ITEM NO.101 COURT NO.8 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
Criminal Appeal No. 454/2011

RATNESH KUMAR PANDEY Appellant(s)

VERSUS

STATE OF UTTAR PRADESH Respondent(s)
(With application for raising additional grounds and office report)

Date : 15/01/2015 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Appellant(s) Mr. S.K. Aggarwal, Sr. Adv.
Mr. Shailendra Pratap Singh, Adv.
Mr. V.P. Tripathi, Adv.
Mr. Debasis Misra, A.O.R.

For Respondent(s) Mr. M. R. Shamshad, A.O.R.
Mr. Rajat Singh, Adv.
Mr. Shashank Singh, Adv.
Mr. Aditya Samddar, Adv.

UPON hearing counsel the Court made the following
O R D E R

For the detailed reasons records in the signed reportable judgment, the appeal is dismissed.

Since the appellant is stated to be on bail from 23rd September, 2011, he should be taken into custody forth with to undergo the remaining part of the sentence.

Signature Not Verified
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Kalyani Gupta
Date: 2015.01.28
17:51:14 IST
Reason:

[KALYANI GUPTA] COURT MASTER

[SHARDA KAPOOR] COURT MASTER

[SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE.]

CRIIMINAL APPEAL NO. 454 OF 2011

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 454 OF 2011

RATNESH KUMAR PANDEY ..... APPELLANT

VERSUS

STATE OF UTTAR PRADESH ..... RESPONDENT

J U D G M E N T

FAKKIR MOHAMED IBRAHIM KALIFULLA J.

The appellant is aggrieved by the judgment of the Division Bench of the High Court of Allahabad dated 15 th December, 2009 passed in Criminal Appeal No. 3302 of 2003 confirming the conviction and sentence imposed on him under Section 302 of the Indian Penal Code. While convicting the appellant the trial court imposed a sentence of life imprisonment apart from fine of Rs. 10,000/- with default clause of one year rigorous imprisonment.

2. It is a case of circumstantial evidence.

3. According to the prosecution, the appellant was living alone with his wife, the deceased Suman in his

first floor portion at A 353, Awas Vikas Colony, Tiwaripur, Gorakhpur, Uttar Pradesh and the ground floor portion was lying vacant. They got married on 17 th September, 1999. The occurrence took place on the intervening night of 30th and 31st January, 2001 at around 4:00a.m.

3.1 As per the contents of the First Information Report, P.W. 1 one Chandra Mohan Pandey, brother of the deceased received information about the death of his sister at 7:30a.m. through P.W.2 Ram Prakash Dubey who is none other than his cousin who was also living in the same locality where the appellant and the deceased were

living. P.W. 2 reached the spot along with his mother at 9:30 a.m. and at 10.05a.m., F.I.R. came to be registered. It was alleged in the F.I.R. that his sister was murdered by the appellant with the help of his friend.

3.2 Based on the above F.I.R., after the registration of the crime though the close relatives of the appellant, as well as, one Ramzan were implicated as accused by supplement and additional charge sheets for offences under Sections 498A, 304B read with Section 120B as well as Sections 3 and 4 of the Dowry Prohibition Act, ultimately the appellant was charged

for the offence under Section 302 along with Ramzan. After trial, the trial court found that the appellant was the sole accused who was responsible for the killing of his wife and he alone was convicted and sentenced to imprisonment as referred to above.

3.3 As per the evidence of P.W. 6, Dr. V. V. Tripathi who conducted the post mortem of the deceased, there were as many as 20 injuries on the body of the deceased and almost all of them were incised wounds. As it was a case of circumstantial evidence, the trial court after assimilating all the evidence placed before it has identified the circumstances in order to find the appellant guilty of the offence, under Section 302 in killing his wife with severe injuries.

4. Clinching circumstances which were identified and noted by the trial Court which has been stated in paragraphs 96 to 100 can be listed as under:-

(i) As per the evidence of P.W.1, the deceased,

his sister visited his house after the marriage 3 to 4 times and told him that she was being beaten and abused by her in-laws.

(ii) The appellant visited P.W.1 on 28th January, 2001 for vidai of Suman and after vidai in the evening of 29th January, 2001 she was found in the company of the

appellant. On 30th/31st January, 2001 the deceased was living and was staying in the matrimonial home at First Floor, A-353, Awas Vikas Colony, Tiwaripur, Gorakhpur, Uttar Pradesh.

(iii) In his statement under Section 313 of the Code of Criminal Procedure, the appellant admitted that the deceased was with him till before her death on the morning of 31st January, 2001.

(iv) On the morning of 31st January, 2001, admittedly, the appellant was found in his residence at around 9:00a.m.

(v) The appellant was arrested by the Police at 11:00p.m. on the same day. The arrest was made by P.W.7.

(vi) Based on the admissible portion of the Confession Statement of the appellant, Exhibit (1), the kitchen knife alleged to have been used in the murder of the deceased was recovered from the kitchen slab of the house of the appellant in the presence of the accused which was established by Exhibit KA 3.

Apart from the signature of the appellant, it also contained the signature of P.W. 2, who also confirmed such recovery made at the instance of the appellant.

(vii)On the same day, the sweater Exhibit 6 worn by the appellant was also recovered at his instance which

contained blood spot. The blood found in the sweater as

well as the knife namely, Exhibit 6 and 1 was human blood and also one and the same as per Exhibit Ka. 23, the Forensic Science Laboratory Report.

(viii)The trial court while considering the plea of alibi of the appellant through D.W. 1 has held that the said confession of D.W. 1 was wholly unreliable and was a cooked up one.

4.1 It was based on the above circumstances, the trial court ultimately found the appellant guilty of the offence under Section 302 which has also been confirmed by the Division Bench of the High Court.

