

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(s). 1290 OF 1999

SUSHILA DEVI AND ANR.

Appellant (s)

VERSUS

STATE OF BIHAR

Respondent(s)

(With office report )

Date: 29/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr.Sunil Kumar, Sr.Adv.

Mr. Amit Pawan, Adv.

Ms.Amrita, Adv.

Mr. Irshad Ahmad,Adv.

For Respondent(s)

Mr.Saket Singh, Adv. for

Mr.B.B. Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order. The appellants are on bail.

Their bail bonds are discharged.

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Court Master

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Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1290/1999

Sushila Devi and Anr. ... Appellants

VERSUS

State of Bihar ... Respondent

O R D E R

The two appellants-herein along with Shyam Bihari Singh and Binod Kumar Singh were tried for commission of an offence under Section 302/34 I.P.C. One Indu Devi was found dead inside quarter No. 368 of Lane No.12 of Kashidih in the town of Jamshedpur with burn injuries on her person. The deceased at the relevant time had been residing with Accused No.1-Shyam Bihari Singh (her father-in-law) and Accused No.2 -Sushila Devi(wife of a brother of A-1) and three girls including the appellant No.2- herein, who was Accused No.4 and two boys including Binod Kumar Singh-Accused No.3 and Sanjay Kumar son of Accused No.1 as also Raj Kumari aged about 16 years and Anita Kumari aged about 14 years(both daughters of Accused .2).

The incident was intimated to some women activists including Prity Chakrabarty and Anjali Bhattacharjee of Sonari as also Nirmala Shukla. They

came to the place of occurrence. On receiving a telephonic message  
a Sub

Inspector of Sakchi Police Station also reached there and found the body of  
the

deceased in one of the rooms of the building with extensive burns on her person.

Prity Chakrabarty(P.W.-10) lodged the First Information Report against th  
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appellants and the said accused persons.

Before the trial Court the accused persons pleaded not guilty. All t  
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accused took the plea of alibi. So far as accused No. 1 and 3 are concerned, they

raised a plea that they being the employees of TISCO, in its steel  
plant at

Jamshedpur, left their house at 7 O'Clock in the morning and came back only at 4

or 4.30 in the evening whence they came to know about the incident for the first

time. Accused Raj Kumari took the plea that on that day at about 11 a.m. she had

left her home for a school and was there till 4.45 in the evening. Similarly, accused

No.2 and accused No.4 took the plea that they had left the house in the forenoon

for Vidyapati Nagar in the same

township and only when they returned home at about 3 p.m. they found a crowd

assembled at their house and came to know that the deceased had died of burn

injuries suffered by her.

Learned Sessions Judge acquitted Sanjay Kumar, Raj Kumari and  
Anita Kumari accepting their plea of alibi. The appellants-herein and two others

( Shyam Bihari Singh and Binod Kumar),however, were found guilty by the trial

Court for commission of an offence under Section 302/34 I.P.C.

In terms of the impugned judgment the High Court while passing

a

judgment of acquittal in favour of Shyam Bihari Singh and Binod Kumar Singh, came to the conclusion that although the appellant-herein are not guilty under Section 302/34 but under Section 201 I.P.C. for causing disappearance of evidence and sentenced them to undergo rigorous imprisonment for seven years each.

The High Court took notice of the fact that one Dr.D.P. Chaudhary, who allegedly performed the autopsy, found ante mortem superficial burns all over the body to the extent of 95% besides ante mortem haemorrhage under the skin on the right side of head. According to the said doctor, smell of kerosene was coming out of the body and

hair of the deceased but he did not find any other ante mortem injury either

internally or externally on the dead body. In the opinion of the said doctor, he

death of the deceased had occurred within 24 hours prior to the autopsy due to the burn injuries.

Comments were made by the High Court as regard the said opinion of the doctor, principally, on the ground as although 95% burn injuries were found on the body; the same could not be described as superficial burn injuries by way of suicidal in nature. It opined that without the Doctor's coming to know all the circumstances under which those wounds were caused, he was incompetent to say whether those injuries were homicidal or suicidal in nature.

The High Court although found that the autopsy report did not conform to the authoritative text books on Medical Jurisprudence and lamented that in

conducting the autopsy the doctor violated the circular letter

issued by the Government of India to the effect that in case of a postmortem on a

body of a married woman "dying of burns(or other reasons)" within seven years

of her

marriage or if her age was less than 30 years at the time of her death in suspicious

circumstances, autopsy should be carried out by two doctors and not one.

The High Court further noticed the defence plea that the husband of the

deceased had not been residing with the family for a long time and the defence

raised by the accused to the effect that in the said situation she was not leading a

happy life and had all along found to be "sad and sullen" which led her to commit

suicide but did not agree therewith. It inferred that "finding or taking the deceased

dead due to sudden violence caused to her on her head, the appellants-her  
rein

planned to set her ablaze by sprinkling kerosene to give a colour of suicide and

thereby caused disappearance of evidence to screen the culprits from legal

punishment."

No reason has been assigned in support of the said conclusion.

No

evidence has also been discussed for the purpose of arriving at the said finding.

Although according to the High Court the death of Indu Devi  
was

homicidal in nature, but on the material brought on record it could not be and in

fact has not been held that the appellants herein had a role to play.

The High Court furthermore did not arrive at any finding that  
the

deceased was done to death by somebody else. Section 201 of the Indian Penal Code in our opinion could not have been invoked by the High Court in the manner

as has been sought to be done by the High Court.

Such an opinion was arrived at, as noticed herein above, despite the fact that none of the accused had been found guilty for commission of an offence under Section 302/34 I.P.C. It is not in dispute that the trial Court did not frame any

charge against the appellants under Section 201 I.P.C. No charge was framed

under Section 201 I.P.C., Section 201 I.P.C. constitutes an independent offence. It

was, therefore, essential for the learned

Sessions Judge to frame appropriate charge so as to enable the prosecution to lead

evidence and the accused to lead evidence contra. No case for convicting the

appellants under Section 201 I.P.C. has been made out. Only because

the plea of alibi taken by the appellants-herein was not accepted, the same by itself

may not be a ground for arriving at a conclusion that they although might not have

committed an offence under Section 302/34 IPC, but must have committed an

offence under Section 201 IPC. Suspicion, as is well known, is no substitute for

proof.

For the reasons aforementioned, the impugned judgment cannot be

sustained. The impugned judgment is set aside. The appeal is allowed. The

appellants are on bail. Their bail bonds are discharged.

.....J.

( S.B.SINHA )

.....J.

( R.V. RAVEENDRAN )

New Delhi,

September 29, 2005.