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ALBER ORAON

v.

STATE OF JHARKHAND

(Criminal Appeal Nos. 1868-1869 of 2012)

APRIL 23, 2014.

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**[K.S. RADHAKRISHNAN AND VIKRAMAJIT SEN, JJ.]**

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*Penal Code, 1860: ss.302, 201 – Murder – Appellant was assigned the construction of house by the deceased woman – They developed intimacy and appellant started living with her – Informant found that deceased woman and her children not seen for few days by neighbours – Their dead bodies exhumed from the soak pit next to the toilet of the house of deceased woman – Conviction and death sentence by courts below – Held: No interference with the conviction and sentence – The convict did not offer convincing explanation as to why he did not report prolonged absence of the deceased to the police – The convict was a mason and also a civil-works contractor, and was, therefore, competent to dig a soak-pit and dispose of the three bodies in that soak-pit and then make a brick covering thereon – There was not an iota of doubt as to his living with the deceased in the same house as her husband – The factum of his having executed documents indicative of his marriage to the deceased as also her 'Declaration' to transfer her property to him, in the event of her death provided compelling motive for his having committed the crime of murdering her and her two minor children – The convict was logically found, beyond reasonable doubt, to have committed the murder of the three deceased – Sentence u/s.201 not interfered with – As regards offence u/s.302, though the action of the convict was extremely brutal, grotesque diabolical and revolting, incarceration for a further period of 30 years, without remission, in addition to the sentence already undergone*

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*would be appropriate punishment in the facts and circumstances of the case – Sentence/Sentencing.* A

The prosecution case was that the deceased woman assigned the work of construction of her house to the appellant-convict. In the course of the construction of the house the convict and the deceased woman developed intimacy and the convict started living with her portraying as her husband. The informant and his aunt were regular visitor in the house of the deceased woman. On one such visit the informant learnt from the neighbourhood that in the recent past only the convict was seen in the house. On enquiry from the convict, no proper information regarding the deceased woman and her two minor children was obtained. The matter was reported to police. On investigation, highly decomposed bodies of a woman and two children were discovered and exhumed from the soak pit next to the toilet of the house of the deceased woman. B C D

The trial court found the convict guilty for offence under Sections 302 and 201 IPC and passed death sentence. The High court confirmed conviction and death sentence. The instant appeal was filed challenging the order of the High Court. E

Disposing of the appeal, the Court F

HELD: 1. In the instant case, the bodies of the three deceased victims were exhumed after three to six weeks of their unnatural death and no convincing explanation was offered by the convict as to why he did not report their prolonged absence to the police. The convict was a mason and also a civil-works contractor, and was, therefore, competent to dig a soak-pit and dispose of the three bodies in that soak-pit and then make a brick covering thereon. There was not an iota of doubt as to his living with the deceased in the same house as her G H

A husband, even though he was already married. The factum of his having executed documents indicative of his marriage to the deceased as also her 'Declaration' to transfer her property to him, in the event of her death provide compelling motive for his having committed the crime of murdering her and her two minor children. The convict was logically found, beyond reasonable doubt, to have committed the murder of the three deceased. [Para 7] [338-A-E]

C *Trimukh vs State* 2006 (10) SCC 681; 2006 (7) Suppl. SCR 156; *Raj Kumar vs State* (2007) (1) SCC 433; *State vs Jaggu* 2008 (12) SCC 51; 2008 AIR 982; *Sushil Kumar vs State of Punjab* 2009 (10) SCC 434; 2010 AIR 832; *Swamy Shraddananda vs State of Karnataka* 2008 (13) SCC 767; 2008 (11) SCR 93 – referred to.

