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(2003) 04 AHC CK 0258

Allahabad High Court

Case No: Criminal Appeal No"s. 14 and 60 of 1981

Mohd. Iqram (in Jail) APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision: April 25, 2003

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13, 24
- Penal Code, 1860 (IPC) - Section 13, 302, 307, 34

Citation: (2003) 3 ACR 2208

Hon'ble Judges: M.C. Jain, J; K.N. Ojha, J

Bench: Division Bench

Advocate: R.K. Jain, S.K. Pundir, K.B. Srivastava and R.B. Sharma, for the Appellant; G.S. Bisaria, A.G.A., for the Respondent

Final Decision: Allowed

Judgement

This Judgment has been overruled by **: State of U.P. Vs. Mohd Iqram and Another, AIR 2011 SC 2296 : (2011) 3 Crimes 14 : (2011) 6 JT 650 : (2011) 3 RCR(Criminal) 711 : (2011) 6 SCALE 497 : (2011) 8 SCC 80 : (2011) 4 UJ 2291 : (2011) AIRSCW 3844 : (2011) 4 Supreme 346**

M.C. Jain, J.
Assailing the order of conviction and sentence passed on 20.12.1980 by Sri B. D. Agrawal, the then Sessions Judge, Saharanpur in Sessions Trial No. 382 of 1980, these two appeals have been filed which are being decided together. The Appellant in Criminal Appeal No. 14 of 1981 is Mohd. Iqram, whereas Noora is Appellant in Criminal Appeal No. 60 of 1981. Both of them have been convicted u/s 302, I.P.C. read with Section 34, I.P.C. and sentenced to life imprisonment.

2. We have heard Sri S. K. Pundir learned Counsel for the Appellant Mohd. Iqram of Criminal Appeal No. 14 of 1981, Sri R. B. Sharma learned Counsel for the Appellant Noora of Criminal Appeal No. 60 of 1981 and Sri G. S. Bisaria from the side of the State.

3. There was one third accused Suresh Kumar, husband of the deceased, who was also tried along with the two Appellants but he was acquitted. The deceased was Smt. Rashmi. The incident occurred on 15.5.1980 at about 9 p.m. at her house in Mohalla Gill Colony, P.S. Sadar Bazar, Saharanpur and the F.I.R. was lodged the same night at 10 p.m. by S.I. Brahm Pal Singh P.W. 6. The distance of police station was only two furlongs. The case was initially registered u/s 307, I.P.C. but was subsequently converted into one u/s 302, I.P.C.

4. The brief resume of the facts, as emerging from the F.I.R. and the evidence adduced, may be set forth for appreciation of subsequent discussion. The deceased was aged about 30 years and had been married to Suresh Kumar, but her relations with him and her in-laws were strained. She had no issue. Her husband moved a petition u/s 13 of the Hindu Marriage Act for divorce against her which was decreed on 30.1.1980. Under the decree, she was permitted to reside in a room with an enclosed sahan towards its west situate apart from the rest of the house and she was also granted maintenance @ Rs. 150 per month till her lifetime or remarriage, whichever was earlier. She had preferred an appeal in the Court of District Judge which was pending. On 15.5.1980 at about 9 p.m. S.I. Brahm Pal Singh P.W. 6 of police station Sadar Bazar accompanied by Head Constable Balvir Singh P.W. 7, Constable Surendra Pal and Constable Babu Ram was moving in connection with collection of clues relating to some crime and for general patrolling. On reaching the west of Adarsh School, he and his companions heard shrieks emanating from the house of the co-accused Suresh Kumar (where the deceased also resided, as stated above), known as Jagadhari Walon Ki Kothi. They saw three persons scaling down the wall of the sahan towards west of the room under the occupation of the deceased Rashmi. On being challenged and flashing of torch light, two of them ran towards north west and the third towards south. A chase was given to those running towards north west and the present two Appellants were caught hold of Samay Singh P.W. 8 and one Sharif were also present. The culprit running towards south was spotted but he managed to escape towards south. He was stated to be the co-accused Suresh Kumar by the present two Appellants when they had been apprehended. The Appellants led the police party inside the sahan mentioned above. The lock inside the door opening in the sahan was broken and S.I. Brahm Pal Singh P.W. 6 besides others in his company could see a woman lying unconscious on the floor in the room. She was laid on a cot. In the meanwhile, Mahesh Kumar P.W. 3 (elder brother of Suresh Kumar) also came down from the upper storey besides other persons. They took Rashmi by car to S.B.D. Hospital, Saharanpur. The Appellants were brought to the police station Sadar Bazar, where F.I.R. was lodged by S.I. Brahm Pal Singh P.W. 6, as stated earlier. The Appellant Noora was also sent for medical examination. Smt. Rashmi was pronounced to be dead at the hospital and Mahesh Kumar P.W. 3 conveyed it to the police at about 11 p.m., resulting in

