

SUPREME COURT OF INDIA

Tapubha Bhagvanji

Vs.

State of Gujarat

CrI.A.No.2024 of 1996

(D.P. Mohapatra and Ruma Pal JJ.)

30.7.2002

JUDGMENT

D.P. Mohapatra, J.

1. The five appellants in this appeal were accused Nos. 1 to 5 in Sessions Case No. 33/84 of the Court of Sessions Judge at Surendranagar and respondents in Criminal Appeal No. 19/85 in the High Court of Gujarat at Ahmedabad. They are aggrieved by the judgment of the High Court dated 23.10.96, reversing the order of acquittal passed by the Sessions Judge and convicting them under Section 302 read with Section 34 of the IPC and also under Section 201 read with Section 34 of the Code. The High Court sentenced all the appellants to undergo imprisonment for life on the first count and Rigorous Imprisonment for 7 years on the second count with the direction that the sentences shall run concurrently.

2. The case of the prosecution, shortly stated was that Manharba, the deceased was married to Dilubha, who is son of appellant Nos. 1 and 2 and brother of appellant Nos. 3 to 5.

3. After marriage she left her parental home in village Chotila and Started residing in village Olak where the appellants reside. Shortly after marriage she complained of ill-treatment, harassment and torture by the appellants on account of inadequacy of dowry. Her husband Dilubha used to reside at Bhavnagar where he was serving. The young bride living alone in the house of the in-laws expressed considerable difficulty in putting up with insulting and torturous behaviour of the appellants. While complaining about such conduct of the appellants before her parents Manharba expressed that she should not be sent to the village Olak. When she did not go back to the house of her parents-in-law, appellant No. 1 used to come to the house of Mohabatsinh Bachuba father of Manharba and pressed for sending his daughter with him (appellant No. 1). When he was told about the complaint of ill-treatment and torture of Manharba he made promises that there will be no cause for any such complaint in future and Manharba will join her husband at Bhavnagar very soon. Such promises were given on several occasions when on one pretext or the other father of the deceased was prevailed upon to send his daughter to the house of the accused appellants. The promises were not kept; Manharba was never sent to Bhavnagar to join her husband; on the other hand

ill-treatment, harassment and torture on account of inadequacy of dowry continued to be meted out to her. On the last occasion when her father was prevailed upon by the accused No. 1 to send her to Olak the deceased had told him and other members of the family that if she is forced to go there she may be killed. When such was the situation Mohabatsinh father of Manharba received a message from one Thakarshi, Laghra (PW2), a neighbour of the appellant, who used to treat Manharba as his daughter, that he (father of deceased) should come to village Olak immediately. Before the latter could reach village Olak he was communicated by Natubha Ladhubha (Accused No. 15) and Mangalsinh Devubha (Accused No. 16) that his daughter died of burn-injuries during the night between 13.5.84 and 14.5.84 and her body had been cremated. On receiving the information the shocked father accompanied by his elder brother Parbatsinh and nephew reached village Olak on the 15th. All that they found were few bones and remnants of the body of Manharba. At Olak they came to know that at about 1 O'clock at night Manharba's body was found burning inside the kitchen of the house and her tongue protruded. The appellants were all present in the house sitting in the Orsi (court yard) without making any move to put out the fire or to provide any medical treatment to Manharba. Thereafter the body was taken from the house in a Jholi (sling) and cremated early in the morning by 6 O'clock.

4. On their return from the village Olak Mohabatsinh and others handed over a written complaint Exh. 23 to the DSP at Surendranagar on 16.5.84. The said complaint was received by the Sub-Divisional Police Officer (for short 'SDPO'), Surendranagar on 19.5.84 for inquiry. The SDPO recorded the complaint of Parbatsinh at Sayla on 21.5.84 at about 12.35 a.m. and sent it to Lakhtar Police State for registration of the offence. The said complaint is marked as Exh. 22-A. Exh. 23 being first in point of time was treated as FIR by the trial court. After investigation charge-sheet was filed against 17 persons including the 5 appellants for offences punishable under Sections 302, 201 read with Section 34 of the IPC also read with Section 114 of the IPC and Section 4 of the Dowry Prohibition Act. While the appellants were inmates of the house in which Manharba breathed her last, accused Nos. 6 to 17 were their relations, who were roped in on the allegation that they had helped the appellants in disposing of the dead body of Manharba. The trial court framed charges for offences under Section 302 read with Section 34 of IPC against accused 1 to 5, the appellants herein and also individually under Section 302 IPC. The said accused persons were further charged for the offence under Section 201 read with Section 34 IPC and also 114 IPC. The rest of the accused persons, accused Nos. 6 to 17, were charged for the charges punishable under Section 201 read with Section 114 of the IPC.