D 2. The Sessions Judge found the convict guilty under Section 302, IPC and awarded him the death sentence; and Rigorous Imprisonment for seven years and a fine of Rs.5000/- under Section 201, IPC. In the E impugned Judgment, both these sentences were confirmed. As regards the sentence under Section 201, IPC, there is no reason to interfere with it. Even though the action of the convict was extremely brutal, grotesque diabolical and revolting, incarceration for a further period of 30 years, without remission, in addition to the sentence F already undergone, would be appropriate punishment in the facts and circumstances of the case. Accordingly, the death sentence concurrently imposed by the courts below is modified and the convict is sentenced to G incarceration for a further period of 30 years without any remission. [Para 8] [338-F-G; 339-C-D, F]

H *Sangeet vs State of Haryana* 2013 (2) SCC 452; 2012 (13) SCR 85; *Gurvail Singh vs State of Punjab* 2013 (10) SCC 631; *Swamy Shraddananda and State of UP vs Sanjay*

*Kumar 2012 (8) SCC 537; 2012 (7) SCR 359; Sahib Hussain alias Sahib Jan vs State of Rajasthan 2013 (9) SCC 778; 2013 (2) SCR 1019; Anil alias Antony vs State of Maharashtra 2014 (2) SCALE 54 – relied on.* A

**Case Law Reference:**

2006 (7) Suppl. SCR 156 Referred to Para 6 B

(2007) (1) SCC 433 Referred to Para 6

2008 AIR 982 Referred to Para 6

2010 AIR 832 Referred to Para 6 C

2008 (11) SCR 93 Referred to Para 6

2012 (13) SCR 85 Relied on Para 8

2013 (10) SCC 631 Relied on Para 8 D

2012 (7) SCR 359 Relied on Para 8

2013 (2) SCR 1019 Relied on Para 8

2014 (2) SCALE 54 Relied on Para 8 E

**CRIMINAL APPELLATE JURISDICTION :** Criminal Appeal Nos. 1868-1869 of 2012.

From the Judgment and Order dated 22.11.2011 of the High Court of Jharkhand at Ranchi in Criminal Appeal (D.B.) No. 1048 of 2010. F

Sudhir Kulshreshtha, Sushma Singh for the Appellant.

Jayesh Gaurav (for Anil K. Jha) for the Respondent. G

The Judgment of the Court was delivered by

**VIKRAMAJIT SEN, J.** 1. The endeavour in these Appeals is to set aside the impugned Judgment dated 22nd November, 2011 of the Division Bench of the Jharkhand High Court which H

- A had concluded that the facts of the case have brought to light the commission of the rarest of rare offence under Section 302 of the Indian Penal Code warranting the passing of the death sentence. The impugned Judgment also upholds the sentence in the context of the facts which we shall presently detail under
- B Section 201 of the IPC. The Appeals attempt to dislodge concurrent findings of facts as well as of the sentence passed by both the Courts below.

2. The case of the prosecution is to be found in fardbeyan recorded by Sunil Munda on 14.12.2008. It narrates that the
- C deceased Pushpa Devi along with her two children, Deepika Kumari then aged 8 years and Sudarshan Munda then aged 6 years were living at village Kutmu on the death of her husband late Dilip Kumar Munda, who died while in the service of the
- D Indian Army. Pushpa and her children were initially living as tenants in the house of Sukru Oraon (PW-4). It appears that Pushpa had entrusted the construction of a house on a plot in her ownership to Alber Oraon (the Convict); they developed intimacy in the course of construction of the house and the
- E Convict started living with the deceased masquerading as her husband. The prosecution's case is that the Informant as well as his Aunt had been visiting Pushpa frequently, and on one such visit the Informant learnt from the neighbourhood that in the recent past only the Convict had been seen in the said
- F house. When they visited the house of Pushpa no cogent information on the absence of the three deceased was forthcoming from the Convict, as he stated variously that Pushpa and her children had gone to her parents house and/or that she was visiting her maternal grandmother. Because of these evasive and inconsistent replies the Informant reported
- G the matter to the police. In the course of investigation the highly decomposed bodies of a woman and two children were discovered and exhumed from the soak-pit next to the toilet of the home of Pushpa and this exercise had been conducted under the supervision of the Executive Magistrate.<sup>1</sup> Further
- H enquires from the neighbourhood have revealed that the Convict

and Pushpa were not on cordial relations since the Convict wanted the land and house to be transferred by Pushpa to his name. A

