

State of M.P. Vs. Nuru

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Court : Madhya Pradesh

Decided On : Jul-30-1996

Reported in : I(1997)DMC82

Judge : R.D. Shukla and ;Shambhoo Singh, JJ.

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

Appeal No. : Criminal Appeal No. 547 of 1990

Appellant : State of M.P.

Respondent : Nuru

Judgement :

R.D. Shukla, J.

1. The appeal is directed against the Judgement & Order dated 6.10.1990 of Additional Sessions Judge/ Kukshi, District Dhar, passed in S.T. No. 204/90, whereby the accused-respondent has been acquitted Under Sections 302 & 201,1.P.C. for allegedly having committed murder of his wife Savitri and for having concealed the body behind the house by cremating her surreptitiously.

2. Undisputed facts of the case are that Savitri (deceased) was married to the accused nearly 7-8 years before the incident. P.W. 1 Somla and P.W. 4 Mangti are father and mother of the deceased. Radhu (P.W. 2) is the daughter of the accused

while P.W. 3 Kishan and P.W. 5 Guddi are brother and sister of Savitribai respectively. Savitribai was living with the accused.

3. It is alleged that accused assaulted and caused injuries to his wife Savitri, who died in consequence thereof. Accused, thereafter, cremated the body behind the tapra and put some tiles over it. Radhu has seen the murder. P.W. 5 Guddi had come to the village to meet her relations, to whom Radhu informed about the fact. Thereafter, persons of the village including father of deceased came on the spot. They saw the body lying behind the 'tapra'. The matter was reported to the police Kukshi by P.W. 1 Somla. The information was recorded by Kishanlal Anjna, who visited the spot, prepared a Panchnama (Ex. P/5) for excavation of the body and after excavation further Panchnama Ex. P/8 was prepared. Thereafter, inquest report of the body was prepared vide Ex. P/7. He also prepared site map Ex. P/ 9. One wooden stick and bushirt was seized from the accused vide Ex. P/10, stained and controlled earth was seized from the spot vide Ex. P/11 and, then, the body was sent for post mortem examination.

4. Dr. R.C. Patidar (P.W. 6) conducted autopsy on the body and found as follows:

1. Lacerated wound 2' x 2 1/2' on the left arm maggots were present.
2. 11th & 12th ribs of right side were visible. It was eaten away by maggots.

On further examination Dr. Patidar found injuries on the right parietal and right frontal bone. It was fractured. One piece of the bone had gone into the brain. Brain had liquefied. In the opinion of doctor the person died that head injury and the death had occurred within 7 days from the time of examination. The injuries found on the body of Savitribai could be caused by hard and blunt weapon. The doctor prepared report Ex. P/4. The clothes of the deceased were sent to the police in a sealed packet which were seized by the Police Officer. It appears these articles were sent for chemical examination, however, report could not be received.

5. After investigation accused was prosecuted, who pleaded not guilty and false implication. The learned Trial Judge has acquitted the accused, as above. Hence, this appeal by Ae State.

6. The contention of the learned Counsel for the appellant is that despite eyewitnesses having been hostile, circumstances do prove the fact of murder and the fact of causing disappearance for screening the offender by cremating the body without informing to the villagers and relations. In the alternative, learned Counsel has submitted that even if the fact of murder is not accepted, the accused would be guilty Under Section 201, I.P.C. for causing disappearance of the evidence for screening the offender.

As against it, learned Counsel for the respondent-accused has submitted that since eye-witnesses have not supported the case of the prosecution the very foundation of prosecution case is broken and, therefore, the accused has rightly been acquitted.

7. We were taken to the evidence on record. There is no dispute as to the homicidal death of Savitribai. Even otherwise this is proved from the evidence of P.W. 9 Kishan Lal Anjna and P.W. 6 Dr. Patidar. The defence itself has given a suggestion to Somla, at para 12 of his statement, that on the day of report lodged by Somla the body of Savitri was taken out. Thus, the fact of homicidal death of Savitri, who was residing with the accused at the relevant time stands proved beyond reasonable doubt.

8. P.W. 5 Guddi (sister of deceased) has stated that about 3 days prior to the death of Savitri, she (Savitri) had come to her house. The accused has assaulted Savitri. Thereafter, accused came and took Savitri by force to his house. The accused did not allow Savitri to take food in the house of her sister. This fact has not been challenged. This goes to show that accused was living with her wife and he took his wife to his house by force despite his wife Savitri having sustained injuries. Accused did not allow her to take food in the house of Guddi. This further goes to show that Savitri was healthy and was seen alive in the company of accused.

From the evidence of Somla, Guddi, Ramesh and Kishanlal it is proved beyond reasonable doubt that the body of Savitri was taken out, which was cremated just by the side of the wall of 'tapra' Some parts of the body were visible, though, some parts were covered by tiles. Similarly, from the evidence of prosecution witnesses

specially Somla, Ramesh, Guddi and Mangti it is proved that accused did not inform about the death of his wife to his or his in-laws and other relations. Thus, the body of Savitri was cremated stealthy. This is a conduct which is akin and consistent with the guilt of the accused.

9. Though, the direct evidence of causing of injury and murder is not available, '(hit following facts stand proved beyond reasonable doubt : (i) Savitribai was living alongwith accused; (ii) Savitribai had sustained injuries about 3-4 days prior to the excavation of the body (iii) Savitribai was taken by the accused forcefully from the house of Guddi (sister-in-law of accused) and that thereafter Savitri was never seen alive; (iv) There was unusual mode of cremation, without informing his own and the relations and parents of Savitri; & (v) The body of Savitri was cremated just by the side of the house, cremation was not full, some part of the body was visible, they were covered by tiles. This goes to show that accused had a knowledge of homicidal death of his wife. He cremated the body and, thereby, caused disappearance of evidence for screening the offender.

10. There is no evidence as to who caused injuries to Savitri on the day she readied the house of Guddi with injuries on her body. The possibility of her death because of that injuries also cannot be ruled out and, therefore, in this case the presumption of murder cannot be drawn. The possibility of death by culpable homicide not amounting to murder cannot be ruled out. Thus, the accused caused disappearance of evidence for screening the offender (guilty of culpable homicide) not amounting to murder. Thus, the act of the accused would be covered under Part III of Section 201 of the I.P.C. Almost in the similar circumstances the Apex Court of this country held accused guilty under Part III of Section 201 I.P.C. Reference may be had to 1955 SCC (Cri) 1154. Thus, we maintain the acquittal of the accused Under Section 302, I.P.C., but convict the accused Under Section 201 Part III of the I.P.C. for screening the offender of culpable homicide not amounting to murder.

11. Accused and his Counsel heard on the question of sentence.

12. The accused is sentenced to imprisonment for 2% years, which is maximum provided for the offence. The accused was arrested on 7.6.1990, remained in jail

during trial and was acquitted on 6.10.1990, thereafter, he was summoned by bailable warrant of Rs. 5,000/- in the year 1992, but he could not furnish bail and remained in jail for more than 2½ years and was released somewhere in 1995. Thus, he has suffered incarceration for more than 2½ years. He be released forthwith if not required in any other case.

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