

Raj Kumar Vs. State

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Court : Delhi

Decided On : Apr-19-2016

Judge : Pradeep Nandrajog & The Honourable Ms. Justice Mukta Gupta

Appeal No. : CRL.A. No. 232 of 2016

Appellant : Raj Kumar

Respondent : State

Judgement :

Mukta Gupta, J.

1. Battered and tormented, Gudia has been held to have suffered a homicidal death in the afternoon of May 13, 2014 at the hands of her husband Raj Kumar resulting in his conviction under Section 302 IPC vide impugned judgment dated October 14, 2015 and a sentence of imprisonment for life vide impugned order dated November 16, 2015.

2. Gudia, working as a maid in different houses and Raj Kumar selling kachories as a mobile vendor were blessed with two sons aged 4 and 5 years respectively at the time when the unfortunate incident took place. Ordeal for Gudia started on the eve of May 12, 2014 when at around 8.00-9.00 PM a quarrel took place between Hemraj and Raj Kumar, resulting in Hemraj showing his photograph with Gudia to Raj Kumar. Shanti PW-4 a local resident of the jhuggi cluster, who witnessed the

quarrel, kept Gudia at her Jhuggi that night but on the next day at about 1.30 pm found her unconscious. Shanti along with her husband and Raj Kumar took Gudia to the hospital where she was declared brought dead. Shanti got recorded her statement narrating the sequence of events on which FIR was registered. .

3. Dr.S. Lal PW-12 conducted the post-mortem on the dead body of Gudiya on May 14, 2014 at about 12.45 pm and found the following external injuries:-

1. Ligature Mark A dry reddish brown, parchment type, ligature mark present around the neck is incomplete and oblique. In front- it is 2 cm broad and placed 4.6 cm below the tip of mandible. On left side it is 1.5 cm broad and placed 2 cm below angle of mandible and extent to mastoid area and merge in hair line. On right side it is 3 cm broad and placed 2.5 cm below angle of mandible and extent to right side back of neck up to midline and merge in hair line.

2. Reddish bruise 0.5 cm x 0.3 cm over left side chin placed 3 cm left to tip of chin and 1 cm above lower border of mandible.

3. Reddish bruise 0.8 cm x 0.4 cm on left side face over mandibular area place 1 cm posterior to injury no.2.

4. Reddish bruise 3 cm x 1.5 cm over left side face placed 1.2 cm posterior to injury no.3.

5. Nails mark 0.3 cm x 0.1 cm over left side upper lip placed 2.5 cm from midline.

6. Reddish bruise 4 cm x 2 cm on right inner middle of arm.

7. Reddish bruise 1 cm x 0.5 cm over middle lateral of right forearm.

8. Reddish bruise 1 cm x 0.5 cm over lower middle outer of right arm.

8A. Nails mark 0.5 cm x 0.1 cm over left lower lateral aspect of wrist (inadvertently given the 8 serial number in PM).

9. Nail marks 0.4 cm x 0.1 cm over upper outer back of left forearm.

10. Reddish bruise 1 cm x 0.8 cm over lateral aspect of left elbow.

11. Reddish bruise 2.5 x 1.5 cm over lower outer and lateral of left arm.

12. Multiple reddish bruise in area of 5 x 3 cm varies incise from 1 x 0.8 cm to 1 x 0.3 cm over outer upper 1/3rd of left arm.

13. Multiple small scattered reddish bruise over right leg, varies incise from 2 x 1 cm to 0.5 x 0.4 cm.

14. Reddish bruise 2 in number 0.5 x 0.5 cm each over middle front of left leg.

4. Dr.S.Lal opined the cause of death to be asphyxia due to ante mortem compression of neck produced by means of ligature and sufficient to cause of death in ordinary course of nature. All injuries were ante-mortem in nature, fresh in duration. Injury No.1 was produced by ligature, injury Nos. 5,8 and 9 were caused by nails and injuries no.2, 3, 4, 6, 7, 10, 11, 12, 13 and 14 were caused by blunt force impact and possible in assault. After examining the belts (black and brown colour) and the nylon cloth (yellowish Green), Dr.S.Lal opined that possibility of homicidal death cannot be ruled out and that ligature mark was possible by yellowish green colour nylon cloth and unlikely to be caused by black and brown colour belts.

