

Dilip Kumar Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/772030

Court : Rajasthan

Decided On : Aug-09-2002

Reported in : RLW2004(2)Raj1244; 2003(1)WLC18

Judge : B. Prasad and; N.P. Gupta, JJ.

Acts : Indian Penal Code (IPC) - Sections 201, 302 and 498A

Appeal No. : D.B.Cr. Appeal No. 102 of 2000

Appellant : Dilip Kumar

Respondent : State of Rajasthan

Advocate for Def. : R.K. Soni, P.P.

Advocate for Pet/Ap. : Shambhoo Rathore, Adv.

Disposition : Appeal dismissed

Judgement :

N.P. Gupta, J.

1. The appellant has been convicted by the learned Addl. Sessions Judge, Rajsamand in Sessions Case No. 33 of 1997, vide judgment dt. 27.2.99, for the offence under Section 302 and 201 IPC, and sentenced to imprisonment for life with a fine of Rs. 500/-, in default to undergo one month's rigorous imprisonment

on the first count, and to rigorous imprisonment for three years, and a fine of Rs. 500, in default to undergo one month's rigorous imprisonment, on the second count. Both the sentences have been ordered to run concurrently.

2. Brief facts of the case are that on 27.1.97 one Shanti Lal submitted a written report to S.H.O. Nathdwara alleging inter alia that Manju was married to the appellant four years back in accordance with community customs. On the day of information, he received information, whereupon he came, and found that Manju has been burnt to death by pouring kerosene by the husband, the appellant. On this report a case under Section 304-B I.P.C. was registered. However, before this report Marg case No. 4/97 had already been registered. After investigation charge sheet was submitted against the appellant for the offence under Section 302, 304-B, 498-A, and 201 I.P.C. The case was committed to the Court of District & Sessions Judge, Rajsamand wherefrom it was transferred to the Court of Addl. Sessions Judge.

3. Learned trial court framed charge against the appellant for the aforesaid offence. The accused denied the charge, and claimed trial. In trial the prosecution examined 13 witnesses including Dr. S.S. Purohit, P.W. 12, and the Investigating Officer Shyam Sunder, P.W. 13. The accused in his statement under Section 313 Cr.P.C. took a stand of denial, and stated that he along with Chhagan Lal were sleeping on the shop of his father, and on hearing hue and cry on fire having broke out in the house they reached. He tried to enter the room, engulfed in fire but the crowd prevented him. In this process he also got burn, and fainted down. The people of the crowd carried him to hospital, and that the shutters of the house were also taken away by somebody in that night. With this it has been claimed that he has been falsely implicated.

In defence the accused examined three witnesses viz. Ratangiri, Keshulal, and Chhagan Lal. The prosecution tendered various documents in evidence including some photograph of the site. Many of the documents had been admitted by the defence. After completing trial, the learned trial court found that the story developed by the prosecution witnesses during trial about the demand of dowry cannot be believed, as it has not been mentioned whether in the first report, or

even in the police statements, and is an improvement made during trial. Consequently, the appellant was acquitted of the offence under Section 304-B, and 498-A I.P.C. but then the learned trial court found that the victim was murdered, and was thereafter set ablaze after pouring kerosene, and thus found the appellant guilty of the offence under Section 302 and 201 I.P.C.

4. At once we may observe that in this case there is no eye witness to witness the incident, and the case rests solely on circumstantial evidence. The learned trial court, as appears from para 51 of the judgment, found eight circumstances duly proved, being as under:-

1. The deceased and the accused used to live in the room where the incident occurred.

2. On the date of incident, presence of nobody else other than these two persons is established in the room in question.

3. The incident occurred at about 2.30 A.M. in the night.

4. The victim deceased Manju died on account of asphyxia.

5. The victim was burnt thereafter, so that the evidence of murder be made to disappear.

6. No explanation whatever has been offered on the side of the accused about the incident.

7. The accused offered a false account of the sequence of events.

8. The accused took a stand of alibi which has been found to be false.

5. Thus, according to the learned trial court these circumstances sufficiently established that the accused murdered Smt. Manju by suffocating her to death, and thereafter, after pouring kerosene set her ablaze.

