(2007) 08 AHC CK 0199

Allahabad High Court

Case No: None

Banwari, Meharban and Smt. Ram Kunwar		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Aug. 3, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 169, 173, 313, 374
- Penal Code, 1860 (IPC) - Section 201, 302, 34

Hon'ble Judges: S.K. Jain, J; K.S. Rakhra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S.K. Jain, J.

This criminal appeal by three appellants, namely, Banwari, Meharban and Smt. Ram Kunwar has been filed u/s 374 Sub-clause 2 of Cr.P.C. against the judgment and order dated 3.5.1982 passed by learned IIIrd Additional District and Session Judge, Budaun in Session Trial No. 98 of 1979, State v. Banwari and two others whereby the learned Session Judge, Budaun convicted appellants u/s 302 read with Section 34 and 201 of Indian Penal Code and sentenced each of them to undergo imprisonment for life u/s 302 reach with Section 34 of Indian Penal Code and rigorous imprisonment for three years u/s 201 of Indian Penal Code.

2. Prosecution story is that Smt. Munni was the only daughter of Sohan Lal, P.W 1, resident of village Ushet. Munni was married to appellant, Meharban about four years before her murder. After about one year of her marriage "Gauna" ceremony was performed and she had gone to her matrimonial home. After six months of "Gauna" she visited her parental home. Her parents found her highly disturbed and in poor health. When Sohan Lal and his wife inquired about her condition. Munni told them that her husband appellant, Meharban, her father-in-law, appellant Banwari and her

Mother-in-law, appellant Ram Kunwar and her Dewar Hote Lal were constantly harassing her and asking her to bring Rs. 5000/-from her father. The appellants also told her that she being the only daughter of her parents they expected that she would bring Rs. 5000/-in her "Gauna". Munni again went back to her matrimonial home, but her torture by the appellants continued. When Sohan Lal came to know about the continuous harassment of his daughter, he went to her "Sasural" about 1■ year earlier to the present occurrence and, found her daughter highly disturbed and in poor health. She narrated her tale of woe and told him that either he should give Rs. 5000/- to her in-laws, otherwise they would kill her. She also requested to take her back to her parental home. Sohan Lal discussed about this with appellant Meharban, his father, brother and mother who complained him that he had given less dowry and did not give anything in "Gauna" and asked him to pay Rs. 5000/- otherwise they would not keep his daughter and appellant Meharban would be married again. Sohan Lal. was not in a position to pay Rs. 5000/-, therefore, he brought his daughter back to his home where his daughter stayed with him for about a year. Neither appellant, Meharban nor any of his family members ever inquired about his daughter. Then Sohan Lal sent a message to the appellant Meharban that his daughter would file a petition for her maintenance. Receiving this information, appellant Meharban, his father and brother, Hote Lal, came to the village of Sohan Lal and in presence of Ram Vilas, Ali Hasan and Madan Lal compromised the matter and assured that they would keep Munni properly and would not make demand of Rs. 5000/-. On this assurance, Sohan Lal again sent his daughter to her "Sasural". Some months before the present occurrence, Raghurbar Dayal the brother-in-law of first informant (Raghubar Dayal) went to the "Sasural" of Munni to meet her. Munni wept before him and said that Meharban, his parents and brother were torturing her. They did not give her food. They also beat her and threatened that she would be killed and Meharan would be married again. Raghubar dayal informed Sohan Lal about the condition of his daughter. While Sohan Lal was preparing to go to "Sasural" of his daughter on 13.10.1978, when he was informed by Narottam, who is father of younger brother-in-law of first informant, that on 10.10.1978 i.e Tuesday he had gone to Labhari market and on that occasion he also visited the house of appellants. He saw that Meharban, Banwari and mother of Meharban and his brother Hote Lal were beating Munni by "Chimta" and "Dandas", Munni was bleeding from her head and became unconscious. When Narottam tried to intervene, the accused persons said "Hamari Bahu hain ham chahe kuchh bhi kare". After this Narottam went back to his house and later came to know that appellant Meharban had killed his wife after beating her. In order to screen the crime they had burnt her body to show that it was a suicide.

3. In furtherance of their plan appellant Banwari submitted a report Ex-l at police station on 10.10.1978 in the evening at 8.05 p.m. stating therein that Muni had committed suicide. Sub-Inspector, Khushi Ram reached on the spot, held inquest and prepared necessary papers and sent the dead body of the deceased, Munni for post mortem examination.

