

Sheikh Abdul Hamid & Anr.

Vs

State of Madhya Pradesh

(G. T. Nanavati, V. N. Khare JJ)

04.02.1998

JUDGMENT

V.N.KHARE J

1.This criminal appeal is directed against the Judgment dated 30.4.97 of the Madhya Pradesh High Court in Criminal Appeal No.1712 of 1996 whereby the High Court has upheld the conviction of the appellants under Section 302/34 IPC and further confirmed the death sentences awarded to them by the trial court.

2.The prosecution case in brief, is like this :

Accused appellant No.1 Shaikh Abdul Hameed is the husband of deceased Mst.Manglibi @ Kaniza.Deceased Samidabi, the daughter of Manglibi from her former husband.Deceased Refeeq, aged about 14 months, was the son of accused appellant No.1 and deceased Manglibi.Ashiq Ali, co-accused appellant No.2 is a friend of appellant No.1 and he after release from prison was living with application No.1 in the Dhaba. In the year 1989, deceased Manglibi after purchasing a small plot of land on high way No.7 constructed a Dhaba where she started business of sale of refreshment.Appellant No.1, deceased Manglibi, deceased daughter Shamidabi and son Rafeeq-all were living in the said Dhaba. On 13.11.92, Qadir Khan (PW-9) had lodged a report to the police station Chaprra, that his elder sister Manglibi, along with her children had disappeared or not traceable for 2-1/2 months and he suspected that appellant No.1 either killed or sold them. This report later on came to be registered as the First Information Report. On that report the prosecution machinery was set in motion. The Police after permission from the Sub-divisional Magistrate exhumed the dead bodies by digging the earths in the inner room of the Dhaba. Consequently, charges under Sections 302/34 IPC were framed against the accused appellants. The trial court being of the opinion that there were cogent circumstantial evidence available on record to conclude that it were the appellants who alone have committed the murder of the three deceased persons, convicted each of them for offence under Sections 302/34 IPC and sentenced them to death. The trial court made reference of the death sentence awarded to the appellants for confirmation before the High Court.The appellants also filed appeal before the High Court against their conviction and sentences awarded to them. The High Court by the impugned judgment under appeal upheld the judgment of the trial court and confirmed the death sentences awarded to the appellants. That is how the matter has come up before us.

3.It was urged on behalf of the appellants that in the present case, the chain of circumstantial evidence is not complete as to convict the appellate. Therefore, the conviction recorded against the appellants deserved to be set aside.

4.It is not disputed that the present case is based on circumstantial evidence. It is also not disputed that the stated law is that in a case like the present one the chain of circumstances must be unbroken as to rule out all and every possibilities of innocence of the accused. The trial court as well as the High Court found that the evidence available on record clearly established all the links in the chain of circumstances leading to the guilt of the appellants and no reasonable ground was left for conclusion consistent with their innocence.

5.It is true that in the present case, there was no eye-witness of the murder of the three deceased persons and the prosecution case was based only on circumstantial evidence. It may be noted that the circumstances established in the present case speak for themselves and candidly point out that it were the appellants who committed the murder of the three deceased persons. As noticed earlier, the prosecution machinery in this case was set in motion only after 2 1/2 months of the incident and only on the report of Qadir Khan brother of the deceased Manglibi, wherein he had stated that his sister Shamidabi and her children had not seen in their Dhaba for 2 1/2 months and he suspected some foul play. This shows that the appellants, although were living in the Dhaba with the deceased persons, did not take any interest to find out whereabouts of the deceased persons, but, on the contrary, happily continued to run the Dhaba. After the report of Qadir Khan came to be registered as First Information Report, the police at the instance of appellant No.1, found the dead bodies of the three deceased persons buried in the inner room of the Dhaba. The Police also found that the inner room of the Dhaba where the dead bodies were buried, was locked and its key was found with appellants No.1.After the door was opened, the dead bodies were then exhumed by digging the earth.

