

STATE OF U.P.

v.

RAGHUBIR SINGH

DECEMBER 13, 1996

[M.M. PUNCHHI AND K.T. THOMAS, JJ.]

Penal Code, 1860—Section 364/304 r/w Sec. 34—Conviction by Trial Court—Acquittal by High Court—On appeal, held High Court not justified in interfering with the well reasoned order passed by the Trial Court—Conviction and sentence passed by Trial Court—Upheld.

Evidence Act, 1872—Sections 151/155/140—Indecent and scandalous question on the moral character of the witness—Child of the witness was kidnapped and murdered—Paternity of the child was not in the issue—Murderer cannot escape by establishing that the mother was of loose morals—Such question to shake the credit of another witness or party should not be allowed.

The accused (A-1) and the deceased were brothers and sons of PW-1. A-1 married the daughter of accused A-2 and both were residing in the same city. Since the death of his father, A-1 was pressurising his mother, PW-1, to give him the property left behind by his father. But she did not yield to such pressures. On one occasion, both the accused went to the village and started ploughing the land, which was resisted by PW-1. A-1 threatened her that should she persist with her resistance he would finish off her remaining male heir, the deceased. But she did not take it seriously.

On 29.11.1997, while the deceased child was playing on the roadside, near his residence, both the accused caught him and dragged him towards the engine shed of PW-2. Hearing the child scream, his mother PW-1 and some neighbours gathered at the place. But as they moved to rescue the child, A-1 whipped out a pistol and threatened to kill them. Thereafter, the accused took the child inside the engine shed and killed him by throttling and dumped his dead body in a pit. When the killers slipped away, the neighbours rushed to the shed and found the dead body of the child lying submerged in the pit.

Both the accused were arrested and challaned before the Trial Court.

A The Trial Court relied upon the evidence of PWs. 1, 2 and 3 and convicted the accused under Sections 364 and 302 along with Sec. 34 of IPC.

B The Division Bench of the High Court observed that 'the Trial Court has not cared to look into the statement of the DW-1, who was the daughter of PW-1' and reversed the conviction. Hence, State moved this appeal by special leave.

The appellant-State contended that the High Court was totally unjustified in interfering with fair dealing to the defence witness and with the well reasoned conviction and sentence passed by the Trial Court.

C Allowing the appeal, this Court

D HELD : 1.1. If the evidence of the P.Ws. 1 to 3 had been accepted, there would have been no escape for the accused from conviction. But the High Court swept off the evidence of PW-1 solely on the ground that her daughter, DW-1 spoke derisively of her moral character and instead of considering the worth of evidence, niggled on some irrelevant features and bypassed the other evidence of PW-2 and PW-3. Where PW-1 gave evidence that her son was murdered, there was little scope for conducting any inquiry into her moral life. Law does not permit even the child of a prostitute to be murdered. In such a case, murderer cannot escape by establishing that the mother of the child was of loose morals. The evidence of the defence witness, DW-1 was therefore, quite unnecessary and irrelevant. Since the paternity of the child was not in the "facts in issue", the entire discussion of the High Court which appears to be focussed on the moral character of the mother is entirely improper. [95-E-F; 98-A-B; 98-E]

F 2. The questions to elicit indecent or scandalous imputations from witnesses in the guise to shake the credit of another witness of party should not have been permitted by the courts. Sec. 151 of the Evidence Act empowers every Trial Court to forbid such questions "although such questions or inquiries may have some bearing on the question before the Court, unless they relate to facts in issue". Hence, High Court erred in relying on such testimony and reversing a well-merited conviction. Since accused A-1 died during pendency of this appeal, only the conviction of accused A-2 passed by the Trial Court is restored. [97-B-C; 99-B-C]

H *Mahammad Mian v. Emperor*, 32 Indian Cases 54 and *Subala Das v.*

Indra Kumar Hazzva & Ors., AIR (1923) Cal. 315, referred to.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2051 of 1996.

From the Judgment and Order dated 5.4.93 of the Allahabad High Court in Crl.A. No. 3030 of 1979.

