

Vinod Bhalla and anr. Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-23-1991

Reported in : 1992CriLJ3527

Judge : Faizanuddin and ;R.D. Shukla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 109, 201, 302, 305 and 306

Appeal No. : Criminal Appeal No. 952 of 1985

Appellant : Vinod Bhalla and anr.

Respondent : The State of Madhya Pradesh

Advocate for Def. : A.S. Jha, Govt. Adv.

Advocate for Pet/Ap. : Rejendra Singh, Adv.

Judgement :

R.D. Shukla, J.

1. This appeal is directed against the judgment and order dated 13-8-1985 of Sessions Judge, Rewa, passed in Sessions Trial No. 75 of 1983, whereby the accused appellants have been convicted under Section 302 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life.

2. The brief history of the case is that accused appellant No. 1 Vinod Bhalla was married to Smt, Rajni (deceased) on 3rd February 1982 at Allahabad. The accused-appellant No. 2 is the mother of accused-appellant No. 1 accused-appellant No. 1 is employed as cashier-cum-clerk in the State Bank of India at Sidhi, nearly 90 K.Ms, from Rewa (place of incident). Smt. Rajni (deceased) was living along with her mother-in-law (accused-appellant No. 2) in the house situated at Rewa. It is alleged that accused persons were demanding dowry from the father of the deceased and they were dissatisfied with the dowry given by the parents and relations of Smt. Rajni.

3. On 27-5-82, dead boy of Smt. Rajni was found in a supine position in one of the rooms situated in the first floor of the house and by the side of the store-room. Some tiles, bamboos and rafters used for supporting the tiles, were also fallen on the body. Some of those articles were also burnt.

The matter was reported to police by telephone. The said information was recorded in Roznamacha Sanha No. 1429 in the city Kotwali, Rewa. Thereafter, Mahipat Singh, Town Inspector, registered a Marg vide Roznamacha Sanha No. 1444 and visited the spot. The Panchnama (Exs. P-10 and P-11) of the body of deceased Smt. Rajni were prepared. The photographs of the body and the room (Exs. P-22 to P-25) were also taken and the body was sent for post-mortem examination. P.W. 9 Dr. N. R. Moghe conducted the autopsy on the body of deceased Smt. Rajni. Since the body skin was almost burnt in all parts, including heart, kidney, spleen and liver, as such, no definite opinion could be given about the cause of death of the deceased. Viscera was preserved by the doctor for chemical analysis. P.W. 9 Dr. N. R. Moghe gave the post-mortem report (Ex. P-14).

The post-mortem report, photographs and map of the spot were sent to Forensic Expert at Bhopal. P.W. 11 Dr. Heereshchandra, vide his report (Ex. P-20) and the diagram (Ex.P-21), has opined that the death, in all probability, was homicidal and had occurred between two to three hours of last meals.

The accused-appellant No. 2, who was present during Panchanama proclaimed the death to be suicidal and further proclaimed that the death occurred during the

morning hours.

4. During investigation, father of the deceased, viz., P.W. 1 Pashupatinath Tandon, disclosed about the demand of dowry and of coercive practice on the deceased and, therefore, a case earlier under Section 306 of the Indian Penal Code was registered vide Ex.P-19 on 11-12-1982. The investigation was done accordingly.

However, on the report of Dr. Heerashchandra and after filing of the challan at the stage of charge, the case was converted under Section 302 of the Indian Penal Code.

5. Charges under Section 305 read with Sections 109 and 34 as also under Sections 302 and 302 read with Section 34 of the Indian Penal Code were framed. Accused persons abjured the guilt and pleaded innocence. Accused Vinod Bhalla had pleaded innocence and led defence evidence to demonstrate that, on the date of incident, he was at Sidhi, merely 90 K.Ms. away from the place of incident. Accused No. 2 Sarojini has pleaded that she was in the ground floor of the house and she does not know as to her daughter-in-law Rajni (deceased) dies in the first floor of the house.

6. The learned trial Judge has convicted and sentenced the accused-appellants as above. Hence, this appeal.

In the memo of appeal and during the course of arguments, learned counsel for the appellants has submitted that the fact of homicidal death has not been proved beyond reasonable doubt and the evidence about participation in the crime is scanty and untrustworthy and the chain of circumstances is incomplete.

