

Chandra Bhan Vs. State

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Court : Allahabad

Decided On : Jul-29-2004

Reported in : 2005CriLJ351

Judge : M.C. Jain and ;K.N. Ojha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 84 and 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : CrI. Appeal No. 144 of 1981

Appellant : Chandra Bhan

Respondent : State

Advocate for Def. : A.K. Awasthi, Adv. and ;A.G.A.

Advocate for Pet/Ap. : V.P. Tripathi, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

K.N. Ojha, J.

1. Instant Criminal Appeal has been filed against judgment and order dated 25-7-1980 passed by learned IV Additional Sessions Judge, Agra, in Sessions Trial No. 656 of 1978, State v. Chandrabhan, under Section 302, I.P.C. by which the

appellant has been awarded sentence of life imprisonment for committing murder of his wife Smt. Gullo.

2. We have heard Sri V.P. Tripathi, learned amicus curiae for the appellant and Sri A.K. Awasthi, learned AGA from the side of the State. We have also carefully perused the record.

3. According to the prosecution, Chandrabhan appellant used to live in his house in village Nandpura along with his wife Smt. Gullo and two children. Chandrabhan assaulted Smt. Gullo inside the room of his house by Phookni on 11-5-1978 at about 3.00 p.m. and stabbed her in her stomach by Ranpi, as a result of which she fell down bleeding profusely. The blood also splashed in the room and its walls. After so causing injuries to his wife, Chandrabhan dragged her in injured condition to a pit near his house and left her there at a distance of about 15 steps from his door. Children of the locality were playing there. They raised alarm that Chandrabhan had caused injuries to his wife Smt. Gullo. Hearing the alarm, P.W. 4 Pancham Singh, P.W. 6 Sobran Singh and one Parshadi went there and found Smt. Gullo lying in the pit in injured condition. There was blood in the pit. The earthen pieces stained with blood were also found there. Smt. Gullo was serious and was semiconscious. There was a petticoat on her person. Chandrabhan was trying to pull her by her Petticoat. The witnesses caught hold of him and tied him with rope to a 'Neem' tree nearby the pit. Pancham Singh, Sobran Singh and Parshadi went to outpost of the police station to inform the police, but FIR was not lodged. In the meantime, Rambabu, younger brother of Chandrabhan, took, Smt. Gullo to S.N. Hospital, Agra, for treatment, Smt. Gullo was admitted, in S.N. Hospital, Agra, at 5.50 p.m. on 11-5-1978. Her injuries were examined by P.W. 9 Dr. Ramesh Kumar Jasuja, who found the following 11 injuries on her body.

1. Stab wound 2 1/2' x 1' x skin deep in front of left elbow.

2. Stab wound 2V/2' x 1' on the stomach left side. Small intestine was coming out.

3. Stab cut wound 2' x 1' on the stomach front and left side 2' from injury No. 2 toward umbilicus.

4. Stab cut wound 2 1/2 x 1' x cavity deep on the stomach left side small intestine were coming out from the injury.
5. Stab cut wound 2' x 1' x muscle deep on left hand front and back 4 1/2' above the elbow.
6. Cut wound 1/2 x 1/4' skin deep on left elbow inner side.
7. Cut wound 1' x 1/4' x skin deep on left arm inner side, 4' below the elbow.
8. Stab wound 2' x 1' x muscle deep on left thigh back side, 5' above the knee.
9. Cut wound 2' x 1/4' x skin deep on left arm back side, 3' below the elbow.
10. Cut wound 1' x 1/4' x skin deep, 1' above the left elbow back side.
11. Stab wound 2' x 1' x bone deep on the back.

4. In the opinion of the Doctor the injuries were caused by sharp edged pointed weapon such as knife and were fresh. X-ray was advised for some of the injuries. In the opinion of the Doctor the injuries could be caused on the same day at 3.00 p.m. The condition of the patient was very serious.