4. First informant hearing about the murder of Munni sent application dated 14.10.1978 Ex. Ka-1 to various authorities including S.P. Budaun, as S.I. Khusi Ram who had taken up the investigation had submitted final report u/s 169 read with Section 173 Cr.P.C. On 18.1.1979, R.A. Singh, Circle Officer ordered S.O. of P.S. Kadar Chowk for registration of case u/s 302 I.P.C. on the basis of report dated 14.10.10.1978 made by fist informant and then on 20.1.1979 a case was registered u/s 302 I.P.C. by head Moharrir, Karan Singh, P.W. 4 in G.D. No. 24 at 7.50 p.m. It was investigated by S.O. K.C. Sharma, P.W. 6 who took partly burnt clothes from the spot, prepared its memo and after inspecting the place of occurrence prepared site plan Ex. Ka-23 and remitted charge sheet against the accused appellants.

5. Prosecution in order to bring home charges levelled against the accused appellants examined seven witnesses. Sohan Lal, P.W. 1 is maker of report Ex. Ka-1 dated 14.10.1978 and father of the deceased Munni, Ram Vilas. P.W. 2 is witness of Panchayat which had taken place two months before the death of Munni in which accused appellants had assured that they would not repeat demand of Rs. 5000/-and would keep deceased Munni properly. Doctor, V.K. Srivatastava, P.W. 3 performed autopsy on the dead body of Smt. Munni on 11.10.1978 at 5.15 p.m. and prepared post mortem report Ex. Ka-12. Head Moharrir, Karan Singh,P.W. 4 has proved the copy of entry in G.D. No. 22 Ex. Ka-13 dated 10.10.78 made on information Ex.-l given by accused Banwari. Narottam P.W. 5 is witnesses of the fact that on the day when Munni died he had seen accused appellants causing injuries to Munni, P.W. 6, K.C. Sharma is the investigating officer who also proved the order passed by the Circle Officer on the application of Sohan Lal first informant and also the inquest report and necessary papers for post mortem prepared by S.I. Khusi Ram and remitted the charge sheet Ext. Ka- 14 after preparing the site plan Ext Ka-23 and recording the statement of the witnesses as usual.

6. Doctor V.K. Srivastava, P.W. 3 found the following ante mortem injuries on the person of deceased Munni:

(1) An abrasion oval in shape 2 cm X 1 cm on left zygomatic bone 1.5 cm below the left lower eye lid.

(2) An abrasion 1 cm X ■ cm on left side of forehead ■ cm above the left eye brow and 2.5 cm left to mid line.

(3) An oval abrasion 1 cm X 3/4 cm on Rt side of forehead 4 cm above the Rt. Eye brow and ■ cm right to midline.

(4) Lacerated wound 2.5 cm X 1/2 cm. bone deep on left side scalp 11 cm above the left ear.

(5) A transverse contusion 8 cm X 2 cm on posterior aspect of left arm 14 cm above the Rt. elbow joint.

7. Following post mortem injuries were found on body of Smt. Munni:

Post mortem burn was present on face and part of neck, part of chest abdomen, both upper extremities, part of thigh both lower leg including foot. No line of redness seen between healthy and burnt portion. Vasication not present. Burn had gqt an appearance of dull white . Doctor also found fracture of left parietal bone below injury No. 4. Clotted blood over the brain surface below injury No. 4 was found. Brain memberance were found contused. Small intestine was full of gas and 3 Oz semi digested food was also found.

8. In the opinion of doctor the cause of death was shock and haemorrhage due to ante mortem injury No. 4. He also opined that the death might have occurred one day prior to the post mortem examination and deceased could die on 10.10.1978 in the afternoon. He also stated if a living person receives burn injury, then there would be vasication and there would be no vasication if a dead person is burnt. He further stated that if a living person receives bum injury then there will be bright redness in the injury and if a dead person is burnt there will be dull whiteness in burn. However, in his cross examination, doctor stated that there can be fracture of skull bone due to intense heat and line of redness can be absent in case of person of a thin constitution. He also admitted that vasication would not be so much bright in case of person of weak constitution. He also stated that burns present on the body of Smt. Munni could also be ante mortem as she was of weak constitution.

9. The learned Sessions Judge found the evidence adduced by the prosecution reliable and convicted the appellants as aforesaid.

10. The appellants in their statements u/s 313 Cr.P.C. denied the prosecution allegations. Appellant Banwari stated that no demand of dowry was made, nor Munni was subjected to any cruelty. He further stated that witness Narottam had a desire to have Munni married to some one else but she came to be married to Meharban and, therefore, Narotta''m became annoyed. He also stated that Munnil committed suicide by burning herself. Prahlad, Shankar, Dwarika after breaking the chain of the door brought her out. Sohan Lal started demanding clothes and jewellery of Munni back when the dead body of Munni was being sent for post mortem. He told Sohan Lal that it was not right time to demand these things back, infuriated, he made a false report. He further stated that Munni wanted to go to her parents house as her mother was to deliver a child. His wife told her that she would be allowed to go after some time and, therefore, Munni committed suicide.

