

State Vs. Sunil Kumar Mandal

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Court : Delhi

Decided On : Nov-02-2003

Reported in : I(2004)DMC86; 2004(72)DRJ229

Judge : Usha Mehra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 498A

Appeal No. : Crl. A. No. 923 of 2001 and Murder Ref. No. 1/2001

Appellant : State

Respondent : Sunil Kumar Mandal

Advocate for Def. : P.R. Thakur, Adv.

Advocate for Pet/Ap. : Ravinder Chadha, Adv

Judgement :

Pradeep Nandrajog, J.

1. By the judgment dated 30-10-2001, accused Sunil Kumar Mandal stands convicted of an offence under Section 302 IPC and Section 498A IPC. By order dated 2-11-2001 the learned Addl. Sessions Judge pronounced the sentence of death for the offence under Section 302 IPC besides a fine of Rs. 5,000/-. In view of the sentence imposed under Section 302 IPC no separate sentence under

Section 498A was imposed.

2. Has the prosecution successfully brought home the charge against the accused. The charge is as under:-

'That on 1-7-1999 at about 2.15 AM (night) at your house (B-29, Khajan Basti, Maya Puri, New Delhi) with intention to kill Anita, you had sprinkled kerosene oil on your wife Anita and had set her on fire resulting in her death thereby you have committed an offence punishable under Section 302 IPC and within the cognizance of this Court.

Secondly, you married Anita (since died) on 18-2-1999 and there after you had been demanding Rs. 5,000/- as dowry from Anita and upon her inability to bring it, you quarrelled with your wife Anita on 5-6-1999 and subjected her to cruelty and thereby you have committed an offence punishable under Section 498A IPC and within the cognizance of this Court.

And I hereby direct that you be tried of the above said charge by this Court.'

3. Since the accused pleaded not guilty to the charge and Claimed trial, the learned Additional Sessions Judge recorded evidence and on an analysis of the evidence came to the conclusion that the prosecution witness inspire confidence. Their statements are reliable and can be acted upon. The facts and circumstances, which according to the learned Addl. Sessions Judge stood proved beyond all reasonable doubts against the accused are as under:-

'(a) Deceased Anita was married to the accused on 18-2-1999 and after a short stay in the matrimonial house, she had been living with her parents in their house No. B-29-30 Maya Puri, Khazan Basti within the jurisdiction of PS Delhi Cantt., since the gauna ceremony had not yet been asked for by her in-laws and so not performed.

(b) The house of PW-2, father of the deceased, consisted mainly of one room accommodation, about 12 feet x 10 feet in size, with a courtyard open to sky bounded by wall on all sides having a shutter at its one end (never used) and only one door being used from the other side, which abuts a street, the door leading

into the courtyard. The sole room had only one door, which would also open into the courtyard, where a space covered by tarpaulin was in use as kitchen.

(c) The accused came to the matrimonial house sometime during the day on 30-6-1999, was allowed to use the said sole room for sleeping purposes during the night intervening 30-6-1999 and 1-7-1999, he with the deceased retired for night around 23-00 hours on 30-6-1999, while PW-2, his wife PW3 and their other two children went to sleep in the open courtyard.

(d) At about 0230 hours on 1-7-1999, PW-2 and PW3 heard shrieks of their daughter Anita (deceased) coming from inside the single room in the house and upon walking up on hearing the said cries, they went up to the door of the room, knocked at it several times, but it was found bolted from inside.

(e) The door of the room was opened after an interval of a few minutes by the accused, who came out and started running away.

(f) After the door had been opened by the accused from inside, PW2 and 3 saw their daughter Anita in flames, from bottom upwards, where upon they raised alarm, which resulted in neighbours getting collected.

(g) PW2 overpowered the accused so as to stop him from running away and handed him over to the neighbours, who would later rough him up.

(h) The fire was extinguished and Anita removed, first to DDU hospital, and from there to Safdarjung Hospital in the car of PW.1.

(i) On way to Safdarjung hospital from DDU hospital, Anita told her father that she had been set on fire by the accused by pouring kerosene oil on her, after she had refused the demand of the accused for Rs. 5000/-.

