

Virender Bhatti Vs. the State

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Court : Delhi

Decided On : Apr-05-1989

Reported in : ILR1990Delhi163; 1989RLR265

Judge : P.K. Bahri, J.

Acts : [Evidence Act, 1872](#) - Sections 113A

Appeal No. : Criminal Appeal No. 65 of 1988

Appellant : Virender Bhatti

Respondent : The State

Advocate for Pet/Ap. : D.R. Sethi,; Raman Sawhney and; K.K. Bakshi, Advs

Judgement :

P.K. Bahri, J.

(1) The appellant has been convicted of offences punishable under Sections 498-A and 306 of the Indian Penal Code vide judgment dated August- 5, 1988, of an Additional Sessions Judge, New Delhi, and vide Subsequent order dated August 10, 1988, he has been sentenced to undergo rigorous imprisonment for one year and a fine of Rs. 1,000.00 and in default to further undergo rigorous imprisonment for six months on the first count and to undergo rigorous imprisonment for four years and to pay a fine of Rs. 2,000/- and in default to further undergo rigorous

imprisonment for six months on the second count. In this appeal the appellant has challenged his conviction and sentences.

(2) This case presents certain disturbing facts and unusual features. 'This appellant was earlier married to one Sarla, daughter of Public Witness 4 Lal Chand in the year 1971. The appellant has one daughter and one son out of the said wedlock and Sarla died of burn injuries in the house of the appellant in the year 1975. It appears that no case was registered against the appellant and most probably Saria was shown to have died due to some accidental fire. The appellant married the deceased Kamlesh daughter of Public Witness 2 Jagan Nath in June 1978. Kamlesh had earlier been married to some other person but that marriage lasted only for a few months and a divorce had taken place but there was no issue born out of the said wedlock. After this marriage the appellant got one son named Nitin from Kamlesh.

(3) On February 10, 1984, Ravinder Singh, one of the brothers of the appellant came to Police Station Lajpat Nagar at about 10.25 Am and got recorded daily dairy report No. 4A, copy Ex.PW18IA, to the effect that on that day his elder brother, namely, the appellant had come back after leaving his children at the school and it was discovered that some 'moke was coming out from the bath room and it was apprehended that some fire had taken place and on the basis of this report Si Rajpal Singh was deputed to enquire and after receiving the copy of the report from Constable Sakhi Ram, Si Rajpal reached the aforesaid house No. A-11/14, Lajpat Nagar. He was accompanied by Si Sushil Kumar and he found that the appellant was present at the spot and dead bodies of Kamlesh and her son Nitin were lying in the bathtub in that bathroom duly burnt and he found that a case of murder had taken place. So. he prepared Rukka, Ex. Public Witness 18/B and 'got the case registered under Section 302 .of the Indian Penal Code. Si Rajpal had made a very slipshod report and sot the case registered under Section 302, Indian Penal Code without even giving any details of the place of occurrence as to whether the particular bathroom had one door or two doors and if one door was found broken, what was the position of the second door and whether he had noticed anything on the walls or not and what wag the condition of the dead bodies From his Rukka we do not find any facts and circumstances which could lead to

