CASE NO.:
Appeal (crl.) 298 of 1997

PETITIONER:
Narendra Singh & Anr.

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 12/04/2004

BENCH:
Y.K. Sabharwal & S.B. Sinha.

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The Appellant No. 1 herein by reason of the impugned judgment reversing a judgment of acquittal passed by learned Sessions Judge, Dhar on 6.1.1984 was found guilty of commission of an offence under Section 302 of the Indian Penal Code for having committed murder of Bimlabai by throttling on 6.5.1983 at about 5.30 p.m. at Dhanmandi, Dhar at house No. 16, Dhanmandi, Dhar as also under Section 201 of Indian Penal Code for causing disappearance of evidence by setting her on fire after causing her death; whereas the appellant No. 2 was found guilty of commission of an offence under Section 201 of the Indian Penal Code

The relationship between the appellants herein are son and mother. Along with them, the husband of appellant No. 2 Hari Singh and their daughter Kusum were chargesheeted for commission of murder of the aforementioned Bimlabai. The deceased Bimlabai was married to the appellant No. 1 herein on or about 21.4.1982 in relation whereto the betrothal ceremony was held in December, 1980. The appellant No. 1 after the said betrothal ceremony was appointed as a bus conductor by the Madhya Pradesh State Road Transport Corporation. About 4 and = months thereafter, he was suspended questioning which he filed a civil suit.

At the relevant time, the family members of the appellants were living as tenants in a portion in the upper storey of the house of Bansidhar, P.W.1. Daulatram, another tenant, used to reside in the front portion in the first storey in the same house. One Moi Babu was a tenant on the front portion in the ground floor whereas Omprakash Shukla was tenant in the rear portion thereof.

Allegedly a demand was made by the accused persons for a wrist watch and a chain of gold at the time of marriage to which Ramsingh, PW5 (brother of the deceased) expressed his inability. Sometimes later, the said demand was reiterated. The appellant No. 1 was eventually dismissed from services whereafter financial assistance was allegedly given to him by Ram Singh. The marriage of younger brother of Ramsingh, Rajendra was settled in December, 1982. His Tika ceremony was to take place on 24.4.1983 at Indore. Ramsingh came to the house of the accused persons to invite them and take Bimla with him to his house. For the purpose of fighting

out a suit as regard the termination of his service, Narendra allegedly asked for a sum of Rs. 2000/- from Ramsingh wherefor he expressed his inability saying as his brother is going to be married after one month he was not in a position to spare the amount. Allegedly, thereupon Narendrasingh and Harisingh threatened stating "You will have to give us an amount of Rs. 2000/- otherwise we will not send Bimla to attend the marriage ceremony of her brother Raju at Indore."

The incident in question took place on 6.5.1983. It is alleged that on 6.5.1983 at about 5 p.m. Asha, PW7 (daughter of Daulatram) saw signs of fire coming out from the house occupied by the accused persons. PW2 Ramkunwar Bai also noticed the fire. They gave a call to the appellants but none replied. PW-10 Kusha Bhau and others also went to the house to extinguish fire. Thereafter the fire brigade as also the police reached at the place of occurrence. The dead body of Bimlabai was found lying in the kitchen of the house in burnt condition. A jerry can, its cover and a match box were also found near the dead body in the kitchen. The autopsy on the dead body of Bimlabai was conducted at about 8.15 p.m. on 7.5.1983.

Ram Singh, the informant came to learn about the said incident on the next day. In relation to the said incident a First Information Report was lodged by Ram Singh PW-5 at 6.30 p.m. on 7.5.1983 in the Police Station Dhar. The appellants herein with Harisingh and Kusum were chargesheeted under Sections 302 and 201 read with Section 34 of the Indian Penal Code. The case thereafter was committed to the Court of Sessions. Before the learned Sessions Judge, 17 witnesses were examined on behalf of the prosecution; whereas 6 persons were examined as court witnesses. A plea of alibi was put forth by the appellants herein in the trial stating that the appellant No. 1 was attending a marriage ceremony in the house of Illias Khan, CW-3. The appellant No. 2 also raised a plea of alibi.

PW-1 Banshidhar is the owner of the house. PW-2 Ramkunwar Bai is an adjacent neighbour of the appellants. PW-3 Harak Chand Mittal is an advocate, who lives at some distance from the house of accused persons, had informed the police about fire on phone. PW-4 Om Prakash is also a neighbour. He was a witness to the inquest report, site plan and seizure memo. PW-5 Ramsingh is the first informant. PW-6 and CW-1 are the doctors who conducted the post mortem examination over the dead body of Bimlabai. PW-7 Asha, PW-10 Kusha Bhau, PW-13 Yashoda Bai, PW-14 Gulab Singh are the other witnesses. PW-12 Bhagwanti Bai is the sister of the deceased. The court witnesses were not examined by the prosecution and all of them for some reason or the other were examined as court witnesses. CW2 to CW6 sought to prove the plea of alibi of the appellants.