6. Assailing the impugned judgment it has been contended that the learned trial court has erroneously held the appellant to have killed Manju as, in his submission

the appellant was not in the house, and was sleeping in the shop of his father along with Chhagan Lal, and it was a case of accidental on the other hand had gone to the house on receiving the news of fire, tried to save her in which process he also received burn injuries. It was then contended that it is a case of unfortunate accidental death which has been bolstered into a case of dowry death by the parental relations of the victim by cooking up the story of the appellant making a demand of Rs. 35,000/-, which has already been disbelieved by the learned trial court, and the appellant has been acquitted of the offence under Section 304-B, and 498-A I.P.C. In such circumstances, according to the learned counsel, the appellant cannot be held guilty of any of the offences. Next submission is that since the case rests on circumstantial evidence only, and the circumstances found by the learned trial court, are firstly not proved, and secondly, such of the circumstances as may be found proved by this Court do not establish a complete chain establishing guilt of the accused so also negating innocence of the appellant on reasonable hypothesis. It is contended that according to the prosecution evidence the appellant's parents were living in that very house, and therefore, It cannot be said with certainty that it was the appellant alone who was the perpetrator of the crime, and thus on circumstantial evidence as found proved on record the appellant could not be held guilty.

7. The learned P.P. on the other hand supported the impugned judgment, and contended that from the statements of Dr. S.S. Purohit, P.W.12 and the post mortem Ex.P-9 it is clearly established that though the victim died of asphyxia, but asphyxia was not caused by burns, or fire rather it was after she had been killed by asphyxia, she was set ablaze, and therefore, it cannot be said to be a case of accidental death.

8. We have considered the rival submissions, and have perused the record.

9. Coming to the prosecution evidence, it may be observed that P.W. 1 to P.W.8 are the parental relations of the deceased, and have deposed about the appellant making a demand of Rs. 30,000-35,000/- from his in-laws, the victim making grievance about it, and have deposed that they received information about her death, whereupon they came, saw the dead body in the burnt condition. Since the

learned trial court has disbelieved this part of the story regarding demand of money, and the appellant has already been acquitted of the offence under Section 304-B, and 498-A I.P.C., and since there is no appeal against the aforesaid acquittal, we need not discuss that part of the evidence. The remaining part of the evidence is only to the effect about the witnesses having come, having seen the dead body in burnt condition, and some witnesses having seen kerosene remainants and/or empty kerosene container etc. This part of the event is not in dispute even on the side of the defence, therefore, evidence of these eight witnesses need not detain us any more. Then three witnesses P.W.9 Laxmanlal, P.W.10 Mangilal, and P.W.11 Madanlal who had been produced on the side of the prosecution have turned hostile, as they have disowned their police statements Ex.P-6, P- 7, and P-8 respectively wherein these witnesses had deposed about the appellant having raised hue and cry in the night for rescue, and on coming to the scene they found the room engulfed in fire which was subsequently got extinguished, the deceased was found burnt, and was also dead, so also that the appellant did not make any efforts to extinguish the fire, and on asking the cause of breaking out of the fire it was given out to be on account of electric short circuit, while in the room stove, kerosene container etc. were lying in a disarray, clothes were stinking of kerosene, the tongue of the victim was protruding out. However, despite disowning the police statements, P.W.9 has deposed about his having heard the cries of the appellant for rescue, whereupon he went and found the appellant sitting outside, the room was engulfed by fire which was extinguished by witness's wife then Mangilal and other neighbours had collected. In this fire Dilip's wife got burnt. Thereafter Hiralal (father of the appellant) also came. He has also deposed that food material was lying in the room, while the body was lying on the floor. In cross-examination he has stated that during night Dilip (appellant) and his wife (deceased) sleep in the house and during day hours they used to be on the shop. Likewise Mangilal, P.W. 10 has corroborated the statement of P.W.9 in material particulars. P.W. 11 has also more or less deposed in line with examination in chief of P.W.9. Thus on this evidence, in our opinion, it is clearly established that the incident took place at the dead of the night i.e. 2.30 A.M., the appellant was there at the house who is said to have raised cry for rescue, but then on the witnesses P.W. 9, 10, and 11 arriving on the scene he was found