(j) Anita was admitted in Safdarjung hospital at 0400 hours on 1-7- 1999 as a case of 100% burn injuries vide MLC Ex.PW5/A at which stage, she herself informed PW5 Dr. Daves Sharma, the doctor who prepared the MLC that she had sustained the said burn injuries when her husband had poured kerosene oil on her and had set on her fire.

(k) On the application of the IO Ex. PW13/A, PW11 Dr. Aditya Aggarwal examined Anita in the Burns Ward and certified her fit for statement at 0945 hours on 1-7-1999 vide Ex.PW11/A.

(l) After Anita had been certified fit for statement, she was: examined by PW12 Sh. A.K. Misra, SDM, when she made a statement before him vide Ex. PW12/A confirming her earlier assertions before her father on way to hospital, as also the history of injuries given to the doctor at the time of preparation of the MLC. She told the SDM in the said statement recorded vide Ex. PW12/A that her husband had demanded, during the night, Rs. 5000/-, and when she had told him she would talk in the morning, he had reprimanded her and after telling her that he would set her right, he had put kerosene oil on her and had set her on fire.

(m) Anita died during treatment in Safdarjung Hospital at 12.30 hours on 1-7-1999, and as a result her statements about history of injury to her father on way to hospital, to the doctor who prepared MLC and to the SDM became her dying declarations.

(n) The inspection of the scene, also photographs and the exhibits seized from the scene of incident confirm the fire incident having occurred inside the room in question.

(o) The MLC Ex. PW5/A and the post-mortem report Ex. PW4/A together confirm Anita arid suffered 100% burns and had smell of kerosene all over the body, with cane of kerosene oil, match box and a burnt match stick having been found inside the room where incident took place.'

4. Since the sentence of death has been imposed upon the accused and reference has been made to this Court for confirmation of the death sentence, we have proceeded to reappreciate the entire evidence and analyze the same, uninfluenced by the observations and conclusions reached by the learned Addl. Sessions Judge. Indeed, this is the approach which has to be followed by us while answering a murder reference in view of the law pronounced by the Hon'ble Supreme Court in the decision reported as State of Tamil Nadu v. Rajendran, : 1999 CriLJ4552 .

5. That Anita was married with the accused on 18-2-1999 and that on the night of 30-6-1999 she received burn injuries is not disputed. It is also not disputed that the deceased, Anita, died at 12.30 hours on 1-7-1999 as a consequence of the burn injuries. It is not in dispute that Anita had suffered 100% burns and that incident had taken place at House No. B-29, Khajan Basti, Mayapuri, New Delhi. It is not in dispute that the unfortunate incident in which Anita received burn injuries took place around 2.15 A.M. at intervening night of 30-6-1999 and 1-7-1999. Question, however is, whether it was the appellant who had committed the offence.

6. Case of the prosecution unfolds itself in the testimony of PW2 and PW3 being the father & the mother of the deceased, the testimony of PW5 Dr. Davesh who had examined the deceased when she was brought to the hospital and finally the testimony of PW12 Sh. A.K. Mishra, then posted as SDM, Delhi Cantt. To whom the deceased allegedly made a dying declaration.

7. Before we analyze the evidence of the witnesses aforesaid, we may note that the place where the deceased received burn injuries is a room 13 x 13 ft. (approximately). It was the only living room in the possession of the parents of the deceased. Kitchen, latrine and bathroom were separated from the room. The room had a shutter opening onto the main street, which as per the evidence was never used. The only means of egress and ingress into the room was through a door which opened into an open courtyard. The courtyard had a door opening into the main street on the opposite side.

8. PW-2, Vimal Prasad Singh, father of the deceased in his evidence stated that that his daughter was married to the accused on 18-2-1999. Gauna ceremony of his daughter had not been performed till the date of the incident. Gauna is to be done six to seven months after marriage and till then husband and wife cannot cohabit, but if the boy comes to the bride's place he cannot be sent back. On the night of the occurrence, the accused had come to their house and was allowed to reside there. Since he had only one living room, the accused and the deceased were allowed to sleep inside the room and the rest of the family members slept outside. The door was closed from inside at about 11.00 p.m. At about 2.30 hours he heard the strikes of his daughter but he could do nothing as the room was

closed from inside. After 5/7 minutes the door was opened. He saw his daughter in flames. All the belongings of the family were kept in the room in question. There was so much fire inside the room that none could enter till the flames were doused. There was smell of kerosene all around. Due to heat, the wall clock had got melted. People had collected and somebody used water to douse the flames which had engulfed his daughter. He had apprehended the accused at the spot. The police arrived in a Gypsy. He took his daughter firstly to DDU hospital and there from to Safdarjung hospital in his own vehicle which was already there at that time since the police did not offer to take the victim to the hospital. On the way Anita told him that the accused had demanded Rs. 5000A from her. She had stated that she would talk about the same in the morning at which the accused set her on fire. He denied that his daughter was in love with some one else and since she was forced to marry the accused she had committed suicide.

