

RAVINDRA TRIMBAK CHOUTHMAL

v.

STATE OF MAHARASHTRA

FEBRUARY 23, 1996

[G.N. RAY AND B.L. HANSARIA, JJ.]

Indian Penal Code, 1860: Section 302—Dowry murder most foul—Whether "rarest of the rare" type—Extreme penalty of death—Whether merited.

Indian Penal Code, 1860: Sections 201/34: Dowry murder—Atrocious act of severing head of deceased and cutting her body into nine pieces to cause disappearance of evidence—Sentence of imprisonment—Whether to run consecutively.

Sections 316 & 498A/34: Dowry murder—Death of child in deceased's womb—Killing whether separately intended—Husband's cruelty towards woman—Significance in view of murder.

The appellant had married deceased against wishes of his father. She was persecuted and could live with her husband only for a couple of days and returned to her parents. The appellant brought her back about eight months later to live with him in Bombay. It is alleged that there, for the sake of dowry, he connived with his father, mother and sister in murdering her, and severing her head and cutting her body in nine pieces to cause disappearance of evidence. The child in deceased's womb was also killed in their act. The co-accused the appellant's father and sister died during the course of trial.

The trial court sentenced the appellant to death for the offence under s.302 IPC read with s.120B for committing murder of deceased and of child in the womb; to R.I. for 7 years under ss.201/34; to R.I. for 3 years under ss.498-A/34 and R.I. for 7 years under ss.304B/34. All his substantive sentences were ordered to merge in the death sentence. The appellant's mother was also found guilty of various offences, and sentenced.

The High Court came to the categorical finding that the circumstances clearly established the active participation of the appellant with his father in hatching the plan, committing the murder and disposing of the

body. It confirmed the appellant's conviction for murder of deceased, but changed his conviction for causing the murder of the child in the womb to one under s.316. It also confirmed his conviction under ss.201/34 and 498A/34. His conviction under s.304B/34 was set aside. The appellant's mother was, however, acquitted of all the charges.

Allowing the appeal partly, the Court

HELD : 1. The murder of the deceased was undoubtedly most foul. The motive was to get another girl for the appellant who could get dowry to satisfy the greed of the father. The dowry deaths are blood boiling, as human blood is spilled to satisfy raw-greed, named greed, a greed which has no limit. [1013-F-G]

2. The case, however, cannot be placed in that category which could be regarded as the "rarest of the rare" type. This is so because dowry death has ceased to belong to that species of killing. The increasing number of dowry death would bear this. The sentence of death is, therefore, commuted to one of imprisonment for life. [1013-H; 1014-A; B]

3. However, what has been done to cause disappearance of the evidence relating to the commission of murder - the atrocious way in which the head was severed and the body was cut in nine pieces, makes it a fit case for conviction under ss.201/34. The sentence of R.I. for 7 years awarded to the appellant, therefore, shall be sustained. This sentence shall run consecutively after the life imprisonment has run its course as per law. [1014-C-D]

4. As killing of the child in the womb was not separately intended and the offence of cruelty ceased to be of significance and importance in view of murder of the deceased, the sentences under ss.316 and 498-A/34, and 498-A IPC shall not be added. [1014-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 252 of 1996.

From the Judgment and Order 10/11/12/13/16.10.95 of the Bombay High Court in Confirmation Case No.2/95 & CrI.A.No.245 of 1995.

M. Janardhanan, R.S. Hegde and P.P. Singh for the Appellants.

S.M. Jadhav for the Respondents.

The Judgment of the Court was delivered by

HANSARIA, J. To hang or not to hang, is the basic question to be decided in this appeal. The murder of Vijaya was undoubtedly most foul. Even so, death sentence can be awarded if murder be of the "rarest of the rare" type. Let it be seen whether this was so.

2. The facts taken as established by the High Court, to whom reference was made after the trial court had awarded the death sentence and appeals were preferred, are that Vijaya got officially married to the appellant on April 24, 1990. This was against the wishes of his father Trimbak, who had wanted to get his son married to some other girl and had hoped for good dowry from that marriage. Vijaya could live only for a couple of days with her husband before she returned back to her parents' house, because she felt that she was persecuted by Friyatama, sister of the appellant. On return to her parents' house, she told her father Ashruba about the demand of dowry made by Trimbak and the appellant. The demand was of Rs. 25,000/-. Ashruba, however, being an employee with meagre salary, could agree to pay only Rs. 5,000/-. The further accepted case is that on or about December 2, 1990, the appellant took Vijaya to Bombay. On December 14, 1990, Trimbak and his wife Mudrikabai came to Bombay. All of them were seen together at about 9.15 p.m. Thereafter nobody saw Vijaya alive.

3. Vijaya had been taken to Bombay with a promise that she would be sent back on January 3, 1991 for delivery at her parents' house, as she was carrying a child of about 8 months then. As she did not come even 8-10 days after 3rd January, Ashruba got worried as to what had happened to her daughter. He sent his two sons to Bombay who, alongwith two of their friends, reached there on 15th January. On inquiry being made from the appellant about Vijaya, it was told that she was in good health. On desiring to meet her, the appellant, who was then a Lecturer in Sardar Patel Engineering College at Andheri, said that he would take them to the house at about 4 p.m. when she could be met. The four persons then left for Juhu Beach and when came back to College around 4 p.m., they came to know that the appellant had already left without leaving any message. After making inquiries about the residential address they reached the place to be informed that the appellant and his father had left with bags and baggage. About Vijaya, neighbors told that she had been sent to her

parents' house for delivery. This shocked the boys and they apprehended some foul play. Coming back to Aurangabad (the town where the parents lived) they narrated to Ashruba what had happened at Bombay. Further inquiries were made at Bombay to be given out the same story.

