A MOHD. USMAN MOHD. ISLAM SHAIKH & ORS.

v.

STATE OF MAHARASHTRA

(Criminal Appeal No.1028 of 2006)

B OCTOBER 26, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

C *Penal Code, 1860 – ss. 302/34 – Prosecution for murder – Strained relations between the accused persons and the deceased – No eye-witnesses – Independent witnesses and medical evidence supporting the case of the prosecution – Conviction of three accused and acquittal of one by the trial court – High Court confirming the conviction – On appeal,* D *held: The chain of circumstances envisaged for a successful prosecution are present in the instant case – Conviction justified.*

Four accused persons, including the three E **appellants were prosecuted u/ss. 302, 201 r/w s. 34 IPC. The prosecution case was that appellant-accused No. 1 was married to the deceased. All the accused i.e. accused No. 1, his mother (accused No.2) and his sisters (appellants-accused Nos. 3 and 4) used to misbehave** F **with the deceased because she was unable to give birth to a child and they were forcing her to leave the house, so that accused No. 1 could remarry. There used to be frequent quarrels in the family on this count. On the fateful day, a quarrel ensued on the issue. The accused persons,** G **by beating the deceased caused severe injuries on her head and by inserting a handkerchief into her mouth strangulated her and set her on fire. This resulted in death of the deceased. There were no eye-witnesses to the incident.**

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The trial court convicted accused Nos. 1, 3 and 4 of the offence u/s. 302/34 IPC, but acquitted them u/s. 201 IPC. Accused No. 2 was acquitted of all the charges. The High Court confirmed the judgment passed by the trial court.

In appeal to the Supreme Court, the appellants contended interalia that chain of the circumstances, leading to the conclusion that the accused persons alone were guilty of the offence, was not complete; and that the evidences of the three witnesses viz. PWs 4, 6 and 8 were not reliable.

Dismissing the appeal, the Court

HELD: 1. The chain of circumstances envisaged for a successful prosecution, is present in the instant case. The incident happened in the matrimonial home of accused No. 1 and the deceased. PWs. 4, 6 and 8, who are absolutely independent witnesses, have categorically stated that the relations between the accused and the deceased were strained on account of the inability of the deceased to bear a child and that the accused were anxious that she should leave, so that accused No. 1 could re-marry. The offer given by the deceased to the effect that she had no objection to the remarriage provided she too was permitted to stay in the same house was not accepted by the accused and they thought it fit to get rid of her. A perusal of the evidence of these witnesses reveals that they had been witnesses not only to the frequent quarrels within the family but even to the very bitter fight on the day in question which continued for almost the whole afternoon and ultimately led to the murder. It came in the evidence that the deceased was stout and healthy woman, perhaps physically stronger than her husband, and it is, therefore, obvious that accused Nos. 3 and 4 were also required to lend a

A **helping hand. It is also evident from the Report of the Chemical Analyst that there were kerosene residues and blood stains on the shirts of accused Nos. 3 and 4, the sisters of accused No. 1. [Para 6] [752-B-F]**

B **2. It is evident from the evidence that the deceased met a homicidal death. This is clear from the evidence of PW-5, the doctor who observed that the death was due to Asphyxial throttling, head injuries and burns. The doctor also opined that the injuries on the head were**
C **sufficient to cause death and that all the injuries when seen together clearly proved the case of prosecution that the deceased had been severely beaten before being burnt and killed. [Para 5] [751-F-H; 752-A]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
D No. 1028 of 2006.

From the Judgment & Order dated 3.11.2005 of the High Court of Judicature at Bombay in Criminal Appeal Nos. 334 & 335 of 1999.

E Chetan Sharma Aman Vachher, Ashutosh Dubey, R.D. Puri, Sushil Pandey, Dhiraj, P.N. Puri for the Appellants.

Sushil Karanjakar, Sanjay Kharde, Asha, G. Nair, Ravindra Keshavrao Adsure for the Respondent.

F The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. The facts leading to this appeal are as under:-

G Deceased Noorjahan was married to appellant No.1-Mohd. Usman Mohd. Islam Shaikh but no children had been born to the couple. All the accused that is Mohd. Usman, his mother and sisters were accordingly misbehaving with the intention of forcing her to leave the house so that appellant No.1
H could re-marry. The relations between the accused and the

deceased had become strained on this account and there were frequent quarrels between them.

On 28th April, 1997, a quarrel took place in the family on this issue during which the deceased allegedly consented to her husband's second marriage provided she too was permitted to stay on with him. This arrangement was, however, not acceptable to the accused with the result that the quarrel continued late into the evening during which the deceased was beaten which resulted in severe injuries to her head. It is the prosecution case that thereafter the deceased was murdered by first inserting a handkerchief into her mouth to stifle her cries and suffocate her and she was then strangulated and set on fire. The Fire Brigade received a message about a fire on which it rushed to the house of the accused and extinguished the flames. Information was also conveyed to Kurla police station by one Suleman Patel about the incident on which a police party immediately rushed to the site. A complaint was, accordingly, lodged against all the four accused and they were arrested and on the completion of the investigation, a charge sheet was filed for offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code. The accused claimed innocence and were brought to trial.

