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Court : Delhi

Decided On : May-23-1985

Reported in : 1971CriLJ554A

Judge : Malik Sharief Ud Din and; Rajinder Sachar, JJ.

Acts : Criminal Civil Procedure, 1973 - Sections 161

Appeal No. : Criminal Appeal No. 288 of 1981 (Against order of T.S. Oberoi Addl. S.J. Delhi, D/- 17-8-1981)

Appellant : Roshan Lal

Respondent : The State

Advocate for Pet/Ap. : Mr. D. R. Sethi

Judgement :

Malik Sharief Ud Din, J.

1. Shri T. S. Oberoi, Additional Sessions Judge convicted and sentenced the appellant to imprisonment for life by separate orders dated 14th August 1981 and 17th August 1981, last being the quantum of sentence. The appellant has made a grievance against his conviction and sentence.

2. To begin with, the incident is dated 3rd April, 1980 and has taken place at 5.30 a.m. Place of incident B Servant's Quarter No. A-6, JPN Hospital, New Delhi. It is two-room tenement with a common bathroom. The deceased is one Krishna Devi wife of the appellant, Roshan Lal. They were married in June 1979. On the relevant date the deceased along with her husband (appellant) were admittedly living in one of these rooms while the other room was admittedly under the occupancy of a tenant, namely, one Rajan. The deceased had returned to her husband's quarter (in) the company of her mother on 2nd April, 1980 afternoon after having spent about 25 days in the house of her parents. F.I.R. in the case is based on the statement marked P.W. 1/A of a neighbour P.W. 1, Mrs. Janak which was recorded soon after the incident on spot by S.I. Raghbir Singh P.W. 19. The appellant, Roshan Lal had been allotted this quarter as he was serving as a Nursing Orderly in the Hospital.

3. In fact, police was set in motion on information which was given by one Satish Chand Sharma, P.W. 3, who had gone to the Police Station and had informed that a lady had burnt in one of the quarters of J.P.N. Hospital. D.D. report in this regard is marked as Ex. P.W. 3/DB. It was in pursuance of this report that the investigating agency was set in motion and P.W. 19, S.I. Raghbir Singh, Investigating Officer, assisted by S.I. Balbir Singh, who had partly investigated this case proceeded on spot. After recording the statement of Mrs. Janak it was dispatched at 7.05 a.m. to the Police Station while a formal F.I.R. was registered at 7.15 a.m. The statement exhibit P.W. 1/A is to this effect :-

'I work as a ward Aya in Jai Parkash Narain Hospital. I have been allotted Servant's Quarter No. A-B. I am living there along with my two children. The quarter bearing No. A/6 adjacent to my quarter is allotted to Roshan Lal. Roshan Lal was married to Smt. Krishna Devi in June 1979. Roshan Lal and his mother Maya Devi after a few days of the marriage had started quarrelling with Smt. Krishna Devi on account of bringing insufficient dowry by her. Smt. Krishna Devi had been living with her parents for the last about one month. Yesterday on 2-4-80 at about 12 noon the mother of Krishna came along with Krishna. At that time, Roshan Lal and his mother, Smt. Maya Devi were present at the quarter. Leaving Krishna Devi there, her mother had left for her house. Thereafter, Roshan Lal had

also left. At about 3 p.m. Smt. Maya Devi had also left the house along with her luggage. After her departure, Krishna Devi came to me and told me that her mother-in-law has taken all her ornaments and precious clothes. I pacified Smt. Krishna and she left for her house. At about 11 p.m. Roshan Lal came in the quarter. As soon as he returned he started altercation with his wife Krishna. They kept on quarrelling with each other till late night. They quarrelled till about 3 a.m. After that no noise was heard. At about 5.30 a.m. Ramel Dass, the father of Roshan Lal came upwards and knocked the door heavily whereupon I came out and saw smoke coming out of the bathroom. On seeing, I found that Krishna had caught fire. At that time Roshan Lal fled away from his quarter. He made no efforts to save Krishna in the bathroom. Roshan Lal and his mother Maya Devi, having hatched a conspiracy because of not receiving sufficient dowry killed Krishna Devi. Seeing the smoke, the neighbours had gathered there. Proper action may be taken.'

