

Sarojini And Ors vs State Of M.P. And Ors on 16 October, 1992

Bench: Kuldip Singh, K. Ramaswamy

PETITIONER:
SAROJINI AND ORS.

Vs.

RESPONDENT:
STATE OF M.P. AND ORS.

DATE OF JUDGMENT 16/10/1992

BENCH:
[KULDIP SINGH AND K. RAMASWAMY, JJ.]

ACT:

Indian Penal Code, 1860:

Sections 302 read with 34, 201-Dowry death-Husband and mother-in-law charged with-Convicted and sentenced to life imprisonment-High Court acquitting both the accused giving them benefit of doubt-Mother-in-law convicted u/s.201 and sentenced-`Participis Criminis'-Circumstances clearly showing both the accused participating in the crime-Acquittal set aside and conviction and sentence of both the accused restored-Conviction and sentence of Mother-in-law u/s.201-Affirmed.

HEADNOTE:

The appellant-accused and her son were charged with offences under S.302 read with S.34 IPC or alternatively under S.306 read with S.34 I.P.C. for causing the death of , or abetment to cause suicide by, the daughter-in-law/wife of the accused. According to the prosecution, it was a case of dowry death. The dead body was found in a completely burnt condition in the matrimonial house of the deceased. The trial Court convicted both the accused under S.302 IPC read with S.34 IPC and sentenced them to undergo rigorous imprisonment for life.

On appeal the High Court acquitted both the mother and son of their offences under S.302 read with S.34 IPC but convicted the mother under S.201 IPC and sentenced her to undergo rigorous imprisonment for five years.

The State preferred an appeal against the acquittal and the convicted accused preferred an appeal against her conviction and sentence.

On behalf of the appellant accused it was contended that the deceased either committed suicide or died due to fire accident; that the husband of the deceased was not present at the time of occurrence; and that the mother-in-law was entitled to acquittal under S.201 IPC.

Allowing the appeal by the State and dismissing the appeal by the accused, this Court,

HELD: 1. There is no inconsistency in the evidence of the Post-mortem Doctor and the forensic Doctor, Who minutely examined all the factual details and came to the finding that the death was due to asphexia. This finding has been accepted by the trial court as well as the High Court. Thus there is no conflict of medical opinions to extend the benefit of doubt to the accused. [32-D-E]

State (Delhi Admn.) v. Gulzarilal Tandon, AIR 1979 SC 1982, distinguished.

2. The conduct of the appellant-accused as evidenced by Ex.P-1 to P-4 the pre-marital demand for dowry and non-compliance thereof is a relevant fact to establish motive as rightly found by the courts below. The fact that the daughter-in-law met with homicidal death within three months from the date of marriage is also a relevant fact to conclude that the death was due to the failure to comply with the demand for dowry. At the earliest the appellant accused came forward with the plea that the deceased committed suicide at 8.00 or 8.30 a.m after taking meal, which is found to be false, is also a relevant fact in completing the chain of circumstances. [33-C-D)

3. The dead body was found in the store room which is in the first floor. There is no other way of ingress or egress to the first floor, except through the stair-case lying in the ground floor of the house. As such it is impossible for any other person to enter into the house except the inmates. Admittedly, the deceased and her mother-in-law alone were living in the house while her husband was working at a place 90 KMs. away and obviously he was coming and going to his place of duty. The High Court also accepted the possibility of his coming to his house and after committing the offence he must have left the place as the journey on the high-way would take hardly two hours. The murder was committed within hardly three months from the date of marriage. As per the evidence of DW-4 the deceased was happy in the marital home. It would, therefore, conclusively exclude the theory of suicide. Thus, she must have been done to death by none other than inmates of the matrimonial home. [32 F-H; 33-A,B]

