

CASE NO.:
Appeal (crl.) 146 of 2002

PETITIONER:
Sadhu Ram & another

RESPONDENT:
The State of Rajasthan

DATE OF JUDGMENT: 10/04/2003

BENCH:
N. Santosh Hegde & B.P. Singh.

JUDGMENT:

J U D G M E N T

B.P. Singh, J.

This appeal by special leave has been preferred by the two appellants namely, Sadhu Ram, appellant no.1 and Jagdish, appellant no.2. Sadhu Ram is the son of Jagdish. They alongwith one Narain (since acquitted) were put up for trial before the learned Additional Sessions Judge, Nimkathana (Sikar) in Sessions Case No.4 of 1997 charged variously under Sections 498A, 302, 201 and 436 I.P.C. for the murder of Rukma, wife of Sadhu Ram and Munni, daughter of Sadhu Ram who was about 8 months old at the time of occurrence. The Trial Court, while acquitting Narain of the charges levelled against him, found appellant Sadhu Ram guilty of offence under Sections 498A and 302 I.P.C. and sentenced him to undergo three years rigorous imprisonment and a fine of Rs.250/- under Section 498A I.P.C. in default to undergo three months rigorous imprisonment, and life imprisonment with a fine of Rs.2000/- under Section 302 I.P.C. in default to undergo two years simple imprisonment. Jagdish was found guilty of the offence under Section 201 I.P.C. and sentenced to three years rigorous imprisonment and a fine of Rs.500/- in default of payment of fine to undergo two years simple imprisonment.

The High Court has upheld the conviction and sentence of the appellants recorded by the trial court mainly relying upon the evidence of PW-3, Mala Ram, a neighbour who lodged the F.I.R. on the basis of which this case was investigated. It was fairly submitted before us by the counsel for the parties that apart from the evidence of PW-3, Mala Ram, no other witness had seen the occurrence and there is no evidence to corroborate the testimony of PW-3, Mala Ram though large number of witnesses were examined. The case of the prosecution rests entirely only on the evidence Mala Ram, PW-3.

In this background the facts not in dispute may be noticed. The appellant Sadhu Ram was married to Rukma (deceased) about 3-1/2 or 4 years before the occurrence. They had a child Munni who was about 8 months old on the date of occurrence. On November 22, 1996 at about 4.00 a.m. the appellant, Jagdish lodged a report before the Station House Officer, police station Nimkathana stating therein that at about 2.15 a.m. in the night while his son Sadhu Ram alongwith his wife, Rukma and his daughter aged about 8 months was sleeping in the house, suddenly a fire broke out and Rukma and her daughter, Munni were burnt to death. His son Sadhu Ram was married to Rukma 4 years ago. This report has been marked as Ex.P-9. The Station House Officer, police station, Nimkathana treating the report as one under

Section 174 of the Code of Criminal Procedure recorded Case No. 20 of 1996 and informed the Sub-Divisional Magistrate about the occurrence and requested him to prepare an inquest panchnama of the dead bodies under Section 176 Cr. P.C. Accordingly, the Sub-Divisional Magistrate proceeded to the place of occurrence to enquire into the cause of death and prepared the inquest panchnama in the presence of Phulchand, PW-4 and Ganpat Ram Saini, PW-5 neighbours of the appellants, Bugla Ram, brother of the deceased and two other witnesses who have not been examined. The panchnama also records the fact that Jagdish, the father-in-law of deceased Rukma and Bahadur, father of deceased Rukma were also present. From the inquest report prepared by the Sub-Divisional Magistrate it is apparent that the bodies were almost completely burnt up and apparently it appeared to be a case of death in an accidental fire.

In the course of enquiry under Section 176 Cr. P.C. the statement of Mala Ram, PW.3 was also recorded in which he stated that he was in his field when the fire broke out in the village. He rushed to the place of occurrence where many villagers had assembled. The appellants put off the fire but the wife of Sadhu Ram and his daughter were burnt to death. On inquiry, he came to learn that at about 2-2.30 a.m. while they were sleeping in the house a fire broke out all of a sudden, the cause of which was not known. He further stated that Sadhu Ram was married to Rukma 3-4 years ago. He had not noticed any differences between Sadhu Ram and his wife Rukma.

The above statement of Mala Ram (Ext. D-1) recorded by PW.10 ASI R.C. Sharma disclosed the version which supports the case of death by burning in an accidental fire. R.C. Sharma, ASI, PW.10 has stated that he was posted as A.S.I. at Police Station Nimkathana on 22nd November, 1996. According to this witness the written report Ex. P-9 was given to him by Jagdish at 4.00 a.m.. Earlier he had left for the place of occurrence between 3.00 and 3.30 a.m. on telephonic information regarding the occurrence. At the place of occurrence he had also recorded the statement of Mala Ram, Ext. D-1 between 5.00 a.m. and 2.00 p.m. The statement was read over to Mala Ram and finding it to be correct he had signed the same. From the evidence of this witness it also appears that the bodies were badly burnt and the post mortem examination of the dead bodies was conducted at the place of the incident itself.

