

PETITIONER:
SMT. RAJESHWARI DEVI

Vs.

RESPONDENT:
THE STATE OF U.P.

DATE OF JUDGMENT: 19/04/1996

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
PUNCHHI, M.M.

CITATION:
1996 SCC (5) 121 JT 1996 (6) 58
1996 SCALE (3) 613

ACT:

HEADNOTE:

JUDGMENT:
(With Criminal Appeal No. 534 of 1987)
Onkar Singh & Ors.
V.
The State of U.P.

J U D G M E N T

Mrs. Sujata V. Manohar, J.

The appellant Rajeshwari, in Criminal Appeal No. 38 of 1987 is the mother-in-law of the deceased. The first appellant Onkar Singh, in Criminal Appeal No. 534 of 1987 is the father-in-law of the deceased. The second appellant in that appeal, Santosh Singh is the husband of the deceased while appellants 3 and 4 in that appeal Lallu Ram and Bandha are the servants of Onkar Singh. The deceased Sudha was married to Santosh Singh on or about 3.2.1982. She died of a gun shot injury in the house of her husband on 22.11.1982 at around 12.30 noon. The village Chowkidar Rameshwar was sent by the accused to the parents of Sudha who reside in a different village. He reached the house of Sudha's parents around 4.30 p.m. and informed them that Sudha had committed suicide. He said that she was still alive and she was being taken to Hardoi Hospital. Accordingly, the entire family of Sudha went to Hardoi instead of to the village of the accused. They reached there at about 8.00 p.m. They did not find Sudha there. Hence the brother of the deceased went to village Samtharia where the accused reside on the following morning. On reaching their house he was told that his sister had died instantaneously the previous day and her body had been cremated the previous evening at 4.00 p.m. The accused could not give any proper explanation why the cremation could not wait till the arrival of the family of Sudha.

Seven persons were tried before the Sessions court; Santosh Singh Onkar Singh, Rajeshwari and Suman alias Guddi, the sister-in-law of the deceased were charged under Section 302 read with Section 149, Section 147 and Section 201 of the Penal Code. The two domestic servants Lallu Ram and

Bandha were tried under Section 201. One Manipal Singh was also tried under Section 201. Rameshwar, the village Chowkidar was tried under Section 202. The Sessions court acquitted Suman, alias, Guddi, the sister-in-law of the deceased. It convicted the husband Santosh Singh and his parents Onkar Singh and Rajeshwari and sentenced them to life imprisonment under Section 302 read with Section 149 of the Indian Penal Code. They were also sentenced to 2 years and 4 years rigorous imprisonment under Sections 147 and 201 respectively. The two domestic servants Lallu Ram and Bandha were convicted and sentenced to four years' rigorous imprisonment. Mahipal Singh was similarly sentenced under Section 201. Rameshwar, the village Chowkidar was convicted and sentenced to 6 months rigorous imprisonment.

In appeal before the High Court the High Court has convicted Santosh Singh under Section 302 and maintained his sentence of life imprisonment. Onkar Singh and Rajeshwari have been convicted under Section 302 read with Section 34, and the sentence of life imprisonment is maintained. The sentence under Section 147 is set aside. The conviction of Lallu Ram and Bandha has been maintained while Mahipal Singh has been acquitted. Rameshwar did not prefer any appeal and has served his sentence.

The High Court has upheld the findings given by the Sessions court regarding motive for the murder of Sudha. It has been found the Sudha was being harassed by her husband and in-laws for not bringing sufficient dowry. As the marriage of Suman, the sister-in-law of the deceased had been fixed, there was a renewed demand for ornaments from the family of Sudha. She was harassed on account of her failure to get the ornaments. About a month prior to Sudha's death, when she was at her parent's house, her husband had come to fetch her. Sudha was refusing to go back. Sudha had told her parents that she may not be sent there because on account of her failure to bring ornaments as demanded by her in-laws, they would kill her. However, she was persuaded to go.

