoli, areas of hemorrhage and collapse with intervening emphysema ...

8. Regarding post-mortem appearances in strangulation at p. 305 it was stated that a careful search in suitable mortuary conditions will usually reveal either external or internal evidence of the area where the constriction has occurred At p. 306 the General Internal appearances, it is stated that internally the air passages contain fine froth, often blood stained. The lungs are congested with subpleural petechiae. Microscopically there is usually intense inter alveolar congestion with hemorrhages of varying size, fluid in the alveoli, areas of collapse and intervening areas of ruptured alveoli. The air passages often contain large areas of desquamated respiratory type epithelium, red blood cells and fluid. The remaining organs show only congestive changes.

9. These conditions vary because of the circumstances that the assailants usually employ

considerably more force than would appear to be necessary to ensure that death takes place. In general terms the mark of the neck is usually of the same width as the constricting object and the depth is about half its diameter. Regarding finger-nail marks it was stated that in manual strangulation the marks of bruising will be on the front or sides of the neck, chiefly about the larynx and about it. Marks of pressure of fingers, may, however be slight. The distribution of these marks when present will vary with the circumstances, and factors which will affect it include the relative position of the assailant and the victim, the manner of gripping the neck, being greater if the grip is shifted or has been reapplied if the victim struggles, and the degree of pressure. The solid tissues of the neck are of extreme importance in cases of suspected strangulation. The solid structures comprise the hyoid bone and the cartilages forming the larynx. If the body is found to have died with marks on the neck which indicate manual strangulation and this is subsequently confirmed in the mortuary and laboratory the case must be regarded as a killing by another person. It is inconceivable that any could die from compression of the neck by his own hand because loss of consciousness would cause relaxation of the constricting fingers.

10. In Gradwohl's Legal Medicine, Second Edition in Chapter 18 under the caption Interpretation of Post-Mortem Appearances in Death from Respiratory Obstruction and Compression of the Neck, at p. 336 it was stated that systemic and pulmonary congestion and dilatation of the heart are classically described as signs of an asphyxial death. At p. 337 regarding hyoid bone it was stated that two mechanisms have been suggested in which the hyoid bone may be fractured : from direct lateral compression and from indirect violence. Direct lateral compression is one mechanism in manual strangulation, when pressure is applied under the angles of the jaw.

11. Medical Jurisprudence by Raju and Jhala in Chapter XXV Death from asphyxia and death from drowning at p. 226 stated that the heart in asphyxia, specifically right chambers, it always found full of dark venous blood. This is important to note as usually with death, blood disappears from the heart. The venous system of circulation, because of back pressure, is always found distended with blood. The blood in heart and veins is not only dark blue but also liquid and remains liquid ... The internal organs and mucous membrane also present the general signs of congestion ... This congestion has to be looked for and has to be found in all cases of genuine asphyxia.

12. In Medical Jurisprudence and Toxicology, 13th Edn. by Modi at p. 155 it was stated that in the case of constriction occurring at the end of expiration the lungs are congested, oedematous and exude bloody serum on being cut, but are pale if constriction occurred at the end of inspiration ... The right side of the heart, the pulmonary artery and venae cavae are full of dark fluid blood, and the left side is empty. The abdominal organs are usually congested. The brain is usually normal, it may be pale or congested according to the mode of death. For symptoms at p. 158 it was pointed out that if the windpipe is compressed so suddenly as to occlude the passage of air altogether, the individual is rendered powerless to call for assistance, becomes insensible and dies instantly. If the windpipe is not completely closed, the face becomes cyanosed, bleeding occurs from the mouth, nostrils and ears, the hands are clenched and convulsions precede death. As in hanging, insensibility is very rapid, and death is quite painless. Regarding appearances on the neck he stated at p. 159 that if the fingers are used (throttling) marks of pressure by the thumb and fingers are usually found on either side of the windpipe ... At p. 161, appearances due to asphyxia it was stated that the face is swollen and cyanosed, and marked with petechiae. The eyes are prominent and open. In some cases they may be closed. The conjunctivae are congested, and pupils are dilated. The lips are blue. Bloody foam escapes from the mouth and nostrils, and sometimes pure blood issues from the mouth, nose and ears, especially if great violence has been used. Regarding internal appearances he stated that the cornua of the hyoid bone may be fractured, also the cornua of thyroid cartilage but fracture of