sitting at the place of washing cloth while the room was engulfed in fire i.e. he was not making any efforts for extinguishing the fire, and it was the Neighbours who extinguished it, it is also established from this evidence that the victim died and the body was lying there in burnt condition. It is also established from this evidence that the appellant's father Hiralal had thereafter come. It is also established from the evidence of P.W.9 read with P.W. 10 that during day hours the appellant, and his wife, appellant's father, and mother used to work on the shop, and the appellant and his wife (deceased) used to sleep in the house during night. It appears that the parents used to sleep in the shop, while the appellant couple was sleeping in the house. This we infer from the site plan Ex.P-3, and site inspection note Ex.P-4, which are the documents admitted on the side of the accused, wherefrom it is clear that the house in question comprises of only one room, wherein only one iron cot was found lying towards east side of the room, and towards the north west side of the room the burnt household articles were found, which included one cage of the parrot. Wherein the parrot was also lying dead. From east to west in between cot, and aforesaid household articles, is the main entrance gate of the room. It can well be assumed, according to the aforesaid norms, that in single apartment premises wherein only one iron cot is found, two couples being husband wife, and the parents of the husband, must not be sleeping in absence of anything being there in the room to provide privacy to the two couples, which in the given place has not been shown to be existing. Thus in our opinion, it is established beyond doubt that at the time of incident, it was only the appellant and the victim, who were there in the premises (room), and probably except the parrot, who also died, nobody-else was there.

10. Thus, this much has clearly been established that the first three pieces of circumstances found by the learned trial court are clearly established.

11. The next most crucial question is as to how did the deceased die? inasmuch as, if the deceased died either by burn injures, or on account of suffocation (asphyxia) due to fire, perhaps the appellant may have something to argue about the incident being an accident, while if the deceased had died of asphyxia prior to breaking out of fire, then in the above circumstances, it would be clear that she was done to death, and thereafter she was set ablaze. Since there is no direct

evidence available on record, we are left with the medical evidence only, consisting of the statement of Dr. S.S. Purohit, P.W. 12, and the post mortem report Ex.P-9. Inquest report Ex.P-2 may not be of much help, as in view of the extensive burns on the body, on the first blush everybody would assume and opine the cause of death to be fire.

12. Before discussing this evidence of P.W. 12, and Ex. P-9 we may observe that in view of various authoritative text books on the subject of Medical Jurisprudence and Toxicology, viz. that of Taylor, Modi, and Gradwohi etc. it is clear that there is a marked distinction in post mortem appearance of burns, where the burns are ante mortem, or post mortem, so also where the asphyxia is on account of fire, or otherwise. So far as the other general symptoms found in case of death by asphyxia, like right chamber of the heart being found full of blood, or bloody fluid also coming out, or tongue protruding, we may observe that the significant distinction between the two type of asphyxia, inter alia, is firstly that in case of ante mortem burn injury, the burnt carbon particles (soot) are present in Trachea, which is absent in the case of post mortem burn injuries. Likewise carboxyhaemoglobin is present in the heart blood in ante mortem burning, which is absent in the case of the post mortem burning. Likewise there are different external symptoms on the surface of skin at the place of burn, which distinguishes the burn injury from ante mortem to post mortem, inasmuch as in ante mortem wounds are usually red owing to the tendency of the system to rush blood towards the injured parts for repairs, blisters are prominently present in ante mortem burns, which are full of protein rich fluid that contains a substantial amount of white cells, caused by the tendency of the system to rush in white cells to fight against infection. Then in the case of ante mortem burns reparative enzymes are present in the vicinity of burnt areas, as the reparative enzymes would try to repair the burnt areas. Likewise signs of infection in the burn injury, if found, only lead to the conclusion that the burn injury is ante mortem in nature, as there cannot be infection in a post mortem burn injury, but there is only putrefaction. It is in this background that a perusal of the post mortem report Ex.P-9 shows that no carbon particles were seen over mucosa of trachea, larynx, both lungs were shrunk in size, congested, and on cut section dark fluid blood was oozing out. The right side chamber of the heart was full of blood. Liver was congested and roasted. Kidneys were congested, and