4. This led Ashruba to lodge a complaint at Borivli Police Station on 24th January. Police arrested Trimbak who expressed his willingness to show the place where Vijay's head was thrown after she was murdered. The head was found in the shrub near Gorai Creek. The head was identified to be of Vijaya because of the peculiar nature of her curly hair and projected teeth. Trimbak further told to the police that body of Vijaya was cut in nine pieces and was kept in two suitcases which had been thrown in a Nala. Trimbak led to police that place but could not find the suitcases. The appellant, on being interrogated, made a statement that he will point out the razor and certain other articles which had been thrown at Gorai Creek. On the police being led to that place, two knives and a razor were found. Ultimately, the nine pieces of the cut body were found contained in two bags which had been kept in a local train at Borivli which was proceeding towards Churchgate. The two bags were taken charge of by the railway police and the body was sent for postmortem.

5. After completion of investigation, charge-sheet was filed against the appellant, his father Trimbak, his mother Mudrikabai and his sister Priyatama. During the course of trial, the father and sister died; and so, only the appellant and his mother faced it fully. The former was convicted under section 302 read with 120B of the I.P.C. for committing the murder of Vijaya; and also of the child in the womb. He was further found guilty under sections 201/34, so too under sections 498-A/34 and 304-B/34 IPC. He was awarded the sentence of death for the offence under section 302 read with 120B: to R.I. for seven years for the offence under section 201/34; to R.I. for three years and a fine of Rs. 500/- in default R.I. for three months for 498-A/34 offence; and R.I. for seven years for 304-B/34 offence- the same being the minimum sentence prescribed under law. As the appellant was awarded death sentence, it was stated by the trial court that all his substantive sentences shall merge in this sentence. Mudrikabai (the mother) was also found guilty under some sections and various sentences were awarded to her.

6. On appeal being preferred by the convicts and reference being

made by the Addl. Sessions Judge for confirmation of the death sentence, all the cases were heard together and by the impugned judgment the High Court has acquitted Mudrikabai of all the charges, but has confirmed the conviction of the appellant for the murder of Vijaya. As for the offence of causing the murder of the child in the womb, the conviction has been altered to section 316, for which the sentence is R.I. for ten years. The High Court has also confirmed the conviction under sections 201/34 and 498-A/34 and the sentences as awarded. The conviction under section 304-B/34 has, however, been set aside.

7. This appeal having been admitted only on the question of sentence, we have heard learned counsel for the parties regarding the same. Shri Janardhnan, senior Advocate appearing for the appellant, has contended that the present was not a case of death sentence inasmuch as it was Trimbak who had done all the acts and the appellant had really no part to play, as he had married Vijaya out of love and he continued to love her. As to the prosecution case of his having brought Vijaya to Bombay, it is urged that that had been done at the request of Vijaya and the appellant had no inkling as to what was playing in the mind of his father.

8. We cannot at all accept the aforesaid in view of the finding of both the courts below that the appellant was hand in glove with his father, both of whom had hatched a plan and murdered Vijaya and also had thought out as how to dispose of the body. There are materials on record to show that Vijaya had been brought to Bombay, not to show the love of the husband, but to get her killed at the cruel hands of her father-in-law. The High Court, after noting the evidence, has come to categorical finding that the circumstances clearly establish the active participation of the appellant with his father right from the beginning till the end.

9. The present was thus a murder most foul, as pointed out by us in the opening paragraph. The motive was to get another girl for the appellant who could get dowry to satisfy the greed of the father. Dowry-deaths are blood-boiling, as human blood is spilled to satisfy raw-greed, naked greed; a greed which has no limit. Nonetheless, question is whether the extreme penalty was merited in the present case?

10. We have given considered thought to the question and we have not been able to place the case in, that category which could be regarded as the "rarest of the rare" type. This is so because dowry death has ceased

to belong to *that* species of killing. The increasing number of dowry deaths would bear this. To halt the rising graph, we, at one point, thought to maintain the sentence; but we entertain doubt about the deterrent effect of a death penalty. We, therefore, resist ourselves from upholding the death sentence, much thought we would have desired annihilation of a despicable character like the appellant before us. We, therefore, commute the sentence of death to one of R.I. for life imprisonment.

11. But then, it is a fit case, according to us, where, for the offence under section 201/34, the sentence awarded, which is R.I. for seven years being the maximum for a case of the present type, should be sustained, in view of what had been done to cause disappearance of the evidence relating to the commission of murder - the atrocious way in which the head was severed and the body was cut in nine pieces. These cry for maximum sentence. Not only this, the sentence has to run consecutively, and not concurrently, to who our strong disapproval to the loathsome, revolting and dreaded device adopted to cause disappearance of the dead body. To these sentences, we do not, however, desire to add those awarded for offences under Sections 316 and 498-A/34, as killing of the child in the womb was not separately intended, and 498-A offence ceases to be of significance and importance in view of the murder of Vijaya.

12. The result is that the appeal stands allowed to the extent that the sentence of death is converted to one of imprisonment for life. But then, the sentence of seven years' R.I. for the offence under sections 201/34 IPC would start running after the life imprisonment has run its course as per law.

Appeal allowed partly.