

Harish Chander and anr. Vs. State

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Court : Delhi

Decided On : Feb-26-2007

Reported in : 2007(96)DRJ531

Judge : Manmohan Sarin and; S.L. Bhayana, JJ.

Acts : Indian Penal Code (IPC) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. A. No. 231/1992

Appellant : Harish Chander and anr.

Respondent : State

Advocate for Def. : Sunil Sharma, Adv.

Advocate for Pet/Ap. : K.K. Sud, Sr. Adv. and; Neeraj Jain, Adv

Disposition : Appeal allowed

Judgement :

Manmohan Sarin, J.

1. Appellant No. 1 Harish Chander and appellant No. 2 Chander Kanta alias Prem Kanta, had preferred this appeal assailing the judgment dated 25.11.1992 and order of sentence dated 30.11.1992, passed by then Additional Sessions Judge

Shri J.B. Goel in SC No. 185/1985 convicting them under Section 302 read with Section 34 IPC and sentencing both of them to life imprisonment and payment of a sum of Rs. 2,000/- as fine and in default thereof, further RI for two years. The Trial Court held that there was no evidence of participation of accused Satish Chand, brother of Harish Chander in the crime and the charge against him had not been proved. He was accordingly acquitted of the charge under Sections 302/34 IPC. The present appeal filed by the appellants was admitted to hearing on 15.12.1992. The sentence of the appellants was suspended pending the decision of the appeal vide order dated 4.8.1993 on furnishing bail bond in the sum of Rs. 5,000/- with one surety of the like amount.

2. On 23.3.2006, the Court was informed by the counsel for the appellant that appellant No. 1 Harish Chander had expired on 7.3.1999 and accordingly the appeal preferred by him stood abated and Chander Kanta alias Prem Kanta, appellant No. 2 became the sole appellant. Chander Kanta had not appeared pursuant to the bailable warrants issued and as such, non-bailable warrants were issued. Chander Kanta was arrested and taken in judicial custody and was thereafter, again admitted to bail vide order dated 23.2.2006. The appeal was heard on 24th, 25th and 31st January, 2007 and judgment reserved.

3. The prosecution case in brief is that the appellant Chander Kanta alias Prem Kanta and her son Harish Chander had on 31.5.1985, committed the murder of Chanchal Rani alias Poonam Devi, wife of Harish Chander by setting her on fire. Harish Chander was married to Chanchal Rani alias Poonam Devi in the year 1982 and was living in the matrimonial house on the second floor room at 2661, Gali Anar, Kinari Bazar, Delhi. The parents of Harish Chander, i.e., his mother, father and brother were living on the first floor. Chanchal Rani was found burnt and lying dead at about 7.00 a.m. in the morning on her bed in the second floor. Her clothes were also burnt. Information was given by someone to PCR, who conveyed the same to the concerned Police Station resulting in recording of a DD entry. The parents of the deceased had reached and lodged a report.

4. Ram Dayal, father of the deceased had alleged that Chander Kanta had been imputing unchastity to his daughter claiming that she was pregnant at the time of

marriage. She was got medically examined and the allegations were found incorrect. He claims that in-laws of her daughter Chanchal Rani were harassing her even prior to that and pressing her to arrange a shop for her husband. Demand for dowry had been made earlier as a result of which, she had been harassed a lot. He alleged that her daughter was set on fire by her in-laws due to greed of dowry and money. The Police had inspected the place of occurrence and prepared site plan and taken into possession a bottle with kerosene oil, one stove with open lid containing some oil, match box, matchstick, pieces of glass bangles, pieces of burnt clothes, two pillows, bed sheet, one sofa chair and one plastic basket in partly burnt condition. Vegetables were found scattered. The body was sent for post mortem and cause of death was reported to be burn injuries. The Doctor, who examined the body of Chanchal Rani, had noticed smell of kerosene oil on her burnt clothes. Viscera, burnt clothes and bangles worn by the deceased were preserved. Harish Chander, his mother Chander Kanta and brother Satish Chand were arrested. Harish Chander's bush-shirt and pant with smell of kerosene oil, were also seized. Certain injuries were noticed on the wrist of his left hand. Medical examination was also conducted. The time of death, as per the post mortem report, was estimated at about 4.00 a.m. Prosecution had examined a number of witnesses apart from the parents and relations of the deceased.