9. PW3, Manju Devi, mother of the accused also deposed that her daughter Anita was married to the accused on 18-2-1999. 'Gona' had yet to take place. On the day of the incident accused was sleeping inside the room with his daughter. At about 2.00 in the night, she heard screams of her daughter. She and her husband rushed to the door of the room in which Anita and the accused were sleeping. After sometimes, the accused unlocked the door and tried to run away but was apprehended. She raised an alarm at which neighbours collected. Her daughter was shifted to the hospital by her brother Varun Kumar. She did not go to the hospital. When the door was opened, her daughter was in flames and neighbours had poured water over her to extinguish the flames. Police had met her at about 3.00 hours. When police came, they took away the accused.

10. PW13 S.I. B.S. Gulia in his deposition stated that on 1st July, 1999 when information was received in the police station recorded vide DD No. 5A about a girl having received burn injuries at the premises in question, he Along with Ct. Balmiki and Ct. Fedric reached the spot at 03.25 hours. He met the mother of the girl and learnt that Anita, in burn condition had already been taken to the hospital. Leaving behind Ct. Balmiki, he reached Safdarjung hospital at 05.30 hours where he found Anita admitted in the burn casually ward. He met father of Anita at the hospital from whom he made verbal inquiry but did not record his statement under Section

161 Cr.P.C. He informed the SDM about the incident who reached at 9.45 a.m. and after the SDM recorded the statement of Anita, he was directed by the SDM to have a case registered. He prepared the ruqqa and sent the same for registration of the FIR. After registration of the case he and Ct. Balmiki reached the spot where the crime team and photographer was called. When he reached the police station at 7 p.m., he met the accused who was brought by the PCR. He arrested the accused. The accused was got medically examined. At 8.00 p.m. news of death of Anita was received and Section 302 was added in the FIR.

11. PW-5, Dr. Divesh, who had examined Anita when she brought to Safdarjung hospital stated that he had examined her at 4 A.M. on 1-7-1999 and had prepared her MLC Ex. PW-5/A. At that time, father of Anita was with her. History of burn injuries i.e. that she was set on fire by her husband were recorded by him in the MLC as per the statement of Anita herself. It was Anita, who had told him that she had extinguished the fire by lying down and rolling on the floor.

12. PW-12, Sh. A.K. Mishra then working as the SDM stated that on receiving information that Anita was admitted in Safdarjung hospital, he reached there where the doctor certified at 9.45 A.M. that Anita was fit to make a statement. He obtained certificates Ex. PW-11/A and recorded the statement of Anita in his own hand-writing being Ex. PW-12/A. As per the dying declaration Ex. PW-12A, it stands recorded as under:

'Question: How did this incident happen?

Answer : My husband sprinkled kerosene oil on me and set me on fire at night. I do not know as to what was the time at night. He asked me to give him Rs. 5000/-. I replied that I would talk on that issue in the morning. At this, my husband said that I talked too much, he would set me right just then and that he set me on fire. I do not know as to who had rescued me.

Question: When was your marriage solemnized?

Answer: My marriage was solemnized in this very year i.e. February 1999. I had gone to my matrimonial home for 2-4 days. After the marriage, I stayed at my

parental home itself. My husband stayed with me for about one month; Last time, he had visited on 5th of June. Even then, he had quarrelled with me. Yesterday he again visited me, demanded a sum of Rs. 5000/- and then set me ablaze.

Question: Do you want to say anything else?

Answer: No. My husband has set me on fire.'

