

**SUPREME COURT OF INDIA**

Arun Kumar Sharma

Vs.

State of Bihar

CrI.A.No.67 of 2003

(V.S. Sirpurkar and Deepak Verma JJ.)

05.10.2009

**JUDGEMENT**

**V.S. SIRPURKAR, J.**

1. The sole accused appellant challenges the High Court judgment dismissing the criminal appeal and confirming the judgment of conviction and sentence by the Sessions Judge.

2. The prosecution story is an extremely short conspectus. As many as three persons, being Sitaram Sharma, Gayatri Devi Sharma and Arun Kumar Sharma were tried for offences under Section 302 read with Section 34 IPC and alternatively, under Section 304B read with Section 34 and 498A, IPC. Sitaram Sharma is father, Gayatri Devi is the mother while Arun Kumar Sharma (appellant) is the son. The allegation against all the three was that they committed the murder of Sushma Devi, wife of Arun Kumar Sharma for dowry and also subjected her to cruelty on account of demand of dowry. The Trial Court acquitted Sitaram Sharma and his wife Gayatri Devi Sharma but convicted Arun Kumar Sharma of the substantive offence under Section 302, IPC.

3. On 17.06.1994, at about 9.30 p.m., a telephonic message was received in Lakhisarai police station that a woman was murdered by strangulation. On that basis, an entry, vide Entry No. 516, was made in the police diary and the offence was registered. The police immediately went to the spot of occurrence and got a fardbayaan registered from one Leeladhar Pradhan, the father-in-law of the accused who was ultimately examined as PW-4. It was complained that his daughter Smt. Sushma Devi was married to the accused Arun Kumar Sharma about four years back and after the marriage Arun Kumar always used to demand a motorcycle and a colour television from his wife and also used to threaten her that if his demands were not fulfilled he would drive her out of the house. It was claimed that the deceased always used to complain about this to her parents. It was claimed that 8-9 months prior to the incident, on account of the scolding, harassment and demands of dowry, Panchayat was held and PW-4 had shown his inability to meet the demands made by the accused person. It was further claimed that at about 6 a.m. in the morning Anil Kumar Pradhan (PW- 1) who was none else but the brother of Sushma Devi and son of Leeladhar Pradhan (PW-4) went to his sister's house for giving some articles. He saw three accused persons holding the deceased and Arun Kumar strangulating the deceased and after some time she died. The said Anil Kumar, therefore, ran back to his house and informed Leeladhar Pradhan (PW-4) about the incident and immediately thereafter the parents as well as Arun Kumar went to the house of Sushma where she was lying dead.

4. Further investigation was taken up. The inquest was held and the dead body was sent for autopsy whereupon it was found in the post-mortem report that the deceased had multiple bruises over front of neck varying in sizes and there was extra blood in the soft tissues of neck with fracture of hyoid bone of trachea.

5. The accused were not found present in the house and the house was found to be open. Ultimately, they came to be arrested only when they surrendered themselves after more than 10 days in the Court.

6. The charge-sheet came to be submitted for offences under Sections 304B, 498A read with Section 34 IPC. However, at the stage of trial, the offence under Section 302, IPC was also added. In support of the prosecution's claim, Anil Kumar Pradhan was examined as PW-1 while Dr. Dharam Nath Chaudhari who conducted the post-mortem was examined as PW-2. One Om Prakash Vidyalankar was also examined as PW-3 in order to corroborate the evidence of PW-1. According to his version, he had seen Arun Kumar running from the house of his sister and expressing that his sister was murdered. Father of deceased Sushma, namely, Leeladhar was examined as PW-4. Including the police witnesses, in all 8 witnesses were examined by the prosecution.

7. Thus, the prosecution depended only on the single eye-witness, namely, Anil Kumar Pradhan as also on the other circumstance that within 7 years of her marriage, Sushma had suffered an unnatural death.

8. The defence of the accused before the Sessions Judge was that this was not the case of murder at all. According to the accused, the deceased had kept the ornaments with her father but the same were not returned to the deceased and, therefore, she committed suicide. Two witnesses were examined as DW-1, Veena Devi, who was the neighbour and who claimed that she had talked to the deceased at about 8 a.m, and DW-2 Narmada Devi, who was the maternal grand mother of the accused Arun Kumar who deposed that on that day she had visited Sushma and Sushma had served break fast to her husband and thereafter she cooked meals and after taking bath she came to her room along with her son.

She bolted the door and committed suicide by hanging herself. The witness further claimed to have forcibly opened the door with the help of 2 persons and seen the dead body of Sushma, dangling from the fan.

