Supreme Court of India
State Of U.P vs Ramesh Prasad Misra And Anr on 13 August, 1996
Bench: K. Ramaswamy, S.B. Majmudar

CASE NO.:
Appeal (crl.) 884 of 1996

PETITIONER:
STATE OF U.P.

RESPONDENT:
RAMESH PRASAD MISRA AND ANR.

DATE OF JUDGMENT: 13/08/1996

BENCH:
K. RAMASWAMY & S.B. MAJMUDAR

JUDGMENT:

JUDGMENT 1996 Supp(4) SCR 631 The Order of the Court is as follows

1. Leave granted

2. We have heard learned counsel on both sides

3. In Sessions Trial No. 78 of 1985 in the Court of the Special Judge (E.C. Act), Banda, the Sessions Judge convicted Ramesh Prasad Misra, the first respondent under Section 302 Indian Penal Code ('IPC', for short) and sentenced him to death. He was also convicted under Section 201 IPC and sentenced to undergo rigorous imprisonment (RI) for four years and to pay a fine of Rs 1000 and in default to undergo simple imprisonment for six months. He was also convicted under Section 498-A and sentenced to undergo two years' RI and to pay a fine of Rs 1000 and in default to undergo further simple imprisonment for six months. All the sentences were directed to run concurrently, Smt Butto Devi, the second respondent, mother of the first respondent, was acquitted of the offence under Section 302 but was convicted under Section 201 IPC and sentenced to undergo RI for four years and a fine of Rs 1000 and in default to undergo six months' simple imprisonment. She also was convicted under Section 498-A and sentenced to undergo RI for two years and to pay a fine of Rs 1000 and in default to undergo simple imprisonment for a further period of six months. Both the sentences were directed to run concurrently. A Division Bench of the Allahabad High Court consisting of B.N. Katju and D.S. Bajpai, J.J., however, by judgment dated 21-7-1988 in Criminal Appeal No. 2108 of 1987 acquitted both the respondents of all the charges and also rejected the reference for confirmation of death sentence. Thus this appeal by special leave

4. This is one of the most horrendous bedroom murders of a young married girl, Urmila Devi, of 19 years on the intervening night of 26-9-1985/27-9-1985 in Karwi town in Banda District of Uttar Pradesh. She was married to Ramesh Prasad Misra, aged around 28 years, a practising advocate at Karwi, on 25-4-1985 and hardly after five months she met with cruel death. She was carrying 4 to 6 weeks' pregnancy. It is not in dispute and cannot be disputed that she died due to asphyxia by

strangulation as found by PW 1, autopsy doctor. A contusion of 9 cm x 3 cm size was found across the front of the neck underlying skin, muscle, trachea, oesophagus congested and hyoid bone was fractured, extravasation of blood in the neck region due to injury of neck vessels. It was also found that the tongue had protruded out and was bitten by teeth of both jaws. Blood was coming out from mouth and and nose. Both eyes were closed and congested and face was also congested. The membranes were congested, brain base of skull, pleura, larynx, trachea, bronchi, both the lungs and pharynx were found congested. These circumstances clearly indicate force and pressure put upon her and conclusively establish that the death occurred due to asphyxia by strangulation. Thereafter, the dead body was burnt and the entire body was burnt except the feet. It would thus be clear that the burns were post- mortem. The offence is, therefore, one of murder. According to the doctor, PW 1, the death had taken place around 2400 hours of 26-9-1985. It would be conclusive that the death had taken place around midnight of 26-9-1985/27-9-1985 in the bedroom of the first respondent

5. The question, therefore, is whether the first respondent has committed the murder of his wife ? Undoubtedly, the entire prosecution case rests on circumstantial evidence. It is settled law that it is the duty of the prosecution to establish all the circumstances conclusively to hold that the respondent alone had committed the offence. Witnesses may be prone to speak, and in this case, material witnesses have spoken falsehood but the circumstantial evidence will not. It is, therefore, the duty of the court to carefully scan through the evidence on the anvil of human conduct, probabilities and attending circumstances extending all doubts in favour of the accused. In a case of this type, hardly any direct evidence would be forthcoming for the prosecution

