

RAMACHANDRAN

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v.

STATE OF KERALA

(Criminal Appeal No. 732 of 2008)

OCTOBER 30, 2012

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[SWATANTER KUMAR AND MADAN B. LOKUR, JJ.]

PENAL CODE, 1860:

s.302 - Murder - Circumstantial evidence - Accused causing murder of his wife by forcibly administering poison to her and smothering - Conviction and sentence of life imprisonment awarded by trial court affirmed by High Court - Held: There is ample evidence of prosecution witnesses that the deceased was subjected to physical violence almost on a daily basis - There was motive for the offence - The clinching evidence establishing that the death was caused in the matrimonial house by forcible administering of poison to deceased and by smothering - Thus, there is no break in the chain of evidence which could through up some other possibility - There is no exceptional circumstance or reason to disturb the concurrent finding of fact recorded by courts below and to interfere with the conviction and sentence - Circumstantial evidence.

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The appellant was prosecuted for committing the murder of his wife. The couple had married four years before the incident and had two children, the younger one being aged about 3 months. The prosecution case was that there was a history of matrimonial discord between the couple, as the appellant was stated to have illicit relations with the wife of his elder brother. On the intervening night of 10th and 11th March, 1998 at about 1.00 A.M. there was a quarrel between the couple. Thereafter the appellant forcibly administered a strong

- A pesticide to his wife, and when she ran out of the house and fell down, the appellant smothered her nose and mouth, which resulted in her death. The trial court convicted the appellant u/s 302 IPC and sentenced him to imprisonment for life. The appeal of the accused was
- B dismissed by the High Court.

Dismissing the appeal, the Court

HELD: 1.1 This Court upholds the view taken by the trial court and affirmed by the High Court that the case

- C was one of murder and not of suicide. [para 1] [922-A]

1.2 There is ample evidence on record not only from the immediate family of the deceased (PWs 1, 2 and 3, father, mother and sister, respectively of the deceased)

- D but also from her neighbour (PW-7) that she was subjected to physical violence almost on a daily basis. The cause of discord between the appellant and the deceased appears to be her belief that the appellant had illicit relations with the wife of his elder brother. The strained relations, coupled with the allegations made by the deceased, provided a motive for the appellant to murder her. [para 29] [928-E-G]

1.3 What is clinching in the instant case is the medical evidence. The High Court noted that the unnatural death

- F of the victim was not in dispute. The High Court placed great emphasis on the unambiguous evidence of the doctor (PW 10) to the effect that death of the victim was caused by smothering and administration of toxic Furadan which was found in her mouth and pharynx. As
- G testified by the doctor, the various injuries on the deceased, though minor, indicated that the administration of Furadan was forcible and that she had resisted this. No person other than her husband could have possibly caused her death, especially considering the motive or grudge that he harboured against her. [para 22 and 31]
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[925-H; 926-A-B; 928-H; 929-B]

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1.4 The trial court discounted the theory that the appellant and his father had gone to the temple to witness 'Koothu'. It was noted that there was nothing to support such a statement. [para 18] [925-C]

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1.5 It is true that the case is one of circumstantial evidence but there is no break in the chain of evidence which could possibly throw up some other possibility. Under the circumstances, there is no exceptional circumstance or reason to disturb the concurrent finding of fact recorded by both the courts below and to interfere with the conviction and sentence awarded to the appellant by the trial court and confirmed by the High Court. [para 27 and 34] [928-B; 929-F]

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Sudama Pandey v. State of Bihar, 2001 (5) Suppl. SCR 465 = (2002) 1 SCC 679; Dalbir Kaur v. State of Punjab, 1977 (1) SCR 280 = (1976) 4 SCC 158- relied on.

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Case Law Reference:

2001 (5) Suppl. SCR 465 relied on para 24

1977 (1) SCR 280 relied on para 25

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 732 of 2008.

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From the Judgment & Order dated 30.11.2004 of the High Court of Kerala at Ernakulam in Criminal Appeal No. 663 of 2003.

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P.V. Dinesh for the Appellant.

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Ramesh Babu M.R., R. Sathish for the Respondent.

The Judgment of the Court was delivered by

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A **MADAN B. LOKUR, J.** 1. The question before us is whether the appellant murdered his wife Remani or whether she committed suicide. We are in agreement with the view taken by the Trial Judge and affirmed by the High Court that the case was one of murder and not of suicide.

B **The facts:**

2. The appellant and Remani had been married for about four years. They had two children, the second child having been born just about three months before the murder of Remani.

C 3. There was a history of matrimonial discord between the parties. Remani believed that the appellant was having illicit relations with the wife of his elder brother which seems to have been the cause of conflict. At one stage Remani had even left the matrimonial home. However, on an application having been filed by the appellant for restitution of conjugal rights, the matter was settled between the parties and Remani went back to the matrimonial home. Unfortunately, it appears that even thereafter, matrimonial disputes took place between the parties.