any inference that the offence of murder had been committed. Be that as it may, the Investigating Officer prepared the inquest papers of both the dead bodies which are Ex. Public Witness 18/C2 to Public Witness 18/C 4 in respect of Kamlesh Bhatti and Ex. Public Witness 18/D2 to Public Witness 18/D 4 in respect of Nitin and prepared the applications Ex. Public Witness 18/C and PW18/D and sent the dead bodies for postmortem. In the brief facts mentioned in the inquest papers it was narrated that the door of the bathroom stood broken and certain tile; in the bathroom also were found in broken condition. In the inquest form in respect of Kamlesh, it was mentioned that the tongue of deceased was protruding. Both the dead bodies were found to-be burnt. Dr. Chander Kant (Public Witness 14) had conducted the postmortem on the said two dead bodies on February 11, 1984. In respect of the dead body of Nitin, he found that there was strong smell of kerosene oil coming from the scalp and both lower limbs. Scalp hair were completely burnt, singeing of both eye-brows and the eye-lashes. He found 100% superficial and deep ante-mortem burns and in the stomach he found undigested curd like thick contents weighing 70 grams. The cause of death was due to shock as a result of 100% superficial and deep burns. In respect of Kamlesh, he also noticed strong smell of kerosene oil from the scalp and the body. The body was found to be in pugilistic attitude. The tongue was found protruding cut. He found 100% superficial and deep burns covering the whole body and significantly he also found presence of anti-mortem ligature mark in front of the neck in the thyroid complex region, with a width of 1 cm. in front of neck and 6.5 cms away from the chin, extended up to right side of neck and left side of neck. On posterior side of neck, no ligature mark was detected: underlying tissues had shown extra vacation of blood and the total length of ligature was 16 cms. He also opined that the death was due to asphyxia as a result of strangulation; 100% superficial and deep burns were peri-mortem in nature meaning thereby that these had occurred after clinical death of Kamlesh. He had given the postmortem reports Ex. Public Witness 14/A & PW14/ B respectively. It appears-that during the course of the trial Dr. Kant in his deposition could not over-rule the possibility of Kamlesh having at first self-strangled herself and then receiving the burn injuries by falling by the side of her son who was put to flames at that time. During the course of investigation, the statements of Public Witness 2 Jagan Nath Kamlesh's father) Public Witness 3

Smt. Sunita Sachdeva (sister), Public Witness 7 Smt. Ram Piari (mother) and Public Witness 8 Tarseen Kumar (brother) were recorded who stated that deceased was being dealt with cruelty by the appellant as the deceased used to complain to them that she. used to be beaten by the appellant and the appellant did not want Kamlesh to bear any child as he had two children of its own from previous marriage and wanted Kamlesh to just look after those children as a sort of 'Aayya and that on one occasion a report was also made to the police by the appellant's father when appellant had subjected Kamlesh to severe beating and thereafter the appellant was found strangulating Kamlesh when her mother and sister had come to see her and he had tendered apologies for his conduct and had given assurance that he would not repeat such conduct, towards Kamlesh in future;

(4) The challan was filed against the appellant for offence punishable under Section 302 of the Indian Penal Code but Shri B.S. Choudhary, Additional Sessions Judge, vide his order dated November 24, 1984. held that prima facie a case under Section 302, Indian Penal Code. is not made out but case is made out only under Sections 306 and 498-A of the Indian Penal Code. So, the appellant was charged for the said two offences and was tried for the said' offences. The site plan Ex. Public Witness 18/E which was prepared by the Investigating Officer on the day of occurrence showed that the bathroom in which two dead bodies were found lying had one door opening towards the gallery and' another door opening towards the bed-room. The door marked 'C' opening towards gallery was found broken at the spot. It is not mentioned in the site-plan whether the door which was opening towards bed-room was bolted from inside the bath-room or from the side of bed-room or was not even bolted at all. It is common knowledge that if a person suffers burn injuries the person 'z':'^ awful pain and usually a person would not remain standing or sitting while in flames and would raise lot of shrieks and would try to rush out from the place where he or she was being burnt but what we find in the present case is that four year old child who was put to flames, was found in burnt condition lying in the tub of the bath-room. No other part of the bath-room is shown to have any marks of burning. The fact that Kamlesh had ligature marks on her neck and death was opined to be due to strangulation indicated that it was a case of murder. Unfortunately, it appears that the Investigating Officer did not care

to pin-point these peculiar facts either in his Rukka or in the site-plan or in the inquest papers. Be that as it may, now what we have to see in this appeal is whether the conviction of the appellant for the offences punishable under Sections 498-A and 306, Indian Penal Code, is to be sustained or not. No neighbours have been examined by the Investigating Officer to show as to how the door of the bathroom came to be broken. A brother of the appellant was examined as Public Witness 1 Rajender Bhatti, who was examined to prove the identification of the dead bodies. He had joined the inquest proceedings. In cross-examination he deposed that there had not occurred any untoward incident between appellant and his wife and the relations between them were cordial. Nothing was elicited from him as to whether he was present in the house or not when the occurrence took place. We have to now proceed on the assumption that Kamlesh had committed suicide and while committing suicide also had put her son to flames. In the grounds of appeal, the appellant had mentioned that perhaps it was a case of murder and as the case of murder remains untraced, so the appellant deserves to be given benefit of doubt and could not have been charged and convicted for offences punishable under Sections 306 and 498-A, Indian Penal Code.