The Learned Sessions Judge disbelieved the prosecution case and recorded a judgment of acquittal inter alia on the ground that as admittedly the door of the kitchen had to be broken open; and as the death of Bimlabai presumably took place in between 4.15 p.m. and 5.30 p.m., it was impossible for the assassin to jump from the window in the lane. Furthermore, as no person has seen the assassin, possibly it was a case of suicide. Assuming that it was a case of

murder, the learned Sessions Judge wondered, keeping in view the place of occurrence vis-'-vis the points of possible entries thereto, as to how the assassin of Bimla made his exodus from that room.

The learned Sessions Judge did not fully rely upon the post mortem report having regard to certain cuttings and over-writings therein. The learned Sessions Judge opined that although no mala fide intention could be attributed to the doctors, there existed a possibility that they committed some mistakes in recording their opinion as regard the cause of death. It was further held that the plea of alibi of the accused persons could neither be ignored nor said to be unreliable.

The learned Sessions Judge also disbelieved the evidence of PW-1 Bansidhar holding that from his evidence the presence of the appellants at the place of occurrence at the relevant time had not been proved.

The State preferred an appeal thereagainst. The said appeal was heard by a Division Bench of the High Court comprising Justice A.B. Qureshi and Justice V.D. Gyani. Whereas Qureshi, J. despite holding that the death was homicidal in nature, was of the opinion that the guilt of the accused persons was not brought home; whereas Gyani, J. allowed the State appeal holding the appellants guilty under Sections 302/34 and Section 201 of the Indian Penal Code and sentenced them to undergo life imprisonment. In view of the difference of opinion the matter was assigned to Chitre, J. by the Chief Justice of the High Court. By reason of the impugned judgment dated 20th September, 1996 aggreeing with the judgment of Gyani, J. the learned Judge held the appellant No. 1 to be guilty for commission of an offence under Section 302 read with 201 of the Indian Penal Code and the appellant No. 2 to be guilty for commission of an offence under Section 201 of the Indian Penal Code and sentenced her to undergo three years of rigorous imprisonment. A judgment of acquittal was recorded in favour of Harisingh whereas Kusum was although convicted for commission of an offence under Section 201 of the Indian Penal Code but was sentenced to the period already undergone.

It was held:

"72. Now, therefore, what comes out in the case is that:

(i) there was a demand of dowry which was not fulfilled. Narendrasingh was annoyed. Thus, there was motive for murder.

(ii) Vimlabai met homicidal death by throttling and thereafter was set to fire. The setting of fire must have been with intent to cause disappearance of evidence for screening the offender;

(iii) At least three persons, i.e., Narendrasingh, Gulbadanbai and Kusum were present in the house in the after noon and till the body was found inside the kitchen room. Had the murderer been anybody else Vimlabai must have raised alarm. Persons in the family including these accused persons could have also raised alarm and caused resistance to such murder;

(iv) As no alarm was raised by Vimlabai, this goes to show that the person (murderer) must have been close relation of her and in all probability the husband. A Hindu wife while assaulted by her husband would not cause resistance. Sometimes even alarms are not raised unless the injuries caused are very painful and serious."

Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the appellants inter alia would submit that the preponderance of evidence not only show that the post mortem report should not have been relied upon by the High Court having regard to the fact that the burns have been held to be ante mortem in nature although the cause of death was said to be asphyxia. It was pointed out that the findings of the High Court to the effect that the death was a homicidal one by asphyxia was based on two factors:

(i) no carbon particles were found in the respiratory tract or the trachea, and
(ii) 200 CC blood was found in front of pharynx and in the part of tracheal and sub-surrounding subcutaneous tissues.

The learned counsel would urge that the carbon particles cannot be seen with open eyes particularly when there was blood and as such it was necessary to remove the blood by opening the skull or through legs.