3. On the basis of this fardbeyan, the Convict was Chargesheeted under Section 302/34 and 201/34 of the IPC. Twelve witnesses were examined by the prosecution; it is alleged that the Convict had confessed his guilt and, thereafter, lead to the recovery of incriminating documents. Dr. Binay Kumar, the autopsy Surgeon (PW-12), has deposed that there were ante mortem injuries on each of the three dead bodies, which had been caused by a hard and blunt substance. The "hard and blunt substance" has not been found and it is not controverted that the entire case of the prosecution is predicated on circumstantial evidence. B C

4. So far as the defence of the Convict is concerned, the contention is that the chain of circumstantial evidence remains incomplete; that the prosecution has failed to collect evidence directly implicating the Convict; that Pushpa was not on cordial terms with her in-laws subsequent to the death of her husband, and that she had left her matrimonial home in those circumstances; that there was, therefore, a strong possibility that her in-laws had committed the heinous crimes in order to grab the property. It has also been emphasized that no witness has deposed that the Convict was seen concealing the dead bodies; and importantly the object/implement of the fatal assault has not been found. D E F

5. The Sessions Judge has opined on the basis of the post mortem examination and the manner in which the dead bodies had been buried in the soak-pit that the death was homicidal. He has noted that the Convict was already in custody in connection with his involvement in an alleged crime of kidnapping and it was at that time that he had made a confession leading to the recovery of an Agreement of Marriage between the deceased and the Convict, and a Declaration by the deceased purportedly transferring the property to the G H

- A Convict. The Sessions Judge took note of the deposition of PW-4 to the effect that he was acquainted with all the three deceased as he had previously let out a portion of his house to them. The Sessions Judge further noted that PW-1, Suguni Devi, the paternal aunt of the deceased Pushpa has deposed
- B that the Convict had contracted with Pushpa to construct the house and started living along with the three deceased, subsequent to the completion of the house in 2007; that on her earlier visits to Pushpa the latter had confided to her that the Convict had previously assaulted her with a brick; that when she
- C visited the house on 29.11.2008, she found Pushpa and her two children missing and instead the Convict was staying alone in the house; on being questioned by her he had stated that Pushpa and her children had gone to the house of one of her friends in Ranchi, but her search for Pushpa at Ranchi proved
- D to be fruitless. On a subsequent visit to Pushpa's home, she and her children were again not found there and Suguni Devi and Sunil Munda were told by neighbours that they had seen the Convict excavating a ditch and later covering it with soil. Even in cross-examination, her deposition as regards the
- E Convict initially getting the contract to build the house, thereafter, living with Pushpa as her husband, has remained steadfast. The deposition of the Informant PW-3, Sunil Munda is substantially the same, but he has additionally stated that deceased Pushpa had no enmity with anyone. The Sessions Judge was satisfied that the chain of circumstantial evidence
- F was fully complete. He was convinced that the Convict having developed intimacy with late Pushpa was living with the deceased in the said house he representing himself to society as her husband. The Sessions Judge was satisfied that the bodies recovered from the site were those of Pushpa and her
- G two minor children. Ext.I, Ext.I/1 and Ext.I/2, which came to be discovered pursuant to the disclosure statements of the Convict, not only reinforced the finding that the Convict was staying/living with the deceased at her house, but also manifests the motive. the motive leading to the three ghastly
- H murders. The three Exhibits have been proved by PW-8, the

Investigating Officer, PW-9, Motilal Agrawal, Notary Public and PW-10, Vikas Kumar Gupta, a Real Estate Agent. The documents contain photograph as well as signatures of the Convict and the deceased. The connection of the Convict with the deceased Pushpa as well as the house in question is unassailable. Significantly, the documents recite that the Convict had invested Rs.6,33,075/- towards the construction of the house.

