SUPREME COURT OF INDIA

Jawahar Lal

Vs.

State of M.P.

Crl.A.No.232 of 1999

(M.B. Shah and K.G. Balakrishnan JJ.)

11.05.2001

JUDGMENT

K.G.Balakrishnan, J.

1. The first appellant, Jawahar Lal, his parents and two sisters were tried by the court of Sessions, Gwalior, for the offences punishable under Section 302, 120-B, 149 read with Section 34 IPC. All the five persons were found guilty of the offences charged against them and they were sentenced to undergo imprisonment for life. While undergoing sentence of imprisonment, the first appellant's parents died and the remaining accused filed the present appeal challenging their conviction and sentence. The allegations against the appellants is that they caused the death of Narayanibai, the wife of the first appellant, Jawahar Lal.

2. The prosecution case is that the five accused persons hatched a conspiracy to cause the death of Narayanibai and they doused her in kerosene and set her ablaze in between 11 AM and 2 PM on 18.11.1980. The first appellant, Jawahar Lal and his father Shreeram were having a cloth shop and all the accused persons were residing on the first floor of a double storey building on rental basis. The marriage between the deceased, Narayanibai and the first appellant Jawahar Lal took place in February, 1975 and they had three children. During the relevant time, the eldest daughter Pinki was about 5 years of age and the youngest son, Dhiraj was 1 year old. The first appellant, Jawahar Lal went to the Police Station and gave a statement to PW-8 at about 3.00 PM, wherein he stated that his sister Madhu had come to his shop and told him that his wife Narayanibai had set fire to herself after closing the door of the room and that his sister tried to open the door but she could not open it. He stated that on hearing this, he came running to the house and pushed the door open and found his wife's dead body. PW-10, Asstt. Sub Inspector, recorded the information of the incident at about 4.00 P.M. and he reached the place of occurrence and held an inquest of the dead body. In the inquest report itself, he mentioned that the dead body was lying on the floor and the mouth of the deceased was found open and a piece of burnt cloth was visible in her mouth. It was also noticed that the hair and torso part of the dead body, which was touching the floor of the room, were not burnt. The body was sent for post mortem and PW-4 and PW-9 conducted the post mortem examination. In the post mortem report also, it was stated that the

nose of the deceased was bleeding and her mouth was open, in which a bluish cloth was found stuffed. The outer portion of the cloth was burnt a little and on taking out the cloth from the mouth, the tongue was found to have been pressed inwardly. The cloth stuffed in the mouth of the deceased had completely blocked her trachea and the piece of cloth taken out from her mouth was found emitting the smell of kerosene. The Doctor opined that the victim Narayanibai had died of asphyxia. He also was of the view that the death was homicidal in nature.

3. The appellants set up the plea of alibi. The first appellant stated that he was at the cloth-shop and his sister, Madhu had come there and told him that his wife had committed suicide. The appellants 2 and 3 also denied their complicity in the crime. The learned Sessions Judge found that these appellants, along with their parents, must have caused the death of the deceased by forcibly setting her on fire after having poured kerosene on her. The learned Sessions Judge was of the view that the deceased Narayanibai was aged 27 years at the time of the incident and all the appellants must have been instrumental in causing the death of the deceased.

4. From the post-mortem report coupled with other evidence, it is clear that the death of Narayanibai must be homicidal. The presence of cloth found stuffed in the mouth of the deceased is a clear indication that the assailant must have put this cloth in the mouth of the deceased so that the victim may not cry or make a noise. From the evidence of PW-9, Dr. D.S. Badkur, it is clear that the piece of cloth was forcibly thrust in the mouth of the deceased and the entire respiratory valve was blocked and even the tongue of the deceased was found pressed inwardly.

5. The counsel for the appellants strenuously urged before us that the case of the prosecution that the mouth of the deceased was stuffed with a piece of cloth is not satisfactorily proved for two reasons, namely, (I) that the cloth was not produced as an exhibit; and that (2) the evidence of PW-1 and PW-3 shows that there was no cloth in the mouth of the deceased. PW-1 was a servant in the house of the appellants. He stated that he did not see any cloth found stuffed in the mouth of the deceased. In his cross-examination, PW-3, an inquest witness, also deposed that the mouth of the deceased was closed but two teeth were visible and no cloth was coming out of the mouth.