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Prashant Kumar for A.S. Pundir for the Appellant.

Ravindra Bana (A.C.) for the Respondent.

The Judgment of the Court was delivered by

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THOMAS, J. Leave granted.

This is an appeal by the State challenging the acquittal of two accused Manpal Singh (A-1) and his father-in-law Raghubir Singh (A-2), in a murder case. During the pendency of the special leave petition Manpal Singh died and hence the petition against him stood abated. So we heard counsel for the State of U.P. and counsel for Raghubir Singh (A-2) on the merits of the appeal.

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The case involved kidnapping and murder of a minor boy (Ashok). The victim Ashok was 6 years old when he was murdered. He was none other than the youngest brother of accused Manpal Singh. He and his father-in-law Raghubir Singh were alleged to have kidnapped the lad and throttled him to death and the dead body was dumped in a pit in a kachha room wherein a pumping set was housed. Sessions Judge convicted both the accused of offences under Sections 364 and 302 read with Section 34 of the IPC and sentenced them each to rigorous imprisonment for five years and imprisonment for life respectively under the two counts. But a Division Bench of the High Court of Allahabad, on appeal filed by the convicted persons, set aside the conviction and acquitted both. Hence the State filed this appeal challenging the acquittal.

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Facts in brief : Accused Manpal Singh and deceased Ashok were sons of Choki Singh in his third wife Ramsri (PW-1). Their female children included Sheela Devi (DW-1). They were living in village Jaleshwar (Eta District, U.P.). Accused Manpal Singh married the daughter of accused Raghubir Singh (A-2) and two years after his marriage he shifted his

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A residence to Agra where Raghbir Singh was residing with his family. Accused Manpal prevailed upon his father Choki Singh to give him half share of the landed properties and Manpal Singh wangled the sale proceeds from his father who sold away half of his landed property. Manpal Singh invested the money in a joint venture which he was carrying on with his father-in-law. After the death of Choki Singh, accused Manpal Singh pressurised his mother to give him the property left behind by his father, but his mother (Ramsri - PW-1) did not yield to such pressures. A few days prior to the occurrence both the accused went to Jaleshwar Village and ploughed the land which his father left behind. This was resisted by PW-1 Ram sri. Accused Manpal Singh then threatened her that should she persist with her resistance he would not mind even to finish off the remaining male heir (Ashok). But his mother did not take the threat seriously, but the threat was made into reality on the fateful day.

D On 29.11.1977 while the child Ashok was playing on the roadside near his residence both accused went near him and caught hold of him. As they tried to forcibly drag him the child screamed. His mother Ramsri hearing the cry of her child came out of the house and on seeing the happenings she protested in a strident voice. Some neighbours were attracted to the scene. As they saw both the accused dragging the child by neck they moved forward to rescue the victim but accused Manpal Singh E then whipped out a pistol and brandished it threatening with the query "you too want to die?" The neighbours retreated and then the two accused carried the child to the engine shed of Maharaj Singh (PW-2) which is situate next to the compound of Ramsri. They killed the child by throttling him and dumped the dead body in a pit wherein a pump set was installed. F When the neighbours found that the killers had slipped away from the kachha room without the boy they anxiously rushed to the shed and saw the horrifying sight of the dead body of the child lying submerged in the pit.

G The matter was reported to the police on the next day. Both the accused were arrested and after the completion of investigation both the accused were challaned for the crimes.

H Prosecution story was spoken to by Ramsri (PW-1) as well as Maharaj Singh (PW-2) and Adal Singh (PW-3) who was Pradhan of the village. Learned Sessions Judge accepted the aforesaid evidence and con-

victed them and sentenced them as aforesaid.

Division Bench of the High Court of Allahabad (Polok Basu and K. Narain, JJ.) which reversed the conviction and sentence made scathing criticism on the judgment of the Trial Court. The Division Bench assailed the Session Judge observing that "he has not even cared to look into the statement of defence witness Sheela Devi". Learned counsel who argued for the appellant-State has pointed out that the Division Bench of the High Court has overlooked the fair dealing given by the Sessions Judge to the defence witness and the rightful reasons adverted to by him declining to act on her evidence. Counsel then contended that the Division Bench was totally unjustified in interfering with the well reasoned conviction and sentence passed by the Trial Court.