5. The accused persons pleaded not guilty to the charges. The gist of the defence version was that Manharba had died at 5 O'clock in the morning on 14.5.84 due to burns accidentally received by her from the primus stove; that accused Nos. 15 and 16 were sent to village Chotila to inform her father and other family members and after they had come from Chotila to Olak in the afternoon between 3 to 4 P.M., Manharba was cremated at 4-5 O'clock in the evening.

6. The trial court acquitted all the accused persons holding *inter alia* that the prosecution had failed to prove the circumstances relied upon for the purpose of establishing the guilt of the accused by any reliable or satisfactory evidence.

7. The State of Gujarat filed appeal against the five appellants in the High Court assailing the judgment of the trial court acquitting them. However, the judgment of the trial court acquitting the accused Nos. 6 to 17 was not challenged by the State. The High Court taking note of the case of the prosecution formulated the point for consideration as follows : "The point that arises for our consideration in this appeal is therefore, whether the accused Nos. 1 to 5 committed murder of Manharba during the night between 13.5.84 and 14.5.84 in furtherance of their common intention and that her body was disposed of with a view to screen these offenders in furtherance of their common intention or by aiding and abetting each other."

8. The High Court independently assessed the evidence on record and held the appellants guilty of the offences and sentenced them as noted earlier. The High Court summed-up its conclusions in paragraphs 23 and 24 of its judgment as follows:

"From the totality of all the above facts and circumstances established in this case, we are fully satisfied that the death of Manharba was caused intentionally by these accused Nos. 1 to 5 in furtherance of their common intention during the night between 13.5.84 and 14.5.84 after 11.00 P.M. and that having caused her death, they set her body on fire at mid-night for causing disappearance of the evidence of the offence with intention of screening themselves from legal punishment. The facts and circumstances clearly disclosed that the death of Manharba was intentionally caused by accused Nos. 1 to 5 who all had participated in the crime in furtherance of their common intention. Therefore, what particular part was played by the individual accused from amongst these accused would not be significant. Under the above circumstance, the reasonings adopted by the learned sessions judge and his conclusions cannot be accepted. The contentions canvassed on behalf of the accused persons by their learned Counsel on the basis of the reasoning of the learned Sessions Judge, as also other contentions canvassed by him, cannot be accepted. We therefore hold that all the accused Nos. 1 to 5 are guilty of the offence punishable under Section 302 read with Section 34 of the IPC. It is also established that the accused Nos. 1 to 5 had, by setting the dead-body of Manharba on fire in the kitchen and sending the remnants away in an unceremonious and clandestine way before the dawn, had caused important evidence of the offence to disappear in furtherance of their common intention. They are therefore guilty of the offences punishable under Section 201, read with Section 34 of the IPC. We, therefore, pass the following order:-

The Acquittal appeal is allowed and respondent Nos. 1 to 5 - original accused Nos. 1 to 5 are hereby convicted for the offences punishable under Section 302 read with Section 34 of the IPC and under Section 201 read with Section 34 of the IPC."

9. The thrust of the submissions of Shri Sushil Kumar, learned senior counsel appearing for the appellants, was that in the facts and circumstances of the case and on the materials on record the High Court clearly erred in reversing the judgment of acquittal passed by the trial Court in favour of the appellants. Elaborating the points the learned counsel submitted that since the case of the prosecution entirely depends on circumstantial evidence the materials on record were to be assessed bearing in mind the rigorous standard of proof required for establishing a case of circumstantial evidence which the learned trial judge has done. The learned counsel further contended that the High Court without due application of mind to the reasons stated by the trial court in support of its conclusion simply differed from the conclusion drawn by the trial Court and held the appellants guilty of the offences charged. The High Court, according to Shri Sushil Kumar, overlooked the settled position of law that the view taken by the learned trial judge who had the advantage of marking demeanour of the witnesses was entitled to great weight, and in the absence of the finding by the High Court that the approach of the trial court and assessment of the evidence by it suffered from any serious illegality or perversity, the judgment of acquittal should not have been interfered with.

10. The learned counsel appearing for the respondent, State of Gujarat, on the other hand contended that on the evidence on record the High Court was right in holding that the chain of circumstances established by evidence clearly and unmistakably lead to the only conclusion that the appellants have murdered Manharba and thereafter had disposed of her dead body in a clandestine manner to remove evidence of their guilt. In the submissions of the learned counsel the Judgment of the High Court does not warrant any interference by this Court.