E 4. According to the prosecution, on the intervening night of 10th and 11th March, 1998 at about 1.00 a.m. there was a quarrel between the appellant and Remani. Subsequent to the quarrel, the appellant forcibly administered to Remani a highly toxic carbonate compound called Furadan which is a strong pesticide used for plantain cultivation and was kept in a bottle in the house.

G 5. On being forcibly administered the poison, Remani ran out of her house and fell down on the eastern side where it is alleged that the appellant smothered her by closing her nose and mouth with his hands. The poison and smothering of Remani resulted in her death.

H 6. Early morning, Remani's parents were called and her father lodged a First Information Report at about 12.30 p.m. in

which he stated that the appellant used to inflict physical torture on Remani and due to the continuous harassment she consumed poison and committed suicide. A

7. After investigations, the police filed a report in which it was concluded that the appellant had murdered Remani. On committal, the appellant denied the charge, pleaded not guilty and claimed trial. B

8. The prosecution examined as many as 16 witnesses and produced several documents and material objects in support of its case including a bottle containing Furadan. C

Decision of the Trial Court:

9. The material witnesses for the prosecution before the Trial Court were PW-1, PW-2, PW-3, PW-7 and PW-10. D

10. PW-1 Bhaskaran stated that Remani was his daughter and that her husband used to beat her up everyday and scold her. Remani had told him that the appellant was having illicit relations with the wife of his elder brother. The witness was not specifically questioned about the FIR given by him in which he had stated that Remani had committed suicide by consuming poison. He, however, stated that he had informed the police that Remani was administered poison by her husband, that is, the appellant. E

11. PW-2 Thankamalu, mother of Remani, confirmed that there were frequent and daily quarrels between the appellant and Remani. She stated that Remani told her that the appellant would get drunk and beat her up. She also stated that Remani told her that the appellant was having illicit relations with the wife of his elder brother. According to this witness, Remani was capable of doing some typing jobs and bringing up her children. As such, there was no doubt that, if need be, Remani could look after herself and would not commit suicide. F G

12. PW-3 Ragini is the sister of Remani. She also H

A confirmed the frequent if not daily physical abuse inflicted by the appellant on Remani.

13. PW-7 Hamza is a neighbour of the appellant and Remani. He too confirmed the physical abuse that Remani was subjected to by the appellant.

B 14. PW-8 Kumhadi is the father of the appellant. He stated that on the intervening night of 10th and 11th March, 1998 he and the appellant had gone to the temple to watch a 'Koothu' program. They came back at about 5 or 5.30 a.m. in the morning and that is when they discovered the body of Remani. This witness was declared hostile and cross-examined. The Trial Court did not give much credence to the testimony of this witness and did not accept the alibi.

C D 15. The most important witness is PW-10 Dr. Rajaram. He is an Associate Professor of Forensic Medicine, Medical College, Kozhikode and he conducted the post mortem examination on the body of Remani. He stated that she had as many as 22 abrasions and contusions on various parts of her body.

E He stated, on the basis of the chemical examination report, that Remani died due to the combined effect of smothering and carbofuran poisoning. He was cross-examined and asked whether the abrasions on Remani's body could have been caused on her falling down on a hard surface and

F struggling for existence. He replied that in view of the injuries on the back of her body, the possibility was highly remote. He also stated that if her back had come in contact with a hard object, her clothes would have had a tear. He further stated that the nature of injuries including one on the back of the elbow clearly suggested that Remani had offered some resistance.

G H 16. On the above material, the Trial Court was of the opinion that even though the case was one of circumstantial evidence, there was enough material on record to show that it was only the appellant who had murdered Remani by forcibly administering Furadan and then smothering her. It may be

mentioned that Furadan is a carbofuran and its ingestion can A cause death within 10 minutes.

17. The Trial Court was also of the view that the appellant had a motive for murdering Remani in as much as they would have frequent quarrels on the suspicion of Remani that the appellant had illicit relations with the wife of his elder brother who was residing in the same house. B

18. The Trial Court discounted the theory that the appellant and his father had gone to the temple to witness 'Koothu'. It was noted that there was nothing to support such a statement. In this context, it was observed by the Trial Court that Remani was in hospital from 08.03.1998 till 10.03.1998 due to some vomiting and illness and it was very unlikely that immediately after her discharge from hospital on 10.03.1998 the appellant would have left her alone in the house and gone to the temple where C he stayed overnight, if indeed he cared for her. D

19. On the basis of the above facts, the Trial Court held the appellant guilty of having committed the murder of Remani and sentenced him to imprisonment for life. E

Decision of the High Court:

20. Feeling aggrieved, by the conviction and sentence awarded by the Trial Court, the appellant preferred Criminal Appeal No. 663 of 2003 which was dismissed by a Division Bench of the High Court of Kerala by Judgment and Order dated 30.11.2004. F

21. The High Court took into consideration the evidence of the witnesses, the strained matrimonial relations between the appellant and Remani as also the medical evidence for affirming the conviction and sentence. G

22. The High Court noted that the unnatural death of Remani was not in dispute. The principal question before the High Court was whether her death was due to homicide or suicide. In this regard, the High Court placed great emphasis H

- A on the unambiguous evidence of Dr. Rajaram to the effect that Remani's death was caused by smothering and administration of toxic Furadan which was found in her mouth and pharynx. As testified by the doctor, the various injuries on Remani, though minor, indicated that the administration of Furadan was forcible and that she had resisted this.
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23. In view of the fact that the appellant had a motive to murder Remani and there was clear medical evidence suggesting smothering and poisoning of Remani, the High Court upheld the conviction and sentence.

