

CASE NO.:
Appeal (crl.) 1472 of 2007

PETITIONER:
Hemant Trivedi

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 25/10/2007

BENCH:
S.H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No. 1927 of 2006)

B.Sudershan Reddy, J.

Leave granted.

2. This appeal by special leave is directed against the judgment of the Rajasthan High Court confirming the conviction of the appellant under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC') and the sentence of imprisonment for life and a fine of Rs. 2,000/-, in default of payment of fine, further 3 months rigorous imprisonment. He was also convicted for the offence punishable under Section 201 IPC and sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 500/-, in default of payment of fine, to undergo rigorous imprisonment for 1 month. Both sentences were directed to run concurrently.

3. The conviction of the appellant is based on circumstantial evidence.

4. In brief, the case of the prosecution is that the appellant is a permanent resident of village Kojra, District Sirohi, Rajasthan. The appellant was, however, living with his sister in Mumbai. The deceased-Uma was working in a beauty parlor. She was living in the neighbourhood where the appellant was living along with his sister. Both of them developed intimacy and fell in love with each other. The appellant approached the mother of the deceased Anandi Devi (PW-13) and proposed to marry the deceased. Anandi Devi (PW-13) rejected the proposal made by the appellant. The appellant threatened that he would kidnap the deceased if he is not allowed to marry her. Thereafter, the appellant and deceased disappeared from Mumbai. Anandi Devi (PW-13) did not lodge any complaint whatsoever to the police about the disappearance of her daughter.

5. In the month of March, 1998 the appellant along with deceased came to his ancestral village Kojra and stayed in the village temple for a night. Thereafter, the appellant and deceased entered the ancestral house called 'Rawla' in the same village after performing religious rites in the presence of the appellant's sisters and other family members. They started living in the house called 'Rawla'. Thereafter, they were regularly coming and going to the village Kojra. On 6.4.1998 both the

appellant as well as deceased-Uma talked to Anandi Devi (PW-13) on telephone and assured her that they would soon be returning Mumbai. The appellant and deceased visited the village in June and stayed in the house. Thereafter deceased was not seen with the appellant.

6. On 5.7.1998 Lal Shanker(PW-1) informed the police that a dead body was lying in the house 'Rawla'. On receiving the information the S.H.O. Police Station, Pindwada (PW-21) rushed to the spot where Lal Shankar (PW-1) gave the report exhibit P-78 in which it is stated that at about 9.00 A.M. on 5.7.1998 he climbed on the roof of the house of the appellant to see the water level in the nearby pond. It was raining. He found the ventilator of the room open and he peeped into the ventilator of the room and found a dead body lying therein. He accordingly informed the police. The police broke open the lock and found the dead body in a highly decomposed condition. The dead body was identified as that of the wife of the appellant. Based on the information police registered a case for offence under Section 302 of the IPC and proceeded with investigation. The Police prepared the inquest report and the site plan. The ornaments found on the dead body were removed. The appellant was arrested on suspicion. On the basis of the information given by the appellant his blood stained trouser and some ornaments of the deceased were recovered. The statements of Rajendra Trivedi (PW-2) and Bharat Prabhu Lal (PW-8) were recorded under Section 164 Code of Criminal Procedure.

7. The police after investigation filed charge sheet against the appellant and one Puran Kumar(since acquitted) for the offences punishable under Sections 302 and 201 of the IPC.

8. The appellant denied the charges leveled against him and claimed trial. The prosecution, in order to establish the case, examined in all 22 witnesses. No witness was examined on behalf of the appellant. The learned Sessions Judge upon appreciation of evidence available on record found no case against Puran Kumar and consequently, acquitted him of all the charges. The appellant was convicted for the offences punishable under Section 302 and 201 of the IPC. On appeal, the High Court having reconsidered the entire matter confirmed the conviction and sentences imposed against the appellant by the Trial Court.

9. We have elaborately heard the learned counsel appearing for the appellant as well as for the State and perused the evidence available on record.

10. Shri Nalin Kumar, learned Amicus Curiae for the appellant strenuously contended that the chain of circumstances is not complete and, therefore, the conviction of the appellant cannot be sustained. It was contended that even the dead body was not identified. The learned Amicus Curiae contended that even assuming that the prosecution has been able to establish the circumstance of being last seen together, namely the deceased having left with the appellant on 5.6.1998, that by itself could not connect the appellant with the commission of crime in the circumstances of the case.

11. Dr. N.M. Ghatate, learned senior counsel appearing for the State submitted that the evidence of PW-8, 9 and 13 conclusively establishes the case of the prosecution and there is nothing elicited from them in the cross-examination to doubt the veracity of the prosecution case. It was submitted that PWs. 8 and 9 are related to the appellant and there is no reason to disbelieve the evidence.

