

ASHOK KUMAR

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v.

THE STATE (DELHI ADMINISTRATION)

SEPTEMBER 19, 1995

[MADAN MOHAN PUNCHHI AND SUJATA V. MANOHAR, JJ.]

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Criminal Law :

Indian Penal Code, 1860 :

S.302—Murder—Husband killed by wife and her lover allegedly with a stone—Wife convicted and sentenced to life imprisonment and fine—Other accused convicted and sentenced to death—Confirmed by High Court—Appeal preferred by the main accused but not by the co-accused—Held, the act of the main accused was not so cruel, unusual or diabolical to warrant death penalty—Sentence commuted to life imprisonment.

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The accused as also his co-accused Smt. P. belong to the same village in Rajasthan and had a long knit physical intimacy with each other. Smt. P. was given in marriage to M. Out of the wedlock, two children were born. However the passion between the accused continued and so both of them drew a plan to kill M. According to the Prosecution accused, M, and his two children moved from their respective residence and on their way to Delhi, stayed in the house of PW. 33. Thereafter they reached Delhi and stayed in a hotel, the co-accused and her family in one room and the appellant in another room. At the hotel desk the appellant gave a fictitious name and a false address.

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Both the accused and the children left Delhi. After a couple of days, the management of the hotel found some foul smell coming out of the room occupied by M. They called the Police and in their presence broke open the lock and found the dead body of M, some blood stains, a red stone, a plastic rope, some broken bangles and a tuft of hair. Post-mortem revealed that it was a homicidal death.

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The accused were arrested after a few days and after investigation sent up for trial before the Court of Session, which convicted the appellant for the murder of M and sentenced him to death. The co-accused was

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A convicted for an offence under S.302/34 IPC and was sentenced to life imprisonment and to pay of a fine of Rs. 1,00,000 in default of payment thereof, to undergo 3½ years' rigorous imprisonment. The High Court confirmed the conviction and sentence. The appellant preferred the present appeal, through a jail petition on which leave was granted by the Court. The co-accused did not prefer any appeal.

Allowing the appeal to the extent of commuting the sentence to life imprisonment, this Court

HELD : 1. There is no reason to disbelieve the evidence of the Prosecution witnesses. The discovery of E group blood on the stone, clothes of the deceased and the clothes of the appellant removed from his person on his arrest on 12.1.1988 also assume significance. This is indicative of the appellant's close proximity to the deceased when he was fatally wounded. And lastly is the statement of the co-accused which fixes the appellant to be in the company of the deceased at or about the time when he met his death, let alone what he said to his co-accused. Lastly ever brooding to the occurrence is the motive of the crime. No animus is alleged against the prosecution. It has given the chain of events and the movements of the accused *inter se* and of their being seen together in the company of the deceased. The appellant has thus necessarily to be held guilty of the crime, unless he had a plausible explanation to offer. But instantly, the appellant gave no explanation at all - what to say of a plausible one. The appellant, was thus rightly convicted of the offence under Section 302 IPC. The appraisal of evidence of both courts was sound and this Court agrees with their verdict. [783-E-G]

2. The Trial Judge fixed his attention more on the defiance and unrepentant attitude of the appellant as observed by him while the appellant stood before him in dock as an accused. The High Court on the other hand was more on the moralistic aspect in the appellant having killed his mistress's husband for lust. Even if these two aspects are allowed to play a part, all the more when there is no explanation by the appellant, still this is not the rarest of rare cases in which death penalty should be imposed on the appellant. It cannot be forgotten that two children were born to the co-accused. The appellant was intimate with his co-accused even prior to her marriage with the deceased, and kept on being so even after the birth of the children. That was obviously a long durated steady connection, at

least of 5 to 6 years, if not more. Since there was no time compulsion, the appellant could have had plenty of other opportunities to kill the deceased at another appropriate place in the wildness of Rajasthan rather than bringing him to a hotel in Delhi, accompanied by children, signing hotel papers even though with false name and address and yet killing the deceased with barely a stone. It looks incredible that a stone be carried as far from Rajasthan or to be gathered before hand to be handy for committing a calculated murder of such degree in the execution of which something satanic could be spelled out. It rather appears more probable that the appellant having gone to room no. 30 in the early hours of the morning to meet his mistress or to fetch her to his room was confronted in some form by the deceased which led to the appellant striking the deceased with a handy stone and bringing about the end of the deceased. The act of the appellant therefore cannot be said to be so cruel, unusual or diabolic which would warrant death penalty. Therefore, his sentence is commuted to that a life imprisonment. [783-H, 784-A-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1094 of 1995.