conversion of the case to that of Section 302, I.P.C. The investigation ensued.

5. The post-mortem over the dead body was conducted by Dr. G. R. Sharma P.W. 1 on 16.5.1980 at about 4.30 p.m. The deceased was aged about 30 years and about 18 hours had passed since she died. The following ante-mortem injuries were found on her person:

(1) Lacerated wound 1-1/2 cm. - 1-1/2 cm. - 1/4 cm. on left eye-lid with contusion 7.5 cm. - 2 cm. extending from left eye-lid to left temple region.

(2) Abrasion 4 cm. - 1/2 cm. on left cheek.

(3) Abrasion 1-1/2 cm. - 3/4 cm. on left side neck, 2 cm. below angle of mandible.

(4) Abrasion 1/2 cm. - 1/2 cm. with contusion 1-1/2 cm. - 1 cm. on the right side of neck, 4 cm. below angle of mandible.

(5) Abrasion 1-1/2 cm. - 1 cm. on back of left shoulder joint top.

(6) Abrasion 1 cm. - 1 cm. on back of left elbow joint.

(7) Contusion 5 cm. - 3 cm. on right forearm upper 1/3rd medial side.

(8) Contusion 4 cm. - 2 cm. on back of inner angle of scapula.

Internal examination showed that hyoid bone and rings of trachea were fractured. Muscles of the neck were found congested. In the opinion of the Doctor, the cause of death was asphyxia due to strangulation. The injuries on the neck were sufficient in ordinary course of nature to cause death.

6. In due course, Suresh Kumar co-accused (husband of the deceased) was also taken into custody on 23.5.1980 at about 1 p.m. at the bus stand on the Ambala Road in the city and was placed bapurdah. He was subjected to test identification parade on 6.6.1980 and was identified by S.I. Brahm Pal Singh P.W. 6, Head Constable Balvir Singh P.W. 7 and Samay Singh P.W. 8 besides Babu Ram and Surendra Pal.

7. The accused Appellants pleaded not guilty.

8. It may also be stated as a passing reference that the co-accused Suresh Kumar (husband of the deceased), who has been acquitted, admitted that his relations with his wife Smt. Rashmi were strained and the petition for divorce was decreed. On the fateful day, he claimed to be out of the station. According to him, he was taken into custody from his house and not kept bapurdah. The witnesses knew him from before and he was also shown to them before being put to test identification. The Appellant Noora disclaimed any knowledge of the incident and averred that the witnesses made their statements under the influence of the police and also that he used to carry grass belonging to the witness

Samay Singh P.W. 8 on rickshaw, for which he was not paid. The Appellant Mohd. Iqram also denied his presence at the spot and contended that he was arrested from his house on 16.5.1980 at about 11 a.m.

9. In all 13 witnesses were examined by the prosecution. The star witnesses were Mahesh Kumar P.W. 3, S.I. Brahm Pal Singh P.W. 6, Head Constable Balvir Singh P.W. 7 and public witness Samay Singh P.W. 8. The fate of the appeal would turn on the conclusion flowing from the judicial scrutiny of the testimony of these witnesses. Rest of the evidence is concerned with the autopsy, investigation and other allied matters. The accused Appellant Mohd. Iqram also examined one Bhugan D.W. 1, who was Pradhan of village Taharpur. He was examined on 12.12.1980 to say that about 7 months back at about 11 p.m. a police jeep had come to the village, inquired about the residence of Mohd. Iqram and his father. He pointed that out. Yaseen father of Mohd. Iqram was taken away by the police. The following day at about 10 a.m. Mohd. Iqram reached and informed him that his father had not returned. At about 11 a.m., the police jeep came again and took away Mohd. Iqram. On query it was told that they would release him after interrogation. At 3 p.m. Yasin told him that he had been released but Mohd. Iqram had been challaned.