the cervical vertebrae is extremely rare. The liver may show cloudy swelling and necrosis of the cells, if death has been delayed. The kidneys may show signs of nephritis, and on section the straight tubules may be filled with debris of the blood corpuscles giving the appearance of reddish-brown markings.

13. Regarding the distinction between ante-mortem and post-mortem burns, he pointed out the lines of redness, of vasication and reparative processes as distinctive features. He elaborated the same later. A reading of it gives the distinction and would be concluded thus :

- (1) Ante-mortem burn injuries are characterised by the presence of burnt carbon particles (soot) in the trachea which is absent in the case of post-mortem burn injuries.
- (2) Carbodyhaemoglobin is present in the heart blood in ante-mortem burning which is absent in case of post-mortem burning.
- (3) Ante-mortem burns are usually red owing to the tendency of the system to rush blood towards the injured parts for repairs, which is distinctly different from post-mortem burns which are hard and yellowish in colour.
- (4) Blisters are prominently present in ante-mortem burns. Some blisters may appear in post-mortem burns, but they are distinctly different from ante-mortem burns, where blisters are full of protein rich fluid that contains a substantial amount of white cells, caused by the tendency of the system to rush in white cells to fight against infection. The presence of protein is so high that it becomes solid on heating. Post-mortem blisters hardly contain any protein in their fluid and whatever fluid is contained has so little protein that on heating only a faint opalescence is seen. That fluid in post-mortem blisters does not contain any white blood cells.
- (5) In ante-mortem burns, reparative enzymes are present in the vicinity of burnt areas as the reparative enzymes would try to repair the burnt areas. Their presence could also be used for predicting the time since the person was burnt. Various enzymes appear at the following time :
 - (a) Enzyme esterase - 30 minutes. (b) Leucine aminopeptidase - 2 hours approx. (c) Acid Phosphatase - 3 hours approx. (d) Alkaline Phosphatase - 5 hours. Reparative enzymes are not detected in post-mortem burns.
- (6) Signs of infection in a burn injury only lead to the conclusion that the burn injury is ante-mortem in nature as there cannot be infection in post-mortem burn injury, only putrefaction. Since infection occurs roughly 36 hours after the burn, one can easily predict the time since the burn injury occurred.

14. In H. W. V. Cox's Medical Jurisprudence and Toxicology by Dr. Bernard Knight, 5th Edn. in Chapter 1 at p. 207 it was stated that stragulation is again a term which is not exact in itself, as there are several types of stragulation, mainly manual stragulation and strangulation by a ligature. Though both these are similar, there are certain differences which are reflected in the pathological findings. Stragulation is not by any means same thing as asphyxia in fact, a better name would be 'pressure on the neck', which is used as an alternative description by some pathologists. Regarding manual stragulation and the length of time required to cause death at p. 213 it is stated that the length of

time for which pressure on the neck would be maintained to cause the death is very variable, from zero seconds to several minutes. In the statement regarding length of time he stated that no dogmatic statement of time of two minutes or three minutes can be made. It is of little practical value as unless a witness is present, there is never any way of determining such times. If, however, there is physical evidence of pressure on the neck from bruises and haemorrhage, but no congestion whatsoever, then it is certain that death was relatively rapid before these classical signs appeared, due to reflex cardiac arrest. Where death is due to cerebral anoxia from compression of carotid vessels, then there is usually cyanosis and congestion due to simultaneous blockage of the jugular venous system, though ignorance of time factors make this statement of little practical value. In Taylor's Medical Jurisprudence it was stated at p. 282 that the amount of pulmonary oedema can be used to estimate the time interval between injury and death. In practice it is seldom of value as it is common experience that the changes described can develop with great rapidity when a patient dies after choking. At p. 285, asphyxia by violence, it is stated that if the breathing is interfered with for a sufficient period of time unconsciousness and death will supervene.