4. We have heard the learned counsel for the parties. The motive for commission of crime is said to be demand of dowry testified to by P.W. 9 Bindra Devi, mother of the deceased and P.W. 14 Nota Ram, brother of the deceased. It seems that appellant was also frustrated because earlier to his marriage he was residing with his parents and he brother but soon after the marriage the deceased forced his parents and brother to leave the quarter. This is so admitted by the accused himself. The appellant would however, have the court to believe that it was a case of suicide to which the deceased was driven because of her desperate feeling that her ornaments were being given to the niece of the appellant who was soon going to be married and also due to the frustration that after marriage she could not conceive a child.

5. The two witnesses, P.W. 1 Mrs. Janak and P.W. 3 Sh. Satish Chand Sharma have turned useless. In so far P.W. 1 Mrs. Janak is concerned she turned hostile. She refuted substantially what she is purported to have stated earlier in her statement, as P.W. 1/A. She however stated that she signed that statement. P.W. 3, Sh. Satish Chand Sharma cannot be trusted for the reason that he has overstated the prosecution case by tendering evidence that he even saw the accused pouring some inflammable material on the deceased with a view to

increase the intensity of the fire. This he has done even though he had not stated so before the police in his statement under S. 161 Cr.P.C. We, thereforee, are in complete agreement with Mr. D. R. Sethi, learned counsel for the appellant that nothing can turn on the testimony of these two witnesses and the entire case has to be adjudged by reference to circumstances.

6. It was in this situation that Mr. D. R. Sethi, learned counsel for the appellant contended that the whole case of the prosecution is based on circumstantial evidence and that will have to be weighed and appreciated in the light of the criteria laid down in : 1953 CriLJ129 Hanumant Govind v. State of Madhya Pradesh. His contention is that each circumstance in the first place must be proved, it must be conclusive and the circumstances so proved must form a chain so complete by itself as to leave no doubt in the mind of the Court that these circumstances are only consistent with the hypothesis of the guilt of the accused. This proposition of law is not in dispute and we never suggested that we will not be keeping it in mind while dealing with this case.

7. Keeping in view the fundamental principle for appreciation of circumstantial evidence, we may next examine the circumstances which have been pressed into service. The motive for this crime is testified to by P.Ws. 9 and 14, Bindra Devi and Nota Ram, mother and brother of the deceased. That the relations between the couple were strained is to some extent admitted by the accused himself when he says that after their marriage she compelled him to turn out his brother and parents out of the quarter and that she had a feeling that her ornaments were going to be given to the niece of the appellant on her marriage which was to take place shortly. The fact that she had been living at her parental house for about 25 days immediately prior to the incident without any reason also goes to show that something was wrong. P.W. 9 and P.W. 14 have clearly stated that ever since the marriage of the deceased she was being maltreated by her husband and in-laws for not getting sufficient dowry and they have given her money whenever they could afford to do so. Keeping in view the whole background, P.W. 9 and P.W. 14 cannot be disbelieved. The objection that they are saying so for the first time cannot be maintained because in the setting of our society parents generally do not make a public grievance about such matters with a view to ensure a smooth

married life for their daughters.

8. The next important circumstance is the nature of burns and the manner in which she came to be burnt. We do not propose to reproduce the entire statement of P.W. 6, Dr. Bishanu Kumar, who conducted the post-mortem, though we find it necessary to make reference to some of the facts he noticed. The doctor has opined that kerosene smell was coming out of the burnt clothings as well as from the body. He had noticed deep burns all over head, face, exposing skull bones in frontal and parietal region, all around neck, whole of the upper part of chest, lower half of front of abdomen, upper 2/3rd of front medial and posterior medial surfaces of both thighs, anterior and medial surface of both arms, hands, and all around fore-arms. In all these areas, there was charring skin and heat laceration. Bones around the right wrist region were exposed and fragments showed burning up to the extent of carbonisation. Finger tips were charred completely including nails. Finger bones of both hands were also exposed and charred. Muscles in chest and thigh regions were exposed. Scalp hair were completely burnt except lock of hair in lower back part present and showed singeing. On dissection of neck just below chin in sub-coetaneous tissues there was effusion of blood more to the left of mid lines over thyroid cartilage region, In the opinion of the Doctor, death in this case was due to suffocation, consequent upon inhalation of fumes and the effect of burns. Most of the burns were ante-mortem except charred areas which got burnt afterwards as well and the burns were sufficient in the ordinary course of nature to cause death. He also found evidence of attempted ligature strangulation because of the presence of legating material and effusion of blood in the skin underneath. The probable time of death he has put as 10 to 12 hours.

