Rajkumar vs State Of M.P on 14 September, 2004
Supreme Court of India

Bench: P V Reddi, B Singh

CASE NO.:

Appeal (crl.) 120 of 2004

PETITIONER:

Rajkumar

RESPONDENT:

State of M.P.

DATE OF JUDGMENT: 14/09/2004

BENCH:

P. VENKATARAMA REDDI & B.P. SINGH

JUDGMENT:

JUDGMENT

P. Venkatarama Reddi, J.

The appellant herein was convicted under Section 304 Part II IPC and sentenced to suffer imprisonment for ten years and to pay a fine of Rs.10,000/-. The High Court reversed the order of acquittal of the Additional Sessions Judge, Shivpuri in Sessions Case No. 90 of 1986 in which charges were framed against the appellant under Sections 302 and 498A of IPC. The appellant was charged of committing the murder of his wife Kalpana on 23.5.1986 at about 2.00 p.m. at his house. The appellant married Kalpana in May, 1985. At the time of the incident which took place a year later, she was in the advanced stage of pregnancy.

The accused Rajkumar and his brother Shyamlal (PW15) were residing in the same building. Adjacent to this building, their elder brother Keshav Prasad Agrawal (PW17) was residing. The accused Rajkumar was occupying the third floor. It was in the bed-room of the accused that his wife was brutally attacked.

PW15the brother of the accused invited Suresh Kumar Chokse (PW2), Gopal Krishna Dandatiya (PW5) and Mahesh Prasad Pandey (PW13) for lunch on that crucial day. At about 2.00 p.m., after hearing some noise and cries they went to the upper floor of the building and found the wife of the accused lying almost naked with face down in a pool of blood in the bed room with injuries all over the body. PW15 went inside the room and asked her as to what happened. She replied "Ve Mar Gaye" (the literal translation of 'Ve' being 'they'). The mother of the accused, who was in the 2nd floor, told PW13 while weeping that some altercation was going on upstairs.

The victim succumbed to the injuries even before she reached the hospital. The postmortem examination of the body was done by PW3 at Shivpuri District Hospital at about 4.00 p.m. on the date of incident. He noticed two incised woundsone 'L' shaped over parietal region of scalp, the vertical limb of wound measuring 4 cm. x 5 cm. x scalp deep and horizontal limb being 2 cm. x = cm x scalp deep. Two adjacent incised wounds were present over posterior and middle part of frontal region of scalp. Contusions over many parts viz., right shoulder, left eyebrow, left arm, right and left thighs, dorsum of left hand extending upto left shoulder and a railway track contusion of 6 cm. x 2 cm. over lateral aspect of right thigh were found. Horizontal abrasion of 4=" x =" over left side of chest just below rest of left clavicle and another abrasion of 3 cm. x 1 cm. over right anterior auxiliary line at 7th and 8th rib level were also found. Dark red fresh clotted blood was present around the wounds. The examination of uterus showed a well grown foetus with fully developed male baby which was found destroyed. PW3 expressed the view that the cause of death was shock due to hemorrhage from various injuries sustained by her. In cross examination, he clarified that hemorrhage due to injuries 1 & 2 resulted in death and that no fracture of skull has been found and no injury to the brain was noticed. However, immediate unconsciousness could be caused due to injuries 1 & 2. They were not of such a nature that would cause immediate death. He opined that injuries 1 & 2 would have been caused with a sharp-edged weapon and it cannot be caused by a hammer or by article 'O' (iron pipe/rod). PW4, another Medical Officer also stated that the cut wounds mentioned as injuries 1 & 2 could be caused with a sharp-edged weapon.

