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DNYANESHWAR
v
STATE OF MAHARASHTRA

MARCH 20, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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Penal Code, 1860—s. 302—Unnatural death of wife—In her matrimonial house—Opinion of doctor that the death was caused due to asphyxia ((throttling)—Conviction by trial court, of the husband-accused alongwith his parents u/ss 302 and 498-A—High Court convicting husband-accused alone u/s 302—On appeal, plea that accused entitled to benefit of doubt as the cause of death due to asphyxia cannot be true in absence of fracture on the body of deceased—Held: The accused cannot get benefit of the fact that death due to failure to notice some injuries—Other injuries showing that

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death was caused—When the couple was last seen in the premises, to which an outsider may not have access, it is for the husband to explain the ground for unnatural death of his wife—Evidence—Onus to prove.

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Appellant accused alongwith his parent- accused Nos. 2 and 3 caused death of his wife. According to prosecution case, deceased was found dead in her matrimonial house. FIR was lodged by PW 1 (father of the deceased.). The doctor (PW 9) who conducted post-mortem examination found that the cause of death was due to asphyxia (throttling). During trial, it was averred that the accused , after the marriage, had all along been demanding money from the parents of the deceased and she was also subjected to harassment and ill-treatment . Charge of harassment was proved by PWs 1, 2 and 5. Trial

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Court convicted all the accused u/ss 302 and 498-A IPC. High Court found the appellant accused alone guilty of offence u/s 302 IPC and hence convicted him accordingly and acquitted the other accused.

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In appeal to this court appellant contended that in absence of fracture on the body of the deceased, cause of death could not have been stated to be asphyxia (throttling).

Dismissing the appeal, the Court

HELD: 1. The deceased was murdered in her matrimonial home. It is

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not the case of the appellant that the offence was committed by somebody else. It is, also not his case that there was a possibility of an outsider to commit the said offence. One of the circumstances which is relevant is that when the couple was last seen in a premises, to explain the ground for unnatural death of his wife. [Para 10] [251-C-D]

Raj Kumar Parsad Tamarkar v. State of Bihar and Anr., (2007) 1 SCALE 19, relied on.

2. If the prosecution case in regard to homicidal nature of the death of the deceased is accepted, the ante-mortem injuries clearly go to show that she had been done to death. Only because PW 9 (the doctor) failed to notice some injuries on her neck so as to arrive at a definite conclusion that the death was caused by asphyxia, the appellant in a case of this nature cannot take benefit thereof. [Para 11] [252-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 653 of 2006.

From the Judgment and Order dated 11.10.2005 of the High Court of Judicature at Bombay Bench at Aurangabad in Crl Appeal No. 391 of 2001.

Revathy Raghavan for the Appellant.

Sushil Karanjkar and Ravindra Keshvrao Adsure for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Appellant before us is the husband of the deceased Leelabai. They were married on 31.5.2002. She was found dead at her matrimonial home on 3.4.2003.

2. On a post-mortem examination having been conducted, PW-9 Dr. Ravindra the Medical officer, civil Hospital, Jaina found the following ante-mortem injuries on her person:

“(1) Contusion over R High laterally upper part Reddish chest 3 cm x 2 cm.

(2) Bluish discoloration present over R leg beaten knife 2 cm x 2 cm.

(3) Bluish discoloration present over R leg near ankle joint 2 cm

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x 2 cm.

(4) Bruise over neck below L Mandible 1 inch x 1.5 cm each no axis present beneath.

(5) Bruise over neck ant below above injury 2 cm x 1 cm Ecchymosis present.

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(6) Bruise over neck and above thyroid cartilage 1.5 cm x 1 cm Ecchymosis seen.

(7) Bruise over neck ant below R to above injury 2 cm x 1 cm Eccly main slan.

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(8) Bruise over neck and below above ignore and R side 1 stab x 1 cm Echymosis seen..."

3. According to PW.9 -Doctor Ravindra, who conducted the post-mortem examination, the cause of death was due to asphyxia (throttling).