13. We have from the testimony of PW-2 and PW-3 a positive statement forthcoming on record that the accused was apprehended at the spot. We have a further positive statement coming from PW-3 that when the police came to the spot at about 3.00 hours, they took custody of the accused. We then have a positive statement of the IO, PW-13 that he met the accused for the first time when he reached the police station at late evening time. We have seen the arrest memo of the accused. It records the time of arrest of the accused being 4.00 P.M. on 1-7-1999 PW-13, who reached the place of occurrence in response to the telephonic information received at the police station about a lady being burnt at the premises in question, has made a positive statement that at the spot, he did not meet the accused. We further have on record Ex. PW-13/DA being the MLC of the accused which shows that he was got examined at Deen Dayal Upadhyay Hospital at 10.50 A.M. on 1-7-1999. The MLC records swelling and tenderness on the cheek and left mandible besides bruises, Learned counsel for the Stated contended that nothing turned on the aforesaid facts because in response to the telephonic information received, a PCR Van had reached the spot, evidenced by the testimony of PW-2 and PW-3, who say that police came just after the incident. Accordingly to the counsel for the State, the PCR brought the accused to the police station. The accused was formally arrested at 4.00 by PW-13, the Investigating Officer, Counsel contended that since the accused was apprehended at the spot, he was roughed up by the neighbours and as a consequence thereof received injuries and that is why he was taken for a medical check up.

14. We are afraid that the aforesaid argument of the learned counsel for the State does not stand the scrutiny of the contemporaneous fact. Firstly, we have no evidence on record that any PCR Van reached the spot. No witness has been examined by the prosecution to prove that the PCR Van personnel took custody of

the accused at the spot and transported him to the police station. On the contrary, PW-2 states that the police had reached the spot just before he left for the hospital and apprehended the accused and PW-3 deposes that the police reached the spot after her husband and her brother had removed her daughter to the hospital. PW-13 states that it was he who accompanied by Ct. Balmiki and Ct. Fredric, who reached the spot on receipt of DD No. 5-A. Thus, evidence on record suggests that it was PW-13, who reached the spot in response to DD No. 5-A, and was accompanied by two constables. The case of the prosecution that the accused was apprehended at the spot is highly doubtful. Further evidence on record proves that the intensity of the heat generated as a result of Anita being on fire was so intense that a wall clock on the wall melted. PW-2 and PW-3 in their testimony categorically deposed that the door was opened 5 to 7 minutes after they heard the shrieks of their daughter coming from inside the room. The room as noticed by us above was 13 ft. x. 13 ft.. Indeed, if this was the intensity of the fire and had the accused been present inside the room, there were bound to be, if not burn injuries, at least some kind of traces of injury resulting from exposure to fire.. Further, it was highly improbable for a person to remain inside the room having so much smoke inside, for over five minutes.

15. PW-13 states that her brother had removed his daughter to the hospital in his car. We do not have any evidence on record that there was a telephone in the house where the incident took place. Brother of PW-3, Varun Kumar was examined as PW-1. In his deposition, PW-1 only states that he identified the dead body of his maternal niece, Anita in the mortuary on 2-7-1999. We are left to wonder as to why the prosecution, who had examined Varun Kumar as the first witness, did not elicit any fact from him that it was he who took his niece to the hospital in response to the call being sent to him. Varun Kumar resides at W-223, Mayapuri, Phase II, which as per the testimony of PW-3 is at a distance of 10 to 15 minutes from the house where the occurrence took place. Further, if indeed the testimony of PW-2 is to be believed, police came to the spot when he was there and it is highly improbable that the police would not have removed Anita to the hospital. The facts aforesaid cast a serious doubt on the prosecution version that the accused was apprehended at the spot. If this be the position, the presence of the accused at the spot when the incident took place is doubtful.

16. That apart, PW-2 and PW-3 have deposed that 'Gona' of their daughter had not taken place. They admit that till 'Gona' does not take place, the boy and the girl cannot cohabit as husband and wife. This again casts a lurking doubt on the prosecution Version that the accused was present at the spot. It is highly improbable that accused would make a dowry demand on this wife at 2.00 in the night and the same not being met would set his wife on fire and that too in the house of his in-laws.

17. If we were to go by the testimony of PW-13, when he reached the spot, Anita had already been taken to the hospital. As per the testimony of PW-2, he took his daughter to DDU Hospital when after giving first aid to her, she was taken to Safdar Jung Hospital, PW-13 states that on learning at the spot that Anita had been removed to the hospital, he proceeded to Safdar Jung Hospital. How did PW-13 know that Anita had been taken to the Safdar Jung hospital remains a mystery. Admittedly, the nearest hospital was DDU Hospital. It is not the deposition of PW-13 that he first went to DDU Hospital and there from went to Safdar Jung Hospital.

