

Babulal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-01-1994

Reported in : 1995CriLJ269

Judge : B.R. Arora and; V.G. Palshikar, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : Criminal Appeal No. 365 of 1987

Appellant : Babulal

Respondent : State of Rajasthan

Advocate for Def. : D.R. Bhora, Public Prosecutor

Advocate for Pet/Ap. : M.D. Purohit, Adv.

Disposition : Appeal allowed

Judgement :

V.G. Palshikar, J.

1. The present appeal is directed against the judgment of conviction dated 28-9-87 delivered by Sessions Judge, Jalore in sessions case No. 13/87 convicting the appellant accused under Section 302 I.P.C. and sentencing him to imprisonment for life and to pay a fine of Rs. 5,000/- in default further to undergo 2 Years

rigorous imprisonment.

2. The prosecution case is that the accused killed his wife Sushila and daughter aged about 2 Years by putting them on fire on 2nd January 1987 at about 7 P.M. in village Mandwala in Jalore Dist. The first information report was lodged by the father of the deceased Sushila in which he stated that he has definite doubt that Sushila and her daughter Ritu have been killed by her husband Babulal and his mother and sister. However, there is no statement in the F.I.R. regarding any cruelty to the wife by Babulal. The only complaint is that there was skirmish between Sushila and her mother-in-law and sister-in-law. There is no complaint that Sushila was tortured for getting further dowry from her father. On the basis of this report, investigation was completed and the accused was charge-sheeted on 28-3-1987 for committing murder of his wife and daughter. The accused denied commission of any offence and claimed to be tried. There are no eye witnesses to the incident in this case and the entire case is based on circumstantial evidence.

3. Briefly, facts of the case are that on the date of incident, deceased Sushila was in happy mood as there was birth of male child in the family of her near relation, therefore, she was distributing the sweets on the happy occasion in the evening at about 6 O'clock. It is then claimed on the basis of evidence of one witness that the accused snatched his daughter from his wife, fell her on the ground and dragged her inside the house, at the time, Sushila was crying and following them. After a few minutes, there was a fire and Sushila and her daughter have been killed. The prosecution, therefore, claimed that the death was intentionally caused by the accused and, therefore, he is liable to be punished.

4. The learned Judge after recording the evidence of 11 witnesses and hearing the arguments of the counsel came to the conclusion that the prosecution has proved the case of murder and, therefore, convicted the accused under Section 302, I.P.C. as aforesaid. It is against this judgment that the present appeal is directed.

5. Mr. Purohit, learned counsel for the appellant contended before us that the entire evidence on record even if accepted completely does not prove the case of the prosecution beyond reasonable doubt. The only witness accepted by the learned Sessions Judge for coming to the conclusion of guilt is liable to be

disbelieved as he is obviously concocted witness. We have gone through the entire evidence on the record, it was pointed out to us by learned counsel for the appellant from the deposition of P.W. 6 Jawana that his evidence was recorded, days after the arrest of the accused was effected even when the arrest was effected, Jawana was present as witness and yet he did not disclose to the Arresting Officer regarding his being eye witness to the incident, even other witnesses who were entitled to be believed do not name Jawana as a person present at the place of occurrence during the time they were present. Shri Purohit pointed out that the entire evidence of this witness is afterthought, there is no corroboration to the testimony of this witness, he therefore, claimed that the witness is liable to be disbelieved. He then contended that if the evidence of P.W.6 Jawana is ignored, then there is nothing in the prosecution case, on the basis of which it can be said that the accused is guilty of the offence.

6. P.W.1 is Sumermal S/o Rughnath. He is 60 years old, resident of Mandwala. On the date of incident, he was sitting in the Dharmshala in his village at about 6 o'clock in the evening, he saw fire in the bouse of Kushalraj. Ganeshmal who was also sitting with him went to the house and found that the door was closed i.e. the door to the stair-case was closed, and nobody was in the house, he, therefore, opened the outer door and went up stairs but the upper door was also closed but not locked. He, therefore, opened it and found that child of Babulal was lying dead due to burning and wife of Babulal was also lying on her face and her back side was burning. Seeing this, he stood there for one or two minutes and then came down. He did not see anybody in the house. He is, thus, the first witness to see that Sushila and Ritu died due to burning. This witness P. W. 1 has stated all the facts in a very succinct manner and does not depose to have seen anybody else than the persons named by him.

7. The next P. W. 2 is Amba Ram who runs hotel at village Mandwala and which is situated opposite to the house of Kushalraj where the death occurred. He has stated that he did not visit the house of Kushalraj when wife of Babulal Smt. Sushila died due to burning. However, he came out to the hotel when Sumermal (PW. 1) came to the hotel. He has further deposed that when he came out to the hotel he did see who were present in the house of Babulal. In his cross-

examination by the accused, he has stated that a sum of Rs. 130/- was due from Jawana and, therefore, he did not visit the shop for the last 6-7 months. This witness was examined on 19-5-87. Jawana (PW. 6) was examined on 22-7-87 and it is on the deposition of Jawana Choudhary alone that the conviction is recorded by the learned Sessions Judge as will be seen which is unsustainable.'

