

CASE NO.:
Appeal (crl.) 130 of 2001

PETITIONER:
Gurpreet Singh

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 12/09/2002

BENCH:
Umesh C. Banerjee & Y.K. Sabharwal.

JUDGMENT:

J U D G M E N T

BANERJEE, J.

The appellant Gurpreet Singh an Indian Air Force personnel had a love marriage with one Kalpna, a Nurse in a Military Hospital (since deceased). Later the facts reveal that Gurpreet left his job from Indian Air Force and joined as Assistant Vigilance Officer in Maruti Udyog in Gurgaon and Kalpna was also adjusted in the same Maruti Udyog in a section known as Bharat Seats. They lived in House No.C-2-113/4 D.L.F. Phase-I, Qutab Enclave, Gurgaon and had a son Sudeep out of their lawful wedlock.

It appears that the parties to the said marriage did not pull on well and the deceased and the appellant made a joint petition (Ex.P.N.) before the learned District Judge, Gurgaon under Section 13-B of the Hindu Marriage Act seeking divorce by mutual consent on 14.12.1993; though concededly they lived under one roof till Kalpna breathed her last as noticed hereinbefore in this judgment. The next date fixed in the petition was 17.7.1994.

Incidentally, on the further factual score it appears that purchase of flat No.C-2-113/4, Gurgaon (Ex.A4) prior to filing of consent petition however was in the joint name of both the spouses. The deceased thus had a half share in the flat and the consent petition for divorce created a bounden obligation for the appellant to pay a sum of Rs.3,00,000/- to the wife.

Materials available in the matter depict that around 11.00 or 11.30 O'clock in the night of 13/14.2.1994, there were some sounds of shrieks and cries from the house of Gurpreet Singh and Ashok Mazumdar, (P.W.1), a Businessman, living in House No.113/3-2-2 D.L.F. Colony, Phase I, Gurgaon, not being aware of the happenings got up from sleep and saw from the window that the smoke was emitting from the said apartment and he noticed the appellant and his servant being present there. The neighbourly gesture prompted him to telephone the police as well as the fire brigade and Sub Inspector Bir Singh (P.W.5), on receipt of the wireless message from Police Station Sadar, Gurgaon reached the spot located in the area of Silver Oak Apartments, Qutab Enclave. The Sub Inspector found the appellant-accused sitting in his room while the victim Kalpna lying in burnt condition in another room. The two rooms were burnt but the room in which the appellant-accused was sitting was not having marks of burns. The records depict that the Sub Inspector despatched a ruqa that Kalpna had been murdered by setting her on fire on the basis of which formal FIR Ex.PG/1 was recorded by S.I. Devinder Singh.

The burnt remains of the clothes of the deceased were taken into possession by Inspector Murari Lal, (PW.7) who, as the records depict,

recorded the statement of Ashok Mazumdar (Ex.PA) and that of one Raj Kumar Chawla (since deceased). Though 10/12 persons also gathered at the spot but they were not prepared to state or disclose anything. Records further depict that preparation of site plan (Ex.PQ) as also the inquest report (Ex.PP). Five match sticks in a match box were taken into possession (Ex.PJ) along with a plastic can with cap and a writing pad (vide recovery memos Exs.PK, PL and PM). After the photographs Ex.PT/1 to PT/4 of the dead body were taken, the same was sent for post-mortem examination.

On 16.2.1994, the appellant was arrested because Shri Ashok Mazumdar, PW.1 had already mentioned in his statement to the police that about 15/16 days prior to the occurrence he had seen Gurpreet Singh appellant giving beatings to Kalpna and she was bleeding from her mouth and obviously he expected his hand in the murder. There was the presence of the accused on the place of occurrence with unusual calmness without any attempt even to explain how the occurrence took place obviously led to the inference that he and none else had a hand in the crime.

A site plan according to scales was got prepared from PW.3 Mool Chand Punia, a Draftsman, who gave a note in the site plan that the deceased was stated to be found in a complete sitting posture. The articles taken from the scene of occurrence were despatched to the Forensic Science Laboratory.

On 15.2.1994 at 10.00 A.M., autopsy on the dead body of Kalpna deceased was conducted by Dr. Sanjay Narula, PW.2 and he observed the following:

"No ligature mark on the neck could be commented because of charring. It was dead body of an average built and nourished female wearing yellow metallic chain in neck and yellow metallic kara on the left wrist. Body was totally burnt except a tuft of hair. Puggilistic attitude of the body was there. There was no clothes over the body. There was no smell or kerosene or any other material from the body or hair.