There is no doubt that the child Ashok was murdered by throttling. Dr. Daya Shankar (PW-4), who conducted the autopsy, had given adequate data in the Post-mortem Report to support his finding that the child was murdered by throttling. There is also no dispute that body of the child was found in the water of the pit wherein pump set of Maharaj Singh (PW-2) was installed. PW-1 Ramsri, PW-2 Maharaj Singh and PW-3 Adal Singh have said in unison that the child was physically lifted up by both the accused and taken to the engine shed and later the kidnappers had slipped out of the room without the child and when the witnesses entered the engine room they found the dead body of the child lying in the pit.

If the aforesaid evidence is accepted by the court there is no escape for the accused from conviction of the murder of the child but learned Judges of the Division Bench of the High Court swept off PW-1 Ramsri solely on the ground that her daughter Sheela Devi (DW-1) spoke derisively of the moral character of her mother. True DW-1 Sheela Devi said in her evidence that her mother was living in adultery with one Ram Pal even during the life-time of her husband Choki Singh. Those imputations made by the daughter were disbelieved by the Sessions Judge lock stock and barrel after discussing her evidence in extenso. We may extract here that part of the judgment of the Sessions Judge dealing with the evidence of DW-1 :

"In this case, the testimony of Smt. Ramsri regarding the occurrence of murder as such has remained unshaken. She deserves greater reliance because she is the own mother of the accused

A Man Pal Singh. The defence also tried to assail her character by suggesting that she had illicit relations with one Ram Pal, who is the 'Sadhod' of Maharaj Singh (PW-2). I regard this attempt as only a crude method of saving the accused. The allegation against Smt. Ramsri was that she had illicit relations with aforesaid Ram Pal. But her daughter Smt. Sheela Devi (DW-1) who has been examined in the defence, say that Smt. Ramsri was carrying on illicit relations with Ram Pal and one Edal Singh at the same time. She came out with a version that her mother Smt. Ramsri had quit living with her father and had adopted residence in a kothri of Shopkeeper of her village which was situated considerably away from her residential house. She further claimed that on one evening she herself saw Smt. Ramsri lying on the same cot with Ram Pal in that kothri. Her statement shows that the door of the kothri was opened to the mainstreet of the village and at the relevant time, the doors had not been even bolted from inside. Obviously such statement of Smt. Ramsri deserves no credence whatsoever."

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But the Division Bench of the High Court, evidently overlooking the above discussion of the Sessions Judge, has made an unwholesome criticism against the judgment of the Trial Court in the following words :

E "It is strange that the learned Sessions Judge has not even cared to refer to the statement of defence witness and possibly he did not know that she was examined as he has finished the judgment with an observation that no imputation has been made by the defence to challenge the two independent witnesses namely Maharaja Singh and Edal Singh for which there was a clear statement of DW-1 Smt. Sheela Devi which also had some bearing with the reference to the cross-examination of PW-1 Smt. Ramshree."

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G The Division Bench reiterated it in stronger terms at the penultimate portion of the judgment thus : "It is unfortunate that learned Sessions Judge has not even cared to look into her (DW-1 Sheela Devi's) statement." It was uncharitable on the part of the Division Bench to have made such a baseless criticism of the Sessions Judge who took pains to discuss the evidence of DW-1 at a considerable length and advanced sturdy reasons

H for not placing reliance on the evidence of DW-1.

Now the question is should the court have allowed defence witness to make such imputations on the moral character of her mother in a case where the fact in issue was whether the accused have kidnapped and murdered her son? Section 140 of the Evidence Act permits that "witnesses to character may be cross-examined and re-examined." Section 155 of the Act permits the adverse party to impeach the credit of a witness in the modes enumerated in the Section. The first mode envisaged is by adducing evidence of persons who testify that they believe the witness to be unworthy of credit. Questions to elicit indecent or scandalous imputations from witnesses in the guise to shake the credit of another witness or party should not have been permitted. Section 151 of the Act saddles every Trial Court with the power to forbid such questions "although such questions or inquiries may have some bearing on the questions before the Court unless they relate to facts in issue." (The second and third modes envisaged in Section 155 are not relevant in this context). The 4th mode prescribed in the Section applies to a limited class of cases. It is : "when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character."