Thereafter, on or about 18.11.1982 the brother of the deceased, Yaduvir Singh who is P.W.2 had gone to Sudha's place in connection with the preparations for the marriage of Sudha's sister-in-law. He was at the house of the deceased upto 22.11.1982, the day of the occurrence. On 22.11.1982 he had been told by Sudha that she was treated very badly as she had not brought sufficient dowry and she was given state food to eat. p.w.2 thereupon, thought it proper to talk to Sudha's husband Santosh Singh. But he did not give a satisfactory reply and said that bad days had come and the day of extermination of his line had approached. So saying he picked up the gun and went out towards his field. Thereafter, p.w.2 started back for his own house around 10.00 a.m. and he reached his house around noon. P.W.5 Rukmangal Singh has stated in his evidence that while he was in his field, at about 12.30 noon, he heard a gun shot. He rushed to the house of Onkar Singh where he saw Sudha lying injured, and Santosh Singh, Onkar Singh, Rajeshwari, Suman and the servants standing there. Sudha died shortly thereafter of gun shot injury. He was informed by Lallu and Bandhsa that on the instigation of Onkar Singh, Santosh had fired on his wife and injured her. P.W.5 told the Chowkidar to report the matter to the Police Station. The matter, however, was not reported to the Police Station. He has further stated that after sometime, he found smoke coming from the northern side of the ground near Onkar Singh's house. He went there and saw the two servants, throwing sticks on the fire and burring the dead body of

Sudha Onkar Singh and Santosh were also present. No pyre was made and the dead body was burnt by sticks.

The High Court, on the basis of circumstantial evidence and, in particular, the fact that Santosh Singh had been seen by Yaduvir Singh with a gun in his hand going to the field and making a statement that his line was about to be extinguished, coupled with the evidence of P.W.5 has convicted Santosh Singh under Section 302 of the Indian Penal Code. The High Court has rightly negated the theory of suicide for the reasons which it has set out in its judgment. We do not see any reason to set aside this findings of the High Court.

The cases of Onkar Singh and Rajeshwari, however, stand on a somewhat different footing. The death of Sudha occurred prior to the two amendments of the Indian Penal Code introducing Sections 498A and 304B in the Indian Penal Code and amending the Evidence Act by introducing Section 116B. Therefore, the presumptions under these Sections are not available to the prosecution although there is clear evidence relating to the demand for dowry by Onkar Singh and Rajeshwari and harassment of Sudha on that count. In the absence of these presumptions we find that there is no material to convict them under Section 302 with the help of Section 34. The evidence of P.W.2 Yaduvir Singh is to the effect that Santosh Singh had taken the gun in his hand and gone to the field after P.W.2 Yaduvir Singh had talked to him about the treatment being given to his sister Sudha. There is no evidence to indicate any instigation by either Onkar Singh or Rajeshwari of Santosh Singh to kill Sudha. The evidence of P.W.5. Rukmangal Singh, undoubtedly shows the presence of Rajeshwari and Onkar Singh at the site of the occurrence. He has deposed that the two servants told him that Onkar Singh had instigated Santosh Singh to kill Sudha. This, however, is hearsay evidence. There is no satisfactory evidence to establish that Onkar Singh was in any manner responsible for instigating Santosh Singh to shoot his wife Sudha. Undoubtedly, both Onkar Singh and Rajeshwari had demanded dowry from Sudha's family and were parties to harassing her. But in the absence of presumptions which are available after the amendments of the Penal Code and the Evidence Act, there is no other direct or circumstantial evidence which would justify the conviction of Onkar Singh and Rajeshwari under Section 302 read with 34. Their conviction on this count is, therefore, set aside. Onkar Singh, however, was present at the time of the cremation of the dead body of Sudha alongwith Santosh Singh and the two servants. The High Court has rightly come to the conclusion that Section 201 is attracted. Sudha was cremated on the land adjoining the house of her in-laws without waiting for anyone from her parents, side to come and attend the funeral. In fact (1) It was ensured that none from her parents' family would reach Onkar Singh's house until after the dead body was cremated; (2) The cremation did not take place at the usual cremation ground but in the field close to Santosh's house; (3) Deliberate attempt was made to prevent anyone from Sudha's parents side to reach Santosh's house for cremation and (4) No report of her unnatural death was made at the police Station. As Onkar Singh was present at the time of cremation and the servants who burnt the body were under his control and can be said to have acted on his instructions, his conviction under Section 201 of the Penal Code must be upheld.

The two servants Lallu Ram and Bandha have also been convicted under Section 201. The two servants being the employees of Onkar Singh, Onkar Singh was in a position of

exercise authority over them. Being financially dependant on Onkar Singh and Santosh Singh, it is likely that the servants may have acted at the bidding of both of them. This is, therefore, a fit case for reducing the sentence of Lallu Ram and Bandha to the sentence already undergone.

The appeals are accordingly partly allowed. The conviction and sentence of Santosh Singh is upheld. The conviction of Rajeshwari is set aside and she is acquitted of all charges. The conviction of Onkar Singh under Section 302 read with Section 34 is set aside. However, his conviction under Section 201 and the sentence imposed, of four years' rigorous imprisonment is upheld. The sentence of Lallu Ram and Bandha is reduced to the sentence already undergone.

JUDIS