in view of the symptoms of the skin found by the Medical Board who conducted the post-mortem, clearly opined that the signs of external injuries for asphyxia are marked by complete burns of skin and deep tissues, more so in view of absence of carbon particles in respiratory tract. Dr. S.S. Purohit, P.W.12 has deposed the things found in the post-mortem, and deposed and she was burnt after death. He has also deposed that the body, and the remainants of the clothes found on the body were stinking of kerosene. The learned counsel for the appellant could not satisfy us from any case law, or authoritative text books, to the effect that on the basis of the things found on the post mortem examination the victim should be held to have died only on account of burns, and/or the burns to be not post-mortem. In that view of the matter we are satisfied that the learned trial Court rightly concluded the existence of 4th and 5th circumstances as well.

13. From the perusal of the statement, given by the accused appellant under Section 313 Cr.P.C., and from the evidence led by the defence consisting of D.W.1, D.W.2 and D. W.3, it is clear that the other three circumstances found by the learned trial Court to be existing have also been rightly found.

14. It was sought to be contended by the learned counsel that simply because the appellant was sleeping in the house, that itself cannot be taken to be a material circumstances to hold the appellant guilty, as has been considered by the learned counsel below, as combined effect of circumstance No. 2 and 6. In our opinion, the argument cannot be sustained on the face of authoritative judgment of Hon'ble the Supreme Court in Prabhudayal v. State of Maharashtra (1) which again was a case of the victim dying of burning, and in para 22 Hon'ble Supreme Court considered the circumstances about:-

1. The place where the tragic incident occurred was in possession and occupation of the appellant.
2. The occurrence had happened in the wee hours when nobody else would have had ingress at the place where the incident allegedly occurred,
3. The accused admit their presence.

Of course, the other circumstances we need not recount, as that was a case of murder by burning, and therefore, the circumstances relating to burns, and death by burns are not relevant. Thus, as over all reading of that judgment makes it clear that the conviction had been recorded practically on the sole basis of accused admitting their presence, the place being in their possession and occupation, and considering the time (being wee hours) when nobody else would have had ingress at the place of incident. Hon'ble the Supreme Court in that case had held that homicidal death occurred while the deceased was in the custody of accused, and the incident with its gravity and extent cannot in any manner go unnoticed, as such the accused persons were duty bound to offer plausible explanation. This same fact has been again expressed by Hon'ble the Supreme Court in the recent judgment in State of West Bengal v. Mir Mohammad Omar (2) by referring to Shambhu Nath Mehra v. State of Ajmer (3), a judgment of Hon'ble Vivian Bose J. on Section 106 of the Evidence Act, wherein the legal principle was laid down that Section 106 '..... lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or any rate disproportionately difficult, for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. Following this proposition in para 39 it was found that, the prosecution had proved the facts which, when considered in the light of proximity of time, within which the victim sustained fatal injury, and the proximity of place, within which the dead body was found, are enough to draw an inference that victim's death was caused by the accused, if any deviation from the aforesaid course would have been factually correct, only the accused would know about it, because such deviation would have been especially within their knowledge. As they refused to state such facts the inference would stand undisturbed'.

15. Thus, in our opinion, cumulatively it is clearly established that the victim was in exclusive company of the appellant in the closed apartment, single room, had died in the night of late January, and she has been found to have been killed by asphyxia, and their set ablaze, for which no explanation has been given, rather a

false plea of alibi has been taken, and thus it cannot be said that the learned trial court had in any manner committed any error, in finding the appellant guilty of both the offences, under Section 302, and 201 I.P.C.

16. The net result is that the appeal has no force, and is hereby dismissed.

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