11. Appellant Ram Kunwar also denied the prosecution allegations and stated that Munni locked herself in a "Kothari" and committed suicide. At that time she was not at home. She has also given same reasons of Munni committing suicide as has been given by appellant Banwari. Appellant Meharban also denied the allegations of prosecution.

12. Shanker Lal was examined as DW1, who deposed before the court that on the day of occurrence, he reached his village at about 1.30 p.m. He stayed at his house for some time and thereafter went to nearby well to take bath. When he was about to take bath, Kavita daughter of Banwari came out of her house raising alarm and told that her house had caught fire. He saw smoke coming out and ran towards the house of Banwari and entered the house from southern door. Prahlad, Dwarika Prasad and Ram Chandra also arrived there. They found no body in the house. Banwari and his wife however also happened to reach their house simultaneously . He saw "Gandasa" lying inside the house. They cut the door of "Kotha", which had caught fire. Inside the "Kotha" Munni was crying. Her body was burning. They started pulling out the rods of window and saw that Munni was jumping. They entered the room after cutting the door and saw Munni lying there. She was alive. They extinguished fire and brought her out into the court yard. Munni died at about 2.00 to 3.00 p.m. on the same day.

13. We have heard learned Counsel for the appellant Sri Vinay Sahai and Sri S.K. Agrawal, learned AGA and perused the record.

14. Learned Counsel for the appellants contended that Munni committed suicide. She wanted to go to her parents house after hearing the news that her mother was to deliver a child. As she was not allowed by appellant Ram Kunwar to go, therefore, she committed suicide in the "Kothr"i. Learned Counsel has drawn our attention towards the testimony of Dr. Srivastava, P.W. 3, who in his cross examination has stated that there can be fracture of skull bone due to intense heat and that vasication would not be so much bright In case of person of weak constitution and stated that burns present on the body of Smt. Munni can be ante mortem also because she was of weak constitution.

15. Per contra, the learned AGA submitted that from the statement of Sohan Lal father of deceased Munni and from the statement of Ram Bilas PW2 it is clear that Munni was tortured for demand of Rs. 5000/- by the appellants. PW1 Sohan Lal brought her back to his house, where she stayed for about a year and thereafter when information was sent to the appellants that Munni would file a petition for maintenance, the appellants had taken her back after Panchayat It has also been argued by the leaned counsel that from the statement of Narottam P.W. 5 it is clear that on the date of occurrence the appellants had beaten Munni in the after noon and he witnessed this "Marpeet" and from the statement of doctor it is clear that Munni died on 10.10.1978 in the after noon. The doctor has stated that Munni could have died on 10.10.78 in the after noon and her death was on account of shock and haemorrhage due to ante mortem injury No. 4, i.e. lacerated wound 2.5 cm x ■ cm. by bone deep on left side scalp. It has been further submitted by the learned AGA that the doctor has specifically stated that he found post mortem burn injury on the person of Munni, on the face and part of neck, part of chest, abdomen, both upper Extremities part of thigh and both lower legs including feet. No line of redness was seen between the healthy and burnt portion, vasication not present, burn had appearance of dull white. Fracture of left parietal bone was also found as such it is clear that before her death the ante mortem injuries as stated above were caused to deceased Munni and

thereafter to screen the crime, her body was burnt. No information of her death was given to her father Sohan Lal and a false report about her committing suicide was made by appellant Banwari at the police station.

16. We have given our thoughtful consideration to the submissions made by learned Counsel for the parties.

17. Sohan Lal P.W. 1 has deposed that Munni was married to appellant Meharban son of appellant Banwari and Ram Kunwar four years prior to her murder. After one year of her marriage "Gauna" ceremony had taken place when she went to her in laws home in village Lawari. After six months of her "Gauna" she came back to her parental house in a poor health and in a highly disturbed mental condition. When his wife asked Munni about her condition, she told them that husband and his family members were asking her to bring a surn of Rs. 5000/- from her parents. She went back to her matrimonial house, but the appellants continued to ill treat her. He went to the house of appellants, where the appellants demanded Rs. 5000/- from him and also threatened to remarry Meharban, in case their demand was not met. He further deposed that he expressed his inability to meet their demand and therefore, brought Munni to his house. Munni lived at his house for about a year when he informed the appellants that she would file a suit for maintenance. Appellants Banwari Meharban, Hotey son of Banwari came to village Usait, where a Panchayat was held in presence of Ram Bilas, Ali Hussain and Madan Lal in which it was decided that appellants would not demand Rs. 5000/- from Sohan Lal and would also not ill treat Munni, therefore, he sent his daughter again to her matrimonial home. Thereafter Narottam informed him that the appellant had murdered Munni by beating her by "lathi" "danda" and "chimta".