10. On consideration of evidence on record, the learned trial Judge convicted and sentenced the present two Appellants but acquitted the co-accused Suresh Kumar (husband of the deceased), giving him benefit of doubt, inter alia, on the premise that he might have been known to the identifying witnesses from before and the possibility was also there of his being shown to them before being put to test identification.

11. Anyway, presently, the attention is to be focused as to whether the present two Appellants were the culprits authoring this crime of the murder of the unfortunate young lady Rashmi.

12. Having regard to the post-mortem report of the deceased proved by Dr. G. R. Sharma P.W. 1, it admits of no doubt that she was the victim of violence. A number of injuries had been inflicted on her person and the cause of death was asphyxia due to strangulation.

13. However, so far as the present two accused Appellants are concerned, there are unpatchable holes in the prosecution case as presented before the Court. The accused Appellants were allegedly contract or hired killers. But the strange feature of the case is that no weapon was found with them at the time of their arrest. They were allegedly caught immediately after the incident in the lane. They were then taken to the room inside Jagadhari Walon Ki Kothi where the victim was lying. No weapon was found there either. It sounds to be illogical that the contract or the hired killers would go to perform such job without any weapon with them. This factor shakes the very foundation of the prosecution case.

14. Moreover, the star witnesses of the prosecution were S.I. Brahm Pal Singh P.W. 6 and Constable Balvir Singh P.W. 7, who stated that they were on a move in connection with collection of clues relating to some crime and for patrolling and that on reaching to the west of Adarsh School, they heard shrieks emanating from the house of co-accused Suresh Kumar, known as Jagadhari Walon Ki Kothi. The gist of what they stated is that when they moved forward, they saw three persons scaling down the western wall of the said Kothi who made bid to run away but were apprehended. They were then taken to the room where the victim was lying. P.W. 8 was Samay Singh who was examined by the prosecution to support the version of the two police personnel. Yet another witness was Mahesh Kumar P.W. 3 (brother of co-accused Suresh Kumar who was the husband of the deceased). According to him, in the fateful night at about 9 p.m., he was at the terrace upstairs as there was no electric light at that time. When he heard noise emanating from the room in the occupation of Rashmi, he flashed the torch and saw certain persons running. He came down the stairs and noticed that Noora and Mohd. Iqram had been caught hold of. In the room Smt. Rashmi was lying unconscious. He took her along with other members of the family to the hospital. She was declared to be dead by the Doctor in the hospital.

15. This much is clear from the testimony of Mahesh Kumar P.W. 3 as well as Samay Singh P.W. 8 that they had not seen the present two accused Appellants scaling down western wall of the kothi. The clear statement of Mahesh Kumar P.W. 3 is that when he flashed the torch, he saw 1 or 2 persons running. It was darkness. A number of persons had collected and he saw the present two accused Appellants having been apprehended. The statement of Samay Singh P.W. 8 is also to the effect that on his first sight, he saw two persons running towards north-western side and the police was chasing them.

16. Now, the prosecution version regarding the availability of light at the relevant time is rather negatived by the testimony of M. K. Agarwal P.W. 13, Executive Engineer, Hydel. He referred to certain entries in stoppage Register relating to Gill Colony Feeder but it has come to be admitted by him that he had no concern with the supply of power in the city. On his own showing, Y. P. S. Rana, Assistant Engineer, S.E.B., In-charge of Supply in the city wrote a letter dated 4.6.1980 to the Investigating Officer upon inquiry made by the latter. The said letter showed that in relation to the Gill Colony there was scheduled restling between 6.15 to 12.05. Further during 8.20 to 9.05 p.m. on 15.5.1980, there was shut down for the replacement of the burnt jumpher. The Investigating Officer was also questioned on this subject and he admitted that he had made inquiry from the Hydel Department and he had been given this reply in writing. Thus, electricity was off in the area from 8.20 p.m. to 9.05 p.m. on the relevant date. Substantial and direct support was received in this behalf from the testimony of Mahesh Kumar P.W. 3 who categorically stated that there was no electric light at the relevant time in his kothi or in any of the neighbouring residences. It was for this reason that he had gone to the terrace upstairs and was sitting there. It would be recalled that it is the own case of the prosecution that S.I. Brahm Pal Singh P.W. 6 and Constable Balvir Singh P.W. 7 had heard the shrieks in