The brother of the deceased (PW1) lodged the report to the police at 3.00 p.m. and the FIR was registered on that basis. In the report, he stated that at about 2.00 p.m. he got information from PW2, with whom he was employed, that his brother-in-law Rajkumar had beaten his sister and her condition was serious and that she was taken to hospital. He added that at the hospital also he came to know through others that the accused had beaten his sister. Thus, he clearly incriminated the accused in the report given to the police. Then the investigation was started by PW21. He had called PW10the Scientific Assistant, who prepared site plan and inspection notes, according to which there were extensive blood-stains on walls, clothes, table and mongri. PW21 seized the wooden mongri and the other blood-stained articles found inside the room which was the scene of offence. As seen from Ext.P.8, the wooden piece ('mongri', used while

washing clothes) is of the length of one foot and width of three inches. PW21 arrested the accused on the next day i.e. on 24.5.1986 and at the instance of the accused an iron pipe of the length of two feet, round in shape at one side and flat at another side was seized from the bath room. It was noted in the seizure memo (Ext. P.19) that blood was present at the flat side of the seized iron pipe. Though PW21 stated in his deposition that iron rod and wooden piece were seized at the same time, it is clear from Ext. P.19 & P.8seizure memos, that only the iron pipe was seized after the arrest of the accused. On the same day, the I.O.(PW21) having found traces of blood on the body of the accused, took the accused to Forensic Science Laboratory's mobile unit and the dry blood scrapings were collected by the in-charge of the mobile unit (PW10). It may be mentioned at this stage that the reports of F.S.L. in regard to seized articles etc., have not been produced for reasons best known to the prosecution. The Investigating Officer also recorded the statements of various witnesses including PW17Keshav Prasad (the elder brother of the accused) and PWs 2, 5, 13, 15 and others. Surprisingly, the younger sister of the deceased(PW8), who allegedly came to the house in the morning of 23.5.1986 and met the deceased and accused, and her mother were examined about ten days later. In fact, PW8 denied that she ever gave the statement to police. The accused, in the course of his examination under Section 313 either answered the questions in the negative or made bare denial. There was no eye-witness to the incident.

All the witnesses who were produced for unfolding the prosecution case, in particular PWs 2, 13, 15 and 17 were declared as hostile witnesses by the prosecution after their chief examination in part.

The trial Court, on an elaborate consideration of the circumstantial evidence including the medical evidence, held that the participation of the accused in the crime was not established beyond reasonable doubt. The learned Sessions Judge found no evidentiary basis for the prosecution case in regard to harassment or ill-treatment of the deceased for dowry or otherwise. No other motive was found against the accused. The trial Court held that the alleged dying declaration made before the hostile witnesses was doubtful. The recoveries on the basis of disclosure statements were not satisfactorily established. The circumstances proved by the prosecution were not at all sufficient to fix the guilt on the accused. Therefore, the trial Court gave the benefit of doubt to the appellant.

The High Court disagreed with the findings of the trial Court and found that the circumstantial evidence was complete enough to unmistakably point the hand of the accused in the crime. The High Court while affirming the view of the trial Court that there was no previous animosity or motive to kill the wife, gave the following reasons for holding that the circumstances established by the prosecution formed a complete chain to prove beyond doubt the involvement of the accused:

The deceased was seriously injured within the room in which she used to live with her husband. The accused was last seen with the deceased by PW8the sister of the deceased, at about 9.00 a.m. The elder brothers of the accusedPWs15 and 17 claimed that the accused was at the saw mill at the time the incident took place and on being informed he came home and wept embracing the dead- body. No independent witness was examined by the accused to show his presence at the saw mill. The accused himself did not come forward with any such version. The accused said nothing in his reply under Section 313 Cr.P.C. as to how the deceased was injured inside their room. The accused had maintained silence on this crucial aspect. No explanation was given for the presence of dried up blood on his chest and arm which was scrapped out by PW10 for examination. A false theory of robbery and fatal assault by some stranger was sought to be set up by PWs 15 & 17, but it was totally unbelievable. There were many circumstances to indicate that it could not have been a case of robbery. PW2 deposed that the deceased had stated that "he had beaten me" and that PW2 was definite that the deceased had not referred to any stranger but to her husband only. The same thing was said by PW5.