The post mortem examination of the dead bodies was conducted by Dr. M.C. Sharma at about 1.00 p.m. on the same day. According to Dr. Sharma the cause of death was suffocation due to burns. The burns were ante mortem in nature and all the burn wounds were sufficient to cause death in the ordinary course of nature. It is worth noticing that the medical board consisted of three doctors who conducted the post mortem examination. Dr. Sharma also deposed that they noticed the presence of sooty carbon particles in larynx, trachea, pharynx and oesophagus, which indicated that the deceased were burnt alive. The marks of burning of skin were ante mortem. The post mortem reports are Exts. P-14 and P-15, which fully support the evidence of Dr. Sharma, PW.11. The medical evidence, therefore, is to the effect that the deceased were burnt alive and the burn injuries were ante mortem in nature.

It appears, in the enquiry which was being conducted under Section 176 of the Code of Criminal Procedure, PW.14 Sub Inspector Gokul Singh again recorded the statement of Mala Ram, P.W. 3 at 6.30 p.m.. The said statement has been marked as Ex. P-4. In this statement Mala Ram gave a different version of the occurrence. According to him at about 1.00 a.m. on the night of occurrence he was sleeping in his house when appellant Jagdish came to him and asked him to accompany him to his house as the wife of his son Sadhu Ram was not opening the door. He went with Jagdish first to the house of Narain and then to the house of Mohan. Narain (since acquitted) is a brother of Jagdish. He then

came to the house of Jagdish alongwith them and found that the door was closed. Narain knocked at the door asking Rukma (deceased) to open the door but the door was not opened. Thereafter Sadhu Ram lifting the thatched roof entered the room and opened the door latch from inside. He lighted the lamp and it was seen that the wife of Sadhu Ram and his daughter were hanging from the hook with plastic rope around their necks. Jagdish and Narain examined them and found that both of them had died. The dead bodies were hanging two feet above the ground. The bodies were brought down by the appellants herein and Narain. Mala Ram was told by Jagdish to wait for five minutes so that in the meantime the family members may have consultation in the house of Mohan. After about half an hour the appellants came to him and administered him oath in the name of Goddess Ganga that he would not disclose what he had seen to anyone in the village. At that time Sadhu Ram had a tin of kerosene oil and he sprinkled the kerosene oil on the dead bodies. Thereafter he reminded Mala Ram of the oath in the name of Goddess Ganga.

He then went to his house. At about 2.00 a.m. a hue and cry was heard by him to the effect that a fire had broken out. He rushed to the house of Jagdish where large number of villagers had assembled. Two huts of Jagdish had been completely burnt. He did not tell anyone in the village about what had happened earlier. He further stated that Sadhu Ram often used to beat his wife and on an earlier day also he had beaten her and that is why Rukma committed suicide by hanging herself. Thereafter the appellants and Narain in league with Mohan set the bodies ablaze with the result that the huts got burnt. They deliberately destroyed the evidence by burning the bodies and had got lodged a false report of accidental fire. He said that he did not tell these things to anyone and had gone to his well during the day. Rukma, deceased, was married about 4 years ago and since she was harassed, she was compelled to commit suicide.

This statement of Mala Ram Ext. P-4 was recorded by S.I. Gokul Singh, P.W. 13 at 6.30 p.m.. From Ext. P-4 it appears that the statement was recorded in connection with the investigation of case No. 20 of 1996 under Section 176 of the Code of Criminal Procedure. However, on the basis of this report made by Mala Ram a formal First Information Report was recorded and a fresh case No.372 of 1996 was registered. Statement of Mala Ram, PW.3 was thereafter recorded in the course of investigation as well.

As we have observed earlier the only evidence which implicates the appellants is the evidence of Mala Ram, PW.3 His evidence is not corroborated by any other evidence on record. Apart from his evidence there is medical evidence on record which supports the case of death by burning and to that extent goes against the evidence of Mala Ram, PW.3

Mala Ram was examined during trial as PW.3. In his deposition before the Court he supported the later version given by him in Ext. P-4 though he admitted that the statement recorded by ASI Sharma, PW.10 marked as Ext. D-1 bears his signatures. He stated that his statement was once recorded by the Dy. S.P. and once by some other police officer. His statement was recorded by the police officer on the same day in the evening, while his statement was recorded by Dy. S.P. on the next day. It thus appears that the witness attempted to exclude his statement recorded earlier by PW.10, though he admitted his signatures on the statement, Ext. D.1.

