Ram Kumar Madhusudan Pathak

Vs

State of Gujarat

Criminal Appeal No. 511 of 1995

(M. K. Mukherjee D. P. Wadhwa JJ)

19.08.1998

JUDGMENT

M. K. MUKHERJEE J.

This appeal under Section 379 of the Code of Criminal Procedure is directed against the judgment dated 7-2-1995 rendered by the Gujarat High Court in Criminal Appeal No. 511 of 1995 whereby it reversed the acquittal of the appellant of the charge under Section 302 IPC recorded in his favour by the Additional City Sessions Judge, Ahmedabad and convicted and sentenced him thereunder. Facts relevant for the purpose of disposal of this appeal are as under :

The appellant along with his wife Vasumati (the deceased), his parents, two brothers and a sister used to reside in a four-storied house at Maniasa-ni-Khadki in the city of Ahmedabad. In the top floor of the house, there is only one room which was used by the appellant and his wife as their bedroom. On 4-1-1984, the appellant took his evening meal along with the other members of the family and then started gossiping. Vasumati, however, was not there at that time. Some time later, the appellant went to his bedroom and coming back told them that she was lying unconscious. He called Dr Suresh Pratap Rai Sah (PW 1), their family physician, who examined Vasumati and advised her removal to the hospital. The appellant then took her to V.S. Hospital in an ambulance van but she was declared dead. Information about the death was sent to the local police station and Police Inspector Desai (PW 14) took up investigation. On completion of investigation, he submitted charge-sheet against the appellant and the five members of his family (since acquitted), alleging that in furtherance of their common intention, they committed the murder of Vasumati by strangulation. The accused persons pleaded not guilty to the charge and their defence, as it appears from the trend of the cross-examination and the suggestions put to different prosecution witnesses, was that either she committed suicide or some outsider killed her.

2. In the absence of any eyewitness, the prosecution rested its case upon circumstantial evidence. To prove that all the members of the family were responsible for the murder, the prosecution relied upon the following circumstances :

(i) Vasumati met with a homicidal death by strangulation;

(ii) there was no scope for any outsider to go to the top floor of the house to commit the murder;

(iii) there were no marks of physical violence on the person of the deceased which were likely in case of any encounter with an intruder or of any sexual assault; and

(iv) there was no evidence of theft or attempt to commit theft of any of the properties inside the room;

and pinpoint the guilt of the appellant, on the following additional circumstances :

(i) the appellant and the deceased were the only persons occupying the top-floor room and using it as their bedroom;

(ii) the appellant alone had gone to the top-floor room where the deceased was at the material time and coming down a little later, gave out a false version that she was lying unconscious;

(iii) the doctor opined that hardly 2-3 minutes were required for causing death by strangulation;

(iv) there were marks of injuries on the person of the deceased; and

(v) the appellant's version that the deceased was suffering from vertigo and vomiting since two days before her death, and that because of that ailment, she did not take her meals on that fateful night, was false as semi-digested food was found in her stomach.

3. The trial court first discussed at length the evidence of the doctor who opined that the death was homicidal and accepting the same, held that the defence story that the deceased committed suicide was wholly untenable. It then took up for consideration the question whether any outsider could have committed the murder and considering the evidence furnished by the prosecution regarding the topography of the house and the other related circumstances (stated earlier), answered the same in the negative. In spite of the above findings, the trial court acquitted all the accused persons including the appellant with the following observation :

"There is no evidence on record to bestow knowledge on any of the accused persons that they were aware of the death of Vasumati when Accused 3 went to the dispensary of PW 1 and that Accused 1 (appellant) went to Panchkuvga Fire Brigade for ambulance van. Now mere presence of Accused 1 at the floor below the place of incident cannot by itself suggest the involvement of Accused 1 in the commission of the offence. It may be appreciated that if such incident takes place, the same would be noticed only by the inmate of the house and upon seeing such an incident having taken place, if the inmate of the house raises shouts, it cannot be said that it is he and he alone who has committed the offence. Any other person other than Accused 1, who had gone to the fourth floor, would have noticed the same thing and in that case, probably the prosecution would catch hold of that person saying that it is he who had committed the offence. The circumstances of being in the house at the floor below the place of incident is most natural and in my opinion that by itself would not suggest the guilt of Accused 1. Now simply because he was in the house, from that it can't be definitely said that he has murdered Vasumati. So his entry on the 4th floor soon after the occurrence and being the first person to see his wife in this condition and calling the other accused persons by itself cannot point to the guilt of the accused."

