SUPREME COURT OF INDIA

Sukhram

Vs.

State of Maharashtra

Crl.A.No.1203 of 2006

(C.K. Thakker and D.K. Jain JJ.)

17.08.2007

JUDGMENT:

D.K. JAIN, J.:

1. This appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 has been preferred by Sudhakar, the husband of the deceased, Meerabai and Sukhram, her father-in- law (hereinafter referred to as appellants A-1 and A-2 respectively) against the common judgment of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur passed in Cross Criminal Appeals No. 201 of 1995 and 301 of 1995 respectively filed by the said appellants, challenging their conviction and sentence under Section 304-B, 498-A read with Section 34 of the Indian Penal Code (for short IPC) and by the State challenging their acquittal for the offences punishable under Section 302 and 201 read with Section 34 IPC. By the impugned judgment, while allowing both the appeals, the High Court has set aside the conviction of both the appellants under Sections 304-B, 498-A read with Section 34 IPC but has found both of them guilty and convicted them for having committed offences punishable under Sections 302 and 201 read with Section 34 IPC. Each of the appellant has been sentenced under Section 302 read with 34 IPC to suffer imprisonment for life and to pay fine of Rs.1000/- each and under Section 201 read with 34 IPC, each of them has been sentenced to undergo imprisonment for five years and to pay a fine of Rs.500/-, with default stipulations.

2. We may note at the outset that despite opportunities, appellant A-1 failed to surrender and consequently vide order dated 10th November, 2006 his appeal was dismissed. Therefore, we are required to consider the appeal filed by A-2.

3. Marriage between appellant A-1 and the deceased was solemnized on 21st April, 1986. At the time of marriage some amount in cash, a gold ring and other articles are stated to have been given by way of dowry. It is alleged that not being satisfied with the same, the appellants started ill treating her, and further appellant A-2 had an evil eye on the deceased and he insisted that she should have illicit relations with him which, she resisted. She is stated to have complained to her parents, brother and other relatives about the ill treatment.

4. On 18th February, 1987, the deceased was reported to be missing. The appellants searched for her and found her body in a nearby well. Appellant A-2 registered a report at the police station. On receipt of the information, the then P.S.I. conducted enquiry; visited the place of incident i.e. the

well wherefrom the body of the deceased was retrieved; drew panchnama and sent the dead body of Meerabai for post mortem examination. Investigations were taken over by PW-14, who recorded the statements of various persons; conducted house search of the accused but nothing incriminating was found; prepared spot panchnama and seized certain articles from the brother of the deceased (PW-13). In the meantime, Bisan (PW-6), father of the deceased and other relatives reached deceaseds place and lodged a complaint at the police station, suspecting that his daughter had been killed by the appellants and then thrown in the well. Post mortem report was received on 19th February, 1987, in which the cause of death was mentioned as Asphyxia due to throttling and smothering and not due to drowning. On receipt of the report and after collecting evidence, an FIR was registered against the accused under Sections 498-A, 302, 201 read with Section 34 IPC and both the accused were arrested. On completion of the investigation, charge-sheet was filed against the accused in the Court of Judicial Magistrate, who in turn committed the case to the Sessions Court.

5. Both the accused were charged for having subjected the deceased to cruelty and harassment in furtherance of the common intention with a view to coerce her or her brother to satisfy unlawful demand of dowry and thereby committed an offence under Section 498-A IPC. A-1 was also charged with throttling the deceased in between the night of 17th and 18th February, 1987 and caused her death otherwise than under normal circumstances, within seven years of her marriage and soon before her death, she was subjected to cruelty or harassment by him, thereby committing an offence punishable under Section 304-B IPC. A-1 was also charged for having committed murder of Meerabai, thereby committing an offence under Section 302 IPC. Both A-1 and A-2 were charged for having caused disappearance of evidence connected with the offence of murder, punishable with life imprisonment, by throwing the body of the deceased in the well with the intention to screen the offender from legal punishment and thereby committed an offence punishable under Section 201 IPC read with Section 34 IPC. The accused pleaded not guilty and claimed trial.