11. The learned counsel for the parties have taken us through the depositions of the relevant witnesses examined on behalf of the prosecution and the defence. PW1 Parbatsinh is cousin brother of the deceased, PW2 Thakarsey Lagara is neighbour of appellants, PW3 Madhubhai is his son and PW4 is wife of PW2, PWs 5 Madhavisingh and PW6 Bachubha are related to the deceased as uncles. PW7 Hemantgiri is the pujari who got the information of the death of Manharba from accused Nos. 15 & 16. PW9 Mohbatsinh is father of the deceased, PWs 10 to 12 are the Panchas, PW13 Gopalbhai is the Divisional police officer to whom the written complaint Exh. 23 was submitted and PW15 is the investigating officer. Two witnesses were examined on behalf of the defence DW 1 Dulubha is the husband of the deceased. DW 2 Vajubhai is the person who woke up PW2 Thakersey Lagara during the night when the incident took place and told him that a smell of something burning was coming from the house of accused No. 1.

12. The High Court formulated the point for consideration as stated in paragraph 9 of the impugned judgment i.e., whether the appellants committed murder of Manharba during the night between 13.5.84 and 14.5.84 in furtherance of their common intention and that her body was disposed of with a view to screen these offenders or by aiding or abetting each other. The witnesses examined on behalf of the prosecution particularly PW1, PW2, PW3, PW4, PW9 are witnesses who in normal course of events are expected to know about the incident. Their depositions do not reveal any good reason for rejecting their evidence as

untrustworthy or unreliable. The main ground of attack against their evidence as appears from the discussion in the impugned judgment was that they being relations of the deceased, are interested witnesses. This ground is unacceptable for the simple reason that nothing has been brought on record either in cross examination of the witnesses concerned or in any other evidence to show any good reason as to why they should falsely implicate the appellants in the case. The High Court, in our view, rightly accepted the testimony of the witnesses and rejected the contention raised on behalf of the appellants.

13. Even one of the accused persons accused No. 10 Vajubhai who has been examined in the case as DW2 has supported the case of the prosecution. He stated that at about 4.00 a.m. in the fateful night when he woke up he detected smoke in the house of accused No. 1. He called Thakarsey and informed him of the fact. Thereafter Thakarsey and the said witness went to the house of accused No. 1 and found that Manharba had suffered burns and was lying in the kitchen. The witness stated that he had seen the in-laws of Manharba standing in the house. In the cross-examination the witness stated that none of the members of the house of accused No. 1 had spoken to them as to how the incident happened.

17. The next question that arises for consideration is whether the circumstances emanating from the evidence of the witnesses normally establish the guilt of the appellants. The relevant circumstances which are stated by witnesses may be enumerated as follows:

(a) Manharba had been complaining of taunting and insulting behaviour and torture and harassment by her father-in-law, brother-in-law and sister-in-law shortly after she went to their house after her marriage.

(b) Manharba had also communicated her complaint against the appellants to PW2 who was treating her as his daughter since the marriage of Manharba with Dilubha had been performed in his house.

(c) On the night of 13.5.84 Manharba had come to the house of PW2 and was there till 11 P.M. She was hale and hearty by the time she left the house of PW2 and went back to the house of the appellants.

(d) the deceased and the 5 appellants were the only inmates of the house in the fateful night when the incident took place.

(e) the five appellants were present in the house when the body of Manharba was lying in the kitchen.

(f) none of the appellants was seen taking any step to give relief to the Manharba nor any of them gave any explanation about the incident to the queries made by PWs 2 and 3 who had gone to the house during the night.

(g) the dead body of Manharba was cremated early in the morning by 6.00 a.m. before sending any information of the tragic incident to her parents.

(h) No step was taken by any of the appellants for registration of the death of Manharba or to report the unnatural death suffered by her.

(i) The appellants were initially not sure of the defence to be taken in the case; whether the death was suicidal or an accidental; subsequently they decided to stick to the plea of accident which plea was held by the High Court to be a false one.

15. The aforementioned circumstances, in our view, provide a complete chain of events clearly pointing towards the guilt of the appellants. Therefore, the High Court committed no error or illegality in coming to the conclusion that the charges under Section 302 read with Section 34 IPC and Section 201 read with Section 34 IPC stood established against the appellants. In the result, the appeal fails and is dismissed.

Appeal dismissed.