(5) In case it was a case of murder, then, in my opinion, the appellant could have been convicted for this double murder because circumstantial evidence in the case points to the appellant as the culprit. It is proved on the record that the appellant with his wife and three children were living on the first floor and on the ground floor his two brothers with their families were residing. The appellant and his family had taken breakfast and the appellant had gone to leave his other two children at the school but it has come out in unchallenged testimony of Public Witness 5 Mrs. Veena Sahni, in charge Lahore Montessori School, defense Colony, that on February 10, 1984, the appellant had brought his two children quite late. The school commences at 8.45 A.M. Nitin, who also was studying in that school, had attended the school a day earlier and had gone for picnic but on the crucial day he was not brought. The appellant in his statement under Section 313 of the Code of Criminal Procedure did not give any Explanation as to why the third son was not brought and left at the school and why the children were taken to the school late. At any rate, because of the testimony of Dr. Chander Kant (Public Witness 14) a doubt had arisen as to whether it is a case of murder or not because this expert

has given a firm view that death of Kamlesh had taken place due to strangulation and the burn injuries noticed on the dead body of Kamlesh were not anti-mortem and he had given some good reasons for his said finding. I need not notice those reasons because it is not challenged before me that the expert had rightly come to the conclusion that the burn injuries were not anti-mortem. They have been termed as peri-mortem which occurred between the period of clinical death and the molecular death of the body. However, the doctor, when was recalled for some clarification by the court, could not over-rule the possibility that after a person puts himself to flames, he can self-strangulate also. He also mentioned that it was possible that Kamlesh after pouring kerosene oil on her son Nitin and also on herself had fit the body of Nitin and after self-strangulation had fallen near Nitin who was burning and thus such peri-mortem burns could come on the body of Kamlesh. So, because of this opinion of the doctor I was not inclined to exercise revisional powers of this Court to remand the case back to the trial Court for framing a charge under Section 302 of the Indian Penal Code, against the appellant.

(6) It has come out in evidence that on February 20, 1980. the appellant's father had lodged a report with the police to the effect that the appellant was subjecting Kamlesh to severe beating. On the basis of such a report Public Witness 12 Asi Lakshmi Narain, then posted at Felice Station Lajpat Nagar, had come to the spot and he had recorded statement of Kamlesh, which is Ex. Public Witness 121B and had put in the Kalendra Ex. Public Witness 12;A but thereafter the appellant and Kamlesh had moved a joint application Ex. Public Witness 12 Id and' their statements were also recorded by Acp Sukhdev Singh and as it was found that the appellant and his wife had reconciled their differences, so the proceedings were filed. The appellant in his statement under Section 313, Code of Criminal Procedure, did not dispute that such proceedings took place before the Assistant Commissioner of Police Shri Sukhdev Singh but he came out with the story that in fact he had some differences with his brothers and father with regard to the family shop of which the appellant was being deprived of and in fact there was no quarrel between him and his wife Kamlesh. It is argued by the learned' counsel for the appellant that this particular incident had taken place too remote in time to be treated as evidence of conduct of the appellant or as a dying declaration of

Kamlesh. He has assailed the findings of the Additional Sessions Judge made to the contrary in this respect. The learned Additional Sessions Judge has placed reliance on *Sharad Birdhichand Sarda v. State of Maharashtra*, : 1984 CriLJ1738 .

(1) In the cited case, statements and letters of the deceased were sought to be used as her dying declaration. It was argued before the Supreme Court that they are of a distant time and thus, could not be treated as dying declarations. This contention was repelled and after analysing the provisions of Section 32 of the Indian Evidence Act, the Supreme Court observed that the test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait-jacket. It was observed that distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. The learned counsel for the appellant has pointed out that in the cited case the said statements and the letters were of the period not beyond three or four months. May be in the said case the said dying declarations were of period three or four months prior to death but the facts of each case have to be seen. Only on the ground that some facts have occurred beyond period of three or four months would by itself be not conclusive to come to the conclusion that such facts can not be treated as dying declarations. In the present case as I shall presently refer to the evidence, it would show that the deceased was being subjected to beating and harassment since she was married and she had been complaining about this behavior of the appellant to her parents and her relations continuously. So, keeping in view that evidence, if that is to be believed the conduct of the petitioner in giving beating to Kamlesh and lodging of the report by the appellant's father in that connection and Kamlesh giving a statement to the police alleging beating at the hands of the appellant and fearing that she might not be killed by the appellant become and her statements become admissible as dying declarations under Section 32 of the Indian Evidence Act if it is proved that she was being subjected to beating continuously for all these years.

