

State of Rajasthan

Vs

Mahavir Alias Mahavir Prasad

Criminal Appeal No. 590 of 1991

(G. T. Nanavati, S. P. Kurdukar JJ)

29.07.1998

JUDGMENT

KURDUKAR, J. -

1. The respondent, Mahavir (accused) was tried for an offence punishable under Section 302 IPC for causing the death of his wife, Radha. The couple was staying in their matrimonial home at Bikaner. It is the case of the prosecution that the respondent was all along ill-treating his wife Radha since deceased on the ground that sufficient dowry was not given to him.
2. The incident in question took place during the night intervening between 23-11-1982 and 24-11-1982 at the residence of the respondent. According to the prosecution, the respondent after beating Radha, poured kerosene on her and then set her on fire. Radha died during the same night due to extensive burn injuries on her person.
3. On the following day, one Chatur Bhuj, brother of the respondent, went to the father of the deceased to inform him about the death of Radha.
4. The parents of the deceased came to the village and lodged a report that Radha died in suspicious circumstances. It appears that no investigation was properly done and therefore on 28-11-1982, a complaint was lodged by the father of the deceased alleging that Radha was killed by the respondent. It is on this basis the investigation proceeded further. In the post-mortem examination, it was noted that the deceased had sustained extensive burn injuries and she died because of these injuries.
5. The trial proceeded against the respondent. The prosecution examined many witnesses including the neighbours and the relatives of the deceased.
6. The defence of the respondent was that he was out of town and had gone to see his ailing maternal grandmother at Deshnok. He returned to Bikaner only on 24-11-1982 when he received a message that his wife died because of burn injuries. Thus, the plea taken by the respondent was of an alibi.
7. The trial court relying upon the various circumstances held that each circumstance was conclusively proved by the prosecution and all these proved circumstances complete the chain. The only inference from all these circumstances is that the respondent alone was responsible for causing the death of Radha. The trial court did not accept the plea of alibi, set up by the respondent. Resultantly, the trial court by its judgment and order dated 21-10-1987 held the respondent guilty

for committing the murder of his wife, Radha and convicted him under Section 302 IPC and sentenced him to suffer imprisonment for life. The trial court also directed the respondent to pay a fine of Rs. 500 and in default thereof to undergo rigorous imprisonment of one year.

8. The respondent, aggrieved by the judgment and order of conviction, filed an appeal to the High Court. The Division Bench of the High Court on reappraisal of the evidence did not agree with the findings recorded by the trial court and held that the prosecution miserably failed to establish that the respondent committed the murder of Radha. Consistent with this finding, the High Court acquitted the respondent. It is against this judgment and order of acquittal dated 5-3-1990 passed by the High Court of Rajasthan, the State has preferred this appeal.

9. Mr Bhati, learned counsel appearing in support of this appeal, took us through the judgments of both the courts below as well as the oral and documentary evidence on record. It was contended on behalf of the appellant that the High Court had failed to consider the evidence of various other witnesses, namely, Hanuman-PW 3, Shankar Lal-PW 4 and Shiv Kumar-PW 5. Learned counsel urged that since the High Court had failed to consider the evidence of material witnesses, the judgment is unsustainable. He then urged that the High Court has failed to consider various circumstances which were conclusively established by the prosecution.

10. Countering these submissions, learned advocate for the respondent urged that this being an appeal against an order of acquittal, this Court should not interfere with the order of acquittal. Strong reliance was sought to be placed by the learned counsel for the respondent on the reasons recorded by the High Court to the effect that the material omissions appearing in the evidence of Babu Lal (PW 2) had demolished the prosecution case as regards the presence of the respondent-accused at Bikaner at his residence at 8.00 a.m. on 24-11-1982. If the evidence of Babu Lal (PW 2) is discarded, the evidence of the other witnesses cannot be accepted inasmuch as there are inter se contradictions in the evidence of these witnesses.

11. As indicated earlier, it is not disputed that the respondent and his wife were staying together and none else was residing with them. Therefore, if death occurs in suspicious circumstances, a reasonable explanation was expected from the respondent. The only explanation that was sought to be given by the respondent was that he was away from Bikaner to Deshnok between 21-11-1982 and 24-11-1982 and since he was not present during the night intervening between 23-11-1982 and 24-11-1982, he could not be held responsible for the death of Radha. This plea of alibi of the respondent, in our considered view is an afterthought attempt. Except his bare words, no other material in support thereof was adduced by the respondent. In view of the absence of any material on record, in our opinion, the trial court was right in rejecting the plea of alibi. The High Court has committed an error while accepting the said plea without any material on record.

12. There are some more circumstances which would again go to suggest that it was not a case of suicide or accident but a case of homicide. Mr Bhati, learned counsel, drew our attention to the panchnama of the scene of offence which indicated that broken pieces of bangles were lying in the verandah. If it was a fact, in our view, it excludes the possibility of suicide or accidental death.

13. The next circumstance sought to be emphasised by the learned counsel for the appellant is that the dead body was found lying in the centre of the cot. This again, in our considered view, goes to show that it was neither a case of suicide nor of accidental death. There is one more circumstance which needs to be mentioned, namely, that the father of the deceased was informed about the incident very late. If Radha had suffered these burn injuries in an accident or had committed suicide,

there was no reason why the fact of death was communicated to the father of the deceased so late. The whole attempt appears to be to suppress the fact of homicidal death of Radha from the relatives of the deceased.

14. No serious argument was advanced before us on behalf of the respondent disputing the fact that Radha died due to extensive burn injuries. The post-mortem report indicates that she had sustained extensive burn injuries.

15. In addition to the circumstances mentioned above, there is one more circumstance, namely, the false plea of alibi taken by the respondent which cannot be brushed aside. No probable case was even made out by the respondent to support his plea of alibi that he had gone to see his ailing maternal grandmother at Deshnok. If this be so, the prosecution was right in relying upon this circumstance also to complete the chain of circumstantial evidence.

16. Learned counsel for the respondent, however, sought to demolish the prosecution case relying upon the evidence of Babu Lai-PW 2. It was contended that Babu Lal (PW 2) in his statement recorded under Section 161 Criminal Procedure Code did not state that the respondent was present on 24-11-1982 at Bikaner. This submission did not appeal to us because the earlier statement which was recorded during the investigation did not contain any such omission. If this be so, we are unable to discard the evidence of Babu Lai-PW 2. As regards the evidence of the other witnesses, learned counsel appearing for the respondent, despite his strenuous effort was unable to persuade us to discard their evidence on the point of ill-treatment meted out to Radha on account of insufficient dowry.

17. After going through the evidence of the prosecution witnesses and other materials on record, we are satisfied that the judgment of the High Court is unsustainable. Consequently, the impugned judgment dated 5-3-1990, passed by the High Court is quashed and set aside and the judgment and order dated 21-10-1987 passed by the Upper Sessions Judge, Bikaner is restored with the modification that the order of fine to stand set aside.

18. The appeal is allowed accordingly.

19. The respondent, who is on bail, shall surrender to serve out the remaining part of the sentence.