6. But there is overwhelming evidence to show that the cloth was found stuffed in the mouth of the deceased. Moreover, PW-9, the Doctor deposed that this cloth was taken out of the mouth of the deceased and sent for chemical examination and Ex. P-17 relates to that piece of cloth. The post mortem report and the inquest report coupled with the evidence of PW-9, clearly show that the cloth was thrust in the mouth of the decesaed.

7. The above facts alone would rule out any possibility of the suicide by the deceased. The other circumstances also would indicate that this was not a case of suicide. The door of the room where the deceased died was found open and the nature of injuries sustained by the deceased also would indicate that this was not a case of suicide. The burns were not found all

over the body. The torso part of the body which touched the floor of the room was not found burnt. The hair of the victim also was found not burnt.

8. The conduct of the first appellant also shows that this is a case of murder. PW-8 deposed that on the date of the incident, at about 3.30 PM, the appellant came to him and told that his wife had sustained burn injuries. When PW-8 asked him how she sustained the burn injuries, the first appellant told him that she had died also. PW-8 is related to the deceased Narayanibai as she was the sister of the mother-in-law of PW-8. PW-8 went to the house of the first appellant and gave him Rs.200/- to purchase material for the funeral of the deceased. He advised the first appellant to give a statement before the Police before performance of the funeral. It is pertinent to note that the appellant did not tell PW-8 that his wife had committed suicide. His conduct during the relevant time is totally suspicious.

9. Apart from this, there is evidence of PW-2, Narain Das Agarwal, the brother of the deceased and also the evidence of PW-6, the sister of the deceased. Both the witnesses have deposed in detail that after the marriage of the deceased with the first appellant, the deceased was being severely harassed by the first appellant and his parents for not having brought sufficient dowry from her father's house. These witnesses deposed that the deceased Narayanibai was not being allowed to attend any family function in the house of her brother or sister and that she was not even allowed to write letters. PW-6 deposed that the deceased was staying in a humiliating condition under the terror of her husband and she apprehended danger at any moment. The evidence of PW-2 and PW-6 would clearly establish the motive for the murder.

10. The appellants 2 and 3 are the sisters of the first appellant. They were already given in marriage and during the relevant time they were in the house of the first appellant. There is no evidence that there was any sort of hostility between these two sisters on the one side and the deceased on the other. There is no direct evidence as to how the incident occurred. The circumstantial evidence by itself will not show the nature and extent of participation of these two appellants. Learned Sessions Judge assumed that it was not possible for a single individual to cause the death of the deceased. But in the instant case, the fact is that the deceased was made completely helpless by thrusting a cloth in her mouth. The piece of cloth was already soaked in kerosene and it was so forcibly thrust that it reached the deep end of the mouth of the deceased. Therefore, it is quite possible that after this assault, the victim must have been physically rendered helpless so that there could be no resistance from her side. In that view of the matter, it is quite possible that the murder could have been committed by a single person. Some of the burn injuries were found to be post mortem. This is proved by the evidence of Doctor. In a case of circumstantial evidence, the chain of circumstances should be firmly established and should have a tendency to unerringly point the guilt of the accused. We are of the view that the guilt of the appellants 2 and 3, the sisters of the first appellant is not satisfactorily established There is also not much of evidence to prove their motive against the deceased. Therefore, we are of the view that appellants 2 & 3 are entitled to get the benefit of doubt. In the result, we hold that the case against the first appellant is proved beyond reasonable doubt and we confirm his conviction and sentence under Section 302 IPC. His conviction on other counts does not arise. As the charge of

conspiracy is not conclusively proved against appellants 2 and 3, they are acquitted of the charges under Section 302 read with Sections 120- B(I), 149 and 34 of IPC. Their bail bonds shall be cancelled.

11. The appeal would stand partly allowed.