Coming to the last observation in the above para, we must say that it is contrary to the evidence on record. In making such observation, the High Court had either referred to the statement under Section 161 recorded by the police or the High Court evidently misread the deposition. What was stated by PWs 2 & 5 was that Kalpana, on being questioned by Shyamlal (PW15), stated that "they have given beatings" (ve mar gaye). It is true that the plural expression "Ve" is often used by ladies as a respectful term while referring to the husband. But it is not possible to say definitely that the said expression was used not in the normal plural sense but with reference to her husband. In this context, it is to be noted that there is no evidence to the effect that the deceased Kalpana used to refer to her husband in that manner. The High Court, on a wrong reading of the depositions of PWs 2 & 5, construed the utterance of the deceased referred to above, virtually as a dying declaration made by the deceased within the hearing of PWs 2 & 5 implicating the appellant.

The second factor that weighed with the High Court was the 'last seen' evidence of PW8 coupled with the non- explanation of the injuries on the wife while in bed-room. PW8, as already stated, was allegedly examined long after the incident and no explanation was given for such belated examination, as pointed out by the trial Judge. In fact, she denied having made any statement to the police earlier. Be that as it may, the evidence of PW8 does not advance the prosecution case much. During the long gap of 4= hours in the day time, there was a reasonable possibility of the accused leaving the house to attend to his work or for any other purpose. In fact, PW15the brother of the accused who was declared as hostile witness, set up the version that the accused was working at the saw mill at the crucial time but it was not substantiated further. The accused did not, in the course of his examination under Section 313 Cr.P.C., clarify whether he was at the house or elsewhere. He just denied the knowledge of the incident. Though it is not safe to

act upon the version given by PW15, yet it was the duty of the prosecution to establish that the accused had or necessarily would have remained at the house around the time when the attack took place. The 'last seen' evidence of PW8, even if believed, cannot be pressed into service by the prosecution on account of the long time gap, that too during day time. Barring the evidence of PW8 who claimed to have seen the accused at 9.00 a.m. at his house, there is no other evidence to establish the presence of the accused in the house proximate to the time of occurrence. Therefore, the vital link in this behalf is missing in the case.

The High Court harped on the fact that the theory of robbery sought to be set up by PW15 was inconsistent with all probabilities and therefore it was apparently a false plea. But it does not absolve the prosecution of the burden to connect the accused with the crime. The circumstantial evidence should be so overwhelming as to exclude the hypothesis of the innocence of the accused. Unfortunately, such circumstantial links are lacking in the present case. Moreover, the prosecution even failed to adduce evidence as to the subsequent conduct of the appellant, which could have provided one of the links in the chain of circumstantial evidence. It is not the case of the prosecution that the appellant was not seen in the house or in the hospital soon after the incident.

One of the circumstances relied upon by the High Court was the presence of the dried up blood traces on the chest and arm of the accused. Though the scrapping of blood was done by PW10 on the day of appellant's arrest, the laboratory report has not been produced. It is contended by the learned counsel for the appellant that finding the blood traces a day after the incident seems to be wholly unrealistic. However, it is not necessary to examine this aspect further in the absence of the blood analysis report.

Amongst the main prosecution witnesses, PW5 was one witness who was not treated hostile by the prosecution. His evidence has been referred to in another context, supra. None of the facts stated by him in the deposition would lead to an inference that the accused had committed the crime. On the other hand, his evidence as well as the evidence of the Investigation Officer reveals that any outsider had easy access to the third-floor of the building where the accused and his wife are living.

Above all, no motive has been proved or seriously suggested for inflicting fatal injuries on the pregnant wife whom the accused married a year back. In a case based on circumstantial evidence, this factor also should be kept in view.

In this state of evidence, the High Court should not have disturbed the findings reached by the trial Court on an elaborate consideration of the evidence adduced by the prosecution. It is not a case in which it could be safely said that the view taken by the trial Court was clearly unreasonable or perverse and against the settled principles of standard of proof and evaluation of evidence in a criminal case.

We are, therefore, of the view that the conviction of the appellant on the charge under Section 302 I.P.C. cannot be sustained though suspicion looms large against the accused. The material witnesses turning hostile and deficient investigationthe common maladies afflicting the criminal justice system have irretrievably shattered the prosecution case leaving the Court with no option but to acquit the accused.

We therefore allow the appeal affirming the verdict of acquittal given by the trial Court. The appellant shall be released from prison forthwith.