In his examination-in-chief he reiterated that on the night of occurrence at about 1.00 a.m. Jagdish had come to him and asked him to accompany him to his house since the wife of his son was

not opening the door. He went to the house of Jagdish where Narain was also called. Narain knocked at the door but the door was not opened and thereafter Sadhu Ram by lifting the thatched roof went inside and opened the door from inside. It was found that Rukma and her daughter were hanging and this he saw from outside. The appellants told him that they have been ruined and they will settle the matter after negotiations. Sadhu Ram had administered oath to him in the name of Goddess Ganga Mata that he would not tell anyone about the occurrence. Thereafter he went to his house. Sadhu Ram had a tin of kerosene oil in his hand. At about 2 or 2.30 a.m. he heard a hue and cry that a fire had broken out and then came to the place of occurrence. The fire was put off and he went to his well. On the next day he told the police whatever he had seen.

The examination-in-chief of this witness is rather cryptic. Many of the facts which he stated in the statement Ext. P-4 are not found in his deposition. He has not mentioned about the presence of Mohan nor has he mentioned that he had seen the appellants sprinkling kerosene oil on the dead bodies of the deceased. However, when confronted with portion of earlier statement Ext. D-1, he denied having made such a statement. He could not say why it was not recorded in his statement that he had seen a tin of kerosene oil in the hand of Sadhu Ram though he had so stated before the police.

It will thus appear from the record that though this witness in the course of enquiry under Section 176 of the Code of Criminal Procedure stated before PW.10, ASI Sharma that the deceased had died on account of burn injuries suffered in an accidental fire, his subsequent statement recorded at 6.30 p.m. on the same day is at variance with his earlier statement and gives a completely different picture. In his subsequent statement Ext. P.4 he claims to have gone to the house of Jagdish at his request and found that the two dead bodies were hanging from the hook with rope around their necks and that on account of harassment by the appellants, Rukma had committed suicide. Even in his subsequent statement he did not allege that the appellants had killed either Rukma or his daughter Munni and at best an allegation was made that Rukma had committed suicide.

The trial court as well as the High Court have placed reliance upon the evidence of PW.3 Mala Ram. The different versions put forward by Mala Ram were brought to the notice of the High Court but the High Court was content with observing that some part of his earlier statement Ext. D-1 was put to this witness when he was in the witness box but he had denied the same. The High Court observed that the attention of Mala Ram was not drawn to his later statement Ext. P-4 which was treated as the First Information Report in this case and, therefore, the defence has not succeeded in impeaching the credibility of Mala Ram, PW.3. It is note worthy that both the statements, Ext. D-1 and Ext. P-4 were recorded by police officers in the course of enquiry which was being conducted under Section 176 Cr. P.C. The two versions given by Mala Ram are so much at variance with each other that they cannot be reconciled, the first version supporting the case of death by accidental fire and the second supporting the case of suicide and burning of the bodies thereafter.

It is no doubt true that the conviction of an accused can be based solely on the testimony of a solitary witness. However, in such a case the court must be satisfied that implicit reliance can be placed on the testimony of such a witness and that his testimony is so free of blemish that it can be acted upon without insisting upon corroboration. The testimony of the witness must be one, which inspires confidence and leaves no doubt in the mind of the court about the truthfulness of the witness. In the facts of this case the

credibility of Mala Ram, PW.3 has been sufficiently impeached. We cannot say that Mala Ram is a witness on whom implicit reliance can be placed. He certainly does not come in the category of a witness on whom implicit reliance can be placed. In fact we are inclined to take the view that he is a wholly unreliable witness and no conviction can be based on the evidence of such an unreliable witness. Even if we place Mala Ram in the category of a partially reliable witness, we find no evidence to corroborate his testimony and, therefore, it is not safe to base a conviction on the testimony of such a witness. Moreover we find that the medical evidence does not support his testimony. According to Mala Ram the wife of Sadhu Ram had committed suicide. He is categorical in his assertion that the bodies were hanging when he saw them and their bodies were burnt thereafter. The medical evidence, which we find no reason to disregard, is clearly to the contrary. Dr. Sharma, who was one of the doctors who conducted the post mortem examinations is clear and categorical in asserting that the injuries were ante mortem and he has given good reasons to support his opinion. The medical evidence is consistent with the defence case that the deceased died of burning in an accidental fire, but the same is not consistent with the version given by Mala Ram, PW.3 that their dead bodies were set ablaze later. If it were so, the injuries found could not have been ante mortem injuries, and the presence of sooty carbon particles would not have been found in larynx, trachea, pharynx and esophagus. We are, therefore, of the view that the judgment of the High Court cannot be sustained. Accordingly the appeal is allowed, the judgment of the High Court appealed against is set aside and the appellants are acquitted of the charges levelled against them. Appellant No.2 Jagdish is on bail. His bail bonds are discharged. Appellant No.1 is in jail. He shall be released forthwith, if not required in any other case.