4. When the deceased was done to death by asphexia by asphexia and thereafter the dead body was burnt soaking Kerosene on the naked body, it would be obvious that more than one participated in committing the murder. The High Court also found that the appellant-accused had an associate to screen the evidence of murder. But the investigating officer not only conducted perfunctory investigation but also gave evidence in a most unsatisfactory manner. He did not make

any attempt during investigation to collect the evidence of the presence of the husband of the deceased at the place of occurrence during that night or thereafter. The fact that more than one participated in the commission of the crime and the fact that there is no other person inimical to the deceased to commit the crime and the fact that it is not impossible for the accused-husband to immediately leave after committing the crime, would clearly connect him to be a participis criminis in committing homicide of his wife. Without his cooperation and participation in committing the crime, on the facts and circumstances, it is impossible for his mother alone to commit the crime. Except denial he offered no explanation in his S.313 statement. The false theory of suicide is also a circumstance to be taken into account. The False theory of suicide is also a circumstance to be taken into account. The remorseless conduct of the appellant is a relevant fact. Also the conduct of the accused-husband is inculpatory. The normal human conduct would be that on hearing the news of the death of his wife he was expected to immediately reach home: to make enquiry for the cause of death, and to take further actions, which are absent in this case. [33-EH; 34-A]

5. All the circumstances of the case clearly and conclusively connect and establish that both the accused alone have committed the crime and the prosecution proved the guilt of the accused beyond all reasonable doubt. The Sessions Court is right in its conclusion that they shared the common intention to commit the murder. Accordingly, the conviction and sentence recorded by the trial court of both the accuse under s.302 read with s.34 I.P.C. is restored. The High Court had not bestowed its attention to the crucial facts, and had wrongly given the accused benefit of doubt leading to miscarriage of justice. The order of acquittal by the High Court under S.302 read with S.34 I.P.C. of both the accused are set aside. The conviction under S.201 IPC and the sentence imposed on the appellant-accused by the High Court is affirmed. [34 C-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 626,627 of 1992.

From the Judgment and Order dated 23.11.92 of the Madhya Pradesh High Court in Crl. A.No.952 to 1985.

U.R. Lalit and S.K Gambhir for the Appellant. Sakash Kumar and Uma Nath Singh for the Respondents. The Judgment of the Court was delivered by K. RAMASWAMY, J. Special leave granted.

Vinod Bhalla and his mother Smt. Sarojini were charged under Sec. 302 read with S.34 I.P.C. or alternatively under s.306 read with s.34 I.P.C. by the Sessions Judge, Rewa in Sessions Trial No. 75 of 1983 for causing the death of or abetment to cause suicide by Smt. Rajini Bhalla, aged 22 years. Rajini was married to Vinod on Feb. 3, 1982 and three months thereafter her dead body in a charred and unrecognisable condition was found on the first floor of the matrimonial home at Rewa on May 27, 1982. The trial court convicted both the accused under s.302 read with s.34 and sentenced them to undergo rigorous imprisonment for life. On appeal, the High Court by its Judgment dated November 23, 1991 acquitted them of the offence under s.302 read with s.34, but convicted Smt. Sarojini under s.201 I.P.C. and sentenced her to undergo R.I. for five years. These appeals are by Sarojini and the State respectively.

The facts lie in a short compass. PW-1, Pashupathinath Tandon and PW-2, Vimla, are parents PW-3, Kailash Nath and PW-4, Shiv Charan Lal, are brothers of Rajini. The prosecution case is that Sarojini wrote Ex.-4 to 6, pre-marital letters, to PW-1 demanding Scooter, Tape Recorder and Tullu Pump (motor for pumping water to upper storey), but the same could not be immediately given at marriage. It is the prosecution case that it is a case of dowry death. The case of the accused is one of suicide. The case hinges upon circumstantial evidence. At about 8.00 a.m., on May 27, 1982, PW-8, the Sub-Inspector of Rewa Police Station, received a message of the house burning which was transmitted to PW-10, Mahipal Singh, the Inspector. When PW-10 went to the scene of occurrence, PW-8 was at the scene. He conducted a panchanama of the scene offence on the first floor of the house of the accused. Rajini's dead body in charred and unrecognisable condition was found with the tongue protruding, the blood was oozing from the mouth, the limbs were spread on the upper side in retracted position and the deceased was lying naked on the back in the supine condition. The dead body was sent for post-mortem and Dr. Moghe, PW-9 conducted the post-mortem. According to him he could not give the cause of death, but he noted that the lungs congested and oedematous; both the chambers of heart were empty and found semi-digested food in the stomach of the deceased. The entire material was transmitted to PW-11, Harish Chandra, the Director, Medicology. On minute and detailed examination of the materials furnished to him, PW-11 opined that death was due to asphyxia and that the deceased died after two or three hours of her last meal. The death could not have been in the morning between 8.00 or 8.30 a.m. He also found that the body of the deceased continued to be burnt even after death resulting in heat cracks and cracks in the limbs. Vinod was working as a Cashier-cum-Clerk in the State Bank at Sidhi, 90 km. from Rewa, well connected with through traffic and it takes two hours to reach Rewa or to go back to Sidhi. The deceased and Sarojini were staying in their house at Rewa.

