Vijay Alias Gyan Chand Jain vs State Of M.P. on 2 September, 1994

Equivalent citations: 1994(3)CRIMES279(SC), JT1994(5)SC528, 1994(3)SCALE949, (1994)6SCC308, [1994]SUPP3SCR80, 1995(1)UJ80(SC)

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Bench: G.N. Ray, N.P. Singh

JUDGMENT

G.N. Ray, J.

1. This appeal is directed against the judgment dated February 6, 1985 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 279 of 1981 affirming conviction and sentence passed by the learned Sessions Judge, Shajapur, in Sessions Trial No. 28 of 1981. By the aforesaid judgment dated September 24, 1981, the learned Sessions Judge, Shajapur, convicted the accused/appellant Vijay under Section 302 I.P.C. for murdering his wife Komal Bai and sentencing him to imprisonment for life for the said offence and also convicting him under Section 309 I.P.C. for attempting to commit suicide and sentencing the accused/appellant rigorous imprisonment for one year by directing that both the sentences would run concurrently.

2. The prosecution case in short is that the appellant murdered his wife Komal Bai aged 29 years at about 11.00 P.M. on November 11, 1980, by causing knife injuries on the neck and the chest of his wife. Such act of murder was committed in a room in the upper storey of the appellant's home at Agar, Shajapur. The appellant along with his family members consisting of the deceased-wife, minor son, Chetan aged 9 years and infant daughter Kumari Seni, used to reside at the said home with his father, Bansantilal. At about 11.00 P.M. on November 11, 1980, the brother of the appellant called Dr. Chandra and informed him that his sister-in-law Komal Bai had been bleeding from the neck. Dr. Sharma (P.W.1) on reaching the residence of Basantilal found that in a room in the upper storey the said Komal Bai was lying dead with a bleeding injury on her neck. Letter dated October 11, 1980 purporting to be written by the appellant holding himself responsible for the murder of his wife and for his suicide was also found lying there. The police was informed by Dr. Sharma about the said incident who rushed to the spot. On the arrival of the police, Dr. Sharma scribed the Dehati Nalishi (Ex.p/3) and handed it over to Mokamsingh Nam (P.W.26) the Station House Officer, Agar. The crime under Sections 302 and 309 I.P.C. was registered at about 12.30 A.M. on the same night and investigation was started. The appellant who was admitted in the Agar hospital and examined at 12.17 A.M. on November 12, 1980 by Dr. Sharma (p.w.1) who found a ligature remark around the

neck of the appellant and it was noted by the doctor that such a ligature mark had been caused within three hours of the examination. From the investigation it was revealed that the minor son of the appellant, Chetan (PW-4), was sleeping in the room where the said incident of murder had taken place. Chetan woke up and saw that his mother was lying on the floor with a bleeding injury on her neck and the appellant was there in the room. Chetan thereafter unbolted the door, went down and informed his grand father Basantilal. When Basantilal reached the place of occurrence, he found that said Komal Bai was lying injured and the appellant was hanging with a rope tied around his neck. Basantilal with the help of the knife lying in the room cut the rope and removed it from the appellant's neck. Komal Bai's dead body was sent for post mortem examination and Dr. Satish Jain (p.w. 24) on November 12, 1980 at 9,30 A.M. conducted the post mortem, and the said doctor found one ante mortem incised wound on the right side of the neck and another on the left side of the chest. According to the doctor, injury No. 1 on the neck was sufficient in the ordinary course of nature to cause the death of Komal Bai. The post mortem report is Ex.P/54. It transpired from the investigation that the appellant was in difficult financial circumstances and was indebted to several persons. It also transpired that the appellant had earlier contacted P.W.17 Charikhan to ascertain from him as to how the licence for a pistol could be obtained. It may be stated that P.W.9 Chironjilal Kushwah after disclosing his identity as Naib Tehsildar, Agar, asked the appellant to prepare copies of the letters stated to have been written by him and the appellant agreed to make such copies and the contents of letters being dictated he wrote the same. Such writing was sent to the Additional State. Examiner of Questioned documents, Navinchandra Deshpande (P.W.36) for comparison with the specimen writing of the appellant and on comparison, the said State Examiner had found that the specimen writing and the admitted writing were by the same hand. The learned Sessions Judge after considering the evidence adduced in the case inter alia came to the rinding that the appellant had murdered his wife Komal Bai by causing the injury on the neck and thereafter he attempted to commit suicide by hanging. Accordingly, he convicted the appellant under Section 302 and also under Section 309 I.P.C. and passed the aforesaid sentences.