The examination of scalp revealed that it was burnt except a tuft of hair in the occipital region.

The body above the level of pelvis was totally charred. Deeper muscles of abdomen and chest also charred exposing bone at places. Both lower limbs were deep to superficially burnt showing red line of demarcation. Larynx and tracheae were healthy but containing black particles. Heart was full of cheery red colour blood. The duration between injuries and death was immediate."

In the opinion of the Doctor, the death was due to 100% burns which were sufficient to cause death in the ordinary course of nature.

On 17.2.1994, at 10.00 A.M. the said doctor also medico legally examined the appellant and found the following injuries on his person:-

- (1) Infected superficial burn wound with light brown scab with few pus points, size 3 cm X 1 cm over bridge of nose.
- (2) 3 cm X 2 cm infected burn wound with same features as one over left ala of nose.
- (3) 2 mm X 1 mm wound with same features as one over left side of face.
- (4) Circular .5 cm diameter wound with same features as one over forehead just above medical end of right eye brow.
- (5) 7 cm X 5 cm blister over sole of left foot. No open wound slight erythema around blister. This blister extends at base of fourth and fifth toe.
- (6) 3 cm diameter blister over left border of left foot.

In the opinion of the Doctor the injuries were simple in nature

having been caused by burns.

In view of the aforesaid evidence collected against the appellant, he was put to trial for murder of his wife Kalpna. The entire evidence was put in his statement under Section 313 of the Code of Criminal Procedure. He mostly claimed ignorance regarding the circumstances in which the death of the deceased took place. He took up the plea that in fact he along with DW.1 Ravinder Nath Puri had taken the dinner together around 9.00 P.M. in his Apartment and had gone to Gymkhana Club where he received a telephonic message around 11.00 P.M. from Raj Kumar a neighbour of the accused that the house was emitting fire. He and Ravinder Nath Puri, DW.1 reached the scene of occurrence and in his attempt to extinguish the fire, received burn injuries noticed above. He also stated that his wife had no grouse against him and he had reached much after the place got ablaze and that he was involved falsely. The learned trial Judge did not place reliance on the story set up by the appellant-accused. The conclusions arrived at were that the appellant was not innocent as he claimed to be, but was the actual offender. The liability of loan, differences he had with his wife and the deceased having a half share in the apartment, led to the job of eliminating her. According to the findings the appellant took a false plea of alibi and had nothing to do in Gymkhana Club late in the night. As a matter of fact, the learned Sessions Judge recorded that the burns on the appellant were received when he was trying to burn the wife rather than was extinguishing the fire and the pose of the deceased sitting on a sofa as shown in photographs (Ext. PT/1 to PT/4) was such that if she had either committed suicide she would have run here and there and posture could not have been the way as it transpires from the records. This is more so by reason of the factum of presence of the appellant in the house when he committed the act of murdering his wife, observed the learned Judge. Accused did not disclose anything nor gave any explanation of the situation confronted to him and the only inference that could be drawn was that he committed the crime. On the basis of the aforesaid the appellant was convicted under Section 302 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life.

In the appeal against the order of conviction and sentence, the High Court rejected the contentions in support of the appeal with a positive finding that there exists sufficient circumstantial evidence on record to connect the accused with the sordid crime he committed.

Before proceeding further however and since the injuries as noticed above relate to burn, we feel it expedient to note the observations of this Court in Arvind Singh v. State of Bihar (2001 (6) SCC 407) wherein one of us (Banerjee, J.) dealt with such injuries in quite some detail. This Court observed :

"6. Burn injuries are normally classified into three degrees. The first being reddening and blistering of the skin only; second being charring and destruction of the full thickness of the skin; third being charring of the tissues beneath the skin, e.g. fat, muscle and bone.