6. The prosecution examined a number of witnesses to prove its case which mainly included panch witnesses concerned with various panchnamas, relatives of the deceased, her mother-in-law (PW-12) and the neighbour. In their statements recorded under Section 313 of the Code of Criminal Procedure, the accused denied the commission of the offence. Their plea in defence was that of alibi, claiming that on the fateful night they had gone to their fields. It was only on the next day in the morning that they learnt that the deceased was not in the house; they searched for her and found her body in the well. Appellant A-2 reported the matter to the police, inter alia, stating that he had learnt that on the previous night the deceased had a quarrel with one Shrawan Thakare, who was staying in their house as a guest and had an evil eye on her. On conclusion of the trial, the Trial Court found that there was no eye-witness to the incident and, therefore, the case of the prosecution rested only on circumstantial evidence. It was observed that although Indira Kisan Tiwade (PW-11) and Bhagirathabai (PW-12), sister and mother of the appellant, A-1, respectively were in the house, but they had not uttered anything against A-1. On the contrary they had tried to implicate one Shrawan who had come to their house as a guest. They also denied having seen the appellants throttling the neck of the deceased and that she was crying. Both the said witnesses were declared hostile. Nevertheless, the Trial Court observed that there were two circumstances against appellant A-1, namely, (i) motive and (ii) last seen together.

7. Referring to the statement of PW-12, wherein she had said that accused No.1 and deceased, Meerabai were sleeping in one room and we were sleeping in the other room, the Trial Court observed that the circumstances put forth by the prosecution may lead to inference that Meerabais death might have been caused by appellant A-1 but they are not sufficient for convicting him for the

offence of murder. However, relying on the evidence of the father (PW-6); mother (PW-10); sister (PW- 7) and cousin (PW-5) of the deceased, the Trial Court came to the conclusion that Meerabai was subjected to cruelty on account of demand for dowry, the motive for causing the death stood proved and that the circumstance of being last seen together alone in the company of appellant A-1 also stood proved. The Trial Court, thus, held that the prosecution was able to establish that deceased was ill treated and harassed on account of demand of dowry and she died within a very short span of ten months of the marriage. Therefore, the appellants had committed offences, punishable under Sections 304-B and 498-A read with Section 34 IPC. The Trial Court also held that there was no evidence to show that the body of the deceased was thrown in the well either by appellant A-1 or A-2 or both of them and, therefore, offence under Section 201 IPC was not proved.

8. As noted above, both the appellants as well as the State preferred appeals to the High Court against the said verdict of the Trial Court. On going through the evidence, the High Court found that the allegations as regards demand of Rs.500/- and that appellant A-2 had an evil eye on the deceased was a material improvement made by all the witnesses in their evidence before the court; on which they were confronted with their statements under Section 161 of Cr.P.C. The High Court held that the prosecution had not been able to establish the charge against both the appellants for having committed offences under Sections 498-A, 304-B IPC and, therefore, the Trial Court was not justified in convicting them for these two offences. However, the High Court noted that from the evidence of PW-12 it was borne out that on the fateful night both the accused, the deceased and PW-12 were present in the house; though this witness did not wholeheartedly support prosecutions case, but she had in her evidence admitted that on the fateful night they were present in the house. The High Court observed that the factum of the deceased residing with her husband and in-laws on the fateful night stood established by the evidence of PW-12, who had also admitted her own presence in the house, which was quite natural being the wife of appellant A-2. Relying on the said evidence, the High Court felt that by this evidence, the prosecution has established that appellant A-1 and the deceased were sleeping together in one room on the fateful night which was specifically denied by appellant, A-1, who had taken the plea that he and his father had gone to the field and his maternal uncle was a guest in the house and his mother was also in the house. According to the High Court, evidence of PW-12 by itself was sufficient to establish the fact that both the appellants were present in the house. As regards the cause of death, the High Court relied on the evidence of PW-8, who had performed the post mortem on the dead body and had found multiple bruises on both sides of the neck; bruises on nose and lips and rupture of carotid. According to the opinion of PW-8, the injuries were anti mortem and the deceased had died due to throttling and not for any other reason. Relying on the evidence of PW-8 and the Investigating Officer (PW-16), the High Court came to the conclusion that the appellants had opportunity to commit the crime. The High Court was of the view that the fact that the deceased was throttled to death and then thrown in the well, read with established circumstances that on the fateful night she was sleeping in the room along with her husband and even appellant A-2 was present in the house, to which there was no explanation given by both the appellants, the chain of circumstances stood completed. According to the High Court, all these facts taken together were conclusive to establish that it was the appellants who in furtherance of their common intention had committed murder of deceased Meerabai by throttling her to death and then thrown her dead body in the well so as to cause disappearance of evidence. Consequently, as noted above, both the appellants were convicted for having committed offences punishable under Sections 302 and 201 read with Sections 34 IPC and were sentenced as aforementioned. Hence the present appeal by the appellants.