The learned Sessions Judge found that the motive to kill the young lady who was yet to blossom into womanhood was the unsatiable thirst for dowry. The death was not suicide, but of homicide. PW-11's evidence is conclusive that the death was due to asphyxia and that the murder could not be committed by a single individual. After two to three hours of last meal the death had occurred. Vinod after committing the murder must have left the place. The conduct of Sarojini after the occurrence is unnatural. She was seen remorselessly sipping coffee and snacks. Therefore, the accused alone were responsible for the murder of Rajini. Accordingly, the Sessions Court recorded conviction and sentences.

On appeal, the High Court affirmed that the death was homicidal and occurred between three hours after the last meal. Sarojini was present in the house and she proclaimed at panchnama that the death was suicidal and that it occurred during morning hours. The prosecution established that non-compliance of demanded dowry as motive for death and that it is not impossible for Vinod to come in the evening and to commit the murder and then to reach Sidhi in the same night. But it acquitted Vinod on the ground that the prosecution did not lead any evidence to show that Vinod was present at the time of occurrence and that, therefore, he is entitled to the benefit of doubt. Similarly the High Court found that Sarojini alone could not have committed the offence of murder and there is no clinching evidence as to who committed the murder. So she was given the benefit of doubt. However it found that she and her associates attempted to destroy the evidence of murder of Rajini. Therefore, she was convicted under s.201 I.P.C.

The facts are shocking, but the court should scan the evidence carefully to find whether there is legal evidence to connect the accused with the commission of the crime. The case hinges upon circumstantial evidence. All the circumstances must conclusively establish with the only hypothesis that the accused alone committed the crime beyond reasonable doubt. If there is any break in the links of the chain of circumstantial evidence, undoubtedly the accused are entitled to the benefit of doubt. The crucial question, therefore, is whether the prosecution has brought home the offence against Vinod and Sarojini.

Shri U.R. Lalit, learned senior counsel for the accused, contended that there is long distance between may be true and must be true and the prosecution had failed to travel all the distance in establishing conclusively that the accused and the accused alone had committed the crime. The evidence of motive furnished from the ocular evidence of PW-1 to PW-4 evidence of motive furnished from the ocular evidence from the statements under s.161. The medical evidences of PW-9 and PW-11 are in conflict. The post-mortem report does not indicate the cause of death and the evidence of PW-11 is not conclusive. It is based on only opinion from circumstances, the clinching evidence establishes that Rajini died due to fire accident. She committed suicide or death is due to fire accident. There is no evidence that Vinod was present at the time of occurrence and Sarojini alone could not have committed the crime. There were inmates in the house, like DW-4 and others, they could have committed the offence. Under the circumstances the High Court is justified in giving them the benefit of doubt and these facts do not warrant interference under Art. 136 by this Court and Sarojini is also entitled to acquittal under s.201 I.P.C.