8. P.W.3 is declared hostile and in his cross-examination by the P.P. He denied to have made the statements put to him before the police, he has claimed that on the incident, he had gone to Jodhpur.

9. PW. 4 is Sumermal s/o Manmal. He is 'Panch witness' and he has deposed that the bodies were burnt and burnt clothes were stuck to the body. He does not state any-where that the dead bodies were naked. He is also declared hostile by the prosecution case. According to the prosecution, he states that there was a match box found on the site and that place smell of kerosene oil. He denied the suggestion that he has falsely deposing in the court because he was related to Babulal.

10. P. W.5 Roopraj who was called as 'Panch' (Motbir) by the Sub-Divisional Magistrate, states that he saw the burnt body of Sushila and the clothes she was wearing were stuck to the body. He did not state that when he came there, there was no match box but when he was going out he found a stick in varrandah. The prosecution declared hostile and he was cross-examined, in cross-examination, he denied to have made any such statement to the police.

11. There is the evidence of PW. 6 Jawana. He is the only witness who has deposed that he saw Babulal beating his daughter and throwing her to the ground and dragging her and his wife Sushila following him. He then deposed that he asked to Babulal as to why he is beating his daughter on that Babulal said that not to interfere and go his by own way and then he went to the hotel of Ambalal and stayed there. According to him 15-20 minutes thereafter, there was a fire in the house of Babulal, he therefore, rushed to the house of Babulal alongwith others. He then says, it is pertaining to note that at that time Sumermal S/o Rughnath (PW. 1) went into the house of Babulal and at that time Babulal's mother was standing there. Sumermal came down and said that wife and daughter of Babulal

had died and they have been killed by burning. He then claims that he tried to go up-stairs but was prevented from so doing by the mother of Babulal, he then proceeds to state that 2 minutes after Sumermal came down. Babulal also came down. He admits that several people had gathered there, he further says that after about half an hour Saremal father-in-law of Babulal arrived at, his house. In his cross-examination, this witness admitted that he was charged with murder but in that case was acquitted. He also admitted that 2 or 3 criminal cases are pending against him but claimed that they are false. On the basis of this deposition the learned Sessions Judge found the accused guilty of murder. This witness was examined on 22nd July, 1987. He states that he saw Sumermal there, however, Sumermal does not mention of this man. He also states that Saremal father of deceased Sushila came half an hour after Jawana went to the spot. However, Sumermal who is father of deceased states that he saw fire coming from the house of Babulal. He reached the house of Babulal, on reaching the house of Babulal, his mother and sister were standing there, when he went in, Sumermal came out and he told that his daughter and grand daughter are dead. He then entered the house of Babulal and went up-stairs where he found his daughter and grand daughter lying dead. In his deposition, he nowhere states that he saw Jawana there. He states that when he came, Summermal was coming down, which means he arrived on the spot immediately and not half an hour later as alleged by P.W.6 Jawana. Yet he does not mention the presence of Jawana.

12. P.W.8 is the mother of the deceased who states that her daughter was tortured for dowry but has categorically admitted in her cross-examination that this fact was never told by her to anybody. She has thus, directly contradicted her husband when he states that he was told after the death of Sushila by his wife Sridevi that Sushila was being tortured for dowry except for two statements by the mother and father of the deceased, there is no evidence on record regarding torture for dowry. There is thus, no motive for Babulal to kill his wife and child.

13. P.W.9 is the Sub-Divisional Magistrate, Jalore who went to the spot for knowing of the death and suspicious the spot and Panchnama of spot was made in his presence. He states that on removal of the cloth covering the dead body, it was found that burnt clothes were stuck to the body. He has deposed that the

dead body was found burnt with under-garments which had stuck to the body.

14. P.W.10 is the Dr. who performed post mortem. He has stated that there are no injuries on the body of the deceased. He has then admitted that in this case, the tongue of the victims was protruding out of the mouth because of gas pressure. He then stated: if the tongue had come out earlier, it would have definitely got burnt. Thus excluding the possibility of the deceased having been killed and burnt then.

15. P.W. 11 is the Investigating Officer. This is the detailed evidence from the record On the appreciation of which as indicated above, the accused was found guilty.

16. We are firmly of the opinion that it raises high and strong suspicion that accused was responsible at involved death, but it must be run that suspicion however, high or strong cannot take place of proof. We are, therefore, convinced that there is no case of guilty beyond reasonable doubt.

17. The learned Sessions Judge has in para 9 of his judgment summarised 11 circumstances on which reliance has been placed by him for coming to the conclusion that accused is proved guilty beyond reasonable doubt as pointed above none of the circumstances in any manner stand proved as found by the learned Judge. We would like to deal with each of the circumstances elaborately.

18. The first circumstance used by the learned judge is that the accused was motivated in killing the wife as he was demanding dowry from her and was tortured for the same. Except for evidence of mother and father of the deceased no other independent evidence on record and even the mother and father said for the first time in court that their daughter was tortured for dowry. It is obviously and afterthought and cannot be used as a circumstance against the accused.