5. Learned counsel for the appellant attacking the impugned judgment contends that the learned Trial Court on Shanti s evidence erroneously inferred that Gudia was last seen alive with Raj Kumar whereas Shanti saw Gudia and Raj Kumar together only at 9.00-9.30 AM on the May 13, 2014 when Raj Kumar took Gudia from the jhuggi of Shanti to his own jhuggi. When Shanti saw Gudia in her jhuggi at around 11.00-12.00 noon, Raj Kumar was not present. Even at 1.30 PM on May 13, 2014 when Shanti was informed by Gudia s son that Gudia was lying unconscious, Raj Kumar was not present. As per the FSL report ethyl alcohol was found in the stomach, intestine, liver, spleen, kidney and blood of the deceased which fact has not been deposed by Shanti and thus she is not a truthful witness. There is no corroboration to the testimony of Shanti except by an interested witness Hemraj, hence conviction cannot be based on her testimony. Even as per Shanti she used to leave for work at 9.00 AM in the morning and come back at 6.00 PM in the evening. Thus her presence at around 10.00-11.00 AM and

thereafter at about 1.30 PM on May 13, 2014 is doubtful. As per Shanti, even Raj Kumar used to leave for the job at 9.00 AM and come back in the evening sometime at 9.00 PM or 10.00 PM or 11.00 PM. When Shanti visited the Jhuggi at 10.00-11.00 AM, Raj Kumar was not found present at his jhuggi. Thus there was no possibility of Raj Kumar committing the offence at around 1.00 PM on the fateful day. The two important witnesses of the incident i.e. the two children of the deceased Gudia and Raj Kumar have not been examined though Shanti deposed that Gudia's son was intelligent. The photograph alleged to be bone of contention was not admissible in evidence for want of certificate under Section 65-B of the India Evidence Act.

6. Shanti PW-4, the prime prosecution witness and the maker of the FIR deposed that she was a resident of jhuggi No.83, Railway Line, Sarai Rohilla and was working in houses as maid in the nearby area. The deceased Gudia belonged to her village and she treated her as her sister-in-law. Raj Kumar, husband of Gudia used to sell kachori as a mobile vendor in the area. Deceased had two sons aged 4 and 5 years respectively. A week prior to the incident she came to know from her neighbours that Gudia had illicit relations with one Hemraj who resided in the area. (This statement of Shanti being inadmissible in evidence). Shanti further deposed that Hemraj and Raj Kumar used to consume liquor together. On May 12, 2014 at about 8.00-9.00 PM a quarrel took place between Hemraj and Raj Kumar when Hemraj showed his photograph with Gudia to Raj Kumar on which Gudia ran away from the place. Shanti and Raj Kumar searched for Gudia and found her hiding behind a car parked near Naveen school. They brought Gudia to Shanti's jhuggi when a quarrel took place between Raj Kumar and Gudia. Gudia stayed at Shanti's jhuggi when at about 1.00-1.30 AM in the night Raj Kumar took his wife Gudia to their jhuggi. After about 15-20 minutes Gudia came running and crying to her jhuggi. Gudia told Shanti that Raj Kumar was quarrelling and beating her on which Shanti asked Gudia to stay in her jhuggi. Raj Kumar came to her jhuggi and banged the door however she did not open the same. In the night Gudia stayed at Shanti's jhuggi. Next day i.e. on May 13, 2014 Raj Kumar came to her jhuggi at about 9-9.30 am and took Gudia back to their jhuggi after some persuasion. At around 11.00-12.00 noon Shanti went to the jhuggi of Gudia and found her present there along with her children. So she returned to her jhuggi. At about 1.00 PM

Shanti returned from her work when at about 1.30 PM the elder son of Gudia and Raj Kumar namely Karan came to her jhuggi and told that his mother was not getting up. She immediately reached Gudia s jhuggi where she found her lying on the floor in an unconscious state. She informed the neighbours in this regard and when she went back to Gudia s jhuggi she found Raj Kumar present and weeping. She along with her husband and Raj Kumar took Gudia to a hospital in an auto where Gudia was declared brought dead. She expressed her suspicion on Raj Kumar for having killed his wife Gudia.

7. Hemraj PW-3 deposed that he was a driver by profession and was residing near the jhuggi of Raj Kumar. The two jhuggis were adjacent to each other. Hemraj deposed that Raj Kumar used to return home at around 10.30 to 11.00 PM after consuming liquor and used to beat his wife. After some time Raj Kumar shifted his jhuggi to a small distance from his jhuggi, however he continued meeting his wife whenever she used to call him by making a telephone call. One day he took his photograph along with wife of Raj Kumar on his mobile. On May 11 or 12, 2014 the date he did not remember, at 9.00 PM there was exchange of hot words between Hemraj and Raj Kumar as Hemraj demanded back his money which he had loaned to Raj Kumar. On this Raj Kumar started abusing Hemraj and his family members. Due to this Hemraj got annoyed and in anger showed his photograph along with Gudia on his mobile phone. On seeing the photograph, Raj Kumar got more furious and stated that he would not leave Gudia. On hearing this Gudia ran away from there and Hemraj left for his jhuggi. Next day when he returned back to his Jhuggi he came to know that Gudia had died. He produced his mobile phone with a photograph to the Police which was seized vide seizure memo Ex.PW-3/A. He identified the mobile phone and the photograph therein before the Court.