We have given our anxious consideration to the contentions of Shri Lalit and ourselves closely and carefully scanned afresh the entire evidence placed on record. Normally this court would not undertake appreciation of evidence afresh, but in view of the doubt expressed by the High Court and with a view to satisfy our conscience we independently have gone through the evidence. The crucial question in this case is whether the death of Rajini was suicidal or homicide. Both the courts concurrently found and we found no good ground to differ that the death of Rajini was homicide. The post-mortem report of Dr. Moghe found that the skin was completely burnt. Heart, kidney, spleen and liver were also found congested. He found semi-digested food. The tongue was protruding and the eyes were bulging. Viscera was sent for chemical analysis. His report is Ex.-

14. The forensic expert Dr. Harish Chandra in his report, P- 20 opined that death in all probability was homicidal and had occurred between two to three hours after last meal. In the Panchanama of the dead body, it was found that tongue of the deceased was protruding and blood was oozing from the mouth. Thread was seen around the waist soaked with kerosene. Panchanama establishes that there was no kerosene smell in the store room in which the dead body in a naked condition was found. The sewing machine was found not burnt. The dead body continued to be burnt even after the death resulting in heat cracks and cracks on the limbs. On these materials both the courts concluded that the deceased died two to three hours after the last meal in the night and not during morning hours, as spoken by DW-4, the maternal aunt of Vinod (brother's wife of Saraojini). The death was homicidal. The High Court also conclusively held that protruding of the tongue and oozing of blood from the mouth suggest, as a fact, that the deceased died by asphyxia, may be caused by pressure on chest, throat or nostrils. It was not possible for further evidence to be found because entire skin of the deceased was burnt. Accordingly it was found, "Rajini met a homicidal death and the death occurred in the mid-night not in the morning hours". We have also gone through the report, Ex-20, and the only crucial evidence of Dr. Harish Chandra, PW-11. We entirely agree with the conclusions reached by the High Court as well as by the learned Sessions Judge that the death was homicidal due to asphyxia and not suicidal as contended for. We have seen the Panchanama of the scene of occurrence which would establish that the roof of the room was blackened and burnt and the rafters had fallen down. It would thus be clear that large carbon smoke must have been accumulated in the stores and Rajini before death must have breathed and the absence of carbon soots or black soots or its traces in her lungs clearly proves that the death was homicidal and thereafter the dead body was burnt.

The ratio in *State (Delhi Admn.) v. Gulzarilal Tandon*, AIR 1979 SC 1382 is of little assistance to the appellant. Therein it was found as a fact that there is a dispute between different Doctors examined by the prosecution itself as to the Cause of death. The trial court accepted the prosecution case, but the High Court on detailed examination found that the evidence of the Doctors mutually inconsistent and given benefit of doubt. In that context this court held that :

"Where the medical evidence on the side of prosecution and the accused is more or less equally balanced, the benefit of doubt must go to the accused. The High Court has discussed the evidence threadbare and has also relied on the medical authorities on the various symptoms and other aspects of epilepsy and has held that the possibility of epilepsy cannot be ruled out in this case. Once this possibility is there, it will be impossible for us to interfere with the order of acquittal passed by the High Court."

In this case there is no inconsistency in the evidence of the post-mortem Doctor and the forensic Doctor. PW-9 could not opine the cause of the death, and he did not await the chemical examination report and also forensic opinion. Dr. Harish Chandra, PW-11, minutely examined all the factual details and came to the findings that the death was due to asphyxia. This finding has been accepted by the trial court as well as the High Court. Thus there is no conflict of medical opinions to extend the benefit of doubt to the accused.

The question then is whether the husband and mother-in-law alone have committed the offence. Photography of the scene and the situation of the house disclose that the house consists of ground floor and the first floor. In the first floor, a bed room and another store room and another store room was found as per Panchanama. The dead body was found in the store room. There is no other way of ingress or egress to the first floor, except through the staircase lying in the ground floor of the house. As such it is impossible for any other persons to enter into the house except the inmates. Admittedly, the deceased and Sarojini alone were living in the house while Vinod was working at Sidhi, obviously he was coming and going to his place of duty. The distance between Rewa and Sidhi is 90 Km. The High Court also accepted the possibility of the Vinod's coming to Rewa and after committing the offence leaving Rewa as the journey on the high-way would take hardly two hours to reach Sidhi. The murder was committed within hardly three months from the date of marriage and two to three hours after night meal. As per the evidence of DW-4 the deceased was happy in the marital home. It would, therefore, conclusively exclude the theory of suicide as pleaded by Sarojini and death was in the morning at 8.00 or 8.30 a.m. Within a short period of three months, there is no possibility of anyone developing such deep enmity with Rajini to put to end the life of a young married woman. It must, therefore, be none other than the inmates of the matrimonial home.