9. The Trial Court came to the conclusion that no demand of dowry was proved in this case and, therefore, acquitted the accused of the offence under Section 304B, IPC as also of the offence under Section 498A, IPC. The Trial Court also held that there was no question of the father and mother being there and the PW-1 could not be believed so as to hold anything against accused Nos. 1 and 2, i.e. the father and the mother of the present appellant. The Trial Court, therefore, proceeded to acquit accused Nos.1 and 2 of all the charges and convicted only the present appellant for offence under Section 302, IPC.

10. The appeal against this judgment failed necessitating the present appeal before us. Ms. Jha, the learned Advocate appearing for the appellant, severely criticized the judgments of both the Courts below, the High Court as well as the Trial court and pointed out that there were number of discrepancies to be found in the prosecution case which had remained unexplained.

11. Learned counsel for the State supported the judgments and contended that the prosecution had proved the offences to the hilt. We have, therefore, to decide as to whether the prosecution has in fact proved the offence beyond reasonable doubt.

12. The mainstay of the prosecution is the evidence of PW-1, Anil Kumar Pradhan. Ms. Jha took us through his evidence. According to him, he had gone to his sister's house at a.m. in the morning for giving some articles. At that time he saw that his sister was being held by her in-laws jointly and Arun Kumar was strangulating her. He then specifically said that Arun Kumar pressed her neck and she fell down to the ground. He then proceeded to say that he raised alarm and ran towards her house and met Om Vidyalankar on the way who asked him as to why he was crying, on which he narrated that his sister was murdered.

13. Defence counsel criticized this evidence on the ground that it was too general in nature. It was suggested that it was not clear as to what articles were to be reached in the morning at 6 O'clock, to the deceased. Learned counsel also pointed out that it was unbelievable that his sister was being murdered and he did nothing except crying and running back to his parents. Again, he did not tell as to where Om Prakash Vidyalankar met him. There was a serious omission about his meeting Om Prakash Vidyalankar which was got proved from the Investigating Officer. Last, but not the least, learned counsel pointed out that this witness, as also the other witnesses, merely kept on sitting with the dead body of the deceased all through the day and did not report the matter till 9.30 p.m. when the police reached on the spot at somebody else's instance who had made a call to the police station.

14. When we see the cross-examination of this witness, it is admitted by him that his house was situated at hardly about 1 or 2 kilometers away from the house of the accused persons and it takes about 15 minutes to reach there. It is really strange that this witness chose to go in the early hours of morning at 6 O'clock to give those articles. He does not tell as to what articles he had taken to his sister's house. Admittedly, he was there on the spot only for about 25-30 seconds and according to him immediately thereafter his mother and father reached the spot of occurrence. It is indeed mysterious as to where the accused persons went during these 15 minutes' time, but what completely beats us to understand is as to why all the three kept on sitting there without informing the police and taking any action. It is absolutely doubtful as to what he or his parents did during the whole day. He did not even know the whereabouts of his brother-in-law, the present accused. He did not even know the extent of Sushma's education, though he admitted that Sushma was an emotional girl. He has not uttered even a word about any demand having been made by the accused persons or Sushma having stated about the demands either to him or to his parents. His statement was recorded before the Magistrate under Section 164, Cr.P.C. Very strangely, he has disowned practically all his statements made before the Magistrate. He has stated that he did not remember as to whether he met Om Prakash Vidyalankar on the way etc. The evidence of this witness is extremely casual in nature. It is not known as to what this witness was doing at 6 O'clock at his sister's place. Even after seeing his sister being murdered, he did nothing. It is also not known as to why this witness did not inform the police for 15 hrs., after the so called murder. The evidence of this witness was sought to be corroborated by the evidence of his father Leeladhar Pradhan. His evidence is of no use because admittedly he was not present there. He only said that his son informed him that his sister was being subjected to beatings by her father-in-law, brother-in-law and her husband. He also added the name of the brother-in-law. Who this brother-in-law is, was not clarified nor was he (brother-in-law) made an accused in the proceedings. Again, it is quite mysterious that even this witness who was a literate witness, did not do anything for the whole day and did not go to the police. It is only when the police came to the spot that he made his statement. He, however, made a charge that the police had connived with the accused and filed a Protest Petition before the Judicial Magistrate, Lakhisarai that despite repeated requests, the police was not arresting the accused Gayatri Devi and Sita Ram. In his cross-examination he admitted that he was working as an Accountant. He also admitted that he had not said in his statement in respect of the demand of television and motorcycle. Very significantly, he says that his son-in-law i.e. the accused and his parents were present in the house when they reached. This is not the claim of anybody including PW-1 Anil Kumar. It is again mysterious when he says that on the day of occurrence at about 7 or 7.15 a.m. his son-in-law and his parents left the house. He did not know where they went.