6. The case of the prosecution is sought to be based on the evidence of PW 2 and PW 6 - a practising advocate who are, admittedly, the neighbours. In their statement under Section 161 of Criminal Procedure Code, ('CrPC', for short) they have stated that they heard the quarrel between the first respondent and his wife, Urmila Devi and the latter was heard crying. However, both the witnesses turned hostile to the prosecution

7. The question is whether the first respondent was present at the time of death or was away in the village of DW 1, his brother-in-law. It is rather most unfortunate that these witnesses, one of whom was an advocate, having given the statements about the facts within their special knowledge, under Section 161 recorded during investigation, have resiled from correctness of the versions in the statements. They have not given any reason as to why the investigating officer could record statements contrary to what they had disclosed. It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. One clinching circumstances, viz., that PW 2 and PW 6 had heard some quarrels in the house of the respondents and the deceased was crying out, is not on record as substantive evidence. PW 2 and PW 6 had no regard for truth; they fabricated the evidence in their cross-examination to help the accused which did not find place in their Section 161 statements that they had seen one man of white complexion and aged between 30 to 35 years, going to the house of the deceased on the fateful night and leaving the house at 8.00 a.m. on the next day

8. The first respondent has introduced two theories, viz., some stranger had come to his house on the evening of 26-9-1985. He slept in the house and left the house on the next day, i.e. 27-9-1985, at 8 a.m. This was spoken of not only in his statement made under Section 313 CrPC by the first respondent but also, as stated above in the evidence of PW 2 and PW 6 in their cross-examination. PW 2, Biswas Kumar, a neighbour of the respondents and PW 6, Harshvir Singh were examined to prove the prosecution case that on the intervening night of 26-9-1985/27-9-1985 they heard quarrels emanating from the house of the accused and the deceased was heard crying; but they turned hostile at the trial and were duly declared hostile and were cross-examined. PW 6, is none other than a practising advocate and a colleague of the 1st respondent. Equally, PW 5, Alok Dwivedi is another practising advocate who was also examined to prove that the first respondent himself and one Avadh Vishwa Karma, Advocate, together had gone from the Court with the written report, Ex. KA-3 signed by the first respondent to the police station and had given it at the Police Station, Karwi at about 2.00 p.m. DW 2, Bhavendra Kumar Singh, an advocate of 20 years' standing and the senior of the first respondent was examined to prove the alibi. It is most distressing to note that practising advocate, PW 6 and DW 2, with a view to exculpate the first respondent from the clutches of law, have, without any compunction, spoken falsehood and have no regard for truth betraying their duty of being responsible law officers who are expected to uphold truth and nothing but the truth. DW 2 has spoken falsely that after the first respondent got the news of the death of his wife he was often fainting and swooning which was not even spoken by the first respondent in his Section 313 statement. On his own showing, the first respondent had argued bail applications and attended other cases even after he had the news of the death of his wife. In those circumstances, the plea of fainting and occasional unconsciousness is incompatible with stone- hearted Ramesh Prasad Misra. He did not exhibit normal human conduct of an innocent man, i.e., he should have been shocked to hear the news of the death of his young wife, married just five months back and an expectant mother of his child, in his absence. He should have rushed home to find out the cause for the death and search out whether the crime was for gain etc. and immediately swing into action and make the police investigate into the crime. On the other hand, although he had the news at 11 a.m. he went to the police station at 2.10 p.m. after finding no escape from further delaying the reporting to the police of the crime. This conduct is inconsistent and incompatible with normal human behaviour of an innocent man but seems to be one of a clever demeanour. The evidence of DW 2 regarding occasional faints and swooning and ultimate unconsciousness is a bunch of tissues of lies unsavoury to be accepted