As against it, learned counsel for the State has submitted that death was homicidal and if it is not accepted, it be taken to be a suicidal death as a result of demand of dowry.

7. Prosecution has examined P.W. 1 Pashupatinath Tandon, P.W. 2 Vimla Tandon, P.W. 3 Kailashnath Tandon, P.W. 4 S.L. Chaturvedi, P.W. 5 Jagdish Prasad, P.W. 6 Madhusudan Singh, P.W. 7 Prakshnath Tandon, P.W. 8 Shriram

Dubey, P.W. 9 Dr N.R. Moghe, P.W. 10 Mahipat Singh and P.W. 11 Dr. Heereshchandra, in support of its case, while the accused persons examined D.W. 1 Hridainath Khanna, P.W. 2 Brijmohan Shukla, D.W. 3 Sukhlal Prasad, D.W. 4 Kusum Bhalla and D. W. 5 Subodh Kumar Khatri, in support of their defence.

8. P.W. 10 Mahipat Singh, Sub-Inspector, has stated that he visited the spot, prepared Panchanama after writing the report (Ex. P-10). The photographs of the place of incident, including the dead body of the deceased, were taken as per Exs. P-22 to P-25. These Photographs were examined by Dr. Heereshchandra (P.W. 11).

9. The photographs and Panchanama show that the dead body was lying in a supine position; the burn clothes of the deceased were sticking to the body; the broken tiles, half burnt broken rafters and bamboo pieces were also lying over the body.

Dr. Moghe (P.W. 9), who conducted the autopsy on the body, has stated that rigor mortis was present on upper and lower limbs. He has stated that the tongue was protruding from mouth, eyes were bulging. He has further stated that stomach contained semi-digested food and was congested. Small and large intestines, liver, spleen and kidneys were also congested. There was thread with piece of Sari tied around the waist.

10. Dr. Heereshchandra has opined that death must have occurred within two to three hours after the last meals. It is, therefore, certain that the deceased did not die during morning hours, but died in the mid-night. Dr. Heereshchandra has further opined that, in all probability, death was homicidal. Protruding of the tongue and bulging of the eyes is suggestive of the fact that the deceased died of asphyxia may have been because of pressure on chest, throat or nostrils, and by blocking of air.

11. The photograph (Ex. P-23) shows that a wooden box of sewing machine was found intact by the side of the body. On the right side of the dead body, there was a wooden chair. Wooden cot is also visible by the side and near the body. The chair, cot and the box, lying by the side of the body, had no fire. It appears that

somebody had tried to disturb the room, including the tiles and bamboos, they were thrown on the body of the deceased.

Had the fire flames been so high as to reach : bamboos and rafters of the roof, it must have damaged the chair, cot and the box lying by the side of the dead body.

Had the death been accidental or suicidal, the fundamental instinct of self-preservation must have culminated in struggle for life and that must have caused disturbance all around.

Learned Sessions Judge has accepted the fact that the death was homicidal. We find nothing to differ from this finding. In our opinion, therefore; it has been proved from the circumstances and the position of the body, that Rajni met a homicidal death and death occurred in the mid-night and not in the morning hours.

12. Now, so far as the evidence as to the causing of homicidal death is concerned, it appears to be shaky. Though it may be presumed that if husband and wife were living together and if the homicidal death of the wife occurs in the residential house of the husband, in the absence of any other explanation, or in the absence of any evidence of murder having been caused by somebody else, it may be presumed that the death may have been caused by the husband himself,

Though it is also true that Sidhi, the place of employment of accused Vinod Bhalla, is not unapproachable, it connected with metal road nearly 90 K.Ms, away from the place of incident, and a person could reach Sidhi in the morning leaving Rewa during or after mid-night. Even in a motor-cycle, it will take only two hours to reach Sidhi, but no evidence has been collected on this point as to whether Vinod Bhalla was in the house in the evening or during the night, or that he left Rewa in or about midnight.

13. As against it, D.W. 2 Brijmohan Shukla has stated that he was jointly living with Vinod Bhalla in one of the rooms. He has further stated that, on 27-5-82, he informed Vinod Bhalla that his wife has died of burn injuries, and that he proceeded to Rewa thereafter, but, in cross-examination, he has admitted that Vinod Bhalla was often visiting Rewa. D.W. 2 Brijmohan Shukla has also stated

that Vinod Bhalla was in Sidhi a day prior to the date of incident.