18. Learned counsel for the State contended that we have three dying declarations proved on record and it is settled law that a conviction can be sustained on the basis of a dying declaration without any further corroboration. Counsel contends that the first dying declaration made by the deceased was to her father, PW-2, who deposed to this effect. The second dying declaration was to the doctor, PW-5, who states that he recorded in the MLC the fact that the patient had sustained burn injuries on being set on fire by her husband as per the statement of the patient. The third dying declaration was the one recorded by the SDM.

19. It is true that a conviction can be sustained on the basis of a dying declaration provided the same inspires confidence. On the facts as they emerge and as noticed by us above, the very presence of the accused at the spot is highly doubtful and if this be the position, it would be unsafe to rely on the dying declarations without any further corroboration to sustain the conviction.

20. Whether a death is suicidal or homicidal, had to be considered and determined on the basis of the material on record. To find out as to whether the death is

homicidal or not, the evidence has to be of a standard that it unerringly points to the guilt of the accused and excludes his innocence.

21. If the presence of the accused at the spot is doubtful, the evidence of PW-2 that his daughter implicated the accused as being the person who set her on fire becomes highly doubtful and cannot be accepted. It was PW-2, who took his daughter to the hospital and the possibility of the daughter being tutored to say what she did assuming she was in a position to make a statement, cannot be ruled out. Further, the circumstance of the dying declaration made to the doctor, PW-5 has not been put to the accused in his statement under Section 313 Cr.P.C. as one of the incriminating circumstance against him and on that count also, the same has to be excluded. The third dying declaration made to the SDM could well be a result of the influence or tutoring by PW-2 over his daughter.

22. One very important facet may also be noted. As per PW-13, when he reached the hospital, he met PW-2, father of Anita, who told him about the incident. As per the testimony of PW-13, he met PW-2 at 5.30 hours. If indeed this was true, there was no reason as to why PW-13 did not record the statement of PW-2 and sent the rukka for registration of the FIR. There is no earthly reason as to why the FIR was registered much after 10 A.M. if the name of the accused was told to PW-13 by PW-2 in the early hours of the morning at 5.30 A.M., and the details of the crime were made known to him, an FIR ought to have been registered promptly.

23. In his statement made under Section 313 Cr.P.C. the accused has stated that he was picked up by the police from the house of his friend. Vipin in Mayapuri. Indeed, evidence on record probablises the fact that the accused was arrested not at the spot but sometimes later. The evidence on record does not establish the guilt of the accused. The conviction under Section 302 IPC, therefore, cannot be sustained.

24. The accused had also been convicted for an offence under Section 498-A IPC. The only evidence of the alleged dowry demand is the statement of PW-2 that his daughter told him that the accused had demanded Rs. 5000/- from her at the time when the incident took place. We also have the evidence of PW-3 where she states that earlier the accused had demanded cash in the sum of Rs. 20,000/-.

There is no other evidence of dowry demand. In view of the fact that the presence of the accused at the spot when Anita sustained burn injuries is doubtful, the demand of Rs. 5000/- is doubtful. PW-2 in his deposition did not state about any dowry demand. Even PW-3 admitted that what she was stating in the court about the demand of Rs. 20,000/- was never stated by her to the police earlier, this shows that PW-3 improved upon her statement. The evidence on record does not establish the offence under Section 498-A IPC.

25. We accordingly answer the murder reference. The impugned judgment and sentence is set-aside. Accused Sunil Kumar Mandal is accordingly acquitted.

26. A copy of this judgment be sent to the Superintendent, Central Jail, Tihar with a direction that if the accused Sunil Kumar Mandal is not required in any other case, he be set free forthwith.

Present: Mr. Ravinder Chandha, Advocate for the State.

Murder Reference. No. 1/2001 & Crl. A. No. 923 of 2001.

Vide our judgment passed today i.e. 12.11.2003 separately, the murder reference has been answered and the accused Sunil Kumar Mandal has been acquitted.

Copy of the judgment be sent forthwith to accused Sunil Kumar Mandal by the Registry through Superintendent, Central Jail, Tihar.

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