7. Be it noted here that if the burn is of a distinctive shape a corresponding hot object may be identified being applied to the skin and thus abrasions will have distinctive patterns but in the event a burn injury is the cause of death then 60% cases are of septicaemia and 34% cases are of bronchopneumonia. Where infection was by pseudomonas pyocyanea, spread to unburnt skin ulceration may occur, and internal infection by this organism is especially liable to damage the walls of blood vessels. Gram-negative shock may also occur. The external examination in the normal cases are found in the body being removed from a burnt building and in the event of such a

removal the cause of death would be inhalation of fumes rather than septicaemia as noticed above. In the event the body is not removed from the room and same remains in situ, an examination of the scene must be attempted, as with any other scene of suspicious death, note being taken as regards the position of the body, clothes remaining if any and identifiable objects in the room and so on. The examination of the burns is also directed to ascertain their position and depth, as to whether they were sustained in life or not, and whether their situation gives any indication of the path taken by the flames or the position of the body when the fire started. If the body is very severely burnt then all the skin surface may be destroyed, even sometimes making it rather difficult for identification of the body. A body that is badly burnt assumes the appearance known as "pugilistic attitude" and this is due to heat stiffening and contraction of the muscles, causing the arms to become flexed at the elbows and the hands clenched, the head slightly extended and the knees bent. The appearance resembles the position adopted by a person engaged in a fight and has led on occasions to suspicion that the death occurred during some violent crime. In fact, of course, the body will assume this position when the fire started. The other aspect of the burn injury is that heat ruptures may be produced. These are splits of the skin, caused by contraction of the heated and coagulated tissues, and the resultant breaches look like lacerated wounds. They are usually only a few inches, but may be up to 1 or 2 ft in length. Normally they lead to no difficulty in interpretation, since they occur only in areas of severe burning, and normally over fleshy areas of the body, like calves and thighs where lacerations are uncommon. However, when they occur in the scalp they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt, by their appearance, position in areas of maximum burning and on fleshy areas, and by the associated findings on internal examination. (See in this context Taylor's Jurisprudence.)

8. Although shock due to extensive burns is the usual cause of death, delayed death may be due to inflammation of the respiratory tract caused by the inhalation of smoke. Severe damage, at least to the extent of blistering of the tongue and upper respiratory tract, can follow the inhalation of smoke."

Apropos the burn injury, the report of the Forensic Science Laboratory, Haryana, seem to be of some relevance, as such the same is set out hereinbelow:

"RESULT OF EXAMINATION

(1) Residues of petroleum were detected in Exhibits 1, 2, 3, 4 and 5.

(2) Carbon monoxide was detected in Exhibit-6 (Blood.)"

In this context, the observations of the High Court in the judgment impugned ought also to be noticed : The High Court did delve into the matter rather elaborately and with due importance it deserved. The High Court stated :

"The most important factor in the case remains to be that the photographs Ex.PT/1 to PT/4 are of the most vital importance. Kalpna deceased had been shown in a sofa Ex.P1 in a sitting posture i.e. like a pugilistic pose. She is in an absolute sitting pose on a sofa. If one looks towards the side of the head the entire flames had gone on the wall towards the head. The deceased Kalpna has not moved here or there. If she had moved here or there the burns would have been on other portion of the wall of the room. These photographs Exs.PT/1 to PT/4 as mentioned above were not being brought in evidence and were brought on record during the course of evidence on payment of costs. There was a clever attempt on the part of the appellant that he did not want these photographs to come on record. As already indicated that there was no one who could be taking interest to prosecute the appellant. This posture of the deceased clearly established that if the case had been that of suicide she would have tried to struggle and move here and there rather than to be killed on the sofa itself. So these photographs are important piece of evidence in the chain of circumstances. To recapitulate the situation, the death of the deceased was immediate after the burns. The visual examination of the scene of occurrence found by the Investigating Officer who prepared the inquest report Ex.PP revealed that the fire had been so intense that even the blades of the electrical fan were found to be moulded. Window of the room was burnt and door frame and door closer were also burnt. Smell of petrol had been found in the articles sent to the Forensic Science Laboratory vide report Ex.P0."

Coming back on to the merits of the matter now, it thus appears that there is no direct evidence available so as to connect the appellant with the incident but only circumstantial evidence : It is however now well settled that while circumstantial evidence alone and by itself to form the basis of conviction, provided, however, there is no snap in the chain of events: the chain of events must thus be complete in such a way so as to point to the guilt of the accused person and to none others it is not a mere matter of surmise or conjecture but the events ought to be so tale-tale that one cannot but come to the conclusion that accused is the guilty person. Standard of proof has thus to be at a much higher degree lest an innocent person gets the blame therefor. The approach of the Court thus ought to be extremely cautious and upon proper circumspection as regards the appraisal of the available evidence on record. Various citations were referred to by the parties during the course of hearing, but the law seems to be so well-settled, that we may not detain ourselves on that score.