In an early decision of Patna High Court in *Mahammad Mian v. Emperor*, 52 Indian Cases 54, it was pointed out that if inquiries involving any scandalous matters are made with a purpose of shaking the credit of a witness "the court has complete dominion over them and may forbid such questions even though they may have some bearing on the question before the Court." But Court may have no discretion to forbid such question, if they relate to the facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed. A Division Bench of the Calcutta High Court in *Subala Das v. Indra Kumar Hazzva & Ors.*, AIR (1923) Cal. 315, had to consider the objection raised by the opposite side when a question was put to the defendant during examination whether the defendant was made pregnant by certain person. The counsel who put the question defended it on the premise that it was relevant as his client had a case that defendant did not inherit the property by reason of her unchastity during the life-time of her husband. The Division Bench pointed out that if the fact in issue was whether the defendant was disentitled to inherit the property by reason of her unchastity then the question would be relevant. "If, however, it was asked for impeaching her credit as a witness," the Court will have to consider its powers to forbid such questions.

A If the fact in issue was concerning the paternity of child Ashok, perhaps, some relevance to the moral life of his mother could have been assumed. But in this murder case where the mother of the child gave evidence that her son was murdered we find little scope for conducting any inquiry into the moral life of the mother. Law does not permit even the child of a prostitute to be murdered. The murderer in such a case cannot escape by establishing that the mother of the child was of loose morals.

B We, therefore, deprecate evidence of DW-1 as quite unnecessary and irrelevant in this case.

C Unfortunately the Division Bench of the High Court did not consider the evidence of two other very important witnesses (PW- 2 Maharaj Singh and PW-3 Adal Singh). The entire discussion of the Division Bench appears to be focussed on moral character of the mother of the child. PW-2 Maharaj Singh is important in this case as the incident happened inside the engine shed belonging to him. PW-3 Adal Singh was the Pradhan of the village. Both witnesses were immediate neighbours of the house of the deceased. Both of them said in clear terms that the two accused were seen dragging Ashok to engine shed and the witnesses raised their protests but could not go near the assailants as they adopted a highly bellicose stance by pointing lethal weapon. They further said that when the accused had evacuated from the engine shed without Ashok they rushed to the shed and found Ashok lying dead in the pit. Trial Court placed full reliance on their testimony. But the Division Bench of the High Court, instead of considering the worth of the evidence niggled on some irrelevant features and by-passed the evidence of PW-2 and PW-3 very improperly.

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F High Court did not accept the evidence of PW-2, not because of any inherent infirmity discerned from it, but because on the day when PW-2 deposed in the Trial Court, one Ram Pal (described as a paramour of PW-1 Ramsri) was also present in the court building. About the evidence of PW-1 and PW-2 the High Court made a general comment that if the witnesses had come when Ashok was being dragged away by the assailants,

G Ramsri would have rushed to rescue Ashok. In that context High Court made a further comment while dealing with PW-1's evidence that she did not see whether the dead body was floating or drowned in water and still no effort was made to take the body out. "This is rather impossible for any mother if she was behaving as a mother to have avoided to go to the body."

H The said comment was very unkind as against the mother. Her mental

balance when confronted with the shocking scene and the shocking news of her 6 year old playing son suddenly killed, could not have been as the learned Judges wished her to behave. A

Suffice it to conclude that the impugned judgment has resulted in miscarriage of justice as a well merited conviction has been reversed. We have no hesitation in upsetting the said judgment of the High Court. We, therefore, set aside the acquittal of the second accused Raghbir Singh and restore the conviction and sentence passed on him by the Trial Court. We direct the Trial Court to take immediate steps to put the second accused Raghbir Singh back to jail to undergo the remaining period of sentence. B

B.K.S.

Appeal allowed. C