

Jumman Sheikh Vs. State (Nct of Delhi)

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Court : Delhi

Decided On : Jul-31-2008

Reported in : II(2008)DMC617; 2008(105)DRJ340

Judge : B.N. Chaturvedi and; Rajiv Shakhder, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Crl. Appeal No. 819 of 2004

Appellant : Jumman Sheikh

Respondent : State (Nct of Delhi)

Advocate for Def. : Richa Kapoor, APP

Advocate for Pet/Ap. : V.K. Raina, Adv

Disposition : Appeal dismissed

Judgement :

B.N. Chaturvedi, J.

1. The appellant was, by a judgment dated 27.8.2004, passed by learned Additional Sessions Judge, convicted under Section 302, IPC for committing murder of his wife Saira Khatun and sentenced to rigorous imprisonment for life

and a fine of Rs. 3,000/-, in default of payment RI for six months vide order dated 28.8.2004. The appellant is in appeal against such conviction and sentence.

2. Facts leading to appellant's trial unfold that on 21st April, 2001 at 7.45 a.m. one Smt. Sudesh came to Police Station Narela Industrial Area, Delhi and lodged a report that the wife of the appellant had committed suicide. The information so furnished was registered in daily diary being DD No. 2A dated 21.4.2001. A copy of DD entry was marked to ASI Umed Singh for necessary action. ASI Umed Singh, accordingly, accompanied by constable Jitender Kumar No. 896-NW, proceeded to premises No. T-247, Shivaji Nagar Extension, Delhi. Apart from him, Insp. Sajjan Singh, SHO, PS NIA, Delhi also reached the spot. The appellant was living with his deceased wife and infant son in a room as a tenant in the aforesaid premises. Insp. Sajjan Singh found the dead body of appellant's wife, Smt. Saira Khatun, lying on the floor of the room in a burnt condition. On inspection of the dead body, Insp. Sajjan Singh felt that it was a case of murder and, accordingly, he sent a RUKKA to the police station through one of the police officials for registration of a case under Section 302, IPC. A case FIR No. 153/01 dated 21.4.2001, under Section 302, IPC, was, thus, registered at Police Station Narela Industrial Area, Delhi. The appellant was not present at the spot. He was the one suspected to have committed the murder. He was, eventually, arrested on 23rd of April, 2001.

3. Apart from seizure of dry blood lying on the floor of the room, bloodstained pieces of the floor and earth control, Insp. Sajjan Singh also took into his possession a match box containing some unburnt matchsticks, some burnt matchsticks, a partly burnt bed sheet, a kerosene stove (steel) with lid open containing some kerosene oil, and ashes of deceased's burnt clothes.

4. The dead body of Smt. Saira Khatun was sent for post-mortem examination, which was conducted on 22nd of April, 2001 at 12.00 noon at Babu Jagjiwan Ram Memorial Hospital, Delhi. The doctor concerned opined that the burns on the dead body of Saira Khatun were ante mortem to the extent of 50 to 60 per cent. He found a smell of kerosene oil emanating from scalp hair. Apart from burns on reflection of skull tissues blood extravasated on occipital region in an area of 8 cm

x 6 cm was noticed. The death, according to the doctor, was due to shock as a result of burns sustained and injury on head was ante mortem, caused by blunt impact.

5. The finding of conviction of appellant under Section 302, IPC is primarily based on the testimony of Smt. Sheela, PW-7, Ajay Kumar, PW-28 and Dr. B.N. Acharya, PW-4.

6. Impugned conviction and sentence was assailed by learned Counsel for the appellant on the plea that the appellant was not present at his house on the date of incident being away to his in-laws' place in West Bengal.

7. Alternatively, it was argued that the burns on the body of the deceased were caused due to her accidentally catching fire while cooking as also sustaining head injury on occipital region owing to fall onto the hard floor surface. Yet another argument was that the deceased had actually committed suicide by setting herself ablaze and that the head injury was as a result of her receiving blunt impact on a fall.