9. The question is whether this theory of alibi and of a stranger committing crime is true, likely and probable ? The deceased was hardly 19 years' old, a young teenager who was studying in intermediate standard at the time of marriage. PW 2, Chandra Shekhar had five daughters and Urmila Devi was the third one and being a man of small means, he anxiously married her to the first respondent, spending Rs 35, 000 with fond hope that she would have a bright married life which ultimately turned out to be hell losing her precious life. After the marriage, she was staying with her husband and had spent hardly five months and was having 4 to 6 weeks' pregnancy. There is no suggestion even of her being of loose character. If the stranger had really come and stayed in the house and committed murder by strangulation, would he have burnt the dead body so as to create evidence to alert the neighbours to come and catch him ? It would be abhorrent to the common sense to believe it. Yet another circumstance to disbelieve this theory is that having committed the

murder at midnight, would he have waited till 8.00 a.m. and left the house after daybreak so as to secure evidence of his presence and of having committed the murder ? Under this clinching impossible human conduct, the theory of a stranger's coming to the house, staying with the deceased during the intervening night of 26-9-1985/27-9-1985 and of committing her murder is a false one. The evidence of PW 2 and PW 6 in this behalf is a figment of imagination, emanating from fertile confabulation of 1st respondent, PW 6 and obviously of DW 2 and his other colleagues who are all practising advocates

10. Yet another theory set up by the first respondent to prove his alibi is that pursuant to a letter dated 18-9-1985 written by his brother-in-law, DW 1, resident of Jharimajugaon, a railway employee stating that his sister was unwell and that on its receipt on 24-9-1985, he went to see his sister directly from the court on 25-9-1985 without coming to his house and keeping his briefs and coat in the house. He is stated to have kept his coat in a shop. It appears to be a highly artificial theory set up by the first respondent. On his own admission of DW 1, his wife, viz., the sister of the first respondent had usual fever which did not warrant him to go straight from the court to his sister's house without coming to his house and informing his wife of his going, without keeping his coat and also his record in the house. DW 1 admitted that one vaidya was treating her for fever and that fever continued even after the first respondent left the house. DW 1 was attending to his duties going to a distant place. No prescription of medicine was given. The distance between Karwi and his sister's village is 70 kms. Even assuming that he had gone on 25th September, he would have returned on 26th evening. Yet another circumstance put forward and which is highly artificial and unbelievable and beyond credulity is that he started in the morning on 27-9-198 from DW 1's house and directly reached the court, covering a distance of 70 kms by 10 a.m. and he remained in the court up to 11 a.m. without going to the house which is situated hardly 1 1/4 kms from the court. It is highly unbelievable and unacceptable. It is also an admitted position that he had news of his wife's death in the court at 11 a.m. He did not disclose the name of the informer. Along with another two advocates, i.e. PW 5 and another he went to the police station at 2.10 p.m. on 27-9-1985 to lodge the written first information report, Ex. KA-3. A reading of Ex. KA-3 is quite interesting. He merely mentions that while he was in court at 11 a.m. he received the message that his wife had died and he went to the house and after seeing her dead body he went to the police station and lodged the report. There is no explanation as to where he was moving or what he was doing from 11 a.m. to 2.10 p.m. and why he had lodged the report at 2.10 p.m. when he had received the message of the death of his wife at 11 a.m. He did not even mention that his wife was having burn injuries. It is now seen that the deceased was first strangulated and done to death and was then burnt. Under these circumstances, he was clearly not sure of the cause of death of the deceased and so after consultation he did not specifically and designedly mention the cause of the death because he was not sure as to what was the real cause of the death; in other words, whether it was due to strangulation or burning. If he were to mention that it was due to burns and if it had turned out to be false which in fact turned out to be later, it would be used against him. Obviously, therefore, he had not committed himself to any specific cause of the death. If the theory of stranger's coming and causing the death of his wife is excluded and his theory that he had gone to his sister's house and he did not come back to his house till he received the information that his wife was dead which information he received at 11 a.m. on 27-9-1985, stands excluded, and for the above obvious reasons, it does get excluded, then the necessary conclusion is that he must have been present in the house. None could have access to his

bedroom at midnight. So he committed the murder and he wanted to create evidence of screening the offence of murder by burning her to create an evidence of suicide committed by the deceased. These false theories set up by the first respondent are yet another circumstance to complete the chain to inculpate the first respondent in the commission of the offence of murder and scratching the evidence of murder. There is strong evidence of PW 2, father and PW 4, sister of the deceased, of demand for dowry which furnishes motive to commit murder