19. The second circumstance is that the deceased was in happy mood and was distributing the sweets on account of the birth of son in the family and, therefore, there was no reason to claim mental disturbance in her extraordinary conduct of individual cannot be used to judge mental set up of that person. The circumstance of distributing the sweets cannot therefore, be used to say that she was in

pleasant mood, and moods can change. This circumstance also cannot, therefore, prove anything against the accused.

20. The third circumstance is that the accused was present at the time of incident. This circumstance is not proved except for the statement of Jawana PW. 6 no one states that the accused was present at the time of incident. The testimony of Jawana is unbelievable as aforesaid. This circumstance also does not prove anything in favour of the prosecution. Even if it is assumed that the accused was present at the time when the incident occurred, it does not necessarily mean that he was the author of the incident.

21. The fourth circumstance is just prior to the incident. Accused beat his daughter and dragged her, which made Sushila aggrieved. This statement is made only by Jawana he was to be disbelieved, apart from that, if he is believed then prior to the incident Sushila was unhappy, if his testimony is to be accepted that the daughter Ritu was dragged and beaten by the accused. Some minor abrasions on her body would have been disclosed during the post mortem. However, no such abrasions are found this is yet another circumstance therefore, to disbelieve Jawana in any event. It does not connect the accused with burning.

22. The fifth circumstance is that the bodies of the deceased were 100% burnt but their hands and feet were not burnt. This circumstance is totally innocuous, merely because, the hands were not burnt it could not be said that the deceased was put on fire by the accused.

23. The sixth circumstance is used that no one heard shouting or crying at the time of incident. This circumstance does not point to the guilt of the accused, in fact it militates against any presumption of guilt because had the accused put the deceased on fire. They would have definitely shouted and shouts could have been heard, but they were not shouting. It could not be said that the deceased were burnt by the accused.

24. Seventh circumstance is also innocuous. The door was closed from out side but could be opened. Even if it is so, merely because the door was closed, it cannot reach, the irresistible conclusion is that accused put them on fire.

25. The eighth circumstance is that the body of Sushila was found naked. This is factually incorrect. The photographs of the incident show that the clothes worn on the person have been burnt, and stuck to the body of the deceased.

26. Circumstances No. 9 & 10 relate to finding of kerosene and match box. It is true that it was found there, but it does not mean that the accused committed the murder for all these reasons. Therefore, on reappreciation, we are of the opinion that the conviction is unsustainable in law and deserves to be set aside.

27. Mr. Purohit learned counsel for the accused appellant cited before us several judgments in support of his contention that the circumstantial evidence in the present case was wholly insufficient and did not prove the guilt of the accused.

28. Mr. Purohit then heavily relied on the decision of the S.C. in AIR 1984 SC 1622: (1984 Cri L'J 1738). In that case, the deceased was found dead in her bed where she was sleeping with her husband. There was no eye witness of his ill-treatment and the husband therefore, was prosecuted. He was sentenced to death by the learned Sessions Judge. The death sentence confirmed by the Bombay High Court and in appeal the S.C of India acquitted the accused on the ground that the circumstantial evidence was not sufficient in so doing. The S.C. in AIR 1984 SC 1622 : (1984 Cri LJ 1738). Sharad v. State of Maharashtra page 1624 (of AIR): (page 1740 of Cri LJ) observed as under :-

The following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established;

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. Case law discussed.

A case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction.

29. While granting the benefit of doubt to the accused, (he S.C. of India in the above case has observed as under :-

It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits and accused, the accused is undoubtedly entitled to the benefit of doubt.

In the cases of murder by administration of poison the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction :

(1) there is a clear motive for an accused to administer poison to the deceased,

(2) that the deceased died of poison said to have been administered,

(3) that the accused had the poison in his possession,

(4) that he had an opportunity to administer the poison to the deceased.

In the instant case a newly married bride was found dead. The cause of death was cyanide. The prosecution case was that in the short span of 4 months of married life she was ill treated by her husband and his parents, and that the poison was administered by her husband. The defence plea was however, that while there was a strong possibility of her having been ill-treated, being highly sensitive and impressible woman she might have committed suicide out of sheer depression and frustration arising from an emotional upsurge. The case depended solely on

circumstantial evidence.

Hold that the circumstantial evidence did not lead to the only conclusion that the husband committed murder by administering poison. On the other hand two views were possible one pointing to his guilt and another that the wife might have committed suicide. Consequently, the accused was entitled to benefit of doubt.

30. It will thus, be seen that the present case of Babulal is fully and completely covered by decision of the S.C. in Sharad's case and the evidence is liable to be rejected and the accused is entitled to acquittal.

31. Several other cases including some judgments of this Court were cited before us by the learned counsel for the appellant. However, in our view, the case being covered by the S.C. decision (Supra). The other cases though were relevant and to the point as involved in this case need not be cited or discussed.

32. In the result, the appeal is allowed. The accused is acquitted of charge under Sec. 302 I.P.C. He should be set at liberty forthwith unless required for some other offences by the State of Rajasthan.

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