6. *Trimukh vs State* 2006 (10) SCC 681 was justifiable and correctly relied upon inasmuch as this Court opined that - "Where an offence like murder is committed in secrecy inside the house the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree, as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be corresponding burden on the inmates of the house to give the cogent explanation as to how the crime was committed." Reliance has correctly been placed on the subsequent decisions of this Court in *Raj Kumar vs State* (2007) (1) SCC 433, *State vs Jaggu* 2008 (12) SCC 51, *Sushil Kumar vs State of Punjab* 2009 (10) SCC 434, and *Swamy Shraddananda vs State of Karnataka* 2008 (13) SCC 767. Convinced of the complicity of the Convict, he was sentenced to death for the offence under Section 302 IPC and further to rigorous imprisonment of seven years and a fine of Rs.5,000/- for the offence under Section 201 of the IPC. In the impugned Judgment, the Division Bench of the High Court has considered the evidence threadbare before confirming the factual findings of the Sessions Judge and affirming the death sentence passed in this regard.

7. We have also carefully considered the conspectus of the case and we do not harbour any doubt as to the guilt of the Convict. We reiterate the series of Judgments passed by this

- A Court which effectively transfer the burden of proving innocence to those accused who were living with the deceased within the confines of the home. In the present case, the bodies of the three deceased victims were exhumed after three to six weeks of their unnatural death and no convincing explanation has been proffered by the Convict as to why he did not report their prolonged absence to the police. The Convict was a mason and also a civil-works contractor, and was, therefore, accomplished and competent to dig a soak-pit and dispose of the three bodies in that soak-pit and then make a brick covering thereon. There is not an iota of doubt as to his living with the deceased in the same house as her husband, even though he was already married. The factum of his having executed documents indicative of his marriage to the deceased Pushpa as also her 'Declaration' to transfer her property to him, in the event of her death provide compelling motive for his having committed the crime of murdering her and her two minor children. We are emphasizing these factors in addition to the finding and reasoning of the Sessions Court as well as the High Court. We also have had the advantage of perusing several previous decisions of this Court. We, therefore, conclude that the Convict was logically found, beyond reasonable doubt, to have committed the murder of Pushpa, as well as her daughter Deepika Kumari and her son Sudarshan Munda.

8. We must now consider the appropriateness of the Death Sentence imposed by both the courts below. As has already been mentioned above, the Sessions Judge has found the Convict guilty under Section 302 of the IPC and has awarded him the death sentence; and Rigorous Imprisonment for seven years and a fine of Rs.5000/- under Section 201 of the IPC. In the impugned Judgment both these sentences have been confirmed. So far as the sentence under Section 201 of the IPC is concerned, we find no reason whatsoever justifying our interference. In *Sangeet vs State of Haryana* 2013 (2) SCC 452, a two-Judge Bench had expressed a doubt about the opinion vis-à-vis the legal propriety of awarding sentences of

20 years and above and additionally prescribing that no remission of this sentence would be permissible. That doubt has now been interred in *Gurvail Singh vs State of Punjab*, 2013(10) SCC 631 which after referring to the three-Judge Bench in *Swamy Shraddananda and State of UP vs Sanjay Kumar* 2012 (8) SCC 537 as well as *Sahib Hussain alias Sahib Jan vs State of Rajasthan* 2013 (9) SCC 778 found no scope for any reconsideration on this issue. In *Anil alias Antony vs State of Maharashtra* 2014 (2) SCALE 54, we had countenanced the gruesome murder by strangulation of a minor boy aged 10 years after subjecting him to carnal intercourse. Even though we found the action of the Convict to be extremely brutal, grotesque diabolical and revolting, it was our opinion that incarceration for a further period of 30 years, without remission, in addition to the sentence already undergone, would be appropriate punishment in the facts and circumstances obtaining in that case. The crime which we have unfortunately encountered in the present appeals is also of similar reprehensible nature justifying the use of the same adjectives as we employed in *Anil alias Antony*. We think that the same sentence should be imposed in the present case also. Accordingly, modifying the death sentence concurrently imposed by the courts below, we sentence the Convict to incarceration for a further period of 30 years without any remission. We clarify that this shall be in addition to the sentence already undergone.

9. The appeals are disposed of in the above terms, with no order as to costs.

Devika Gujral

Appeals disposed of.