At this juncture a brief recapitulation of events may be worthwhile so as to assess the situation ourselves in its proper perspective. Mazumdar heard a shriek gets up and finds smoke coming out of Ahluwalia's window : on seeing the smoke, came out of the house and met Ahluwalia and the servant who, in fact, said to have

informed him of the fire in the house and thereupon informs the Police as also the fire brigade this is the statement said to have been recorded by the Police under Section 161 Cr.P.C.: In the witness box however, there is some variation and Mr. K.T.S. Tulsi, the learned Senior Advocate appearing in support of the appeal has been rather emphatic that reliance on Section 161 statement in preference to the other evidence available from Mazumdar has been the key feature in the matter of acceptance of the prosecutor's version rather than a total disbelief of the same.

Incidentally, it is now well-settled that in the event of a portion of evidence not being consistent with the statements given under 161 and the witness stands declared hostile that does not, however, mean and imply total rejection of the evidence. The portion which stands in favour of the prosecution or the accused may be accepted but the same shall be subjected to close scrutiny. It is in this context the observations of this Court in State of U.P. vs. Ramesh Prasad Misra & Anr. (1996 (10) SCC 360) seem to be rather apposite and the same is thus set out hereinbelow :

"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 circumstance, 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."

Next, however, is the plea of alibi as raised by the appellant when the husband stated that after the dinner he alongwith a friend went to Gymkhana Club for a coffee and it is only at the club that he was informed of the fire in the house which prompted the appellant to return to his house immediately. This plea of alibi stands disbelieved by both the courts and since the plea of alibi is a question of fact and since both the courts concurrently found that facts against the appellant, the accused, this Court in our view, cannot on an appeal by special leave go behind the above noted concurrence finding of fact. This stands well settled for about five decades and reference may be made to the decision of this Court in Thakur Prasad vs. State of Madhya Pradesh(1954 Crl.Law Journal 261).

Admittedly there is no eye-witness available in the matter under consideration and the prosecution case is sought to be established from the circumstantial evidence and it is in this sphere the settled law as noticed above is that circumstances from which the conclusion of guilt

is drawn should be proved and thus circumstances must be conclusive in nature. The established circumstances should also be complete and there should not be any missing link in the chain of evidence. The court ought thus to scrutinise the evidence and deal with each circumstance and thereafter find the chain of the established circumstances being complete, in the event, the answer is in the affirmative, there should not be any hesitation in the matter of return.. of a verdict of guilt on the basis of circumstantial evidence. In the event, however, there is a snap in the chain and the conclusion may not steadfastly point or reach the accused, the latter is entitled to a benefit of doubt. In this context the observations of this Court in *Kundula Bala Subrahmanyam & Anr. vs. State of Andhra Pradesh* (1993 (2) SCC 684) lends credence to the view expressed above.

It is indeed a relevant fact in the contextual facts that parties admittedly, were having estranged relationship : As a matter of fact, divorce proceedings has already been initiated a payment of Rs.3,00,000/- is to be effected to the wife by the husband and this is being consented to in writing since divorce was by mutual consent of the parties.

It is to be noticed that whereas there is no eye-witness account but the incriminating conduct and activity of the accused have been proved by overwhelming evidence. The investigating officer found the appellant sitting in the other room and the body of the wife totally burnt in a sitting posture that of course goes on well with the Medical Jurisprudence as noticed above since heat would have the effect of stiffening and contraction of muscle causing the arms to become flex and knees bent. The photographs produced before the Court show the devastation of fire, obviously a definite attempt to see that one does not survive in any event. The appellant-accused has not offered any reason nor explanation except a plea of alibi which the High Court ascribed to be as false denial as noticed hereinbefore. The chain of events dispels any doubt as sought to be suggested by Mr. Tulsi and there seems to be sufficient evidence on record to connect the appellant with a brutal killing of a wife, the motive of which is apparent.

The social evil popularly described as bride-burning thus does not show a descending graph in spite of the legislature stepping up and introducing penal provisions therefor. The sordid tale of young girls becoming victims of lust for money and other materialistic objects continues the appeal in the present case thus is also no exception.

On the wake of the aforesaid, we are unable to record our concurrence with the submissions of Mr. Tulsi. The appeal therefore fails. The conviction and sentence passed against the appellant as confirmed by the High Court is upheld and the appeal is dismissed. The appellant to serve out the sentence.