8. Counter plea by learned Additional Public Prosecutor was that the presence of the appellant at his house at the time when the crime was committed, his contemporaneous and subsequent conduct soon after the incident coupled with nature of injuries on the body of the deceased as established by evidence on record verily justify the impugned conviction and sentence. It was contended that the opinion of the doctor, who performed post-mortem examination on the body of the deceased, clearly negate the defence plea of accidental fire or suicide, as advanced by the learned Counsel for the appellant.

9. Mr. V.K. Raina, Advocate made extensive oral submissions on behalf of the appellant, so also Ms. Richa Kapur, APP, representing the State. We have re-appraised the material evidence on record.

10. Of all the prosecution witnesses numbering 29, affirmatory statement of Smt. Sheela, PW-7, is eminently positioned in finding the complicity of the appellant in the commission of the crime. Though otherwise erratic in his affirmation, the

testimony of Ajay Kumar, PW-28, tends to lend corroboration to Smt. Sheela's deposition in regard to presence of the appellant at the scene of crime on the date and time of the incident. Regarding presence of the appellant at his house on the date and time of incident, reliance by the prosecution on the testimony of Smt. Sheela, PW-7 and Ajay Kumar, PW-28, apparently suffers a set back in view of contrary statements of Smt. Shamina Begum, PW-5, and Kasim, PW-6, who, though examined to support the prosecution case, turned the other way towing the plea of alibi set forth by the appellant. Both these witnesses happen to be the parents of the deceased Saira Khatun and parents-in-law of the appellant. Initially, in their respective examination-in-chief, both of them affirmed that they reached Delhi from West Bengal along with the appellant on 25th of April, 2001 on hearing about the death of their daughter. Since both these witnesses had in other respects deviated from their statements under Section 161, Cr.P.C. made to the police, the learned Additional P.P. subjected them to cross-examination on being so permitted by the learned trial Court. They denied a specific suggestion by the Prosecutor that the appellant was not with them when they had arrived at Delhi from West Bengal on 25th of April, 2001. Absence of any cross-examination of these witnesses on behalf of the appellant regarding the date, i.e., 25th of April, 2001 of their arrival at Delhi from West Bengal gave an impression of no challenge about correctness thereof from the side of the appellant. It, however, appears that later, on a request on behalf of the appellant, which was granted by the learned trial Court, both these witnesses were recalled on 3rd of April, 2002 itself for their cross-examination with an obvious purpose of offering them an opportunity to change their statements in regard to the date of their reaching Delhi. A suggestion was put to them on behalf of the appellant to the effect that they had actually accompanied by the appellant, reached Delhi on 23rd of April, 2001 and both of them readily accepted the lead. Clearly, changing of track by both these witnesses with respect to the date of their arrival at Delhi was prompted simply with a view to help the appellant to prove his alibi and to escape the punishment for which he would have been in, on prosecution succeeding in establishing his complicity in commission of the crime. Creditworthiness of the statements of Shamina Khatun, PW-5, and Kasim, PW-6, as also the contents of complaint Ex. DW-I/A, stand exposed on being juxtaposed to the testimony of Smt. Sheela, PW-7 and Ajay

Kumar, PW-28.

11. Smt. Sheela, PW-7, deposed that on the fateful day sometime around 7.00 p.m. on a phone call for the appellant being received at her shop, she went to call the appellant from his house and a knock at the door by her was responded by the appellant, who came out of his room and on being informed of telephone call, he came to her shop and while he was attending the call, Ajay Kumar, PW-28, came there in the meantime to inform the appellant that his house and wife were engulfed in fire. Hearing this, affirms Smt. Sheela, PW-7, the appellant threw away the receiver and instead of rushing towards his room, ran away in the direction of Mandi. Ajay Kumar, PW-28 corroborated the statement of Smt. Sheela, PW-7, to the extent that he had been to the shop of Smt. Sheela where the appellant was attending his phone call to inform him about fire in his room. Looking at the statement of Ajay Kumar, PW-28, as a whole, he, of course, appears to have made mutually contradictory statements on various counts putting a question mark on his credibility. However, even if the statement of Ajay Kumar, PW-28, is kept apart being of impeachable character, solitary statement of Smt. Sheela, PW-7, which by no means could be discredited on her cross-examination on behalf of the appellant, provides a safe basis to record the finding about presence of the appellant in his room when the incident took place.