8. The explanation of Raj Kumar in his statement under Section 313 Cr.P.C. was that he was innocent and not present in the Jhuggi at the relevant time, however he led no defence evidence in this regard. He also admitted that on the night of May 12, 2014 Shanti asked Gudia to stay in her jhuggi and he went back to his jhuggi. He later banged the door of Shanti, however Gudia stayed in the jhuggi of Shanti for the whole night and on the next day at about 9.00-9.30 AM he took her

back to his jhuggi. He also admitted Hemraj producing the mobile phone make Nokia Ex.P-10/4 having the photo of Gudia and Hemraj which mobile phone was sealed and seized vide memo Ex.PW-3/A by PW-21 and deposited in the malkhana. Though suggestions were given to Shanti that Gudia committed suicide due to shame, however there is no cross-examination of Dr.S.Lal PW-12 who conducted the post-mortem and opined that the possibility of homicidal death could not be ruled out.

9. From the statement of Shanti and Hemraj it has been proved by the prosecution that on the night of May 12, 2014 after Hemraj and Raj Kumar took liquor, there was a quarrel between the two of them when Hemraj showed the photograph which resulted in Raj Kumar getting furious. As a consequence Gudia ran away from the spot and was brought back to the jhuggi of Shanti by Shanti and Raj Kumar. When Gudia went back to her jhuggi with Raj Kumar there was a quarrel so she came back to Shanti s jhuggi and stayed there in the night till 9.00-9.30 am on May 13, 2014. These facts have also been admitted by Raj Kumar in his statement under Section 313 Cr.P.C. as noted above. At about 11.00-12.00 noon Shanti found Gudia with her children in her jhuggi, so she returned back to her jhuggi.

10. Learned counsel for the appellant challenges the testimony of Shanti on two counts firstly that as a daily routine she would leave for her work in the morning at 9.00-9.30 AM and come back at 6.30 PM in the evening and secondly even as per Shanti she did not find Raj Kumar at 11.00 or 12.00 noon with Gudia thus proving Raj Kumar s plea of alibi and that Raj Kumar was last seen with Gudia at 9-9.30 am whereas Gudia died at around 1.00 pm, thus he was not last seen with Gudia, close to the time of her death. About her presence Shanti in her re-examination by the learned APP has clarified that after Raj Kumar took back the deceased to her Jhuggi she left for work and came back at 11.00-12.00 noon in order to know the well-being of Gudia and thereafter she went back again to the work. The explanation rendered is quite plausible for the reason that Shanti was working as a maid in nearby houses and in between the work of two houses she would have easily come back to her jhuggi. As regards the presence of Raj Kumar, no doubt Shanti does not say that he was present at 11.00-12.00 noon when she went to

see Gudia, however since Raj Kumar was working as a mobile vendor in the nearby area it was possible for him to have come back home. The fact that Raj Kumar was in vicinity is also proved by the fact that though Raj Kumar was not found at his Jhuggi at 1.30 PM, however soon thereafter he appeared and accompanied Shanti and her husband to take Gudia to the hospital. The version of Shanti that Raj Kumar accompanied them with Gudia to the hospital is corroborated by the MLC of Gudia Ex.PW-8/A which notes Gudia was brought by her husband Raj Kumar.

11. The fact that the two children of Gudia were not examined by the investigating officer would not belie the credible version of Shanti and Hemraj, which to an extent is admitted by Raj Kumar in his statement under Section 313 Cr.PC. Since the mobile phone of Hemraj itself has been produced in the Court and exhibited, there was no need of a certificate under Section 65B Indian Evidence Act.

12. This Court examined various decisions of the Supreme Court and the presumption under Section 106 of the Indian Evidence Act raised against the husband when the wife dies in her matrimonial home in the decision reported as 2010(2) JCC 1563 Mukesh Vs. State authored by one of us (Pradeep Nandrajog, J.) and held:

52. Having examined the decisions of the Supreme Court on the point of death of a wife in her matrimonial house, we deem it appropriate to classify the said judicial decisions into undernoted 4 broad categories for the reason we are finding considerable confusion in the minds of the subordinate Judges as to the correct position of law:-