4. In setting aside the order of acquittal of the appellant, the High Court concurred with the findings

of the trial Court that the deceased met with a homicidal death and that no outsider could have committed the murder and then held that all the circumstances alleged by the prosecution to prove that the appellant committed the murder stood conclusively proved and they unmistakably pointed towards the guilt of the appellant.

5. From the above, resume of facts, it is seen that so far as the first two questions are concerned, namely whether the deceased committed suicide or was killed and whether any outsider could have killed her, both the courts below gave their findings in favour of the prosecution. This being a statutory appeal we have, notwithstanding the fact that the above concurrent findings are based on detailed discussion of the evidence, carefully looked into the record to satisfy ourselves whether those findings as also the findings recorded by the High Court to convict the appellant are sustainable or not.

6. From the evidence of the doctor, we get that the deceased had the following external injuries on her person :

> "A ligature mark extending from just below the right angle of the mandible bone towards the left side of the neck just below the left angle of mandible over the laryngeal tubercle 13 cm in length at the beginning, 2 cm in breadth, increasing in size and at the end of 3 cm, 2 cm below the angle of left mandible, there is a minor abrasion like a nail mark. In the beginning at the right side, it is red in colour and prominent while the intervening portion only gives the impression of ligature. There was two linear red lines, fine in nature, 2 cm each, 1/5 cm apart on the left side of the neck lateral to thyroid cartilage."

and the following internal injuries :

> "1. V-shaped haemorrhage in the supra-sternal notch, 3 cm in length linera shape.
>
> 2. Large haematoma 3 cm x 4 cm around the outer aspect of sub-mandibular gland on the left and right. Muscles red and contused. Petechial hemorrhages on both the sides of laryngeal tubercle."

7. On the basis of the above objective finding, the doctor gave detailed reasons in support of his opinion that the death was homicidal, which, as earlier noticed, was accepted by both the trial court and the High Court. In our considered view, irrespective of the opinion of the doctor, the nature of the injuries found on the person of the deceased by itself establishes that the deceased could not have committed suicide and that she was killed. If from the ligature mark found on her neck we were to infer that she committed suicide - as contended by the defence - we would have to necessarily assume that she hanged herself but, admittedly, her body, when first seen, was found lying on the cot. To put it differently, the very fact that the body with a ligature mark around the beck was found on the cot - and not hanging - completely demolishes the theory of suicide and proves that she was murdered. As regards the possibility of murder by some intruder, the most eloquent circumstances against its acceptance is that there was no sign of a scuffle or mark of sexual assault on the deceased and no proof of theft of any article from the room of any attempt in doing so. This part, both the courts found that the evidence adduced in proof of the topography of the residential premises excluded the possibility of any outsider entering the top floor of the house.

8. Coming now to the circumstances relied upon by the prosecution to bring home the charge

levelled against the appellant (stated earlier), we notice that they stand proved by unrebutted evidence and his admissions. Since the High Court has dealt with this aspect of the matter at length we need not restate them. Suffice it to say that considered in the context of the fact that no outsider could have committed the murder, the only conclusion that can be drawn from the proved circumstances of the case is that after strangulating his wife of death - which according to the doctor could be caused within 2-3 minutes - the appellant came out with a false version that she was lying unconscious. The false explanations offered by the appellant regarding alleged ailments of the deceased lend further assurance to our above conclusions. It passes our comprehension how the trial court, after having held that the deceased was murdered and no outsider could commit the murder, exonerated the appellant in spite of tell-tale circumstances unerringly pointing to his guilty. Indeed the reasons given by the trial court for acquitting the appellant - quoted earlier - are, to say the least, queer and inexplicable.

9. For the foregoing discussion, we find no merit in this appeal. It is accordingly dismissed.