4. Appellant before us as also his parents were prosecuted for commission of an offence of murder of Leelabai. The prosecution case proceeded on the basis that after the marriage; the appellant and his parents have all along been demanding a sum of Rs. 50,000/- from the parents of the deceased and was also being subjected to harassment and ill treatment.

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5. First Information Report was lodged by PW.1 - Sheshrao, father of the deceased. In order to prove the charge of harassment, apart from the father of the deceased, P.W.2-satyanarayan and P.W.5 Raghunath were examined. Relying on or/on the basis of the evidences adduced on behalf of the prosecution, the learned trial Judge held the appellant as also accused Nos. 2 and 3 guilty of commission of offences under Section 302 as well as under Section 498-A of the India Penal Code.

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6. However, on a appeal preferred by the accused herein 'the appellant alone was found guilty for commission of an offence under Section 302 I.P.C. and the accused No. 2 and accused No. 3 were acquitted.

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7. The High Court found that an attempt was made by the accused to keep the commission of the offence concealed for a long time. We may not go into that aspect of the matter as the principal contention raised before us by the learned counsel appearing on behalf of the appellant centers round the nature of ante-mortem injuries sustained by the deceased.

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8. Learned counsel pointed out that although a large number of injuries were noticed by P.W.9-Dr. Ravindra, no fracture having been seen, the cause of death could not have been stated to be asphyxia (throttling); The said witness, however, referred to the injuries suffered by the deceased and stated that the injuries on the neck may be possible in case of throttling. He, however, accepted that he might have failed to notice all the injuries.

9. The High Court has considered this aspect of the matter in the impugned judgment. It noticed that absence of some injuries by the said P.W.9-Dr. Ravindra, may not be sufficient to hold the appellant not guilty of commission of the said offence.

10. It has not been disputed before us that the deceased was murdered in her matrimonial home. It is not the case of the appellant that the offence was committed by somebody else. It is also not his case that there was a possibility of an outsider to commit the said offence. One of the circumstances which is relevant is that when the couple was last seen in a premises to which an outsider may not have any access. It is for the husband to explain the ground for unnatural death of his wife. In *Raj Kumar Prasad Tamarkar v. State of Bihar & Anr.*, (2007) (1) SCALE 19, this court held:

“22. The conspectus of the events which had been noticed by the learned Sessions Judge as also by the High Court categorically go to show that at the time when the occurrence took place, the deceased and the respondent only were in the bedroom and the terrace connecting the same. There was no other person. The cause of death of the deceased Usha Devi i.e. by a gun shot injury is not disputed. The fact that the terrace and the bedroom are adjoining each other is not in dispute.

23. The autopsy report shows that 'a blackening and charring' existed so far as Injury No. (i) is concerned. The blackening and charring keeping in view the nature of the firearm, which is said to have been used clearly go to show that a shot was fired from a short distance. Blackening or charring is possible when a shot is fired from a distance of about 2 feet to 3 feet. It, therefore, cannot be a case where the death might have been caused by somebody by firing a shot at the deceased from a distance of more than 6 feet. The place of injury is also important. The lacerated wound was found over the middle of forehead. It goes a long way to show that the same must have been done by a person who

- A wanted to kill the deceased from a short distance. There was, thus, a remote possibility of causation of such type of injury by any other person, who was not in the terrace. Once the prosecution has been able to show that at the relevant time, the room and terrace were in exclusive occupation of the couple, the burden of proof lay upon the respondent to show under what circumstances death was caused to his wife. The onus was on him. He failed to discharge the same.”
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11. If the prosecution case in regard to homicidal nature of the death of the deceased is accepted, in our opinion, the ante-mortem injuries clearly go to show that she had been done to death. Only because P.W.9 - Dr. Ravindra failed to notice some injuries on her neck so as to arrive at a definite conclusion that the death was caused by asphyxia, we are of the opinion that the appellant in a case of this nature cannot take benefit thereof.
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12. For the reasons aforementioned, we do not find any merit in this appeal. It is dismissed accordingly.
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K.K.T.

Appeal dismissed.