I. In the first category fall the decisions where it is proved by the prosecution that the husband was present in the house when the wife suffered a homicidal death and rendered no explanation as to how his wife suffered the homicidal death. (See the decisions reported as State of Rajasthan v Parthu (2007) 12 SCC 754, Amarsingh Munnasingh Suryavanshi v State of Maharashtra AIR 2008 SC 479, Ganeshlal v State of Maharashtra (1992) 3 SCC 106, Prabhudayal v State of Maharashtra (1993) 3 SCC 573, Dynaneshwar v State of Maharashtra (2007) 10 SCC 445, Trimukh Maroti Kirkan v State of Maharashtra (2006) 10 SCC 681, Bija

v State of Haryana (2008) 11 SCC 242 and State of Tamil Nadu v Rajendran (1999) 8 SCC 679)

II. In the second category are the decisions where the prosecution could not prove the presence of the husband in the house when the wife suffered a homicidal death but the circumstances were such that it could be reasonably inferred that the husband was in the house and the husband failed to render any satisfactory explanation as to how his wife suffered a homicidal death. The circumstances wherefrom it could be inferred that the husband was in the house would be proof that they lived in the house and used to cohabit there and the death took place in such hours of the night when a husband was expected to be in the house i.e. the hours between night time and early morning. (See the decisions reported as State of UP v Dr Ravindra Prakash Mittal (1992) 3 SCC 300 and Narendra v State of Karnataka (2009) 6 SCC 61).

III. In the third category would be proof of a very strong motive for the husband to murder his wife and proof of there being a reasonable probability of the husband being in the house and having an opportunity to commit the murder. In the decision reported as Udaipal Singh v State of UP (1972) 4 SCC 142 the deceased wife died in her matrimonial home in a room where she and her husband used to reside together. The accused-husband had a very strong motive to murder the deceased which was evident from the letter written by him to his mistress, which letter clearly brought out the feeling of disgust which the accused had towards the deceased. The accused had the opportunity to commit the murder of the deceased as there was evidence to show the presence of the accused in the village where the house in which the deceased died was situated at the time of the death of the deceased. Noting the facts that the accused had a strong enough motive and an opportunity to murder the deceased, noting that there was no evidence that the appellant was seen in his house by anybody, the Supreme Court convicted the accused.

IV. In the fourth category are the decisions where the wife died in her matrimonial house but there was no evidence to show presence of the husband in the house at the time of the death of the wife and the time when the crime was committed was

not of the kind contemplated by the decisions in category II and was of a kind when husbands are expected to be on their job and there was either no proof of motive or very weak motive being proved as in the decision reported as *Khatri Hemraj Amulakh v State of Gujarat AIR 1972 SC 922* and *State of Punjab Vs. Hari Kishan 1997 SCC Cri. 1211*.

13. The present case falls in the third category of cases noted above. Though no one speaks about the presence of Raj Kumar at around 1.00 PM on May 13, 2014 but it was very much in the vicinity being a mobile vender and had a very strong motive to commit the murder of Gudia.

14. The defence of Raj Kumar, as per the suggestion given to Shanti, is that Gudia committed suicide. As noted above, Dr.S.Lal opined that death to be homicidal. There is no cross-examination of Dr.S.Lal on this count. Thus, there is no merit in this contention.

15. The offence committed by Raj Kumar would not amount to culpable homicide not amounting to murder being caused on a sudden and grave provocation in view of the decision reported as *AIR 1962 SC 605 K.M. Nanavati Vs. State of Maharashtra* where in a similar situation it was held:-

85. The Indian law, relevant to the present enquiry, may be stated thus: (1) The test of grave and sudden provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to Section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

86. Bearing these principles in mind, let us look at the facts of this case. When Sylvia confessed to her husband that she had illicit intimacy with Ahuja, the latter was not present. We will assume that he had momentarily lost his self-control. But, if his version is true for the purpose of this argument we shall accept that what he has said is true it shows that he was only thinking of the future of his wife and children and also of asking for an explanation from Ahuja for his conduct. This attitude of the accused clearly indicates that he had not only regained his self-control, but, on the other hand, was planning for the future. Then he drove his wife and children to a cinema, left them there, went to his ship, took a revolver on a false pretext, loaded it with six rounds, did some official business there, and drove his car to the office of Ahuja and then to his flat, went straight to the bedroom of Ahuja and shot him dead. Between 1.30 p.m., when he left his house, and 4.20 p.m., when the murder took place, three hours had elapsed, and therefore there was sufficient time for him to regain his self-control, even if he had not regained it earlier. On the other hand, his conduct clearly shows that the murder was a deliberate and calculated one. Even if any conversation took place between the accused and the deceased in the manner described by the accused though we do not believe that it does not affect the question, for the accused entered the bedroom of the deceased to shoot him. The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for the murder. We, therefore, hold that the facts of the case do not attract the provisions of Exception 1 to Section 300 of the Indian Penal Code.

16. Appeal is dismissed.

17. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

18. TCR be returned.

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