5. Information was sent to the City Magistrate, II, Agra, Sri R. S. Dohrey, who reached the hospital in the night of 11/12-5-1978 at 2-15 a.m. P.W. 18 Doctor Rajiv Kumar, House Surgeon was on duty at that time. Dr. Rajiv Kumar examined Smt. Gullo and found that she was in fit condition to make dying declaration. After fitness certificate given by the Doctor, the Additional City Magistrate Sr. R. S. Dohrey recorded the dying declaration of Smt. Gullo in which she stated that on 11-5-1978 at about 4.00 p.m. she was sleeping where her husband Chandrabhan came and assaulted her with Phookni. She raised alarm, but there was none in the house. Then Chandrabhan took Ranpi and stabbed in her stomach and thereafter he dragged her outside the house and went away and then she became unconscious. She also stated that her husband acted like a mad person and no quarrel had taken place with him. Her two children were sleeping in the house. She was married 13 years before and no quarrel had taken place earlier. This madness like condition of her husband was for the last few months.

6. Later on, Gullo breathed her last on 12-5-1978 at 8-20 a.m. Chick report No. 20 was written at police station Kotwali, district Agra, on 12-5-1978 at 9-45 a.m. on the information of Smt. Chandrakala, nurse of S. N. Hospital, Agra. Postmortem examination was done by P.W. 5 Dr. R. K. Sharma, on 13-5-1978 at 11-15 a.m. In the opinion of the Doctor the deceased was aged about 25 years and following ante-mortem injuries were found on her body :

1. Stitched wound 5 1/2' on left side stomach 1/2.' up to umbilicus.
 2. Stitched wound 2 1/2 on right side abdomen 3/4' above the umbilicus.
 3. Wound hole 1' x 1' on left side abdomen lower part, 3' from umbilicus.
 4. Wound hole 2 1/2.' x 1 1/2' on left side abdomen, 3 1/2' away from umbilicus.
 5. Stitched wound with a tube drain inside the abdomen left side.
 6. Stitched wound with bandage on right side abdomen, 4' away from umbilicus.
 7. Stitched wound 1' inner side lower part on right arm 4 1/2' above the wrist.
 8. Stitched wound 1' inner side of right elbow.
 9. Stitched wound 2' below the right arm.
 10. Stitched wound on front and left side elbow 3' long.
 11. Stitched wound on arm.
 12. Stitched wound 1 3/4' on the back of left upper arm.
 13. Trans versed wound 2' x 1/2' on the back 1 1/2' above the hip.
 14. Cut wound 1 1/2' x 3/4' x muscle deep on the back lower part left side.
7. On internal examination small intestines were found stitched, which were cut through and through. There was pregnancy of about five months. In the opinion of Doctor, the cause of death was shock and hemorrhage as a result of ante-mortem injuries, which were sufficient to cause death. It was also the opinion of the Doctor

that injuries No. 13 and 14 were caused by sharp edged weapon such as Ranpi.

8. After preparing site plan, inquest report, recording statements of witnesses and collecting evidence, the Investigating Officer submitted charge-sheet under Section 302, IPC against the accused appellant and thereafter the case was committed to the Court of Sessions.

9. Prosecution examined P.W. 1 Constable Dalbir Singh, P.W. 2 Constable Rambir Singh, P.W. 3 Head Morarrir Shiv Narain Singh, P.W. 4 Pancham Singh, P.W. 5 Dr. R. K. Sharma, P.W. 6 Sobran Singh, P.W. 7 Shyam Lal, P.W. 8 S.S.I. Mahesh Chand Sharma, P.W. 9 Dr. R. K. Jasuja, P.W. 10 Prem Prakash, clerk in the Court of C.J.M. Agra, P.W. 11 Goverdhan, Reader in the Court of Munsif Magistrate, Civil Court, Agra, P.W. 12 constable Murad Khan, P.W. 13 M. P. Singh, Assistant Prosecuting Officer, Collectorate, Agra, P.W. 14 Ram Gopal, Record Room Moharrir, Collectorate, Agra, P.W. 15 constable Jagdish Gautam, P.W. 16 R. K. Ashokayan, Advocate, P. W. 17, Smt. Ram Shri and P.W. 18 Dr. Rajiv Kumar.

10. No witness was examined in defence. The defence case is that murder of Smt. Gullo was not committed by the appellant. In those days he was ill and he used to live in a temple. His mother used to arrange medicine for him from hospital.