5. There is no eye witness to the case and the entire case is based on circumstantial evidence. The appellants in their statement denied the incriminating circumstance put to them and stated that Harish Chander, and the deceased were living separately on the second floor having their own kitchen, while other family members were living separately in the same house.

6. We may, at this stage for facility of reference, reproduce the circumstances and facts, which the Trial Court found as having been proved in establishing the guilt of the appellants. These are set out in para 25 of the judgment and are reproduced:

25. In the present case, the following circumstances have been proved:

1) The deceased Chanchal Rani was married to accused Harish Chander in or about April, 1982.

2) (a) Shortly after the marriage false accusation of unchastity since before marriage was leveled against her by her in-laws.

(b) She was subjected to medical test to prove her chastity and the allegations were found to be false.

3) She was being ill-treated in the matrimonial home even thereafter on account of or in connection with demand of money or other property from her parents and such demand was not met.

4) There was thus motive for the crime.

5) She was found dead in bed at her house on 31.5.85 at about 7 a.m. with 100% burns with bed and beddings also burnt.

6) She had not died a natural death or accidental death nor suicidal death and had died homicidal death and as per report of post mortem Doctor (PW-15) deceased had died due to shock resulting from ante-mortem burns.

7) She had suffered 100% ante-mortem burns and smell of kerosene oil was found on her person and clothes when found dead.

8) She along with her husband accused Harish Chander was living in a single room accommodation on the second floor of the house. Whereas her mother-in-law along with her father-in-law and one brother-in-law accused Satish was living on the first floor of the same house.

9) There was no other third lady member living with the deceased or with her in-laws in that house at about the time of occurrence.

10) Broken pieces of her glass bangles were found lying on the floor near the bed where she was found burnt and in these pieces of glass bangles some more pieces of glass bangles not belonging to the deceased were found intermingled which must be of accused Chander Kanta accused and showing her participation in the crime.

11) Accused Harish Chander and other accused persons were found present at their house i.e. at the place of occurrence at about 7 a.m. when police and parents of deceased had gone there after receipt of information of the incident.

12) The accused or any other family member of the accused were not found having suffered any burns in that incident. Obviously they had not tried to rescue her from fire at once.

13) No medical aid was provided to the deceased by the accused persons.

14) The accused themselves had neither informed the police nor parents of the deceased about the occurrence. As per post mortem Doctor the death caused due to burn injuries.

15) The conduct of the accused is inconsistent with their innocence.

16) In all human probabilities this crime must have been done by the accused Harish Chander and Chander Kanta.

17) There is no Explanationn given by the accused persons about the circumstances in which the deceased had been burnt.

7. Learned Senior Counsel for the appellant Mr. K.K. Sud submitted that unfortunately, appellant No. 1 expired on 7.3.1999, leaving Chander Kanta alias Prem Kanta as the sole appellant, who was an old lady of 70 years suffering from cardiac disease and diabetes. Mr. Sud, giving the family background and circumstances of the appellant, submitted that Appellants belonged to the indigent class, where appellant Harish Chander, since deceased, was a tea vendor in East Delhi. For the purposes of his vocation, he used to leave the home early. Mr. Sud urged that the couple was residing separately having their separate establishment and kitchen. They had nothing to do with the in-laws, who lived on the first floor having their own kitchen. He submitted that the injuries on the deceased appellant's hand were a few abrasions. These were caused when the body of his deceased wife Chanchal Rani, was being taken down through the narrow stair case. He submitted that what was being referred as an allegation of unchastity or demands for dowry, were being totally misconstrued and blown out of proportion.

He submitted that for a newly married girl to have some complaint of nausea etc. was quite common and the thought would normally go to the girl being in the family way and there was nothing sinister in having a medical check up done to verify that. Similarly, he submitted that it was quite a different thing to ask for help in arranging a shop and demanding a shop in dowry. He also argued that the stove was not sent for examination to see whether it was working. He submitted that the appellant No. 1 had duly left the house and thereafter, if the deceased had any mishap or accidental death during cooking, the appellants could not be faulted with.