5. Mr. S.K. Aggarwal, learned senior counsel appearing for the appellant while assailing the judgment of the trial court as well as the High Court, in his submission, contended that it is unbelievable, as observed by the High Court, that in the bedroom where the body of the deceased was found, everything was in order but yet the appellant could be implicated for the killing of the deceased. The learned senior counsel also contended that when as many as 20 injuries with incised wounds were found on the body of the deceased, it was hard to believe that the sweater worn by the appellant had only a blood spot. According to the

learned senior counsel, where the brutal murder was committed by inflicting such injuries all over the body of the deceased any dress worn by the assailant would have been soaked in blood and, therefore, the case of the prosecution ought not to have been believed. The learned senior counsel then contended that the evidence of D.W.1 was true and that on 31st January, 2001 after returning from Gorakhpur to Gonda along with D.W.1 when he came back to his residence around 9:00a.m. he was

illegally taken into custody by the Police and the case was foisted on him. Learned senior counsel therefore, contended that none of the circumstances had any link in order to hold that the appellant was responsible for the killing of the deceased.

6. Insofar as the plea of dacoity pleaded before the trial court through D.W. 3, though the same was referred to by the Division Bench of the High Court, it must be stated that the same was not even pleaded on behalf of the appellant. Secondly, the said theory was mooted through D.W.3 at the instance of one of the co-accused but in the course of the cross examination D.W. 3 himself admitted that the theory of dacoity was not correct which he realised when he visited the place of occurrence after getting the initial information of the

killing of the deceased. Therefore, we will have to consider the analysis made by the High Court as well as that of the trial court eschewing the so-called theory of dacoity which was pleaded and was at the very outset rejected by the trial court. Barring the said aspect, we examined the conclusion reached by the trial court as well as the High Court.

7. The question for consideration is whether the chain of circumstances noted and found proved against the appellant leads to the only hypothesis in respect of the guilt alleged against the appellant. With that perspective in mind, when we consider the circumstances noted by the trial court which we have in seriatum referred to in the earlier part of the judgment we find that when the appellant and the deceased were living together immediately before the death of the deceased the whole burden was upon the appellant to show as to

who else was responsible for the killing of the deceased. Except the evidences relating to the prior grievances expressed on behalf of the deceased to P.W. 1 as regards the beatings inflicted on her by the in-laws of the deceased there was no other version placed before the Court for implicating anybody else to have any grievance as against the deceased. Keeping the

said situation in mind when we consider the circumstances noted by the courts below which were duly supported by the legally acceptable evidence on record, it will have to be stated that the burden was heavily upon the appellant to show that he had nothing to do with the killing of the deceased.

8. The plea of the appellant that he was away from the spot on the intervening night of 30th and 31st January, 2001 was disbelieved by the trial court by rejecting the evidence of D.W. 1. When we examined the said conclusion of the trial court, we are convinced that the reasoning of the trial court for not accepting the version of D.W. 1 cannot be found fault with. The trial court has given more than one reason why the version of D.W. 1 cannot be accepted and we do not find any flaw in the said reasons. Therefore, once the said plea of alibi put forth on behalf of the appellant is ruled out, then it will be for the appellant to satisfactorily show as to who else was responsible for the killing of the deceased. Though other co-accused including the co-accused who were related to the

appellant were arrayed along with one other friend of the appellant by name Ramzan, it has come out in evidence that none of them were in any way responsible

for the killing of the deceased. In the said background, the various circumstances narrated in the earlier part of the judgment found a complete chain without any break in its links and the said set of circumstances conclusively proved that it was the appellant and the appellant alone who alone could have committed the crime of the killing of the deceased as concluded by the trial court and as confirmed by the High Court in the impugned judgment. We have no reason to take a different view than what has been held by the trial court as well as by the High Court with regard to various circumstances which ultimately persuaded the courts below to find the appellant guilty of the alleged offence.

9. As far as the contention that the High Court found everything in order in the bedroom is concerned, the same will have to be taken in the sense that there was no indication of any attempt to steal or rob any of the valuables from the bedroom. When the deceased was found dead with as many as 20 injuries all over her body, the said observation of the High Court will have to be read objectively and not superficially. The contention by referring to a mere blood spot in Ex. 6 (Sweater) is concerned, when the F.S.L. Report, Ex. K 23 confirmed

the similar blood group in Ex. 1 and 6, it is immaterial whether the blood content in Ex. 6 was less or more. The said contention also does not merit a

ny consideration. The contention that the police foisted a case when he returned back home after his trip to Gonda at 9:00a.m. is concerned, when his plea of alibi was disbelieved, on that very ground that stand will fail. Except the ipsi dixit to claim that he was arrested and the case was foisted against him, he did make a ny attempt to support the said version.

10. Mr. Aggarwal in his submissions lastly contended that appellant has already suffered more than 10 years imprisonment and subsequently got married when he was on bail and that he has also got children after su ch marriage, therefore, the offence can be modified into one under Section 304B and a lesser punishment can be awarded. However, persuasive such submission may be on behalf of the appellant, when we considered the injuries found on the body of the deceased, we find that the deceased had suffered as many as 20 injuries and all of them were of incised wounds caused by Exhibit 1, the knife used by the appellant for the killing. T he deceased was assaulted in such a manner that the body was like a minced meat in the process of her killing.

Therefore, that very fact dissuades us from showing any lenience to the appellant for showing any sympathy in the matter of punishment. Therefore, we do not find any scope to modify the sentence imposed on the appellant. Consequently the appeal fails and the same is dismissed.

10. Since the appellant is stated to be on bail from 23rd September, 2011, he should be taken into custody forth with to undergo the remaining part of the sentence.

.....J
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J
[ABHAY MANOHAR SAPRE]

NEW DELHI
JANUARY 15, 2015.