11. The star witnesses of the occurrence who have been examined in this case are P.W. 4 Pancham Singh, P.W. 6 Sobran Singh and P.W. 7 Shyam Lal. Pancham Singh and Sobran Singh are residents of the same village Nandpura. P.W. 4 Pancham Singh has stated that it was at about 2.30 or 3.00 p.m. when he was sitting at his residence situated three or four houses away from the house of the accused Chandrabhan. He heard the alarm raised by the children who were saying that Chandrabhan had caused injuries to his wife. He rushed and reached the pit nearby the house of the accused Chandrabhan. P.W. 6 Sobran Singh deposed that it was at about 3 or 3.30 p.m. when he was sitting beneath the neem tree. Children were running shouting that Chandrabhan had caused injuries to his wife and his wife was lying in a pit. The statements of P.W. 4 Pancham Singh and P.W. 6 Sobran Singh are consistent that they saw that Chandrabhan was catching hold of the petticoat of his wife and was trying to raise her up, but she was lying in

unconscious condition. The presence of these witnesses was natural. They had no enmity with the accused and they made consistent statement that no other person was there, who could have caused injuries to Smt. Gullo, P.W. 7 Shyam Lal is the third witness of the occurrence. He is also resident of Nandpura. He deposed that when he first saw Smt. Gullo in injured condition, she was lying in a pit. There were injuries on her body and blood was coming out from her injuries. He had seen Chandrabhan also there, who was near Smt. Gullo. It is obvious that the witnesses reached the pit on hearing alarm raised by the children. When they reached there, they found Smt. Gullo in injured condition and Chandrabhan was also there. He was catching hold of her petticoat. In case some outsider had caused injuries to her due to enmity or to rob cash or ornaments from her, then the appellant himself would have raised alarm and offered resistance to the culprit. He would have indeed been the first person to lodge the FIR. Nothing of the kind was done by him. It shows that he was the real culprit and injuries were caused to her by him. Whatever may be the motive, when the evidence clearly proves that offence was committed by the appellant then motive is immaterial.

12. In this case children were not examined but it does not adversely affect the prosecution case. They only raised alarm. On alarm being raised by them, the witnesses reached the spot and saw what has been related above. They even tied Chandrabhan with the tree, but later on when Smt. Gullo was carried to the hospital, some one rescued him with the result that he ran away.

13. The fact that P.W. 4 Pancham Singh and P.W. 6 Sobran Singh had heard the children of the locality naming the accused Chandrabhan as the assailant of his wife is admissible as *res gestae* evidence.

14. In this case P.W. 10 to P.W. 17 were produced to prove the loss of original dying declaration of the deceased and the death of the Magistrate, who had recorded the dying declaration and to prove that exhibit Ka-26 is the true copy of the said dying declaration prepared by P.W. 15 Jagdish Gautam.

15. The story about the loss of the said dying declaration is that the accused had applied through his application Ex. Ka-17 before the Committing Magistrate for being supplied the copy of the dying declaration, which was not given to him under

Section 207, Cr. P.C. and as such enquiries were made whether the dying declaration was taken and then it was found that the dying declaration was so taken. The Magistrate ordered for giving its copy and as such the original dying declaration came to the hands of P.W. 15 Jagdish Gautam for preparing its copy and he prepared the said true copy exhibit Ka-26. There is the endorsement Exhibit Ka-21 of the lawyer of the accused, Sri. R. K. Ashokayan that he received the copy of the dying declaration and since thereafter the said original dying declaration is not traceable. As such it is contended that by mistake the original dying declaration was handed over to Sri. R. K. Ashokayan and its copy prepared by Jagdish Gautam exhibit Ka-26 remained with the police. As such the said paper, which was given to Sri R. K. Ashokayan vide his endorsement exhibit Ka-21 was required to be filed and Sri Ashokayan was examined, who stated that he gave it to the mother of the accused and as such the mother of the accused P.W. 17 Smt. Ram Shri was examined, who stated that she handed over this paper to the new counsel of the accused and as such that paper, which was given to Sri Ashokayan on 21-11-1978 could not be filed in the Court.

16. P.W. 18 Dr. Rajiv Kumar had examined Smt. Gullo at 2-15 a.m. on 12-5-1978 and gave his fitness certificate that she was in a fit condition to give dying declaration. As such he proved that said fitness certificate and the endorsement of Sri. R. S. Dohrey on the bed head ticket to show that he had recorded the dying declaration.