The learned counsel would further submit that presence of accused at the time of death cannot be said to have been proved by the prosecution as the court witnesses categorically stated about their presence at the relevant time at the house of Illias Khan. It was urged that the evidences of PW-1 Banshidhar, PW-2 Ramkunwar Bai and PW-7 Asha should not have been relied upon by the High Court as regard presence of the appellant No. 1 having regard to the improvement/omission/ contradiction contained in their statements. The learned counsel would submit that PW-1 has been contradicted in material particulars by Inder Dhobi CW-5 whose presence had not been disputed by the prosecution witness. It was pointed out that the statements of the witnesses examined on behalf of the prosecution were recorded on the 2nd or 3rd day of the occurrence and thus the same could not have been relied upon. Our attention had

also been drawn to the fact that according to PW-1 himself he had reached his house about 5.15 p.m. whereafter he went to latrine and only after his coming out therefrom, he noticed the fire, washed his hands, climbed on the top of shed when Nadkar and Inder Dhobi were also present; and in that view of the matter he cannot be a witness as regard the first part of the incident as by that time, even the doors of the kitchen had also been broken open and people had already arrived in large number. It was further contended that it was admitted by PW-1 that he came to know about the death of Bimlabai from Shri Mittal, which fact also makes his statement doubtful.

As regard the finding of the High Court that Bimlabai died in between 3.00 p.m. to 5.30 p.m., Mr. Jain would point out that the evidence of PW-1 Banshidhar, PW-2 Ramkunwar Bai and PW-7 Asha would categorically show that the incident must have taken place after 5.00 p.m. The learned counsel laid emphasis on the fact that admittedly water in the tap comes at 5.00 p.m. whereafter only the fire was noticed by the witnesses examined by the prosecution.

The finding of the High Court to the effect that the appellant No. 1 after commission of the offence locked the room inside and slipped out of the window, Mr. Jain would urge, is untenable keeping in view the height of the window, the size of the room being 5'x 6' as also the fact that some people had already gathered near the water tap and, thus, it would be impossible for anyone to jump from the open space without being noticed and that too remaining unhurt.

A judgment of acquittal without any cogent and sufficient reasons should not be reversed, Mr. Jain would argue.

The learned counsel would further submit that the prosecution has not been able to prove any motive for commission of the offence as the prosecution witnesses accepted that the relationship between the husband and wife was cordial and only because a sum of Rs. 2000/- was asked for the same by itself could not be the motive on the part of the accused persons, for commission of the offence.

Ms. Vibha Datta Makhija, learned counsel appearing on behalf of the State, on the other hand, would support the judgment of the High Court inter alia contending that; whereas the judgment of the learned Sessions Judge was based on surmises and conjectures, the High Court assigned sufficient and cogent reasons for arriving at its findings. It was pointed out that in a case like the present one, the Court should consider the matter having regard to three scenarios in mind, viz.:

(i) Suicide committed by Bimlabai;
(ii) Murder by intruder; and
(iii) Murder by the accused;

and arriving at a finding upon excluding the one or the other possibility.

The learned counsel would contend that the deceased was a young girl and in view of the fact that she must have been having the same state of mind for more than a year and,

thus, she was unlikely to commit suicide only because she was not sent by her in-laws to attend the marriage of her brother. In any event, having regard to the presence of ligature mark on her neck, commission of suicide by self strangulation and thereafter setting herself on fire must be ruled out.

The learned counsel would contend that commission of murder of Bimlabai by an intruder is wholly improbable. It was pointed out that PW-2, PW-7, CW-2 and CW-6 categorically stated that the appellant No. 1 was at home at about 3.00-3.30 p.m. The learned counsel would contend that if the appellants and Kusum were present in the house and if the story that immediately prior to the occurrence the family was visited by PW-13, it is impossible for an intruder to come and commit the offence without being noticed. The learned counsel would aruge that such an offence is not possible to be committed without drawing the attention of others, without any noise and without any shriek by the victim which are clear pointers to the fact that throttling of the deceased must have been committed by somebody who was known to her and had access, and, in that view of the matter the offender cannot be any other person but the appellant No. 1.

Ms. Makhija would contend that demand of dowry, an unhappy marriage, the threat by the appellant No. 1 and his father and PW'5's refusal to give to the accused person the sum of Rs. 2000/- on demanded by them, establish sufficient motive for the accused persons to commit the murder of Bimlabai and then to make the same look like a case of suicide. The burn injuries suffered by the appellant No. 2 in hand is also a pointer to the fact, Ms. Makhija would contend, that she had also taken part in setting fire on the deceased.

It was urged that as the plea of alibi of the appellants have not been proved and keeping in view the proximity of time and the place of occurrence and time of murder, it can safely be presumed that the entire occurrence took place within 10-15 minutes and it was possible for the appellant No. 1 to come back from the House of Illias Khan and upon commission of the crime go back to his house to show his absence. Furthermore, the burden of proof when a plea of alibi has been found to be false lies upon the accused persons, Ms. Makhija would argue.