11. It is rather most unfortunate that the learned Judges of the High Court dealt with the matter very casually and did not apply their mind to the crucial circumstantial evidence in this case. They merely superficially read the evidence of hostile witnesses PW 2 and PW 6 and held that from their evidence the presence of the accused in the house was excluded. The evidence of PW 2 and PW 4, father and sister of the deceased who spoke about the motive, was excluded on applying Section 32 of the Evidence Act. It is difficult to appreciate this line of reasoning. Section 32(1) of the Evidence Act, 1872 is wide enough to include statements of the deceased regarding circumstances of the transactions which resulted in his death, i.e., the motive behind the criminal act in question. But even if Section 32 does not cover such evidence, the evidence of these witnesses can certainly be treated to be relevant for deciding whether the accused was guilty of offence under Section 498-A of the Indian Penal Code. Thus, even assuming that Section 32 is inapplicable to the facts of this case as held by the learned Judges of the High Court, the narration of the facts of demand for dowry of sofa, motor cycle etc. and non-supply thereof is a piece of evidence to prove motive for committing the offence of murder. Such evidence would be relevant and admissible under Section 8 of the Evidence Act. The deceased informed these witnesses of the ill-treatment meted out to her due to her inability to secure the articles demanded by Ramesh Prasad Misra. Further, the learned Judges blissfully forgot the presumption under Section 113-B of the Evidence Act. The learned Judges, therefore, have wrongly excluded the relevant and admissible evidence as being inadmissible under Section 32 and omitted to consider applicability of Section 113-B. The learned Judges have also failed to consider the moot question whether the defence version that the murder of Urmila was committed by some unknown person in the bedroom of the deceased on that fateful night, was at all probable and acceptable. This part of the case has been totally left out of consideration by the learned Judges. If all the circumstances are read together, the only inevitable conclusion that could be reached is that the first respondent alone has committed the offence of murder of his wife and screened the offence of murder so as to escape from the clutches of law. From the evidence on record, however, it is not possible to unhesitatingly connect the mother of the first respondent, viz., the second respondent, Butto Devi to be a privy to the commission of murder or any of the other offences and, therefore, the acquittal of the second respondent is upheld but the acquittal of the first respondent is set aside12. In view of the long passage of time from the date of the commission of the offence till date, we are of the view that it is not a case warranting restoration of death sentence and confirmation thereof as imposed by the learned Sessions Judge. We place on record our commendation for the earnest effort made by the learned Sessions Judge, S.C. Chaurasia in discussing, in fairness, all the material circumstances and connecting the offence with Accused 1 and giving reasonable benefit of doubt of capital sentence to Accused 2. On the other hand, the learned Judges of the High Court betrayed their duty of final court of fact, to subject the evidence to close and critical scrutiny. They either have no knowledge of the elementary principles of criminal law or adopted casual approach towards a serious crime like the present one. In either case, miscarriage of

justice is the inevitable result at their hands in criminal cases

13. Accordingly, we set aside the acquittal of the first respondent in respect of all the three charges and restore the conviction of the first respondent for an offence of murder under Section 302 IPC. However, the sentence of death, recorded by the Sessions Judge is converted into RI for life. However, the convictions and sentences under Sections 201 and 498-A IPC are restored and are directed to run concurrently. The acquittal of the second respondent in respect of all charges is upheld

14. We request the learned Chief Justice of the Allahabad High Court to bring this judgment to the notice of the learned Judges, B.N. Katju and Bajpai, JJ. if they have not already retired with a view to see that the learned Judges would be more careful in future in deciding criminal matter assigned to them so that miscarriage of justice would not result15. The appeal as against the first respondent is allowed and is dismissed as against the second respondent. The bail bonds of the first respondent stand cancelled. He should surrender forthwith to serve out the sentence. In case he does not surrender himself, the Superintendent of Police, Banda District is directed to take him into custody forthwith and report the compliance to the Registry of this Court. The bail bonds of the second respondent stand discharged