- C **Discussion and conclusions:**

24. In *Sudama Pandey v. State of Bihar*, (2002) 1 SCC 679 this Court considered the scope of interference in a criminal appeal with concurrent findings of fact. It was observed as follows:

We are not unmindful of the fact that this Court under Article 136 of the Constitution seldom interferes with the factual findings recorded by two concurring Courts but if

- E this Court is satisfied that the High Court has committed a serious error of law and that there was substantial miscarriage of justice, this Court could interfere with the concurring findings of the High Court and that of the Trial Court. This Court also does not normally enter into a reappraisal or review of the evidence unless the assessment of the evidence by the High Court is vitiated by an error of law or procedure or there was misreading of evidence."
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25. Similarly in *Dalbir Kaur v. State of Punjab*, (1976) 4 SCC 158 the principles for interference were culled out and stated by S. Murtaza Fazal Ali, J as follows:

"Thus the principles governing interference by this Court in a criminal appeal by special leave may be summarised as follows:

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(1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence; A

(2) that the Court will not normally enter into a reappraisal or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on; B

(3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court; C

(4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused; D

(5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence." E

26. In the same decision, A.C. Gupta, J concurred but F cautioned as follows:

"The decisions of this Court referred to in the Judgment of my learned brother lay down that this Court does not interfere with the findings of fact unless it is shown that "substantial and grave injustice has been done". But whether such injustice has been done in a given case depends on the circumstances of the case, and I do not think one could catalogue exhaustively all possible circumstances in which it can be said that there has been G H

A grave and substantial injustice done in any case."

27. Keeping these principles in mind, we have considered the evidence on record and find no exceptional circumstance or reason to disturb a concurrent finding of fact by both the Courts.

B 28. However, we need to deal with the contentions urged by learned counsel for the appellant. His first contention was that even though there may have been strained matrimonial relations between the appellant and Remani, those differences were patched up when Remani came back to live with the appellant in the matrimonial home. His second contention was that the appellant had no ill will towards Remani in as much as when she was hospitalized from 8.03.1998 to 10.03.1998, he had looked after and paid the medical bills. Under these circumstances, there was no reason for him to have murdered Remani.

29. We are of the view that there is no substance in either of the submissions made by learned counsel. There is ample evidence on record not only from the immediate family of

E Remani but also from her neighbour that she was subjected to physical violence almost on a daily basis. The cause of discord between the appellant and Remani appears to be her belief that the appellant had illicit relations with the wife of his elder brother. This may or may not be true but the fact of the matter F is that relations between the parties were terribly strained and Remani was subjected to physical abuse almost on a daily basis. These strained relations, coupled with the allegations made by Remani, provided a motive for the appellant to murder her.

G 30. The fact that the appellant may have looked after Remani during her illness for a couple of days is neither here nor there. He was expected to do so.

H 31. However, what is clinching in the present case is the medical evidence which clearly indicates that Remani was

forcibly administered Furadan; she had resisted this forcible administration; as a result of her resistance, she received several minor injuries on her body. Eventually, with a view to overcome her resistance, she was smothered and ultimately she died as a result of the forcible administration of Furadan and smothering. No person other than her husband could have possibly caused Remani's death, especially considering the motive or grudge that he harboured against her.

32. Learned counsel for the appellant also submitted that Remani's father had himself stated in the FIR that she had committed suicide by consuming poison. This seems to have been the first impression gathered by Bhaskaran. Learned counsel for the State pointed out that the reason could possibly have been to save the appellant from imprisonment keeping the welfare of their two children in mind. It is not necessary for us to make any guesses in this regard.

33. The fact is that investigations into the matter, particularly the injuries suffered by Remani and presence of Furadan in her mouth suggested that the case was not one of suicide. When the matter was taken to trial the truth eventually came out, which is that Remani had not committed suicide but had in fact been murdered. Bhaskaran's hypothesis proved to be only an assumption.

34. We are conscious that the case is one of circumstantial evidence but we are not able to find any break in the chain of evidence which could possibly throw up some other possibility. Under these circumstances, we find no reason to interfere with the conviction and sentence awarded to the appellant by the Trial Court and confirmed by the High Court.

35. There is no merit in the appeal and it is accordingly dismissed.

R.P.

Appeal dismissed.