15. The contention of Sri U. R. Lalit that the palms were not clenched and the eyes did not protrude but were half closed, the mouth was closed and tongue was not protruding, the duration of death of 5 to 10 minutes as opined by the doctor and in the case of death by strangulation, the death would be instant and that, therefore, it is not a case of strangulation but suicide does not cast any doubt on the cause of death. Above study of medical jurisprudence establishes that the symptoms found at post-mortem are not uniform but variable depending upon the compression as employed on the neck and duration. It would be an inferential fact since direct evidence would rarely be available. The discussion of the medical jurisprudence conclusively establishes that all the symptoms found on the dead body of Shashi Bala unmistakably show that her death was due to pressure on the neck and the findings at the post-mortem examination recorded by the doctor and the evidence of Dr. Sher Singh, PW 1, are consistent with medical jurisprudence. The duration of death also depends on the mode of pressure employed and the circumstances in which constriction was done. Doctor's evidence is clear, cogent and convincing in his findings that the death was due to asphyxia and not due to suicide. We place on record that Dr. Sher Singh had meticulously done an expert and excellent autopsy with grasp of medical jurisprudence to establish, without any shadow of doubt of the cause of death of Shashi Bala as asphyxia.

16. Realising this unsurmountable difficulty concerted attempt was made to sling mud and cloud of doubt on the unimpeachable evidence of Dr. Sher Singh. Who would be benefited by a complaint against the doctor ? The prosecution is not interested since his autopsy report is completely in its favour. PW 15 or anybody on his behalf is not interested to make any allegation against PW 1. It is the accused that would be benefited and so a false complaint of demand of illegal gratification was fabricated which was rightly thrown out. The further suggestion that some unknown doctor along with PW 15 brought pressure on PW 1 to give fabricated autopsy report is desperate one. We accept the evidence of PW 1, Dr. Sher Singh as truthful, reliable and acceptable. From his evidence it is now conclusively established that the death was due to constriction (asphyxia) and that a deliberate attempt was made to destroy the evidence of death by pouring kerosene on the dead body and burning the dead body extensively of 95 per cent. We find that the High Court committed palpable illegality in accepting the defence version to doubt the evidence of Dr. Sher Singh. The death was, therefore, homicide and not suicide.

17. The question then is, who is the author of the murder ? The contention of Sri Lalit is that the respondent had no motive and the High Court found as a fact that the evidence is not sufficient to establish motive. The case is based on circumstantial evidence and motive being absent, the

prosecution failed to establish this important link in the chain of circumstances to connect the accused. We find no force in the contention. Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case. The question, therefore, is whether Satish Kumar alone committed the offence of murder of his wife ? In this regard Sri Lalit pressed into service the evidence of DW 1, the uncle of the respondent who stated that respondent 1, his brother and father were in the shop at the relevant time and that the respondent also stated so in his statement under Section 313 CPC. This evidence clearly establishes that the respondent was not at home when the occurrence had taken place. This evidence has to be considered in the light of the attending circumstances and the conduct of Satish Kumar. It is established from the evidence that the deceased and the first respondent alone were living in the upstairs room. The Occurrence took place in the board day time in i their bedroom. The deceased at that time was having three month child. What had happened to the child at the time when the ghastly occurrence had taken place is anybody's guess. Normally three month child would be in the lap of the mother unless somebody takes into his/her lap for play. It is not the case. It would be probable that after the murder, the child must have been taken out and the dead body was burnt after pouring kerosene and litting fire. Therefore, the one who committed the offence must have removed the child later from the room. Admittedly the day of occurrence is a Sunday and that too in the afternoon. Therefore, the shops must have been closed. DW 2, Post Office Superintendent, examined by the defence, categorically admitted that the handwriting of all the four telegrams was of the same person. Satish Kumar admitted that he issued two telegrams including the one to PW 15 and the two were issued by his father. Therefore, four telegrams were issued by respondent 1 alone. When the wife was practically charred to death an innocent and compassionate husband would be in a state of shock and would not move from the bedside of the deceased wife and others would attend to inform the relation. It is also his case that he phoned to the police station and informed of the occurrence. Evidence is other way about. An attempt was made to have the matter compromised, but failed. Thereafter they were found to be absconding. The evidence of DW 4 (maternal uncle) that respondent 1 was in the shop thus gets falsified and his is a perjured evidence. The false plea is a relevant circumstance which militates against his innocence. The death took place in the bedroom of the spouse and the attempt to destroy the evidence of murder by burning the dead body; the unnatural conduct of Satish Kumar, immediately after the occurrence, the false pleas of suicide and absence from house are telling material relevant circumstances which would complete the chain of circumstantial evidence leading to only one conclusion that Satish Kumar alone committed the ghastly offence of murder of his wife, Shashi Bala.