9. Learned counsel appearing on behalf of the appellant submitted that the High court committed

serious error in holding appellant, A-2 guilty of commission of offences under Sections 302 and 201 IPC, particularly when there was no specific charge against him under Section 302 of IPC. In so far as the offence under Section 201 is concerned, it is urged that the High Court again erred in holding that the said offence stood established by the evidence of PW-12. It is submitted that even if a part of the testimony of PW-12 is held to be reliable, at best it gives rise to a suspicion about the presence of A-2 in the house and no more. It is asserted that except for the aforenoted statement of PW-12, which has otherwise been discarded by the Trial Court and the High Court, there is not even an iota of evidence to show that appellant A-2 knew or had reason to believe that appellant A-1 had committed an offence. Learned counsel has also argued that the High Court has neither recorded any reason nor analysed the evidence adduced by the prosecution and thus, grievously erred in reversing the finding recorded by the Trial Court to the effect that ingredients of Section 201 of IPC had not been proved against the said appellant.

10. Learned counsel for the State, on the other hand, supported the view taken by the High Court.

11. We have perused the Trial Courts record. We find that though charge for offence punishable under Section 302 of IPC had been framed against appellant A-1, no such charge was framed against appellant A-2, even with the aid of Section 34 IPC. The only charge framed against A-2 was for an offence punishable under Section 201 read with Section 34 of IPC. True that Section 222 Cr.P.C. clothes the Court with the power to convict a person of an offence which is minor in comparison to the one for which he is charged and tried, but by no stretch of imagination, offences under Sections 304-B and 498-A IPC, under which appellant A-2 was convicted by the Trial Court, could be said to be minor offences in relation to that under Section 201 IPC, for which he was charged. In fact, the three offences are distinct and belong to different categories. The ingredients of the offences under the said Sections are vastly different. Therefore, Section 222 Cr.P.C. had no application on facts in hand.

12. At this junction, we may also note that conviction of appellant A-2 by the High Court under Section 302 IPC cannot also be held to be valid when tested on the touchstone of the provision contained in Section 464(2)(a) Cr.P.C. If it was convinced that a failure of justice had, in fact, been occasioned, the High Court was required to follow the procedure laid down in the Section, which was not done. That apart, even on the proven facts on record, a case for conviction under Section 302 IPC was not made out against the said appellant.

13. Bearing in mind this factual and legal backdrop, we are of the opinion that the High Court was not justified in convicting appellant A-2 for having committed a major offence punishable under Section 302 IPC. Nonetheless, it is well settled that notwithstanding acquittal of the said appellant of the offence under Section 302 IPC, his conviction under Section 201 IPC is still permissible. (See: Constitution Bench decision in Smt. Kalawati & Anr. Vs. The State of Himachal Pradesh). Therefore, the question that remains to be examined is regarding the correctness of the conviction of appellant, A-2 for offence under Section 201 IPC.