He also claims that they did not return till the next day of occurrence or so long as he was there at the place of occurrence. He also said that he did not recollect as to whether he stated in his fardbayaan or not that Om Prakash Vidyalankar also arrived at the place of occurrence following them.

15. The evidence of this witness is extremely suspicious for the simple reason that he did nothing for the whole day nor did he go to the police station at all.

Ordinarily, he would have confronted the parents of the present accused- appellant and would have asked about the death of this daughter. He also did not raise any objection on the accused leaving their house. When we see the First Information Report made by this witness, it is seen that there is no mention of the demand for motor cycle and television. In his report, he says that number of persons, many men and women were present. What beats us completely is that this witness kept quiet for the whole day, for more than 15 hours till the police reached him and recorded his statement.

16. The evidence of Om Prakash Vidyalankar (PW-3) is also extremely suspicious for the simple reason that even he, in spite of the fact that he was informed of the murder, yet kept quiet. He claimed that he was with the dead body all the day when he reached the house of Sushma after some time. It is obvious that this witness was present as his signature appears on the report.

However, he also for some mysterious reasons kept quiet for about 15 hours.

When matched with the evidence of Anil Kumar Pradhan (PW-1), the evidence of this witness becomes suspicious.

17. In short, all the three witnesses do not inspire any confidence. PW-2 is the doctor who conducted the autopsy. It is clear that in his evidence, he found the following ante-mortem injuries on the body of Sushma:

" 1. Multiple bruises over front of neck varying in sizes  $> \frac{1}{2} \times \frac{1}{4}$ ;

2. On dissection ecchymosis was found present. There was extra-vagation of blood in the soft

tissues of neck with fracture of hyoid bone of trachea."

18. It is significant that Sushma did not have any other injuries. If the theory of the prosecution was that she was being severely beaten by fists and slaps by the accused persons, then some ante-mortem injuries ought to have been found.

On the other hand, even her bangles were not broken. Anil Kumar Pradhan (PW- 1) has specifically admitted that her glass bangles were intact in her hands. In his cross-examination, the doctor suggested that the injury was on account of asphyxia as a result of injury No.1 due to forcible pressure over neck. In his cross-examination, the doctor deposed:

"11. In this case, while conducting post-mortem examination I did find multiple bruises which may be due to forceful pressure by the fingers. These multiple bruises are not due to ligature and they can not be called ligature mark.

13. In ligature mark there is breadth, with depression."

19. In paragraph 17 of his cross-examination he admitted that if fingers are used, mark of pressure by thumb and fingers are usually found on either side of the wind pipe. From this evidence, it does not appear that there was any such mark on either side of the wind pipe. The evidence of the doctor suggests that there were multiple bruises which could be due to the forcible pressure of fingers.

Even if it is held that Sushma died of throttling, there is no convincing evidence that it was the accused alone who throttled Sushma to death.

20. What is more baffling is that the FIR which was registered at about 9 or 9.30 at night was not sent to the Magistrate. Under Section 157 Cr.P.C., the copy of the FIR has to be sent to the Magistrate. This never happened.

However, seen from the records, this FIR reached the Magistrate only on 22.06.94. This is extremely suspicious. In his deposition, the Investigating Officer proved that the FIR was chalked out in writing by Maheshwari Mandal, the SHO. Very significantly, this SHO or any other officer never examined the house thoroughly nor have they examined the inner rooms for ascertaining as to whether the doors and the latches were intact or not. This was a typical dumb investigation.

Investigation Officer has not even bothered to draw a spot Panchnama. Though he stated that the accused were not present, he did not suggest any efforts having been made for their arrest. In his cross-examination, he admitted that in the case diary, he had not recorded as to which officer received information in the police station nor was it mentioned in the case diary as to which lady was referred to in the telephonic information. Even the name of the informer was admittedly not there in the case diary. Specific questions were put as to whether he inspected the rooms at the place of occurrence or not. He admitted that it was not so recorded in the case diary. Even the time of sending the dead body for post-mortem was not mentioned. He admitted that when he reached the spot, neither the accused nor his parents were present. Then he asserted that their luggage was there. It is very significant to note that he admitted that Anil Kumar had not stated about the time of occurrence nor did he state the fact of beating Sushma with fists and slaps. Very significantly, he admitted that Anil Kumar had not stated about this meeting with Om Prakash Vidyalkar on the way. He had also not stated that his sister was murdered on account of not giving the colour television and motor cycle. He further admitted that Anil Kumar (PW-1) had not stated that his father had told him while he went for tuition that some articles were to be delivered to his sister. The witness admits "on enquiry by us, he remained silent".