It is a case which, in our considered opinion, requires a broad based consideration.

We will proceed on the basis that the death of Bimlabai was a homicidal one. We will also assume that the contents of the post mortem report is correct and, thus, the death of Bimlabai was caused due to asphyxia. We may further assume that the appellants herein have failed to prove their plea of alibi. What, however, is baffling to us on the manner in which the offence is alleged to have been committed. The High Court arrived at its findings relying upon the spot map prepared by learned trial Judge which indicates that there existed a window in the kitchen without any grill; the height whereof from the road is said to be 11 ft. holding :

"71. From the map proved by the prosecution, the site map and the note prepared on the direction of the Judge

go to show that there were two places wherefrom a person in the kitchen and the side room of kitchen could slip away; (i) by window which is nearly 10 to 11 feet in height from the ground. (It is note worthy that it is not a construction with plain wall upto 11 feet but with residential quarters in the ground floor and therefore, it was not impossible to slip away from that window after commission of murder), and (ii) the other possibility that the person who committed murder came out from the gap between the wall containing door No. 10 and 12 and the roof which was probably closed subsequently and, therefore, marks of new constructions of the wall above the door upto roof."

The High Court, therefore, considered the escape of the assassin of Bimlabai through one of the two gaps as possible but did not assign any reason as to how the same can be said to have been established. Furthermore, it does not appear that such a case was made out by the prosecution. Investigation in this behalf does not appear to have been carried out to show as to whether it was possible for a person to climb the wall before slipping out of one of the two places mentioned by the High Court nor any material in support thereof was brought on record. The witnesses did not say that they had seen any foot mark of any person on the wall nor any other evidence suggests that one of the two open places would otherwise be used by the offender as possible escape routes. If the time of incident is taken to be nearer 5 p.m. than 3.30 p.m., it would be well nigh possible for the appellant No. 1 to climb the wall, sneak through the open places and jump from the window to the lane without being noticed. It also does not appear that the attention of the appellants had been drawn by the Sessions Judge to any piece of evidence seeking their explanation thereabout in their examination under Section 313 of the Code of Criminal Procedure. Had it been the prosecution case that the appellant No. 1 after throttling the deceased and setting her on fire escaped through one of the two open places mentioned by the High Court, it was obligatory on the part of the Court to give an opportunity to the appellants to explain thereabout. Such a circumstance, had it been put to the appellant no.1, could have been explained away by him. The appellants were, therefore, prejudiced by not being given a chance to explain the said purported material against him. It is not a case where no prejudice can be said to have been caused to the appellants.

The findings of the learned Sessions Judge to the effect that had any person slipped or gone away from that window, pedestrians through the lanes must have seen such person cannot, in our opinion, be said to be irrational warranting interference by the High Court. If the observations of the High Court to the effect that persons going through the road do not keep a vigil on such movements, is correct, the same by would itself give rise to some surmises keeping in view the fact that there existed a greater possibility of the appellant no.1 being seen as his jumping from the window would have been abnormal which would attract the attention of the persons who had assembled to take water from the tap. We also fail to see any force in

the finding of the High Court to the effect that only because the appellant no.1 was the husband of the deceased he had a chance to throttle her all of a sudden without any resistance. The finding of the High Court to the effect that Gulbadanbai having sustained burn injuries in her hand, the probability of her presence at this time of setting of fire cannot be ruled out is contradictory to its ultimate finding that she was guilty of offence only under Section 201 of the Indian Penal Code and not under Section 302/34 thereof.

It is now well-settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however, grave may be cannot take place of a proof. It is equally well-settled that there is a long distance between 'may be' and 'must be'.

It is also well-known that even in a case where a plea of alibi is raised, the burden of proof remains on prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a higher Court. (See Dhanna Vs. State of M.P. (1996) 10 SCC 79, Mahabir Singh Vs. State of Haryana, (2001) 7 SCC 148 and Shailendra Pratap & Anr. Vs. State of U.P. (2003) 1 SCC 761), which had not been adhered to by the High Court.

The entire case is based on circumstantial evidence. Pieces of circumstances, however, strong may be, it is well-known that all links in the chain must be proved. In this case a vital link in the chain, viz., possibility of the appellant No. 1 committing the offence, closing the door and then sneaking out of the room from one of the two places had not been proved by the prosecution.

We, thus, having regard to the post mortem report, are of the opinion that the cause of death of Bimlabai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.

For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained which is set aside. Accordingly, the appeal is allowed. The appellants are on bail. They are discharged from the bail bonds.