17. Thus exhibit Ka-26 is the true copy of the statement, which was made by Smt. Gullo. It was recorded by the Additional City Magistrate, Agra, on 12-5-1978 at 2-15 a.m. Smt. Gullo had stated that she was sleeping. At about 4.00 p.m. her husband Chandrabhan came to her and assaulted her with Phookani (an instrument to revive fire) and Ranpi. He dragged her out of the house and she became unconscious. This dying declaration inspires judicial confidence because there is nothing to infer that someone could have prompted or influenced her to name Chandrabhan. There is nothing to show that Ram Babu, brother of Chandrabhan, who had taken Smt. Gullo to the hospital, was inimical to Chandrabhan. There is also no evidence that any one else having enmity with Chandrabhan had access in the hospital to influence Smt. Gullo. On the contrary,

further part of this dying declaration shows that there was no dispute or quarrel between her and her husband. As such the dying declaration appears to be a voluntary statement given by Smt. Gullo. It is amply proved from the dying declaration of the deceased that the accused was the assailant of his wife. The statements of P.W. 4 Pancham Singh, P.W. 6 Sobran Singh and P.W. 7 Shyam Lal as also the res gestae evidence referred to above lend corroboration to the dying declaration.

18. The case of the defence is that the accused was mad on the date of the occurrence and therefore, he is entitled for the benefit of Section 84 of IPC.

19. Learned defence counsel has cited (2003) 46 All Cri C 28 : (2002 Cr LJ 4356). Shrikant Anandrao Bhosale v. State of Maharashtra in which it has been laid down by Hon'ble the Apex Court that state of mind of the accused at the time of commission of the offence is an aspect to be inferred from the circumstances. Unsoundness of mind preceding the occurrence and following the occurrence is also a matter of consideration. Family history, cause of ailment, earlier medical treatment, regular or casual, killing a person and no attempt to hide or run away are other circumstances which deserve consideration. Thus, it is laid down that totality of the circumstances has to be examined. It is also to be ascertained whether the act was committed out of extreme anger or was result of unsound mind. The appellant is entitled to the benefit of Section 84 of IPC only if he was incapable of knowing the nature of his act because of unsoundness of mind.

20. In instant case, after causing injuries to his wife, the accused appellant dragged her to a pit nearby his house. When children ran away from that place raising alarm, adult male members of the village reached there. They tied the appellant with a 'Neem' tree and carried Smt. Gullo to S. N. Medical Hospital, Agra, for medical examination and treatment. In the meantime, the appellant Chandrabhan somehow got rescued. He ran away from the place. It bears testimony of his guilty mind. Had he been suffering from unsoundness of mind, he would not have disappeared from the scene of occurrence. That apart, under Section 313, Cr. P.C. it was stated by the accused appellant that his medical treatment was going on and he used to live in a temple, but no witness was

examined to prove any medical document or to state that before the occurrence he was mad and his medical treatment was going on. The case was fully contested by the appellant. When his statement under Section 313, Cr. P.C. was recorded, he made statement that he was not involved in the commission of the crime and he was falsely implicated in the case. It shows that he proceeded with his defence like a sane person and his conduct was not like that of a mad man. As said above, no medical paper has been produced to show that at any point of time the appellant was suffering from any mental disease earlier to the occurrence. P.W. 6 Sobran Singh, who was resident of the village of Chandrabhan stated that Chandrabhan was neither mad on the date of occurrence nor on any date prior to the occurrence. If in dying declaration Smt. Gullo stated that her husband acted like a mad man, it does not mean that the appellant was a man of unsound mind. It only meant that he was so angry that he acted like a mad man. On consideration of totality of circumstances, it cannot be accepted that at the time of the commission of this crime the accused-appellant was of unsound mind.

21. In view of above discussion, this Court subscribes to the view of the learned trial Judge and affirms the judgment of conviction and sentence of life imprisonment under Section 302, IPC passed against the appellant Chandrabhan.

22. The appeal fails and is dismissed. The appellant is in jail. He will remain in jail to serve out the sentence passed against him.

23. Sri V. P. Tripathi, Advocate, who argued the appeal as amicus curiae shall get Rs, 1000/- as his fee.

24. The judgment be certified to the lower Court for needful compliance in consequence of the dismissal of the appeal under intimation to this Court within two months.