

SUPREME COURT OF INDIA

State of Haryana

Vs.

Ashok Kumar Alias Billu

(Dr.A.S. Anand, R.C. Lahoti and S. V. Patil JJ.)

18.01.2001

ORDER

1. Saroj was married to the accused-respondent on 14th December, 1985. During the night intervening 18th and 19th June, 1986, she died. According to the prosecution case Om Prakash PW-1 at about 5.00 a.m. on 19th June, 1986 was going to answer call of nature when he found the respondent along with two of his co-accused standing outside their house and talking rather nervously. He also noticed that dead body of Saroj was lying in front of their house. He went back to his house and informed his uncle Shiv Kumar, requesting him to guard the dead body and himself went to Satnali village to inform father of the deceased, Shri Luxmi Narain, PW-7. The father of deceased along with some other members of family came to the house of accused and found the dead body of Saroj lying in front of the house. PW-7 Luxmi Narain went to the police station and made a written complaint Ext. PH, on the basis of which an entry was recorded in the daily diary. Inquest proceedings were held and dead body was sent for postmortem examination, which was conducted by Dr. Janak Raj Singhla, PW-2. The respondent complained against the conducting of postmortem examination and unfairness of investigating agency to the higher authorities and demanded a second postmortem to be conducted by a board of doctors. That request was acceded to and a board of doctors headed by Dr. S.C. Aggarwal, PW-3 conducted second postmortem examination.

2. After completion of investigation the respondent along with six other members of his family were sent up for trial for offences under Sections 302/34 IPC and 498A IPC. The trial court on 30th July, 1987 convicted the respondent for an offence under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs. 5,000/- and in default to undergo six months further rigorous imprisonment. The respondent was acquitted of the offence under Section 498A IPC. All other co-accused of the respondent were acquitted of all the offences.

3. The respondent filed an appeal against his conviction and sentence in the High Court, which was allowed on 28th March, 1989 and as a result the respondent was acquitted. By special leave the State has put in issue the order of acquittal of the respondent.

4. It appears to us that the prosecution was double-minded and did not have a positive case.

5. Prosecution alleged the motive on the part of respondent to commit the crime as based on demands of dowry which had remained unfulfilled. This version appears to be an afterthought. It found no mention whatsoever in the first complaint (Ext. PH) lodged by Shri Luxmi Narain, PW-7, father of deceased, at the police station. Other evidence regarding demand of dowry etc. is also scanty and does not inspire confidence.

6. The viscera of the deceased had been sent for chemical examination and pathological report. According to the Chemical Examiner's report Ext. PE, stomach, small and large intestines, liver, spleen, kidney and lungs had aluminium phosphate poison in them. The first postmortem report given by Dr. Janak Raj Singhla PW-2 had disclosed that the cause of death was asphyxia as a result of "throttling". In his evidence, however, it was admitted that there was no mark of ligature or any other external injury or mark present on the neck or any other part of the body. In the second postmortem examination conducted by the Board under Dr. S.C. Aggarwal, PW-3 it was also noticed that there was no mark or external injury present on the dead body and in the opinion of the board, the cause of death was given to be asphyxia as a result of aluminium phosphate poisoning and strangulation. The prosecution led no evidence to establish that aluminium phosphate poison, which it is conceded before us, can lead to fatal consequences, had ever been procured by the respondent or was in his possession or was even administered by him, even if it may be presumed that he had an opportunity to administer the same, had ever been in possession of it. The prosecution apparently gave up its case of death by poison and did not pursue it for reasons best known to it. It instead rested its case on death being caused by asphyxia due to strangulation. The absence of any external injury or marks of ligature creates a doubt about the correctness of the theory of death by strangulation. Some of the symptoms noticed by the doctors are common - both if death is caused due to asphyxia caused by poisoning as well as asphyxia caused due to strangulation. There is, thus, a considerable doubt about the cause of death of the deceased.

7. That apart, we find that the prosecution has made an attempt to improve its case and with a view to show that Om Prakash PW-6 could have come to know of the death of Saroj at about 5.00 a.m. on 19th June, 1986, an attempt was made to show that dead body of Saroj was lying in front of the house of respondent. According to Luxmi Narain, PW-7 when he left his village after 7.30 a.m. and reached the house of respondent, he also found that the dead body of deceased lying in front of the house. This does not stand to reason. Why should the dead body be kept in front of the house? Prosecution has offered no apparent reason for it. The respondent in his statement under Section 313 Cr. PC categorically stated that the dead body of the deceased was inside the house and was not lying in front of the house, The site plan and sketch Ext. PF also show that the dead body was found to be inside the house. These factors also create doubt about the truthfulness of the prosecution case as also about the fairness of the investigating agency. In this state of evidence, the High Court committed no error in giving benefit of the doubt to the respondent and acquitting him. The view taken by the High Court is undoubtedly a possible view in the face of the evidence on record. The view taken by the High Court cannot be said to be either perverse or even unreasonable. Under these circumstances, we do not find any reason to interfere with the order of acquittal.

8. This appeal, therefore, fails and is dismissed. The respondent is on bail. His bail bond shall stand discharged