

CASE NO.:
Appeal (crl.) 852 of 2003

PETITIONER:
Sardar Khan

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 20/01/2004

BENCH:
Doraiswamy Raju & S.B. Sinha

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The appellant before us was convicted under Section 302 and Section 498-A of the Indian Penal Code. He was sentenced to rigorous imprisonment for life for commission of an alleged offence under Section 302 IPC as also a fine of Rs.1,000/- and to one year's rigorous imprisonment under Section 498-A in respect whereof a fine of Rs.500/- was also imposed upon him.

On an appeal preferred by the appellant herein, the High Court, however, while maintaining the judgment of conviction passed by the learned Sessions Judge, issued a notice upon the appellant as to why the maximum capital sentence should not be imposed on him. Upon giving an opportunity of hearing to the appellant, the High Court having arrived at a finding that the case is one of the rarest of rare one, imposed death penalty upon him.

Being aggrieved, the appellant is in appeal before us.

The deceased was the appellant's wife. They were staying at House No.41, Hall's Road, Sagayipuram, K.G. Halli, Bangalore in a rented house belonging to PW 3, Noor. At the time of marriage, allegedly the deceased's parents gave gold ornaments as dowry. The accused at that time was working as a Carpenter. As he was not doing his work properly, he being in dire financial need, started selling away the jewellery of the deceased. The father of deceased, PW 1 gave some money to the appellant to start his own business, which was also spent out. Allegedly, three months prior to the incident, the deceased was kicked on her stomach when she was pregnant as a result whereof an abortion took place whereafter her father brought her to his own house. However, allegedly on mediation by elderly persons including PW 5, Syed Arif, the deceased was sent back to her matrimonial home. Despite the same, the deceased allegedly used to complain to her parents about harassments meted out to her by the appellant accused persons i.e. his brother Irshad Ahmed Khan and sister Smt. Bhalkeez Begum.

On the night of 14/15.4.1997 at about 1' 0 clock, one Belal Sheriff son of Noor (PW 3) came to the house of Yusuf Khan (PW 1) and informed him that fire was seen in the house of the deceased and the accused; whereupon he, his wife Smt. Asmathunnisa (PW 6), and his son, Saleem Khan (PW 2) went there and found that neighbours had been trying to put out the same. The door of the house was open and upon going inside the room, they found the

deceased lying dead on a cot with her neck cut. She was also found to have been gagged with a cloth. Allegedly, an attempt had been made to burn her body.

The first information report about the commission of offence was lodged at about 2 A.M. on the same night. The accused who was absconding was arrested on 22.4.1997 and allegedly on a statement made by him, the weapon in question being 'chopper' (marked as MO 11), his clothing, as well as some ornaments of the deceased pledged with pawn broker were recovered.

The prosecution with a view to establish the guilt of the appellant examined 21 witnesses. The learned Sessions Judge convicted the appellant but acquitted the other two accused. The High Court, as noticed hereinbefore, upheld the said judgment of conviction.

Mr. S. Sadasiva Reddy, learned counsel appearing on behalf of the appellant, would submit that the courts below committed a serious error in passing the impugned judgment of conviction and sentence inasmuch as there was no eye-witness to the occurrence and the entire case was based upon the circumstantial evidence. Having regard to the fact that the accused was also not last seen with the deceased and the recovery of the 'chopper', according to the learned counsel being doubtful, the impugned judgment should be set aside. It was pointed out that the report of the serologist was also not produced. As regard the order of sentence passed by the High Court, the learned counsel would submit that this case cannot be said to be one of the rarest of rare cases warranting death penalty.

The complainant Yusuf Khan, PW 1, is the father of the deceased. He in his evidence not only furnished the details about the manner in which the deceased had been dealt with by the appellant prior to the occurrence. He was supported by the other witnesses.

The death of Smt. Shamim Unnisa was homicidal in nature is admitted.

Autopsy report of Dr. Nissar Ahmed (PW 12) in no unmistakable term shows that the deceased was brutally murdered. The autopsy report was proved by the said witness which was marked as Ex.P-7. In the said report it was stated that both the hands of the deceased had been tied at the back; the mouth and neck were tied with the cloth; the wounds were found on the neck of the deceased. The said wounds were said to have been caused with a spear. The said witness examined the spear produced by the police before him and he stated that the injury in question could be caused by a spear like that.

From the evidence of PW 1, PW 2, PW 3 and PW 6, it has further been proved that an attempt was made to destroy the evidence by putting the dead body on fire by pouring kerosene and the same had to be put out. The appellant had been absconding from the night of 14/15.4.1997 till 22.4.1997 and no explanation therefor had been furnished. Immediately after his arrest, he made voluntary statement on the basis whereof the incriminating articles including 'chopper' as also his clothes and gold jewellerys belonging to the deceased which were marked as Mos 11, 12, and 13, were recovered.

In his statement before the police, the appellant disclosed that if he is taken to the house in question, he would show the spear, the golden ornaments and blood stained clothes. In view

of the same, he was taken to the house in question where he had been residing. The spear in question which was kept in a cardboard box on the 'chajja' was shown to the accompanying police personnel by him whereupon it was seized. On 23.4.1997, furthermore, the appellant took the police to a shop belonging to Goutham Chand, a pawn broker to whom he pledged the gold ornaments. The said gold ornaments were seized. On the same day at his instance, the police took him to the Shop No.109, Arunachalam Road, Bharathi Nagar and on his pointing out to the witness through Anand, the blood-stained clothes were seized.

