

Biharilal Soni and Others

Vs

State of M.P.

Criminal Appeal No. 1142 of 1997

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

06.08.1998

JUDGMENT

NANAVATI, J. -

1. The three appellants were convicted under Section 302 read with Section 34 IPC in Sessions Case No. 320 of 1989 by the Court of Sessions Judge, Bhopal. Appellant Murarilal was also convicted under Section 201 IPC. The High Court confirmed their conviction. Therefore, they have filed this appeal.
2. It was alleged by the prosecution that all the three appellants were treating Sarita cruelly and that they caused her death on 25-11-1988 by causing burn injuries to her on 16-11-1988.
3. In order to prove that she was treated cruelly by the three appellants, the prosecution examined PW 1 Bhagwandas, PW 6 Purshotamdas and PW 7 V. K. Sharma. The prosecution also led evidence to prove that Sarita had received burn injuries sometime on 16-11-1988 and that she had died as a result of those burn injuries on 25-11-1988. The medical evidence led by the prosecution remained almost unchallenged. The defence of the appellants was that Sarita was suffering from mental illness and schizophrenia and that she had received burn injuries either while lighting a lamp or by bursting crackers. In order to prove that she was suffering from the disease of schizophrenia, the appellants had examined Dr Malvia, Dr Handa, Dr Sharma and Dr Tandon as defence witnesses. The trial court after appreciating their evidence held that even if it was accepted that Sarita was suffering from some mental disease, the defence raised by the appellants was not believable. The trial court also came to the conclusion that it was not a case of accidental or suicidal death. The possibility of her having received burn injuries while bursting crackers was completely ruled out by the medical evidence. The trial court observed that if Sarita had caught fire accidentally, she would have raised cries for help, the appellants would have tried to extinguish the fire and they would have taken her to a hospital. But nothing was done by the appellants.
4. The trial court after considering the evidence of the three neighbours held that it was established that Sarita was treated in a cruel manner by her in-laws. The trial court also took into consideration the subsequent conduct of the appellants in not getting her treated medically, in not informing her parents about her having received burn injuries till she died after nine days and the false explanation given by appellant Murarilal as regards the cause of her receiving burn injuries for holding that the prosecution had established its case beyond reasonable doubt. It, therefore, convicted all the three appellants as stated above.
5. The High Court on reappraisal of the evidence agreed with the findings recorded by the trial

court and confirmed the conviction of the appellants and dismissed their appeals.

6. The learned counsel for the appellants submitted that in view of the evidence of the four doctors examined in defence, the High Court ought to have held that Sarita was suffering from schizophrenia and, therefore, the defence of the appellants was probable. He also submitted that the evidence regarding cruelty ought not to have been believed as witness Bhagwandas was not on good terms with the appellants. As regards PW 1 Bhagwandas, he submitted that there was a litigation between the father of Bhagwandas and the father of the appellants Biharilal and Murarilal in respect of a piece of land adjoining the house of the appellants and therefore he was an interested witness. With respect to the two other witnesses Purshotamdas and Sharma, he submitted that their evidence is vague and not worthy of acceptance. After scrutinising the evidence of Bhagwandas, we find that there is nothing on record to show that Bhagwandas was not on good terms with the appellants. He admitted that there was a civil litigation between his father and the father of the appellants Murarilal and Biharilal, but that suit was disposed of 30 years back and thereafter he had no dispute with the appellants. Bhagwandas was admittedly doing his business of selling tea opposite the house of the appellants and therefore, he could have seen the ill-treatment that was given by the in-laws to Sarita. The other two witnesses, though not specific have also deposed about the ill-treatment and complaints made to the authorities in that behalf. They had no reason to falsely depose against the appellants.

7. The courts below were, therefore, right in accepting their evidence. We find no infirmity in appreciation of their evidence. In our opinion, the courts below have rightly held that the deceased was ill-treated by her in-laws. However, we find that the witnesses Purshotamdas and Sharma have not specifically stated that Biharilal was also treating Sarita cruelly. There was no reason for him to do so. He, being a government servant and a married man would not have taken part in treating Sarita cruelly and causing her death without any reason. There is no other evidence against him lie, therefore, deserves to be acquitted.

8. We agree with the findings recorded by the High Court and hold that Murarilal and Leelabai, Appellants 2 and 3 have been rightly convicted under Section 302 read with Section 34 IPC. Conviction of Murarilal under Section 201 is also proper and legal. However, the conviction of Biharilal under Section 302 read with Section 34 IPC will have to be set aside.

9. We, therefore, partly allow this appeal. The appeal of Appellants 2 and 3, Murarilal and Leelabai, is dismissed. The appeal of appellant Biharilal is allowed and his conviction and sentence under Section 302 read with Section 34 IPC are set aside.

10. Bail of Appellant 3 is cancelled and she is directed to surrender to custody to serve out the remaining sentence.