9. We have noticed that there is no evidence that while burning, the deceased has raised any cries or shrieks. Nor does she seem to have expressed any anguish due to the pain the burns were likely to inflict. Medical evidence is also to the effect that there has been an attempt of strangulation. To our mind this is obviously a case where she was first rendered unconscious and incapable of crying or saving herself before she was set ablaze. It is different matter that the cause of death is not strangulation. We do not believe it to be a case of suicide because if she had chosen to silently suffer all this pain, then she would have bolted the door of the

bathroom from inside. We also fail to see any reason for her to commit suicide and to choose such a painful method for committing suicide. She had come to the house of the husband on that very day and we are required to believe that she came there only to commit suicide. The nature of burns in this case is such that they can only be received if a lady is rendered incapable of saving herself.

10. The third circumstance is the injuries on the body of the appellant, testified to by P.W. 2, Dr. R. P. Sarawat. He has found as many as four injuries on the person of the accused which he has characterised as simple and caused by blunt object. The duration he has placed between 6 to 12 hours. This corresponds to the time when the deceased has been set ablaze. The condition of the room where the couple used to sleep, as deposed to by S.I. Raghbir Singh, P.W. 19, was found to be almost a mess. He found things scattered which is also evidenced by the photographs. The also goes to show that there was a quarrel between the couple and there had been a struggle in which deceased was rendered incapable of helping herself and was set ablaze. That accounts for the injuries on the person of the accused.

11. Yet another circumstance is that the accused after commission of crime absconded from the quarter where he was admittedly sleeping with his deceased wife on that night. He was however arrested on the same day along with his mother who has since been discharged, from the shop of his brother, at Mangolepuri by P.W. 18, S.I. Balbir Singh, who has partly investigated the case. It was in fact there that at the instance of the mother of the appellant jewellery and clothes of the deceased were recovered from the house belonging to her husband. We find no reasons to disbelieve the prosecution evidence in this regard.

12. Yet another significant circumstance is that finger prints of the accused were found on the bottle containing kerosene oil which was recovered from the bathroom where the deceased came to be burnt. Two of the finger prints were clearly identified to be that of the accused while about the third detected on the bottle it has been reported by C.F.S.L. that it did not contain sufficient number of clear ridge characteristics for comparison. The accused has tendered an Explanationn that he was made to handle bottle by the police before it was seized.

We find it difficult to believe the Explanationn in the light of the other circumstances and particularly in view of the fact that at the time of seizure of this bottle a number of persons were around.

13. All these circumstances have been conclusively proved and they definitely form a chain so complete by themselves that one is left in no manner of doubt that the appellant after rendering the deceased unconscious and incapable of helping herself took her to the bathroom and after pouring kerosene oil on her set her ablaze. Under these circumstances it cannot be said to be a case where there is paucity of evidence. The fact that P.W. 1 has turned hostile and the fact that P.W. 3 could not be trusted because of his over zealousness in overstating the prosecution case to our mind does not affect the circumstantial evidence which clearly goes to show that the accused and accused alone, has committed this crime. The circumstances in this case are so overwhelming that they clearly go to tell the tale.

14. We may here take notice of the objection of Mr. D. R. Sethi, learned counsel for the appellant, that Rajan who was a tenant in one of the rooms has not been examined by the prosecution and non-examination of such an important witness is fatal to the prosecution case. We have already stated that the circumstantial evidence in the case sufficiently indicates the involvement of the appellant in the commission of crime. That apart we are in agreement with Mr. Sethi for the simple reason that P.W. 19, S.I. Raghbir Singh has clearly stated that he did record the statement but he could not be examined at trial as he could not be traced. It is not a case where an important witness was not examined by the Investigating Officer. It is a case where unfortunately the witness could not be traced.

15. With these observations we find that the prosecution has sufficiently been able to establish the guilt of the accused. The appeal as such is dismissed and the conviction and sentence recorded against the appellant is confirmed.

16. Appeal dismissed.

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