Bench: N S Hegde, D Raju

CASE NO.:

Appeal (crl.) 1913 of 1996

PETITIONER:

BABURAM

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 29/01/2002

BENCH:

N. Santosh Hegde & Doraiswamy Raju

JUDGMENT:

SANTOSH HEGDE, J.

Deceased Bhagwan Devi was married to one Ram Kumar son of the appellant herein. It is stated by the prosecution that on 27.2.1988, the said Bhagwan Devi was found charred to death in the house where she was living with her husband, and at that time, the appellant was visiting them for about 3 days prior to the ghastly incident. After investigations, the Police filed a chargesheet against the appellant and his son under Sections 302 and 201 IPC and alternative charges were also framed under Section 306 read with Section 498A IPC. Almost all material witnesses examined by the prosecution had turned hostile and the trial court after considering the material on record came to the conclusion that the charges under Sections 201 and 302 were not proved against said Ram Kumar and the appellant and, therefore, acquitted them of the said charges. However, both the accused, namely, Ram Kumar and the appellant were found guilty of the charges under Sections 306 and 498A IPC and were sentenced to undergo RI for 3 years under each count and both the sentences were made to run concurrently.

Aggrieved by the said conviction and sentence imposed on them, the appellant and his son Ram Kumar preferred Criminal Appeal No.53/90 before the High Court of Madhya Pradesh and being aggrieved by the acquittal of the accused persons of the charges under Sections 302 and 201 read with Section 34 IPC, the State of Madhya Pradesh had preferred Criminal Appeal No.219/90 before the said High Court. The High Court tried both the appeals together and came to the conclusion that so far as Ram Kumar is concerned, his innocence is proved by the alibi set up by him and acquitted him of all the charges whereas it partly allowed the State appeal to the extent of the appeal filed against the appellant herein and found the appellant guilty of offences chargeable under Sections 201 and 302 IPC for having caused the murder of Bhagwan Devi and for having caused the disappearance of evidence for screening himself from the said offence and, consequently, sentenced the appellant to undergo RI for life under Section 302 IPC and further RI for 7 years for the offence held proved against him under Section 201 IPC, with a direction that both the sentences will run concurrently.

It is against this judgment of the High Court of Madhya Pradesh that the appellant Babu Ram is before us. Mr. D.B.R. Vohra, learned counsel for the appellant, has contended before us that it is clear from the evidence of

Dr. Fayaj Hussan, PW-1, that the death of the deceased Bhagwan Devi was caused not by strangulation but due to the burn injuries received by her. He also contended that the evidence of the said Doctor in regard to the ligature marks found on the neck of the deceased cannot be accepted as a definite conclusion of the said Doctor and in the absence of the prosecution producing any acceptable evidence for the purpose of proving strangulation, the High Court could have relied on probabilities alone to convict the appellant on the charge of murder. On behalf of the State, it was contended by Mr. Rohit Singh that there was enough circumstantial evidence to drive home the point that the death of Bhagwan Devi was not only caused by the burn injuries she received but also by strangulation and the prosecution has established beyond all reasonable doubt that it was the appellant who was last found in the residence where Bhagwan Devi was found murdered. Therefore, bearing in mind the motive emanating from the ill- will harboured by the appellant against the deceased for not having brought sufficient dowry, the High Court was justified in coming to the conclusion that the death in question was caused by strangulation and burning and both the acts must have been committed only by the appellant. Hence, the judgment of the High Court was unexceptionable.