No doubt there is improvement in the evidence of PW-1 to PW-4 on the demand of dowry of the specified items, but in the statements under s.161 they have stated the factum of demand for dowry, but the details were absent. But the evidence receives corroboration from Ex.P-1 to 4 letters written by Sarojini. If we look into the conduct of Sarojini as evidenced by Ex.P-1 to P-4 the pre-marital demand for dowry. At the earliest Sarojini came forward with the plea that the deceased died due to suicide, at 8.00 or 8.30 a.m. after taking meal, which is now found to be false, is also a relevant fact completing the chain of circumstances. When the deceased was done to death by asphyxia and thereafter the dead body was burnt soaking kerosene on a naked body, it would be obvious that more than one participated in committing the murder. The High Court also found that Sarojini had an associate to screen the evidence of murder. Who would be the other person? Here the presence of Vinod is called into picture. We are surprised to note that PW-10, the investigating officer, not only conducted perfunctory investigation but also gave evidence in a most unsatisfactory manner. He did not make any attempt during investigation to collect the evidence of the presence of Vinod at Rewa during the night or thereafter. The fact that more than one participated in the commission of the crime and the fact that there is no other person inimical to Rajini to commit the crime and the fact that it is not impossible for Vinod to immediately leave Rewa for Sidhi after committing the crime, would clearly connect him to be a participation in committing the homicide of his wife Rajini. Without his cooperation and participation in committing the crime, on the facts and circumstances, it is impossible, for Sarojini alone to commit the crime. Except denial he offered no explanation in his s.313 statement. The false theory of suicide is also a circumstance to be taken into account. The remorseless conduct of Sarojini is a relevant fact. Conduct of Vinod also is inculpatory. The normal human conduct would be that on hearing the news of the death of his wife he was expected to immediately reach home; to make enquiry for the cause of death and to take further actions which are absent in this case. Under these circumstances we have no hesitation to agree with the Sessions Court and disagree with the High Court that Vinod also was a participis criminis in committing the crime. We have also no hesitation to conclude that Sarojini is the villain of the piece in committing the murder of Rajini.

Accordingly we hold that all the circumstances discussed above clearly and conclusively connect and establish that both the accused alone have committed the crime and accordingly we hold that the prosecution proved the guilt of the accused beyond all reasonable doubt. The Sessions Court is right in its conclusion that they shared the common intention to commit the murder of Rajini. Accordingly we uphold the conviction and sentences recorded by the trial court of both the accused under s.302 read with s.34 I.P.C. The High Court had not bestowed its attention to the crucial facts and given the accused benefit of doubt leading to miscarriage of justice. Accordingly the judgment of the High Court is reversed. The order of acquittal by the High Court under s.302 read with s.34 I.P.C. of both Vinod and Sarojini are set aside and that of the Sessions Court is restored. Accordingly the State appeal is allowed and the appeal of Sarojini shall stand dismissed. The conviction and sentence under s.201 I.P.C. affirmed and the same would run concurrently with life imprisonment.

Before concluding the case, we place our appreciation for Dr. Harish Chandra's sincere devotion to duty, who has correlated all the material facts and circumstance available from the record placed before him to arrive at the conclusions; otherwise miscarriage of justice would have been ensued. The investigating officer did not even conduct inquest over the dead body. he did not even speak of the details which of scene of offence and other material details smacks of irresponsibility. Vinod Bhalla shall immediately be taken into custody to undergo the sentence of R.I. for life.

Criminal appeal No. 626/92 dismissed.

Criminal Appeal No. 627/92 allowed.