3. It may be noted in this connection that the appellant denied his complicity in murdering his wife and the appellant's case was that he had gone out of the room where his wife and the son and daughter were sleeping and when he came back he found that the wife was lying seriously injured and had been bleeding profusely. After seeing that there was very little chance of her surviving, he became remorseful and wanted to end his life by hanging. It may also be noted here that before the learned Sessions Judge on behalf of the appellant, it was contended that his writings which were obtained by the Naib Tehsildar for comparison should not be taken into consideration because procurement of writing was contrary to Section 73 of the Evidence Act. Such contention, however, was not accepted by the learned Sessions Judge.

4. The appellant thereafter preferred the said Criminal Appeal No. 279 of 1981 in the High Court of Madhya Pradesh at Jabalpur but the High Court dismissed the appeal and affirmed the convictions and sentences passed by the learned Sessions Judge. Before the High Court the appellant also contended that the said specimen writing was inadmissible in evidence in view of bar under Section 73 of the Evidence Act but the High Court rejected the said contention on the finding that the Court did not give any direction for specimen writing thereby offending the provisions of Section 73 of the Evidence Act but in course of the investigation, the police got the specimen writing from the accused

and sent it for comparison before the hand-writing expert. The High Court also compared the contents of the letters which were found at the place of murder by Dr. Sharma with the admitted writings of the accused/appellant. The High Court on comparison came to the finding that both the writing were by the same hand. The case of the appellant that he was not present in the room when the murderous attack was made on Komal Bai but on coming back when he found that the wife was critically injured with no chance of surviving, he attempted to commit suicide by hanging, was not accepted by the High Court by pointing out that the son of the appellant deposed to the effect that when he went to inform his grand father he found his father wiping out the blood from the neck of his mother. At that time, a rope with a knot tied on it was hanging from the roof. The High Court has indicated that the said fact completely demolishes the case of the appellant that the attempt to commit suicide was taken when the wife was found critically injured with little chance to survive. It has been held by the courts below that being indebted heavily the appellant decided to kill his wife and thereafter to end his life by committing suicide and he noted such intention in a letter which was found immediately after the occurrence by the doctor at the said place of murder. It has been held that the writing of the said letter was by the appellant.

5. At the hearing of this appeal, the learned Counsel appearing for the appellant has contended that the room where the appellant was taking rest with the members of the family including the deceased wife had also another entry from the back side and it was, therefore, not improbable that during the short absence of the appellant, somebody entered from the other side and had murdered the wife. The learned Counsel for the appellant has contended before us that from the deposition of the son of the deceased it transpires that the son woke up when the deceased mother put her hand on the forehead of the son and he found his father wiping out the blood from the neck of the mother. It has been contended by the learned Counsel for the appellant that the said deposition clearly shows that the appellant was trying to save the wife by wiping the blood and seeing the injured wife he was extremely remorse and weeping. Such fact runs counter to the case of murder with pre-meditation as sought to be alleged by the prosecution. It has also been contended by the learned Counsel for the appellant that there is no evidence to indicate that the appellant had been bearing any grudge against the wife and the relation between the two was strained at any point of time. In the aforesaid circumstances, there cannot be any motive for murdering the wife. If the prosecution case is accepted to the effect that the appellant was indebted heavily to various persons and he lost interest in his life it was highly improbable that on that account he would commit the murder of his innocent wife with whom there was no ill-feeling and love between the two was not lost. In such circumstances, it will be only consistent with the normal human behaviour that one would try to end his own life to avoid shame and harassment in the society. The learned Counsel for the appellant has submitted that the absence of a strong motive is a very relevant consideration in a case of circumstantial evidence. The learned Counsel has also contended that admittedly at the dictation of Naib Tehsildar, Agar, the appellant had prepared the contents of the letter. It was not open to the police to dictate to the appellant to prepare a document against him. Such document was, therefore, inadmissible in evidence being contrary to Section 73 of the Evidence Act and no reliance should have been placed on the contents of the said letter and comparison of the same with the admitted writing of the appellant should not have been made. It has also been contended by the learned Counsel for the appellant that there was no reliable and cogent evidence establishing the fact of murder being committed by the appellant and it was with reference to the said letter, the appellant's

complicity in the said murder was found by both the courts. The learned Counsel for the appellant has, therefore, contended that the case of murder depending on circumstantial evidence had not been established by events so complete in chain that the irresistible conclusion about the complicity of the appellant in committing the murder could be drawn safely.