the lane. The possibility cannot be ruled out that under the cover of darkness, shrieks had been heard by the two accused Appellants also in the lane and on spotting the policemen and flashing of torch by one of them-S.I. Brahm Pal Singh P.W. 6, they became panicky and started running. The simple fact of their running in the lane at that moment would not be sufficient to fasten the guilt on their heads. Their running, as we said, could be due to hearing the shrieks in the lane and spotting the policemen with one of them flashing torch. Out of utter confusion and for the fear of landing themselves in some unnecessary trouble, they might have taken to their heels.

17. There is no corroboration from any independent witness that the accused Appellants had scaled the western wall of the kothi. There being darkness in the lane due to non-availability of electricity, S.I. Brahm Pal Singh P.W. 6 and constable Balvir Singh P.W. 7 might have mistaken the accused Appellants to be the persons scaling the wall on the basis of imagination, more swayed by the fact that they started running.

18. We should also point out that the two accused Appellants cannot be held guilty simply because of their inability to explain as to why they have been falsely implicated. It is the golden principle of criminal jurisprudence that it is for the prosecution to prove its case to the hilt beyond reasonable doubt. In the instant case, the prosecution has utterly failed to discharge this burden and the conviction of the accused Appellants cannot be upheld on the premise of suspicion. The gap between "may be" and "must be" has to be bridged by convincing and conclusive evidence which has not been done in the present case so far as the accused Appellants are concerned.

19. Before parting, we also wish to observe that greater possibility is that it was the co-accused Suresh Kumar-husband of the deceased who was the real culprit. But unfortunately, the case was projected against him in different profile, which did not come up to the standard of judicial certitude. He had obtained a decree of divorce against his wife. Under the decree, she had been permitted to reside in a room with an enclosed sahan situate apart from rest of the kothi and she was also granted maintenance @ Rs. 150 per month till her lifetime or remarriage whichever was earlier. She had preferred a civil appeal in the Court of District Judge and also moved an application u/s 24 of Hindu Marriage Act. Therefore, she was a continuous source of trouble to her husband. She was not reconciled to the divorce granted in favour of her husband and had challenged the same before the appellate court. The husband had also been mulcted with the liability to pay maintenance to her till her lifetime or remarriage which was to be earlier. He knew the complete topography of the room in which she was putting up. The post-mortem report shows that seminal fluid was found in her vaginal part and several ante-mortem injuries had also been inflicted on her. The autopsy indicated as if she was subjected to forcible intercourse also before her death. The greater possibility is that it was her husband who cut short her life after inflicting several injuries on her and strangulating her, but before doing that he even had forcible sexual intercourse with her exhibiting sadistic tendency. He did her to death this way, removing the thorn from his way for all times to come. After committing the crime, he managed the vanishing trick from the scene. The

sad feature is that the case was given a different profile relating to him, not coming up to the standard required to find him guilty.

20. Coming to the point, presently the Court is concerned with the two accused Appellants-Noora and Mohd. Iqram. So far as they are concerned, the amount of doubt which this Court entertains regarding their complicity is much more than the level of reasonable doubt. Indeed, it would be a matter of regret for everybody including ourselves that nobody is going to be punished for this heinous crime of an unfortunate lady having been done to death in a cruel manner, but then the Court of law, is to be guided by the legal evidence adduced in the case. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt, the conviction cannot be recorded.

21. The upshot of the above discussion is that the circumstantial evidence against the accused Appellants was too weak to be believed for warranting conviction. They deserve to be afforded the benefit of doubt.

22. In the result, both the appeals are allowed. The order of conviction and sentence passed against the Appellants Mohd. Iqram and Noora is set aside. They are acquitted. Noora is already on bail. Mohd. Iqram is in jail. He shall be set at liberty, if not wanted in any other connection.

A certified copy of this order along with the record of the case be sent to the court below for needful compliance under intimation to this Court within two months.