We have heard learned counsel for the parties and perused the records. First of all, it should be noticed that PW-1 in his examination-in-chief as also the post mortem certificate did notice some transversely placed ligature marks on the front side of the neck at the level of thyroid cartilage about inch wide. It is the presence of this ligature mark which has made the High Court accept the prosecution case that the death was partly due to strangulation. On a perusal of the evidence of the Doctor in detail, it is seen that when the said doctor was questioned by the court in regard to the ligature marks found by him and the effect thereof on the cause of death, this is what the doctor said : "First there must have been partial strangulation & thereafter she might have been burnt or it may be possible that after the start of burn she might have been strangulated. After burns she might have survived for about an hour and during that period she might have been strangulated." A bare perusal of this evidence/statement clearly shows that the doctor was not sure what exactly was the effect of the so-called ligature marks that were found on the body of the deceased. His evidence is rather uncertain in terms since that evidence postulates more than one possible circumstance. It also indicates that the deceased could have been conscious for nearly an hour after she was burnt and also contemplates deceased being strangulated as she was being burnt. If we analyse these possibilities, it will be extremely difficult to accept the prosecution case that there was strangulation by the appellant for the reason that if the strangulation had taken place during the process of burning then the probabilities are that the accused also would have some signs of burns on his hands, if not the burn injuries itself. But that was not the prosecution case. It is also evident from the said doctor's evidence that there was a possibility that the deceased might have survived for an hour after she was strangulated but the other evidence adduced by the prosecution clearly goes to show that even though there were neighbours in the proximity, nobody ever heard any shrieks from the deceased during her alleged strangulation or burning. Therefore, in our opinion, the evidence of the doctor does not in any manner support the prosecution case to prove beyond all reasonable doubt that the appellant had caused the strangulation of the deceased.

Coming to the next aspect of the prosecution case that it is the appellant who alone could have caused the burn injuries on the deceased, it is to be noted that the said version of the prosecution case is solely based on the fact that the accused was last found in the house wherefrom the dead body was recovered. Here again, we are unable to accept the finding of the High Court because it is the prosecution case that the body in question was found in a locked room where both the front door and the window of the room were locked/bolted from inside. The prosecution tried to develop an hypothesis that there was a window in the house which had a barrel bolt which bolt could have been closed from inside after a person came out of the window and shook the window in such a manner as to put the bolt in proper position. The learned Sessions Judge who conducted a spot-inspection and tried to examine this aspect of the case, has clearly stated that it was extremely difficult to do so and he himself could do it with great difficulty and that too in third attempt. That apart, the case of the prosecution that the appellant might have come out of the window and then locked it from inside afterwards is again only an hypothesis inasmuch as no witness has ever stated that the appellant was seen coming out of the window. It is true that some witnesses, who have turned hostile, have stated in their examinations-in-chief that they saw the appellant coming out of the house but they did not say that he was

coming out of the window or at what point of time he came out of the house. Therefore, in our opinion, it is not at all safe to draw any such inference against the innocence of the accused based on the facts which are not at all proved.

We are satisfied that the prosecution has failed to establish the case against the appellant beyond all reasonable doubt. The appellant having been acquitted of the charge under Section 201 read with Section 306 IPC, there being no cross- appeal by the State, we do not think it is necessary for us to go into that aspect of the matter. Even otherwise, so far as the appellant herein is concerned, we find that there is no motive whatsoever why the appellant should have caused the death or abetted the suicide of the deceased because she failed to bring in sufficient dowry. In the background of the prosecution evidence which shows that the appellant and Ram Kumar were satisfied with the gold-ring which was given by the father-in- law and the Government job which he managed to get for Ram Kumar, therefore, even according to the prosecution case, the appellant's son was not having any grouse against his wife on account of bringing in insufficient dowry. We find it extremely difficult why the appellant who was visiting his son and daughter-in-law and had come only 3 days prior to the incident in question, should go to such an extent of murdering or abetting the suicide of his daughter-in-law for not bringing in sufficient dowry. In our opinion, it is extremely dangerous to rely upon the prosecution evidence to base a conviction against the appellant. In the said view of the matter, this appeal succeeds and the same is allowed accordingly. The conviction and the sentence imposed on the appellant by the High Court as well as the trial court are set aside. The appellant shall be set at liberty, if not required in any other case.

.....J.

(N. Santosh Hegde)

.....J.

January 29, 2002. (Doraiswamy Raju)