From the Judgment and Order dated 10.1.95 of the Delhi High Court in CrI. A. No. 213/94 with Murder Ref. No. 2 of 1994.

With

CRIMINAL MISCELLANEOUS PETITION NO. 1593 OF 1995.

Ms. Ranjana Narayan, Dr. J.P. Verghese and S.P. Sharma, for the Appellant.

V.C. Mahajan, B.V.B. Das, S.N. Terdol and Binu Tamta, for the Respondent.

The Judgment of the Court was delivered by

PUNCHHI, J. Permission to file special leave petition sought by the mother and brother of the petitioner, Ashok Kumar vide Criminal Miscellaneous Petition No. 1593 of 1995 is refused. Leave granted to Ashok Kumar, Petitioner on his petition from jail.

This appeal by Ashok Kumar is to challenge the judgment and order

- A of the Delhi High Court dated January 10, 1995, whereby he has been held guilty for the offence of murder under Section 302 IPC and sentenced to death. His co-accused Smt. Prem Kanwar stands convicted for offence under Section 302/34 IPC, for which she has been sentenced to life imprisonment and to pay a fine a Rs. 1,00,00, in default of payment of which she has futher to undergo 3½ years rigorous imprisonment. Smt. Prem
- B Kanwar has not appealed against her conviction and sentence. So instantly we are only concerned with Ashok Kumar.

The prosecution case is woven like this :

- C Both the accused, Ashok Kumar and Smt. Prem Kanwar belong to the same village in the State of Rajasthan. Both the accused had a long knit physical intimacy with each other. While so Smt. Prem Kanwar was given in marriage to Mahabir Singh, deceased. The marriage made no difference to the intimacy and their relationship continued. Out of the
- D wedlock of Smt. Prem Kanwar, accused with Mahabir Singh deceased, two children were born. The passion between the two lovers, seemingly, did not subside. It is inferred that because of that relationship Ashok Kumar, appelland and his co-accused Smt. Prem Kanwar drew a plot to kill the deceased so that they could be with each other unobstacked. To fulfil that design, it is stated that they moved out of their respective places of
- E residence and jointly came on December 27, 1987 to the house of P.K. Sharma, P.W. 33 at village Kotputli where both the accused persons, the deceased and the two minor children spent a night. Then it is said that this group of people came to Delhi and with the aid or Bajrangi Lal, Guide, P.W. 27 came at about 11.00 p.m. on 29-12-1987 to hotel Eagle in Katra
- F Barian, Delhi to seek accomodation. Before-hand, the appelland Ashok Kumar, styling himself as Vijay Kumar had told Bajrangi Lal of their requirement of Having a room with three cots. The guide conveyisely told him that a room with a pair of cots and another with single cot would be made available. Accordingly, the appelland and his companions, on coming to the hotel, were allotted room nos. 30 and 33, after the appelland had
- G duly signed the necessary papers and registers at the hotel desk, and having also paid Rs. 200 as advance, He gave out to the hotel management his name as Vijay Kumar and supplied an address which was false. Room No. 30 was then occupied by the couple. The same was on the fourth floor of the hotel, Room No. 33 was occupied by the appelland. This was on the
- H top floor. Both the rooms had no attached toilets. Common bathrooms and

latrines were available for both the floors i.e. 4th and top floor at the third floor. The following morning at about 9.00 a.m., the appellant and his co-accused Smt. Prem Kanwar were seen standing together in front of room no. 30 and on their asking were served tea by Ram Kumar, P.W. 23, At about 11.00 a.m. the appellants accompanied by his co-accused Smt. Prem Kanwar and her two children left the hotel premises never to return back. It is further traced that on that day itself they left Delhi so as to be in Jaipur where they had checked in at Hotel Sital at about 7.00 p.m. There again the appellant with a pseudo name gave a wrong address. On the next day, i.e. 1.1.1988, both of them left together and stayed in a Dharamshala for two days at Kotputli, from where they were ultimately located at Ahmedabad, whereat they were arrested on 12.1.1988.