14. As observed above, a person could come to Rewa in the evening or in the night and further reach back Sidhi nearly in two hours, but, as stated above, evidence to that effect neither has been collected nor adduced. Under these circumstances, it cannot be accepted beyond reasonable doubt that Vinod Bhalla was present in the house during the mid-night and returned back to Sidhi after committing murder. He is, thus, entitled to benefit of doubt.

Learned counsel for the State has submitted that had the murder been committed by any body else other than the member of the family, there would have been hue and cry and accused No. 2 Sarojini, the mother of Bhalla, who was also residing along with deceased Rajni, must have raised alarm and informed the police in the night itself. This circumstances do create a suspicion and doubt, that murder may have been committed by a member of the family, but there is a long distance between 'may' and 'must' and unless that gap is filled, a person cannot be convicted of a heinous offence of murder.

15. Now, so far as accused No. 2 Sarojini is concerned, she was the only other occupant of the house along with Rajni; though, as stated by her, she was living in the ground floor. However, there is nothing to show that she is suffering from any infirmity so as to prevent her from going to the first floor.

However, she is said to be a lady aged about 50 years and deceased was also young and healthy woman and, therefore, it would not have been possible for accused Sarojini to overpower the deceased without sustaining any injury, if resistance was offered, which is natural (by the deceased). The murder must have been committed by a person who could overpower Rajni by force, or by a person on whom she had so much of confidence that pressure on the chest, mouth and nostrils could have been caused all of a sudden.

16. Sarojni was not living together with the deceased Rajni in one room. There is nothing to show that the first floor of the house is unapproachable from outside or that a third person could not reach the first floor where her dead body was found, without first approaching the ground floor occupied by Sarojini.

Learned counsel for the State has submitted she being the only other occupant of the house along with Rajni, the murder could not be committed without her complicity. Though it raises a strong suspicion, but no evidence to show the unapproachability of the place of murder, by a third person has been adduced and, therefore, it cannot be held with all reasonable certainty that Sarojini committed the murder or abetted the murder.

17. Evidence of P. Ws. 1 and 2 Pashupatinath Tandon and Kailashnath Tandon, can utmost show a strong motive for the offence, but that is not sufficient for presuming that the murder has been committed by Sarojini. She also cannot be convicted of offence of murder.

It has been found in the earlier paragraphs of this judgment that the death was homicidal, that she (Rajni) died within two to three hours of last meals, i.e., in the mid-night; that the photographs and Panchanama go to show that the place of incident was intermeddled and the bamboo pieces, rafters, broken tiles etc., were thrown over her after death. Had it been due to fire in the roof of the store-room, as referred above; the wooden chair, wooden box of sewing machine and wooden part of the cot lying by the side of the dead body, must have caught fire. This intermingling must have been done with a purpose to destroy and for causing disappearance of evidence for screening the offender.

18. This intermeddling in the evidence and disturbance in the place of incident, must not have been done without the complicity of accused Sarojini, because she was the only other occupant (other than the deceased) of the house. It can, therefore, readily be inferred that accused Sarojini, either herself or through some of her associates, caused disturbance and intermeddling the place of incident. It must have been done with intent to destroy and cause disturbance of evidence to screen the offender. In the opinion of this Court, therefore, she is liable for the offence for causing disappearance of evidence in order to screen the offender punishable under Section 201 of the Indian Penal Code.

19. As a result, the appeal of accused Vinod Bhalla is accepted and he is acquitted of the charges levelled against him. He is on bail. His bail-bonds are discharged.

Appeal of accused Sarojini is partly accepted. She is acquitted of the offence punishable under Section 302, read with Section 34 of the Indian Penal Code. However, she is held guilty under Section 201 of the Indian Penal Code for causing disappearance of evidence in order to screen the offender, and sentenced to rigorous imprisonment for five years under Section 201 of the Indian Penal Code. She is on bail and, therefore, directed to surrender before the Chief Judicial Magistrate Rewa, on 9-12-91 for serving out the remaining, period of sentence.

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