6. The learned Counsel has also contended that admittedly the son who was sleeping by the side of the deceased did not hear any shriek or sound of agony from the mother and he has stated in his deposition that he woke up when her mother put her hand on his forehead. At that time, he noticed the mother critically injured in the neck and the father was wiping out blood from the wound. Such fact clearly indicates that wife did not give any resistance before suffering the murderous attack on her. The prosecution case is that the appellant contemplated to kill the wife and then to commit suicide by hanging. From the evidence, it reasonably transpires that the wife consented to suffer the murderous attack so as to carry out the plan of the husband and precisely for the said reason she did not raise any sound but silently suffered the murderous attack. The learned Counsel for the appellant has contended that although the appellant did not come out with any case of consent by the wife but if such defence is available to him on the face of the evidence adduced in the case, the Court should take into consideration whether the case is covered by Exception 5 to Section 300 I.P.C. The learned Counsel for the appellant has submitted that if Exception 5 to Section 300 I.P.C. is pressed into action, no conviction for murder under Section 302 is warranted, but the appellant at best can be convicted under Section 304 Part I I.P.C. In support of such contention, the learned Counsel has referred to the decision of the Patna High Court in Dasrath Paswan v. State of Bihar , a decision of the Lahore Court hi Ujagar Singh v. Emperor AIR (1918) Lahore 145, and also a decision of the Madras High Court in Ambalathil Assainar's case AIR (1956) Madras 97.

7. Learned Counsel for the State, however, has submitted that the case of committing murder by the appellant has been clearly established by cogent evidence adduced in the case. Being frustrated on account of his heavy indebtedness, the appellant decided to kill his wife and thereafter to commit suicide so that both of them might not suffer humiliation in the society. Such contemplation has been clearly indicated in the letter written by him which was found at the spot of the murder immediately after the incident by an independent witness, namely, Dr. Sharma. It has been established that the contents of the said letter unfolding his decision to kill the wife and then to commit suicide had been written by the appellant himself. Apart from the hand-writing expert's opinion, the High Court compared the said writing with the admitted writing of the appellant and had categorically found that on comparison it transpired that both the writings were written by the same hand. In the room where the said act of murder was committed, there was no outsider excepting the young daughter and son of the deceased and accused/appellant. The son has deposed to the effect that when he woke up by the touch of the hand of his mother, he found the mother critically injured and the father was wiping out the blood. In the aforesaid facts, the accused had a duty to explain as to how the wife had suffered such injuries. The defence taken by the appellant that when he came to the room from outside he found the wife critically injured and then he decided to commit suicide is completely belied by the very fact that the son had noted that the preparation for committing suicide had already been done. The learned Counsel for the State has submitted that simply because the appellant had no bitter feeling against the wife, it cannot be held that there was no motive for him to murder the wife. It has been submitted by the learned Counsel for the State

that this is a case where the appellant lost the usual frame of mind because of serious indebtedness and decided to end his life by committing suicide after killing the wife so as to avoid humiliation in the society. Such decision might not have been taken by a man with normal frame but how a human mind reacts in s sensitive situation is very difficult to appreciate at times. He has submitted that the learned Sessions Judge and the High Court by indicating cogent reasons have accepted the prosecution case and in the facts of the case, no interference is called for in this appeal. He has submitted that the submission of the learned Counsel for the appellant that the case is governed by exception 5 to Section 300 I.P.C. should not be accepted. Such case runs completely counter to the defence taken by the appellant. There cannot be any case of implied consent of the wife to suffer the murderous injury. Such consent is bound to be established by sufficient direct evidence and there is no such evidence on the record. Hence, the contention should be rejected straightaway.

8. After considering the facts and circumstances of the case and the evidence adduced at the trial, it appears to us that the learned Sessions Judge and the High Court have correctly appreciated the evidence adduced in the case and have come to the finding that the husband had planned to murder the wife and in execution of the said plan had murdered the wife and thereafter tried to commit suicide. In the facts of the case, Section 73 of the Evidence Act has not been violated. That apart, the High Court has compared the writings in the letter found at the place of murder by Dr. Sharma with the admitted writing of the appellant and on comparison had come to the finding that both the writings were by the same hand. Such letter indicates the motive for committing the said offences. The submission of the learned Counsel for the appellant that Exception 5 to Section 300 I.P.C. is attracted in the facts of the case, is an argument in despair. It may be noted that exception 5 to Section 300 I.P.C. must receive a very strict and not a liberal interpretation and in applying the said exception the act alleged to be consented to or authorised by the victim must be considered with a very close scrutiny. In this connection, reference may be made to an old Full Bench decision of the Calcutta High Court in Queen Empress v. Nayamuddin and Ors. Indian Law Reports Calcutta Vol. XVIII 484. In our views, the learned Counsel for the State is justified in his contention that consent by necessary implication should not be permitted to be raised by way of defence. The appellant at no point of time had spoken about such consent and simply on account of the son not hearing any shriek or sound of agony, it cannot be held that the deceased wife had consented to or authorised the appellant to cause the murderous assault. We, therefore, find no reason to interfere with the order for conviction and sentence passed against the appellant. The appeal, therefore, fails and is dismissed. If the appellant has been enlarged on bail, he should be taken into custody to serve out the sentence.