The Hotel management on its part, on routine check, found that room no. 33 lay open. The key and lock of that room lay inside the room. Room No. 30 was however, locked by the private lock of the customer. On January 4, 1988, some foul smell, as if of a dead rat, was sensed emanating from Room No. 30. This put Sunil Kumar, Hotel, Manager, P.W. 12 on the alert. He informed his father Hari Om, P.W. 14. They approached Police Station Hauz Qazi for help. S.I. Gurbax Singh, P.W. 29 arrived at the scene at about midnight. In the presence of the police party, and others present, lock of Room No. 30 was got broken and on opening was found the dead body of the deceased lying on a cot. Amongst many articles which were recovered from the spot were the weapon of offence being a red-stone. There were also a plastic rope, some broken bangles and a tuft of hair. The clothes on the dead body were blood stained. As a part of the investigation, the dead body was sent for post mortem. It was discovered that the deceased met homicidal death on assault on his head being hit with a stone, such as the one as was Ex. P.13, recovered at the spot. Internally, it was discovered that there were fractures of the frontal, parietal and occipital bones. Death was opined to have taken place within the time suggested by the prosecution i.e. on the night intervening 29th and 30th December, 1987.

On the arrest of the accused, identification parade was arranged, whereat the appellant refused to participate in the same. Smt Prem Kanwar, accused offered herself for identification and was identified by the prosecution witnesses, who had occasion to see her accompanying the appellant.

A After completion of the investigation, both the accused were sent up for trial before the Court of Session. The conduct of the appellant at the trial was far from normal. He was obstructive to the proceedings of the trial and somewhat defiant as observed by the learned Additional Sessions Judge. Apparently, he had a "Do'n't care" attitude, as seen by the learned Judge. He would at times stop communicating with his counsel and take to silence. His co-accused Smt. Prem Kanwar, however, was different. She made a statement at the trial that she and her husband and her children had accompanied the appellant to Hotel Eagle on the day and at the time alleged by the prosecution and admitted having stayed and having slept in room no. 30 alongwith her husband when the appellant had stayed in room no.33 This part of it is obviously separate and has nothing to do with the crime as such. Now about the crime she says that on the next day at about 5.00 a.m. she got up to urinate and had to go down on the third floor to visit the toilet. Having gone there, she says she just as well had a bath, and when she returned to her room, she found the appellant standing there and her husband lying covered with a bed-sheet. She removed the bed-sheet to find her husband profusely bleeding. She then asked the appellant as to why he had done this to her husband. At that juncture, the appellant is said to have asked her to keep quite and threatened her with dire consequences, and even of killing her children, if she did not cooperate. She alleges that the appellant gave her some drug by which she became semi-conscious.

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E Statedly, in that condition she left the hotel room with her children till finally after wandering from place to place, she was taken to Ahmedabad by the appellant where she was left in her uncles house, to whom she told about the occurrence, who in turn informed the police and this is how she claims to have been arrested.

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G It is on the evidence as afore-described, and the incriminating circumstances emerging from the sequence of events and the statement, of Smt. Prem Kanwar co-accused that the appellant stand convicted and sentenced as aforesaid. The High Court enumerated as many as 11 circumstances which appeared against the appellant. It has spelled out the appellant's case to be the rarest rare cases, deserving death penalty.

H On hearing learned counsel on both sides, we are of the view that the conviction of the appellant is well-based and the chain of circumstances having tightened the ring of guilt around him successfully.