The prosecution in support of its case relied on the evidence of PW-5-Dr. Manohar Shivsharan, who had performed the post-mortem, and had certified the cause of death as "Asphyxial death due to throttling and gagging associated with head injury and burns". The doctor also noticed contusions on the face, bleeding on the lips and congestion of the throat and also recovered a handkerchief that was deeply embedded in the mouth of the deceased blocking the mouth opening. The doctor further opined that the contusions could have been caused by blows given by a hard and blunt object and the injuries to the lips had been caused while gagging the deceased.

The Trial Court noted that there were no eye-witnesses to

A the defence but from the evidence of PWs.4, 6 and 8, it was apparent that the relations between the accused and the deceased had become strained because the deceased was unable to give birth to a child and there were frequent quarrels between them on that account. PW-6-Naseem Virani further B stated that on the date of the incident at about 1:30 p.m. or 2:00 p.m she had heard Hashmi Begum, the mother of the accused, quarreling with the deceased in the presence of accused Nos.3 and 4. PW-6 further stated that accused No.1 had also come to the house after a short while and the quarrel had again C erupted which continued till about 4:30 p.m. and that she (PW-6) had thereafter left her house and when she had returned at about 8:30 p.m., Noorjahan was dead.

The fact of the family quarrel was also confirmed by PW-8-Sayyed Ali who further deposed that the accused were D beating the deceased and, thereafter Mohd. Usman had dealt blows on her chest and stomach while his sisters had caught hold of her by her hands. The trial Court also relied on the statement of PSI-Avinash Bhamre (PW-9) who had recovered certain items from the spot including a stove, a half burnt E kerosene plastic cannister containing two litres of kerosene oil, and PW-10-PI Rajan Shrikant Gaikwad, the Investigating Officer who had taken into possession the blood stained clothes of the accused when he had arrested them on the 30th April, 1997.

F The Trial Court, after examining the evidence, concluded that in the light of the fact that as there were no kerosene oil or blood stains on the accused-Hashmi Begum, the mother of accused Nos.1, 3 and 4, there was some doubt as to her presence. The court also found that no case under Section 201 G of the Indian Penal Code was made out. The Trial Court, however, convicted the other three accused of the offence under Section 302/34 of the Indian Penal Code and sentenced them to imprisonment for life. This judgment has also been confirmed by the High Court in an appeal.

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2. The present matter arises as a result of the grant of special leave by this Court. A

3. Mr. Chetan Sharma, the learned senior counsel for the appellants, has raised several arguments before us. It has been submitted that in a case of a prosecution relying solely on circumstantial evidence, it is essential that the chain of circumstances against the accused be complete leading to the only hypothesis that the accused alone were guilty of the offence alleged and no other conclusion could be drawn. He has also pointed out that the evidence of the three witnesses PWs-4, 6 and 8 who had come forward to support the prosecution story, could not be believed as they being employed elsewhere had no cause to be present when the quarrel had ensued on the fatal day and that in any case it would have been difficult for them to have noticed as to what was going on in the house of the accused on account of the location of their houses vis-à-vis the house of the accused. It has further been submitted that there was no evidence to suggest that the relations between the parties were strained or that Mohd. Usman, accused no.1, was keen to get married a second time as the deceased was unable to bear him a child. B C D E

4. Mr. Sushil Karanjakar, the learned senior counsel for the State of Maharashtra has, however, supported the judgment of the courts below.

5. We have heard the learned counsel for the parties and very carefully gone through the record. We see from the evidence that the deceased had met a homicidal death. This is clear from the evidence of PW-5, the doctor who observed that the death was due to Asphyxial throttling, head injuries and burns. The doctor also observed that a ladies handkerchief had been stuffed deep into the mouth of the deceased with the result that the protrusion of the tongue which was a symptom of throttling, was absent. The Doctor also opined that the injuries on the head were sufficient to cause death and that all the F G H

A injuries when seen together clearly proved the case of prosecution that the deceased had been severely beaten before being burnt and killed.

6. We must first notice that the incident happened in the matrimonial home of accused no.1 and the deceased. We have also carefully examined the evidence of PWs-4, 6 and 8 who are absolutely independent witnesses. They categorically stated that the relations between the accused and the deceased were strained on account of the inability of the deceased to bear a child and that the accused were anxious that she should leave so that accused No.1 could re-marry. The offer given by the deceased to the effect that she had no objection to the remarriage provided she too was permitted to stay in the same house was not accepted by the accused and they thought it fit to get rid of her. A perusal of the evidence of these witnesses reveals that they had been witnesses not only to the frequent quarrels within the family but even to the very bitter fight on the day in question which continued for almost the whole afternoon and ultimately led to the murder. It has come in the evidence that the deceased was a stout and healthy woman, perhaps physically stronger than her husband, and it is, therefore, obvious that accused nos. 3 and 4 were also required to lend a helping hand. We also see from the Report of the Chemical Analyst that there were kerosene residues and blood stains on the shirts of accused nos. 3 and 4, the sisters of the accused no.1. We are, therefore, of the opinion that the chain of circumstances envisaged for a successful prosecution, are present in the case before us.

7. We, thus, find no merit in the appeal. It is accordingly dismissed.

K.K.T. Appeal dismissed.