(7) Now coming to the evidence of Public Witness 2 Jagan Nath, father of the deceased, he has deposed that soon after the marriage was performed, the appellant had started, harassing the deceased on the pretext that sh had been brought to just look after his two children from previous wife as a maid servant. He has also deposed that the appellant did not want any child from the deceased and was instrumental in getting the deceased aborted two or three times and the deceased used to tell him that she was being beaten by the appellant frequently. He has also stated that on January 17, 1984, his wife and daughter after visiting the house of the appellant had informed him that they had found appellant giving beating to the deceased and was also trying to strangle her and thereafter he had apologised and had assured not to repeat such behavior and he (Public Witness 2) Along with his son Tarseen had gone to the house of the appellant and the appellant S;ad apologised for his said behavior. In cross-examination it was suggested that it was appellant who used to suggest to the deceased that as he was having two children from his previous wife, so he would not be able to afford any more child and thus, Kamlesh had one abortion after Nitin was born. So, these suggestions coming in cross-examination do corroborate the statement of the prosecution witnesses that deceased desire to have her own children was being thwarted by the appellant. This may have been the main cause of appellant treating the deceased with cruelty and subjecting her to beating. No wife would have given a statement against the husband regarding the beating if she was not being subjected to beating. In the year 1980 the matter went up to the police but then deceased thought it fit to reconcile with the appellant and she continued to live with the appellant for all these years but ' she had been complaining to her close relations regarding the beating being given to her by the appellant. Sunita (Public Witness 3) also gave similar facts. She also made reference to her visiting the appellant accompanied by her mother on January 17, 1984 and having seen deceased being subjected to beating by the appellant. Ram Piari (Public Witness 7). mother of the deccased, also narrated the said facts. She had, of course, introduced a new fact that an year before her death Kamlesh wanted Rs. 10,000 which she gave when appellant was also present but even thereafter the appellant's behavior towards the deceased did not improve. Tarsem (Public Witness 8), brother of the deceased, also corroborate these facts. The learned

Additional Sessions Judge has also noticed the circumstances in which the dreadful tragedy took place. The family had breakfast on that morning and the appellant had taken only his two children belatedly to the school leaving behind the third child and his wife and soon after the said occurrence took place which according to the Additional Sessions Judge leads to an inference that some unpleasant incident must have taken place between the husband and the wife and that could be only that husband must have again given beating to the wife which ultimately led her to commit suicide and also burn her own child. The Additional Sessions Judge has given good reasons for believing the testimony of these four close relations of the deceased and I have no reason to differ with the findings of the Additional Sessions Judge on this aspect. The mere fact that no further police reports were lodged by the deceased or by her close relations regarding the beating being given to the deceased is not by itself sufficient to hold that the statements given by the said relations are doubtful or suffer from any infirmities. It is not always that the relations take recourse to legal proceedings or take help of the police because they always nourish a fond hope that relations may improve. When appellant had tendered his apologies regarding the incident of January 1984, there could be no occasion for the deceased or her close relations to lodge any report with the police.

(8) It has been argued that if the appellant was not keen to have any child from the deceased why he would have allowed Nitin to be born. There has come a good Explanation in the statements of the witnesses that the deceased had reached a stage of pregnancy where abortion would not have been possible without risk to her life. Hence, this gives a good reason as to why Nitin was allowed to be born. Section 113-A of the Indian Evidence Act clearly applies to the facts of the present case. The suicide had taken place within seven years of the marriage and the convincing evidence has come on the record that deceased was subjected to cruelty at the hands of the appellant and thus, the court can presume under the said provision that it is the appellant who abetted the commission of suicide by his wife. The ingredients of the offences covered by Sections 306 & 498-A of the Indian Penal Code stand well made out against the appellant

(9) I, hence, endorse the findings' of the Additional Sessions Judge on all points and maintain the conviction and the sentences of the appellant and dismiss the appeal.

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