8. Mr. K.K. Sud, learned Counsel for the appellants, submitted that the above submissions were made by him with a view to demonstrate that the Court had proceeded on conjectures and assumptions, which were not warranted. However, as appellant No. 1 had expired and his appeal stood abated, we were now primarily concerned with the conviction of Chander Kanta alias Prem Kanta. He submitted that there was no evidence whatsoever to link Chander Kanta alias Prem Kanta with the crime. The present case admittedly was based purely on circumstantial evidence. The case of Chander Kanta was similar to that of Satish Chand. Chander Kanta and Satish Chand were both living on the first floor as a family having a separate kitchen from that of the appellant Harish Chander and the deceased Chanchal Rani. Chander Kanta is sought to be implicated in the crime on the basis of the alleged allegation of unchastity leading to the daughter-in-law being subjected to a medical check up to confirm pregnancy, ill treatment at the matrimonial home, harassment and alleged demand for dowry.

9. We may observe that close relatives of the victim have a tendency to exaggerate and their narration of events often gets affected or coloured by their perceptions and belief. Their evidence has to be examined with care and caution. The demands of dowry and the strained relations with in-laws, alleged to be the cause of the death of Chanchal Rani are founded on the evidence of her father, mother and uncle. In view of the close relationship and affection any person in the position of witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Father of the deceased had stated that deceased did not say anything about harassment to her in his presence. Even

mother of the deceased stated that she did not tell her husband about the quarrels or the complaints made by their daughter. PW3, Uncle of the deceased stated that he did not know what was the cause of harassment of his niece, though it might have been dowry. In such circumstances to attribute a motive for the crime and convict Chander Kanta for the same cannot be justified.

10. The dominant factor which appears to have weighed with the Trial Court is the presence of pieces of broken glass bangles found at the place of occurrence, which was different from those worn by the deceased Chanchal Rani. Proceeding on the basis that there was no other lady apart from Chander Kanta in the house, the Trial Court held that this would establish her presence and the broken pieces of glass bangles must have belonged to her, thereby establishing her presence at the scene of crime. Further the absence of burn injuries on appellants would indicate that they took no steps to try to rescue or to extinguish the fire of the deceased. Besides, not providing medical aid, non- informing the Police or parents of the deceased about the occurrence and failure to explain the circumstances in which the deceased was burnt, were urged as the circumstances pointing towards the guilt of the appellant Chander Kanta. It was urged that the appellant was found sipping tea after the tragedy when the parents of deceased arrived which too indicated her indifferent and insensitive attitude towards Chanchal Rani.

11. Learned Counsel for the State while reiterating the submissions and inferences as noted above and drawn from the above circumstances, submitted that there was no evidence whatsoever of cooking at the early hour in the morning. There were no half-cooked vegetables or oil in any of the utensils. The stove had an open lid. All these negated any accident while cooking. It was a clear case of homicide and the appellant/accused have not explained at all the circumstances in which she got burnt and was not even rescued or efforts made by extinguishing the fire by the family members. All these pointed towards the guilt of the appellants.

12. We have considered the above submissions, perused the judgment and the depositions as well as the record. It is the admitted case that the appellant No. 1 Harish Chander, since deceased, and Chanchal Rani, deceased, were both living

separately and independently in the room on the second floor having their own kitchen and establishment. The main person who is responsible for explaining the manner in which the deceased Chanchal Rani got burnt and was found dead would be appellant No. 1, who is no more. There is merit in the submissions of learned senior counsel Mr. K.K. Sud that appellant No. 2 Chander Kanta and Satish Chand, who was acquitted by the Trial Court, are placed in similar circumstances as being members of the family of deceased, who were living on the first floor. Satish Chand, younger brother of the deceased appellant, was a pavement vendor and was having his independent vocation. Allegations of harassment and dowry have been made against the members of the appellant No. 1's family. The specific allegation was made of having attributed unchastity to Chanchal Rani. However, we cannot also overlook the fact that this happened immediately after marriage and after the so-called medical examination, over 3' years had elapsed and in the daily routine of life, the matter was over and stood concluded.