21. It is true that this witness was not asked as to why he had not forwarded the FIR to the Magistrate. However, the learned counsel pointed out from the official record that a copy of the FIR was not sent to the Magistrate up to 22.06.1994 though the Court and the police station are in the same city. There is also the evidence of Veena Devi (DW-1) and Narmada Devi (DW-2). DW-1 asserted that she had visited Sushma at 8 O'clock. At that time, Sushma was alive. DW-2 asserted that she had gone to the house of Sushma to meet her and till almost 11 O'clock Sushma was alive so much so that she had offered breakfast to her husband.

22. We do not attach much importance to these witnesses but one thing is certain that both the witnesses claim that Sushma was alive even after 6 O'clock.

DW-2 asserted in her examination-in-chief that when she went to her house again on hearing cries of Sonu, the son of deceased, she found the door closed.

She, therefore, called two persons saying that her daughter-in-law was not opening the door. She then claims: "Dono aadmi ne ek darwaje me dhakka dia to chitkani toot gaya; to hamne dekha Sushma pankhe se latak rahi thi. Baccha ro raha tha. Phir dono aadmio ne Sushma ko pankhe se utar kar aangan me sula dia [both persons forcibly pushed the door when the stopper broke down.

There they saw that Sushma was dangling from the fan. The child was crying.

Then both those persons brought down the body and put it in the courtyard"].

23. In her cross-examination she had stated the name of those persons to be Birju Mandal and Ramvilas. The investigating agency would have done well in examining at least the neighbours but that does not seem to have been done.

DW-2 was also a neighbour in the sense that she stayed very near to the house of the deceased. It is not known as to why the Investigating Officer did not examine neighbours, one of whom was the relative of the deceased. The apathy on the part of the Investigating Officer to examine the house closely creates suspicion. This is an unfortunate case where due to the slipshod investigation the death of a young woman has to go unpunished.

24. Therefore, numbers of questions remain unanswered. Where did the unfortunate girl die? Whether inside the house or in veranda? If she died inside the house, was it possible for a person standing on road to see the incident? Who brought the body in veranda? Who were the inmates of the house? Where did they go after the incident? When were they arrested? What happened to the child of the deceased? Who took it away and when? Why was the room not inspected and examined so as to ascertain the condition of the door, height of the ceiling fan, condition of the stopper (chitkani) etc? These questions keep on gaping at the Court and the only responsible person is the Investigating Officer who has acted in the most irresponsible and casual manner. We hope the department takes note of this.

25. The State has not filed any appeal against the acquittal of accused Nos. 1 and 2. The Trial Court refused to believe PW-1 in so far as the role ascribed by him to accused Nos. 1 and 2. This is one more reason why it is extremely difficult to accept the evidence of PW-1. The major part of his evidence is disbelieved by the Trial court and that verdict of the Trial Court has remained unchallenged.

26. The judgments of the Trial Court and the High Court are also disappointing. The Trial Court, though has referred to the witnesses, has not cross-matched the evidence of the witnesses so as to come to the proper conclusion regarding the veracity of the evidence of those witnesses. To the similar effect is the judgment of the High Court. There is no serious appreciation of the evidence with reference to the record. In its appellate jurisdiction, all the facts were open to the High Court and, therefore, the High Court was expected to go deep into the evidence and, more particularly, the record as also the proved documents. There does not appear to be any serious effort to delve deep into the record of the case and the evidence of the witnesses. The role of the appellate Court in a criminal appeal is extremely important. All the questions of facts are open before the appellate Court. Unfortunately in this matter, we do not find any such serious effort made on the part of the High Court to deal with the matter, with the result that we had to examine the evidence afresh along with the proved documents, which we ordinarily would not have done. However, that was necessary in the interest of justice.

27. The result is that, firstly the accused has to be given the benefit of doubt and the appeal has to be allowed on that basis. The judgments and orders of conviction passed by the Trial Court and the appellate Court are set aside. The accused is acquitted of all the offences. He is presently reported to be on bail.

His bail bond shall stand cancelled.