12. Having heard the learned counsel for the parties and on perusal of the record, we find that the courts below have not committed any error in coming to the conclusion to convict the appellant of the charges framed under Section 302 and 201 of the IPC.

13. The prosecution in order to prove the crucial circumstance of appellant and deceased "last seen" together has examined Bharat Prabhu Lal (PW-8) who is none other than a cousin of the appellant. It is in his evidence that in the last week of March, 1998 the appellant visited the village Kojra accompanied by the deceased-Uma. He introduced Uma as his wife. The couple stayed in the temple. Next day, both of them went to nearby village named Malgauv and returned after 3-4 days along with appellant's sisters Kamla, Usha, Hansa etc. They started living in their ancestral house namely 'Rawla' after performing religious ceremony of house warming. On 5.6.1998 the appellant along with deceased met him. They spent night on the terrace of the temple. In the morning of 6th June, 1998 he found appellant alone. The appellant was getting ready for going to Mumbai. Thereafter the deceased was not seen alive.

14. Nelesh Trivedi (PW-9) is another important witness who is none other than a cousin brother in relation of the appellant. It is in his evidence that the appellant visited the village in the month of March along with the deceased. The appellant introduced the deceased as his wife named Uma. His version is consistent with what has been stated by Bharat Prabhu Lal (PW-8). It is stated by him that he had seen the appellant and deceased Uma together on 30th March, 1998. Thereafter he had not seen the deceased alive. PW-8 and 9 consistently speak about the circumstance of the appellant and deceased last seen together.

15. It is clear from the evidence available on record that the appellant was providing misleading information as regards the whereabouts of deceased-Uma. PW-8 stated that on 6th June, 1998 on inquiry the appellant stated that his wife Uma had gone to Jhadoli to meet her maternal uncle and from there she will join him at Sirohi and both of them will go to Mumbai from Sirohi. On 17-18th June, 1998 he received a message from Mumbai through one Raju Ram to inquire about the whereabouts of the wife of the appellant as it was found that the appellant returned to Mumbai alone. He inquired from the appellant about the whereabouts of the deceased-Uma and appellant told him that Uma had gone to village Gol. Thereafter he stated that Uma had gone to his sister Dodva or Pandiv. PW-8 confronted the appellant as to why he was providing misleading information. He told him that he had left Uma at Nala Supara Railway Station, Bombay with her mother. On 30th June, 1998 the appellant again visited the village along with his friend Puran (co-accused, since

acquitted). He again gave some misleading information. Nilesh Trivedi (PW-9) also stated that the appellant was giving misleading information about the deceased-Uma. Thus, the evidence of PW-8 and 9 undoubtedly reveal that the appellant was providing misleading information about the whereabouts of Uma. Thus, it is the second incriminating circumstance against the appellant.

16. The appellant was arrested vide memo Ex. P-16. While in police custody the appellant gave information vide Ex. P-73 leading to the recovery of key of the room in which the dead body of Uma was found. It is true the lock was broken by the police but the evidence available on record suggests the recovered key is of that lock which was broken for opening the room in which the dead body was found. The appellant did not offer any explanation whatsoever in this regard. This is yet another incriminating circumstance connecting the appellant to the murder of the deceased. Similarly the trouser of the appellant was recovered vide Ex. P-11. Blood stains on the trouser were found to be of human origin as per the F.S.L. report Ex. P-79. It is true as contended by the learned Amicus Curiae there is no reliable evidence that the blood stains found on the trouser were of the same group that of the blood group of the deceased. But the fact remains the appellant has not given any cogent and acceptable explanation as to the presence of human blood on his trouser. This is also yet another incriminating circumstance that goes against the appellant.

17. Anandi Devi (PW-13) is the mother of the deceased. She performed the last rites of her deceased daughter. In the evidence she stated in categorical terms that she performed funeral of her daughter. That crucial sentence of the evidence is as under:
"Thereafter on 6.7.98 the telephone of police came to my elder brother of my husband that Uma has been murdered. Then we started from Bombay and came to Kojra village. And I did funeral of my daughter in the village."

This part of the evidence is not subjected to any cross-examination whatsoever by the defence. The evidence of PW-8 and PW-13 conclusively establish the dead body recovered which was in a highly decomposed condition was identified as that of Uma. There is no reason to disbelieve the evidence of PW-8 and 13.

18. The prosecution case does not rest solely on the circumstance of "last seen" together. The circumstance of "last seen" together may not by itself necessarily lead to the inference that it was the accused who committed the crime. The evidence available on record clearly establish connectivity between the accused and the crime which we have noted supra.

19. The High Court came to the right conclusion that the chain of circumstances taken individually and cumulatively leads to the one and only conclusion that it was the appellant, who committed the murder of deceased-Uma. In our considered opinion the High Court rightly confirmed the conviction and sentence of the appellant

for the charges framed against him.

20. Accordingly, the appeal stands dismissed.

JUDIS