12. In addition to the statement of Smt. Sheela, PW-7, medical evidence in regard to the nature and extent of injuries found on the body of the deceased also unerringly lead to a finding consistent with the prosecution case that it was undoubtedly a case of murder and not suicide or accidental fire, as contended by learned Counsel for the appellant. The post-mortem report, Ex.PW-4/A, coupled with opinion of the doctor concerned vide Ex. PW-4/C and PW-4/E and the deposition of Dr. B.N. Acharya, PW-4, hold key to find if it was a case of homicide or otherwise. On external examination of the body of the deceased, following injuries were noticed:

1. Superficial burn 2nd to 3rd degree present on face, front and side of neck, front of chest and abdomen.
2. Patchy burn present on genital organ. Pubic hair partially burnt and singed.

3. Both upper limb shows 2nd and 3rd degree burn except both palm.
4. Patch burn 2nd and 3rd present on front of both lower limb.
5. Deep burn present on front of right foot anterior 1/3rd exposing underneath muscle and charred bone.
6. No other external mark of injury seen.

Internal examination on reflection of skull tissue (scalp) revealed blood extravasated on occipital region in an area of 8 cm x 6 cm.

13. The doctor concerned opined the burns being ante mortem in nature covering a surface area of 50 to 60 per cent. Shock as a result of burns sustained was, according to the doctor, cause of death. The injury on head was ante mortem caused by blunt impact. Subsequently, on an application vide Ex. PW-4/B, further opinion of Dr. B.N. Acharya, PW-5, was sought on the point if the head injury could be caused by banging the head of the deceased prior to her death, by some other person by holding her hair against a brick wall or not? Dr. B.N. Acharya vide his opinion Ex. PW-4/C opined in affirmative. Yet another application Ex. PW-4/D was presented to Dr. B.N. Acharya, PW-4, seeking his opinion on the following:

1. Whether the burn injuries are homicidal or suicidal?
2. Whether the head injury to the deceased is homicidal or suicidal?
3. What is the approximate time since death of the deceased at the time of post mortem?
4. Whether it is a homicidal or suicidal case?

Dr. B.N. Acharya, PW-4, responded with his opinion vide Ex. PW-4/E which reads thus:

In continuation of PM report No. 137 dated 22.4.01 and subsequent opinion as asked by back page,

1. Body was found in supine position with head injury on occipital region which suggests that the deceased first sustained injury and subsequently unconscious and then set on fire by other party by pouring K. oil.

2. Head injury/burn injury is consistent with homicidal in nature.

3. Time since death is about 36-48 hours prior to autopsy.

4. On perusal of PM finding and brief facts of the case indicate that the case is consistent with homicidal in nature. However, same may be confirmed by circumstantial evidence.

14. The nature of burn injuries as reflected from post-mortem report, Ex. PW-4/A and reproduced hereinabove, disclose that all the burn injuries are confined to the front and side region only of the deceased's body. No burns were noticed on any part of back side of body/limbs and only post-mortem staining was found present on the back side vide Ex. PW-4/A. In the photograph, PW-19/6, one can notice that part of clothes of the deceased on the back side are intact and not burnt thereby indicating that the fire did not flare up to that part. This signifies that the deceased was set on fire while in supine position after sustaining head injury on occipital region. Dr. B.N. Acharya, PW-4, is, thus, right in opining that consequent upon sustaining head injury the deceased would have turned unconscious and that she was set on fire by someone by pouring kerosene oil on her while the body lay in supine position. Had it been a case of accidental fire or suicide, as contended by learned Counsel for the appellant, the burns would have been caused all over the body, including backside, and would not have remained confined to front and side portions only. Once the possibility of the deceased catching accidental fire or committing suicide by pouring kerosene oil is ruled out, there could be no occasion for the deceased sustaining head injury due to any fall on to the hard floor surface.