The aforementioned Goutham Chand was examined as PW 10. He categorically stated that on 21.4.1997, the appellant pledged with him one golden finger ring and a head ornament for Rs.1,200/-. As regard the recovery of the clothes, PW 11, Anand in his deposition stated that he knew him and about two years prior to his deposition, the appellant had come to his saloon for shaving whereafter he left a cloth bag there. The aforementioned clothes were recovered by the police from the saloon at the instance of the appellant.

The courts below had also proceeded on the basis that the ill-treatment meted out to the deceased by the appellant had not only been proved by PW 1, PW 2 and PW 6 but also PW 5 and PW 3 who were independent witnesses.

As indicated hereinbefore, the fact that the deceased and the appellant were living together in a tenanted premises belonging to PW 3 is not in dispute.

It has further been brought on records that the said rented premises were also taken by PW 1 for his daughter on a monthly rent of Rs.500/- wherefor he had paid a sum of Rs.8,000/- as advance.

The systematic manner in which the deceased was subjected to ill-treatment and torture as also assault when she was pregnant resulting in her abortion proves motive on the part of the appellant to cause murder of the deceased. Thus, the weapon of attack being 'chopper' as also clothes and jewellery were recovered on the statement made by the accused.

Before the learned Sessions Judge, several photographs marked as Ex.P-12 to P-14 were produced. The prosecution examined PW-20, David, who had taken the said photographs and on perusal thereof, the learned Sessions Judge opined :

"...When the photographs of the deceased are seen it becomes clear that a heinous act has taken place. It appears in the photos also the mouth and the neck of the deceased are tied. Blood stains and burnt and scattered clothes are also found clearly in the photograph."

There cannot be any doubt whatsoever that with a view to satisfactorily prove the commission of a crime on the basis of circumstantial evidence, the prosecution must satisfy : (1) the circumstances from which an inference of guilt is to be drawn must be cogently and firmly established; (2) the circumstances should have a tendency to unerringly point to the guilt towards the accused; and (3) the circumstances taken cumulatively should form a chain so complete that there is no escape from the

conclusion that within all human probabilities the crime is committed by the accused and none else. One of the factors which had been taken into consideration by both the courts below is that the appellant was absconding since the date of incident and he had to be arrested.

It is not in doubt or dispute that there was no eye-witness to the occurrence. It is, however, not in dispute that the deceased and the accused were living in the house of Noor who examined himself as PW 3. His evidence remains unchallenged. The ill-treatment meted out by the appellant has not only been proved by the father and brother of the deceased, Yusuf Khand (PW 1) and Saleem Khan (PW 2) as also Smt. Asmathunnisa (PW 6), the mother of the deceased but also stands corroborated by the evidence of Syed Arif (PW 5) who mediated between the appellant and the deceased. It has also been proved that the jewellery belonging to the deceased were pawned to one Goutham Chand (PW 10) by the appellant. The fact that the deceased was kicked on her stomach while she was pregnant as a result whereof, abortion was caused and she had to be hospitalized is also not in dispute.

There is nothing on record to show that any outsider broke open the house and caused the murder of the deceased. The aforementioned circumstances, in our opinion, have rightly been accepted by the courts below as leading to proof of guilt of the appellant. In a similar situation, in *Jawahar Lal and Others vs. State of M.P.* [(2001) 5 SCC 300], this Court upheld the judgment of conviction and sentence.

It may be true that the learned Sessions Judge acquitted the brother and sister of the appellant but the said finding was arrived at on the premise that they had not been residing in the house in question and, thus, a benefit of doubt was given to them but that by itself cannot be the basis to accept the innocence of the appellant or extend a similar benefit of doubt to the appellant also, in spite of materials starrng against him. Furthermore, in a case of this nature particularly when the marriage had taken place only two years prior to the date of occurrence and the prosecution had been able to show that a few months after the marriage, the deceased was subjected to torture for obtaining financial benefits from her parents, the tests required for arriving at the guilt of the accused on the basis of circumstantial evidence must be held to have been satisfied.

We do not, therefore, find any infirmity in the impugned judgment.

The question which, however, required to be addressed is as to whether imposition of death penalty by the High Court was proper? We think not. The learned Sessions Judge having regard to the facts and circumstances of the case and upon hearing the appellant thought it proper to impose a sentence of imprisonment for life. The State did not prefer any appeal for enhancement of the sentence. No argument also appears to have been advanced by the State in this behalf before the High Court.

Brutality in taking away the life of the victim is only one of the factors which is required to be taken into consideration for coming to the conclusion that the case at hand is one of the rarest of rare ones warranting imposition death penalty. Imposition of punishment for life, it is well-settled, is the rule. Awarding of death sentence is an exception. [See *Prem Sagar vs. Dharambir and Others* (2004) 1 SCC 113].

We, therefore, alter the sentence imposed by the High Court from death penalty to one to imprisonment for life and further impose a fine of Rs.1,000/-; in default whereof the appellant shall suffer a simple imprisonment for one month.

With the aforementioned modification in sentence, this appeal is dismissed.

JUDIS