14. Section 201 IPC reads as follows:

201. Causing disappearance of evidence of offence, or giving false information to screen offender.

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender

from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,if a capital offence.-shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.-and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.-and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

15. The first paragraph of the Section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of punishments depending upon the degree of offence in each situation. To bring home an offence under Section 201 of IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown.

16. In Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator) this Court had said that in order to establish the charge under Section 201 IPC, it is essential to prove that an offence has been committed; that the accused knew or had reason to believe that such offence had been committed; with requisite knowledge and with the intent to screen the offender from legal punishment, caused the evidence thereof to disappear or gave false information respecting such offence knowing or having reason to believe the same to be false. It was observed that the Court should safeguard itself against the danger of basing its conclusion on suspicions, however, strong they may be. (Also See: Suleman Rehiman Mulani & Anr. Vs. State of Maharashtra , Nathu & Anr. Vs. State of Uttar Pradesh , V.L. Tresa Vs. State of Kerala).

17. In the present case, indubitably there is no eye witness and the prosecution had sought to establish the case against the appellants from circumstantial evidence. It is trite to say that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but all the circumstances so established should be of conclusive nature and consistent with the hypothesis of the guilt of the accused. Moreover, all the established circumstances should be complete and there should be no gap in the chain of evidence. Therefore, the evidence has to be carefully scrutinized and each circumstance should be dealt with carefully to find out whether the chain of the established circumstances is complete or not. (See: Dhananjoy Chatterjee Alias Dhana Vs. State of W.B.) . It also needs to be emphasized at this stage

itself that in a case based on circumstantial evidence motive assumes great significance inasmuch as its existence is an enlightening factor in a process of presumptive reasoning.

18. In the present case, the motive was alleged to be the greed for dowry and desire of appellant A-2 to have illicit relationship with the deceased, which theory, as noted above, has been rejected by the High Court while acquitting the appellant for offences under Sections 304-B and 498-A IPC. Therefore, there is no gainsaying that the prosecution failed to establish the existence of a motive. It is in this background that it has to be examined whether the evidence and the circumstances relied upon by the High Court while recording the conviction of appellant A-2 are consistent with the hypothesis of the guilt of the said appellant.

19. The sole reason given by the High Court for holding appellant A-2 guilty of offence under Section 201 of IPC is the circumstance flowing from the evidence of PW-12, wherein she had stated that: Accused No.1 and the deceased Meerabai were sleeping in one room and we were sleeping in the other room. Undoubtedly, the mainstay of the prosecution case was the testimony of PW-12. There is absolutely no other evidence or circumstance attributing to A-2, the knowledge of the commission of offence in respect of his daughter-in-law, Meerabai. Merely because he happened to be father of appellant A-1, it cannot be presumed as a matter of legal proof that he must be deemed to have the knowledge of the offence committed by his son. Even if the evidence of PW-12 is taken at its face value, though the witness was declared hostile and had been cross examined by the prosecution counsel, mere presence of the appellant, A-2 in the house, in our opinion, is not sufficient to draw a presumption that he had the knowledge of commission of offence by his son, appellant, A-1. There is no other established circumstance to complete the chain to bring home the offence under Section 201 IPC. We are of the view that the prosecution has failed to establish that the conduct of appellant A-2, both at the time of the occurrence and immediately thereafter, is consistent with the hypothesis of his guilt. We have therefore, no hesitation in holding that the learned Judges of the High Court were in error in convicting appellant A-2 for having committed offences punishable under Sections 302 and 201 IPC.

20. In the light of the above discussion, conviction of appellant A-2 (Sukhram) cannot be sustained. Accordingly, we allow the appeal to the extent it pertains to appellant, A-2 and set aside the conviction and sentence passed on him. He shall be set at liberty forthwith unless required in any other case.