15. Recovery of kerosene oil stove, Ex. P-1 with open lid, match box, Ex. P-7 containing unburnt matchsticks P-7/9-22 as also burnt matchsticks P-7(1-8) and presence of smell of kerosene oil in the scalp hair of the deceased, as noticed by Dr. B.N. Acharya, PW-4 in post-mortem report, Ex. PW-4/A, leave no room for

doubt that the deceased after falling on to the floor on turning unconscious due to head injury caused to her, was doused in kerosene oil and set on fire. In a situation where the possibility of the deceased pouring kerosene oil on her body and setting herself ablaze in order to commit suicide, is ruled out, the presence of smell of kerosene oil from her scalp hair leaves no manner of doubt in concluding that it was the appellant who had set his wife on fire with a clear intent of causing her death thereby. The statement of Smt. Sheela, PW-7 to the effect that when the appellant had come out of the room on her knocking at the door, perspiring and perplexed also strengthens this finding. Further, Inspector Sajjan Singh testified that when he had reached the appellant's room next morning pursuant to DD No. 2A dated 21.4.2001, he found the room locked from out side. He added that he entered the room on Smt. Sudesh, PW-1, landlady of the appellant, opening the lock of the room with a key. There is no challenge to the statement of Insp. Sajjan Singh, PW-29, on appellant's room being found locked from outside. In the event of the deceased being present alone in the room and accidentally catching fire or committing suicide, as argued on behalf of the appellant, there could be no occasion for the room being found locked from outside. A finding that the appellant had gone to attend the phone call at the shop of Smt. Sheela, PW-7, after setting his wife on fire and locking the door from outside would thus be consistent with homicidal nature of injuries found on the body of the deceased. The fact that the appellant in spite of being informed of fire in his room trapping his wife, instead of rushing to his room disappeared in the direction of Mandi and was thereafter at no point of time available at his room or elsewhere until his eventual arrest on 23rd of April, 2001 also lead to the same conclusion.

16. Yet another aspect of the matter in the nature of an incriminating circumstance connecting the appellant with the crime in question is that while the dead body of his wife Saira Khatun was found lying on the floor of the room next morning, there was no trace of his' son's presence. According to the prosecution case, the appellant had in the evening of 20th of April, 2001 left his child with Smt. Kadwano @ Manju, PW-11, for care saying that he would return soon. He, however, failed to turn up throughout the night. Smt. Kadwano on the next morning allegedly went to the house of appellant's sister Salma, PW-2, who accompanied her to the house of the appellant where they came to know about the incident. Smt. Kadwano, PW-11

and Salma, PW-2, both, on their examination before the Court did not support the aforesaid prosecution version. Salma, PW-2, contrary to her statement under Section 161, Cr.P.C. before the police, affirmed that it was the police who had brought the son of the appellant to her on 21st of April, 2001 and handed him over to her. Since the child was not there in the room when the police had visited the spot, the question of police coming across with the child and taking him along to Salma's house to hand him over to her could not arise, Smt. Kadwano, PW-11 obviously omitted to support the prosecution case in regard to child being left by the appellant with her in the evening of 20th of April, 2001 in order to shield the appellant in view of her being closely related to him. For the same reasons, Salma, PW-2 also turned hostile and did not fully stick to her previous statement recorded by the police.

17. Absence of the child from the scene of crime in any case indicates that the appellant had made over his custody temporarily to someone as had the appellant been really away to West Bengal in connection with helping his parents-in-law in settling the marriage of his sister-in-law, the child would have continued to be with the deceased only and if it would have really been a case of suicide or accidental fire, as argued on behalf of the appellant, the appellant's son would have been found present in the room only. This was, however, not the case.

18. In view of incriminating circumstances, as discussed hereinabove, complicity of the appellant in commission of murder of his wife, Smt. Saira Khatun, is established beyond doubt. The appellant has, thus, been rightly held guilty of offence under Section 302, IPC and convicted therefor by the learned trial Court. We, as a result, find no merit in the appeal, hence dismiss the same.