

CASE NO.:
Appeal (crl.) 481 of 2007

PETITIONER:
Laxman Anaji Dhundale & another

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 04/04/2007

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
CRIMINAL APPEAL NO. 481 2007
[Arising out of Special Leave Petition (Crl.) No. 6392/2006]

MARKANDEY KATJU, J.

Leave granted.

This appeal has been directed against the impugned judgment and order dated 20.3.2006 of the Bombay High Court, Nagpur Bench in Criminal Appeal No. 199 of 2002.

Heard learned counsel for the parties and perused the record.

The case of the prosecution is that the deceased Kalpana was married to accused No. 1 Rajendra Dhundale on 18.3.2001 in a village known as Uti Tq. Jalgaon Jamod which is 3 kms away from village Kherda (Khurd) of the complainant Bhaskar Sampat Damodhar (PW1), who is the father of the deceased. Within 15 days of her marriage the deceased returned to her parents' place along with her husband and informed her parents that her husband accused No. 1 Rajendra is demanding ornaments for the purpose of construction of a new house. She told her father to give the money to her husband otherwise she would be required to dispose of her ornaments. On this, Bhaskar Damodhar (PW1) informed accused No. 1 Rajendra that he has Rs. 5000/- but Rajendra refused to take the amount and demanded Rs. 10,000/- for the time being. Bhaskar Damodhar (PW1) paid the sum of Rs. 5,000/- and assured accused No. 1 Rajendra that he would give the balance amount of Rs. 5000/- after 15 days. Thereafter, on the eve of Akhadi festival a brother of deceased Kalpana fetched her to her parents house. On the next day accused No. 1 Rajendra also came to attend a marriage in their village and he resided with them for three days. During that period Kalpana informed her parents that she has been harassed to get the balance amount by her husband and his relatives. On this, Bhaskar assured accused No. 1 Rajendra that he would give the remaining amount of Rs. 5,000/- after selling his cattle and persuaded him to take Kalpana along with him and thereafter the deceased left with her husband.

On the next morning, original accused No. 4 Balu came to the complainant's house and informed that his daughter has fallen into a well. On getting this information, the complainant went to the village of the accused persons along with his relatives and found the dead body of his daughter which was lying covered with a cloth with injuries on her person. The complainant Bhaskar (PW1) also noticed burn marks on her head, leg and back. He was informed that his daughter had gone to a well for drawing water and there she accidentally slipped into the well. As Bhaskar (PW1) suspected that the death of his daughter was not natural, he went to the Police Station Jalgaon Jamod for lodging a report.

The appellants who are the parents of accused No. 1 Rajendra, are accused Nos. 2 & 3 in this case. The trial court convicted them along with accused No. 1 under Section 302/34 IPC and sentenced them to life imprisonment. They were also found guilty under Sections 498A/34 IPC and were sentenced to three years' R.I. and also a fine.

The appeal of the accused Nos. 2 & 3 in the High Court was dismissed and hence this appeal by way of special leave.

From the medical evidence on record as well as the other evidence it appears to us that the deceased Kalpana was murdered. The post mortem report shows that there are injuries in her chest as well as in the abdomen. There was abdominal bleeding injury to the liver of deceased Kalpana and also there was a lacerated wound over her scalp caused due to hard or blunt object. Hence we cannot agree with the learned counsel for the appellants that it was a case of suicide, rather we are of the opinion that it was a case of homicide. This is further corroborated by the fact that the spot Panchnama (Ex.25) shows that the well in question was not in use as it did not have bucket, rope or chain to fetch the water and there was not even sufficient water.

However, since this is a case of circumstantial evidence, we have to see whether the chain of links connecting the accused Nos. 2 & 3 to the deceased is established beyond reasonable doubt. We are of opinion that it is not. There is no credible evidence showing that the accused Nos. 2 & 3 (appellants in this appeal) caused the death of the deceased. There is also no credible evidence of any common intention of the appellants along with their son Rajendra to cause the death of the deceased Kalpana. There is no doubt evidence that accused No. 1 Rajendra demanded ornaments from his wife Kalpana for selling the same for the purpose of purchasing tins and wooden ballies for making a roof of his house. However, we are not dealing with the case of accused No. 1, Rajendra in this appeal. We are only concerned with the question whether the guilt of the appellants, who are the parents of Rajendra, is proved beyond reasonable doubt. We are of the opinion that it is not.

As regards invocation of Section 34 IPC, it was held by the Privy Council in Mahbub Shah vs. Emperor [AIR 1945 PC 118 @ 120] as follows:

"To invoke Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if it is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case."

(emphasis supplied)

In Hamlet vs. State of Kerala [2003 (10) SCC 108, vide para 17], this Court held that to establish the common intention of several persons to attract Section 34 IPC, the following two fundamental facts have to be established: (i) common intention and (ii) participation of the accused in

commission of the offences. In the present case, neither common intention nor participation of the appellants in the commission of the offence has been established beyond reasonable doubt.

No doubt, as held by this Court in Anil Sharma vs. State of Jharkhand [2004 (5) SCC 679, vide para 17] direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case. However, in order to bring home the charge of common intention the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34. In the present case there is no credible evidence, direct or circumstantial, that there was such a plan or meeting of minds of all the accused persons to commit the offence in question. Hence, in our opinion, the charge under Section 34 IPC has not been established.

For the reasons given above, we are of the opinion that the benefit of doubt has to be given to the appellants and hence this appeal has to be allowed. We order accordingly. Resultantly, the impugned judgment and order of the High Court as well as the trial court so far as they relate to the appellants are set aside. The appellants shall be released forthwith unless required in connection with some other case. However, we make it clear that we are not expressing any opinion about the case of accused No. 1, Rajendra.