18. It is true as contended by Sri Lalit that Satish Kumar must have married the deceased as she was extremely pretty and that the letter written by her would establish cordiality and love between them. The deceased obviously appears to have written that undated letter expressing her profuse love for the husband at the beginning of their marital life without knowing the true colours of her husband. It is true that the torn pieces of the letter would indicate that she contemplated to commit suicide. Obviously it was due to being unable to bear with the mental torture brought upon her. She accordingly must have written but later she must have changed her mind seeing the tender son in her arms and not to make him to lose mother's care and affection. That would clearly show that she was

not being treated well. Far from being helpful this circumstance also is in favour of the prosecution and against the husband showing that the deceased was subjected to cruelty. The contention that the respondent 1 was not the author of the crime does not inspire us to give credence. The further contention that no neighbour was examined by the investigation officer as they were not present to falsely implicate him and it would be viewed against the prosecution is without any substance. The investigating officer in his evidence clearly stated that he contacted all the neighbours but they were not prepared to give their statements. Therefore, the investigating officer was helpless in collecting the evidence from the neighbours. It is not an insurance that he was innocent. The further contention that the delay in filing F.I.R. is fatal to the prosecution is without any substance. Admittedly PW 15 was residing in Sasuna of Haryana State. On receipt of the telegram he rushed to the place and immediately on seeing the dead body he sent for his relations. After they came to the scene the F.I.R. was lodged on the next day. The delay in lodging F.I.R. is of little significance. We have the evidence of PWs 15 and 9, which of the motive was found to be shaky by the High Court and for the reasoning given it might appear to be probable. In those circumstances the animation by the in-laws and brother-in-law to be a privy to the ghastly murder cannot be positively concluded. Undoubtedly the father, mother and brother might be present. They or someone amongst them might have facilitated Satish Kumar to screen the evidence of murder. Suspicion is not a substitute for proof. No proof beyond doubt is forthcoming. Under these circumstances on the facts of this case we hold that their acquittal is right. The High Court did not consider the evidence in proper perspective. The order of acquittal of Satish Kumar is set aside. He is convicted for the offence of murder of his wife Shashi Bala, punishable under Section 302 I.P.C. and is sentenced to undergo rigorous imprisonment for life. He is convicted under Section 201 I.P.C. and sentenced to undergo R.I. for one year and both the sentences would run concurrently.

19. The judgment and order of acquittal of Satish Kumar by the High Court in CrI. Appeal No. 281/81 is set aside and judgment and order in CrI. Appeal No. 528/81 is confirmed. The judgment conviction and sentences of Satish Kumar and acquittal of others in Sessions case No. 159/80 and Sessions trial No. 85/80 dated April 23, 1981 by the Sessions Court at Hissar is restored. The appeals are accordingly allowed as against Satish Kumar and dismissed as against other three respondents.

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