13. The only basis for implicating the appellant Chander Kanta in the crime apart from the unsubstantiated allegations of unchastity, demands for dowry etc. is the alleged presence of some pieces of glass bangles found intermingled with that of the deceased, which did not belong to her. On this basis, since there was no other lady in the house, it is sought to be concluded that the bangles belonged to her and she must have been present at the scene of the crime and participated therein. To this, have been added other factors, such as indifferent attitude, not coming forward to help, not calling the police and found to be sipping tea etc.

14. As regards the CFSL report on bangles, it was found that exhibits 9-A, 9-B and 9-C being red coloured glass bangles with golden design and red coloured plain glass bangles and red coloured glass bangles with different gold designs, the bangles as per Exhibit 9-A and 9-B were similar to the broken pieces of glass bangles marked 10-A and 10-B while the others were not similar.

15. From the above, it is sought to be concluded that pieces of other white metal ring or other pieces of bangles were not that of the deceased and must have belonged to the appellant. We find that this circumstance was not even put to the

appellant at the time of recording of her statement under Section 313 Cr.P.C. The above evidence which is sought to be regarded as the incriminating piece of evidence and made the basis of conviction was not even put to the appellant Chander Kanta. In her statement under Section 313 Cr.PC, the following questions had been put to her:

Q. It is in the evidence that in C.F.S.L. Office two sealed parcels, one given parcel No. 9 was found to contain three types of bangles, which were separated as parcel No. 9A, 9B and 9C as mentioned in CFSL report Ex. Z2. What have you to say?

A. I do not know.

Q. It is further in evidence that the CFSL analyst PW.19 had also examined another sealed parcel given parcel No. 10 which contained pieces of bangles of two types given parcel No. 10A and 10B which were also examined by him vide his report Ex. Z2. What have you to say?

A. I do not know. Whole thing is made up.

Q. It is in further evidence against you that the CFSL expert after comparison had found the exhibits of parcel No. 9A and 9B to be similar in all respect with the contents of parcel No. 10A and 10B as per his opinion made in report Ex. Z2. What have you to say?

A. I do not know. It is incorrect.

Q. It is further in evidence that said CFSL expert has opined that the contents of parcel No. 9C were different from the contents of parcel No. 10A and 10B. What have you to say?

A. It is incorrect.

Q. Have you anything else to say?

A. I am innocent. Brijmohan Lal died on 22.1.1992. No additional incriminating evidence has come and so I do not want to give any evidence in defense.

16. From the foregoing narration, it would be seen that it had not been put to the appellant that the contents of parcel No. 9C, which was different, belonged to her. This suggestion itself was not even made. The only suggestions being put is that the two types of bangles were different from the third but that the third belonged to her, was not put to her at all. In this view of the matter, an adverse circumstance which has not been put to the appellant cannot be read in evidence against her, besides it is too specious a ground to convict a person in the absence of any other supporting or corroborating evidence to show her presence at the scene of crime. The Court has to guard itself and ensure that while dealing with circumstantial evidence, conjectures and suspicion should not be permitted to take the place of legal proof. Reference may usefully be made to the warning addressed by Baron Alderson to the jury in *Reg. v. Hodge* (1838) 2 Lewin 227 where he observed:

The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.

17. Evaluating the facts and evidence before us, it cannot be said that the facts established would only be consistent with the guilt of the appellant. This is a fit case where, to our mind, it cannot be said that the only hypothesis available is the one consistent with the guilt of the appellant rather there is no conclusive evidence available for conviction of the appellant and/or to show her presence at the scene of the crime except the specious circumstance of some bangles being found, which appear to be different from the ones worn by the deceased. In these circumstances, as noted earlier, the husband of the deceased with whom the deceased was living and who had to primarily explain the manner in which she got burns, is no more. Appellant No. 2 has already suffered the wrath of the almighty in loss of her son. She was not having too cordial a relationship with the deceased and was living separately, is old and suffering from cardiac and other diseases including diabetes.

18. In view of the foregoing discussion, we find that the impugned judgment convicting the appellant Chander Kanta is not sustainable and the prosecution has failed to prove its case beyond reasonable doubt and she is entitled to the benefit of doubt. The appeal is accordingly allowed and she is acquitted. The bail bonds are directed to be discharged forthwith.

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