18. P.W. 2 Ram Niwas corroborated the version of P.W. 1 regarding Panchayat being held and decision of Panchayat.

19. P.W. 5 Narottam, who is alleged to be the eye witness of "Marpeet" which was done with Munni on the day of occurrence has deposed before the court that Sohan Lal P.W. 1 is son of his Samadhi. Deceased Munni was daughter of Sohan Lal, who was married to appellant Meharban in village Lawari. He further deposed that on every Tuesday, a Tuesday market" is held at village Lawari. Whenever he went to the market to do any marketing, he also used to visit the "Sasural" of Munni to know about her welfare. He further deposed that on the day of occurrence at about 12.00 to 1.00 p.m. He had gone to "Sasural" of Munni, where he saw that in the court yard appellants were beating Munni. Appellant Meharban was beating her with lathis and his mother was beating her with a "chimta". Appellant Banwari instigated Meharban that if he was his real son he should kill away Munni and he will bear the consequences. Munni had suffered a head injury, which was bleeding and when he objected to her beating by the appellants, appellant Banwari told him that "Hamare Ladke Ki Bahoo Hai Ham Ise Jan Se Mar Denge Turn Bachane Wale Kaun Hote Ho." He came back to his village and in the evening he came to know from the villagers that Munni had died. Next day Rama wife of his son, who is sister of

Sohan Lal went to the house of appellants, but the appellants did not permit her to see the dead body. He also went to the house of appellant but he was also not permitted inside the house. Next day he went to village Lawari, where he came to know that Sohan Lal was not informed about the death of Munni. On fourth day he went to village Usait and informed Sohan Lal Nothing could be elucidated in the cross examination of the above three witnesses to doubt their testimony.

20. From the evidence of three witnesses it appears that the deceased Munni was subjected to cruelty by the appellants for demand of Rs. 5000/-. Sohan Lal had to bring her daughter to his house as he was unable to meet the demand of Rs. 5000/-. Thereafter she remained at the house of Sohan Lal for about a year and when Sohan Lal informed the appellants that he would file a petition for maintenance of her daughter Munni, a Panchayat took place. Thereafter Munni went back to her Sasural and as per the statement of Narottam on the day of occurrence she was being beaten by the three appellants. Information of her death was not given to Sohan Lal.

21. From the statement of Dr. Srivastava it is clear that Munni had suffered post mortem burn injury. She also suffered other ante mortem injuries as observed above. These injuries were on her left lower eye lid, on left side of fore head, on right side of fore head, on left arm and on left side of scalp above left ear which resulted in her death. In our opinion these injuries were not possible if Munni had committed suicide by burning herself.

22. From the above analysis of evidence, it is clearly established on record that Munni died homicidal death in her matrimonial home. That appellant Banwari lodged a false report with the police that Munni had committed suicide. That no information of her death was given by appellants to the parents of Munni. That Munni was ill treated by the appellants for demand of Rs. 5000/- and was sent with her father when he could not fulfil this demand. Thereafter Munni stayed with her father for about a year and was sent back to her matrimonial home when appellants Banwari and Mehrban assured in the Panchayat that they would not demand Rs. 5000/- and would keep Munni properly. PW3 Narottam saw that on the day of occurrence Munni was beaten by two appellants Mehrban and Raj Kunwar. They were beating her with "danda" and "chimta" at about 1.30 p.m. On the day Munni died. In the opinion of doctor the ante mortem injuries could be suffered by her on that day in the after noon by these weapons.

23. It has come in the evidence of DW1, Shanker Lal that appellant Banwari and Raj Kunwar came out of the house when he reached there. Thus the two appellants did not make any effort to save Munni, if she had lit fire to herself to commit suicide.

24. For the reasons disclosed above and in the above facts and circumstances which are proved on record, it is clearly established that none other than appellants had caused ante mortem injuries and post mortem burn injuries to deceased Munni, we are in agreement with the findings of the learned trial court.

25. Accordingly, the appeal is dismissed. The appellants are on bail. Their bail is cancelled.

26. The judgment be cited to the learned trial court within a week for ensuring that the appellants are sent to jail to serve out the sentences awarded to them. Compliance be reported to this Court within 30 days from today.