6.Dr.K.K.Dwivedi and Dr.H.P.Pateria after conducting autopsy on the dead bodies found that deaths were homicidal in nature and were caused about eight weeks prior to the date of post mortem. It was also found that the first body was wrapped in a blue sari and had bangles on her wrists. Signs of injuries on the body were found present. According to Dr.Pateria death occurred on account of injuries on the chest affecting vital organs like heart. The second body was of a young female clad in a green salwar kurta and bangles on her wrists. She suffered injuries on her neck and chest affecting vital organs. The post mortem report of the child indicated that he had injuries over the skull. According to Dr.Pateria, all these injuries caused to the three deceased were by sharp object like Basula which was found kept under the bench in the inner room of Dhaba, and they were ante mortem. These dead-bodies were identified by appellant No.1 as well as by Habib Khan and Mohd.Iqbal. The medical evidence shows that deaths, seeing the condition of the bodies, must have been occurred about eight weeks before the post mortem examination held on 14.11.92.Thus, it points out the date of incident somewhere in the first fortnight of September, 1992.It is not disputed that the accused were living in the Dhaba with the deceased who were not seen since first week of September, 1992.Accused No.1, who was the husband of Manglibi and father of Rafeeq did not show any interest to find out the whereabouts of the deceased and continued to run the Dhaba. From these circumstances, the High Court concluded that there was no possibility of any outsider committing the murders, as no outsider would have committed the murder of these three deceased persons and buried them in the Dhaba. This conclusion of the High Court drawn on the basis of proved and established circumstances, according to us, is correct on the facts and circumstances of the case. Had any outsider committed the murder of these three deceased persons, he could have thrown the dead bodies somewhere in the lonely place and surely would not have undertaken the

risk of burying the dead bodies in the inner room of the Dhaba. The situation of the room in the Dhaba also indicated that it was accessible only to the appellants who were living therein and no outsider had access to it. It was therefore not at all possible for any outsider to have killed the three persons and brought their bodies to Dhaba to be buried in the inner room of the Dhaba. These circumstances further show that at least more than one person were required to commit such crime as the same was not possible by one person to commit murder or three persons and buried them in the inner room of the Dhaba.

7. We have considered the circumstantial evidence in this case and find that all the links of chain of circumstances are unbroken and complete. We are, therefore, of the opinion that circumstantial evidence is consistent with the guilt of the two accused. The only conclusion from the established circumstances in the case before us is that it were the appellants who committed the murder of three deceased persons and were rightly convicted.

8. How, coming to the death sentence awarded to the appellants which was confirmed by the High Court, it may be noted that under sub-section (3) of Section 354 Cr.P.C. when the conviction is for an offence punishable with death or in the alternative, with an imprisonment for life, the Court is required to state reasons for sentences awarded, and in case of sentences of death, the special reasons for such sentences are to be given. Thus, under the provisions of Code of Criminal Procedure, life imprisonment for the offence of murder is the rule and death sentences is an exception to be resorted to for special reasons to be recorded by the Court. This Court in a number of decisions has laid down guide lines when the extreme penalty or death sentences is to be awarded. (See *Bachan Singh Vs. State of Punjab* (1980) 2 SCC 684, *Machhi Singh & Others Vs. State of Punjab* (1983 (3) SCC 476). In these cases it was pointed out that death penalty could be awarded in a rarest of rare cases and the circumstances, when the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner, so as to arouse intense and extreme indignation of the community would fall within the category of rarest of rare cases.

9. Special reasons given by the trial court in awarding death sentences to the appellants and confirmed by the High Court, were that it was such a cruel act where the appellants have not even spared the innocent child and the motive being to grab the property. We have given our earnest consideration to the question of sentence and the reasons given by the High Court for awarding death sentences to the appellants. Having regard to the guidelines stated above, it may be noticed that in the present case it was not pointed out by the prosecution that it was a cold blooded murder. There is nothing on record to show the murder has taken place. In the absence of such evidence we do not find that the case before us falls within the category of rarest of rare cases, deserving extreme penalty of death. Keeping in view the aforesaid facts, we are of the view that the ends of justice would be met if we substitute the death sentence with that of life imprisonment under Sections 302/34 IPC, while upholding the appellants conviction, as recorded by the High Court.

10. This appeal is, accordingly allowed in part, only to the extent that the death sentence passed against the appellants under Sections 302/34 IPC is set aside, and, instead, the appellants are sentenced to undergo imprisonment for life. Since we upheld the conviction of the appellants under Section 302/34 IPC., appeal to that extent stands dismissed.