To begin with we have no reason to disbelieve P.W. 33 in whose house the appellant and his party stayed for the night on 27-12-1987. It is true that the said witness could not positively identify the woman accompanying the appellant because according to him she was in *parda*. Still, it cannot be doubted that the appellant had a female accompanying him and had a man and two children alongwith him. Then there is no reason to disbelieve the evidence of Bajrangi Lal, Guide, P.W. 27 at whose suggestion and behest they were lodged in Eagle hotel at an unearthly hour at about 11.00/11.20 p.m. Bajrangi Lal correctly identified Smt. Prem Kanwar at the identification parade. Besides, he was the one in whose presence the appellant had signed the hotel papers as Vijay Kumar and had paid Rs. 200 as advance. Bajrangi Lal had no axe to grind against the appellant and his co-accused. Similarly, Raj Kumar, waiter, P.W. 23 who was responsible for giving possession of the two rooms to the party of the appellant cannot be doubted and equally of his having seen both the accused in the company of each other at the time of his serving tea to them the following day at about 9.00 a.m. In the same sequence the evidence of Sunil Kumar, P.W. 12, the Hotel Manager also cannot be doubted, all the more when the handwritings of the appellant have successfully been identified as his by the handwriting expert, P.W. 30, on his obtaining and comparing the admitted handwriting and signatures of the appellant. Another fact of importance is the discovery of E group blood on the stone Ex. P. 30, the clothes of the deceased and the clothes of the appellant removed from his person on his arrest on 12.1.1988. This is indicative of his being in close proximity of the deceased when he was fatally wounded. And lastly is the statement of the co-accused which fixes the appellant to be in the company of the deceased at or about the time when he met his death, let alone what he said to his co-accused. Lastly ever brooding to the occurrence is the motive of the crime. No animus is alleged against the prosecution. It has given the chain of events and the movements of the accused *inter se* and of their being seen together in the company of the deceased. The appellant has thus necessarily to be held guilty of the crime, unless he had a plausible explanation to offer. But instantly, the appellant gave no explanation at all what to say of a plausible one. The appellant, in our view, was thus rightly convicted of the offence under Section 302 IPC. The appraisal of evidence of both courts was sound and we entirely agree with their verdict.

On the question of sentence, however, we differ from the view taken by the courts below. The learned Trial Judge fixed his attention more on

A the defiant and unrepentent attitude of the appellant as observed by him while the appellant stood before him in dock as an accused. The High Court on the other hand was more on the moralistic aspect in the appellant having killed his mistress's husband for lust. Even if these two aspects are allowed to play a part, all the more when there is no explanation by the

B appellant, still we feel that this is not the rarest of rear cases in which death penalty should be imposed on the appellant. It cannot be forgotten that two children had been born to Smt. Prem Kanwar. The appellant was intimate with his co-accused even prior to her marriage with the deceased and kept on being so when the children came. That was obviously a long

C durated steady connection, at least of 5 to 6 years, if not more. Since there was no time compulsion, the appellant could have had plenty of other opportunities to kill the deceased at another appropriate place in the wilderness of Rajasthan rather than bringing him to the hotel to Delhi, accompanied by children, signing hotel papers under his signatures even though false and yet killing the deceased with barely a stone. The prosecution would have us believe that since the stone is not a normal object to

D be kept in a hotel room, it shall be presumed that was carried by the appellants to the hotel to accomplish the deed. It looks incredible that a stone be carried as far from Rajasthan or to be gathered before hand to be handy for committing a calculated murder of such degree in the execution of which something satanic could be spelled out. It rather appears to

E us more probable that the appellant having gone to room no. 30 in the early hours of the morning to meet his mistress or to fetch her to his room was confronted in some form by the deceased which led to the appellant striking the deceased with a handy stone and bringing about the end of the deceased. The act of the appellant therefore cannot be said to be so cruel, unusual or diabolic which would warrant the death penalty. We, therefore,

F commute his sentence to that of life imprisonment. The appeal is allowed to that extent only.

G.N.

Appeal allowed.