SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Ghazi and ors. Vs. the State

Ghazi and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/452439

Court : Allahabad

Decided On : Jun-05-1965

Reported in : AIR1966All142; 1966CriLJ369

Judge : S.S. Dhavan and ;Gangeshwar Prasad, JJ.

Acts : Evidence Act, 1872 - Sections 27 and 32(1); Constitution of India - Article 20(3); Code of Criminal Procedure (CrPC) , 1898 - Sections 162

Appeal No. : Criminal Appeal Nos. 2108 and 2366 of 1964

Appellant : Ghazi and ors.

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : R. Pandey, Adv.

Disposition : Appeals allowed

Judgement :

Gangeshwar Prasad, J.

1. These aretwo connected appeals arising out of a trial in which four persons, namely, Ghazi, Smt. Prabhawati, Shyam Kinker ana Smt. Anar Kali stood charged before the II Temporary Sessions Judge, Allahabad, under Section 302/34, I. P. C.

for committing the murder of Deo Narain and also under Section 201/34, I. P. C. for causing the evidence of the said murder to disappear by concealing and covering the dead body of Deo Narain in a pit in the inner courtyard of the house of Smt. Prabhawati accused with the intention of screening themselves from legal punishment. Shyam Kinker and Smt. Anar Kali nave been acquitted of both the charges; Smt. Prabhawati has been acquitted of the charge under Section 302/34, I. P. C. but convicted under Section 201/34, I. P. C. and sentenced to seven years' rigorous imprisonment; while Ghazi has been convicted under Section 302, I. P. C. and sentencedto death. Ghazi has also been found guilty of an offence under Section 201/34, I. P. C. but no sentence has been passed against him for that offence. Appeal No. 2108 of 1964 is by Ghazi whereas appeal No. 2366 of 1964 is by Smt. Prabhawati. Along with the appeal of Ghazi we have before us the reference under Section 374, Cr, P. C. for confirmation of the sentence of death passed against him.

2. Deo Narain deceased was the son of one Nand Kishore Brahman of village Khanpur P.S. Meja, district Allahabad, who died about ten years ago. He was survived by his widow Smt. Prabhawati his two sons Deo Narain and Shyam Kinker, and his daughter Smt. Anar Kali. It would thus be seen that Smt. Prabhawati appellant is the mother of Deo Narain, and Shyam Kinker and Smt. Anar Kali the acquitted accused are respectively the brother and the sister of Deo Narain. Ghazi appellant is a Lohar by caste and is a resident of the same village, i.e.. Khanpur.

3. At the time of his murder Deo Narain was about twenty eight years of age, and Shyam Kinker and Smt. Anar Kali were at that time about twenty two and twenty five years of age respectively. Deo Narain and Shyam Kinker were both unmarried, while Smt. Anar Kali had been married about ten years before to one Raja Ram of village Achhola and had two or three children. It should be mentioned here that one Sipahi Lal aged about eighteen years of village Aebhola who is said to be related to Raja Ram the husband or Smt. Anar Kali and who is said to have been living with Smt. Prabhawati and Shyam Kinker in village Khanpur for his studies, was also charge-sheeted by the police as an absconding accused, but he has not been tried as he happens to have remained absconding.

4. The case of the prosecution may be stated to be as follows. Smt. Prabhawati appellant had developed an illicit intimacy with Ghazi appellant during the lifetime of her husband Nand Kishore. Her son Deo Narain deceased used to express his disapproval of the conduct of Smt. Prabhawati and she did not, therefore, look upon Deo Narain with favour. After the death of Nand Kishore, Smt. Prabhawati managed to get the name of her younger son Shyam Kinker alone recorded in the village papers over the land loft by Nand Kishore, which was about two or three bighas in area. For these reasons the relations between Deo Narain on the one hand and Smt. Prabhawati and Shyam Kinker on the other were strained and there were occasional disputes and quarrels between them. Deo Narain lived at his house till about three years after the death of his father, but thereafter he left the village and was not heard of for five or six years. During this period too the illicit relations between Smt. Prabhawati and Ghazi continued. Towards the end of May 1963, Deo Narain suddently returned home at about 11.00 O'clock in the night. He found the door of his house closed from inside, and he lay clown on the floor on the outer verandah of the house near the door. At about 2.00 or 2.30 O'clock in the night Deo Narain saw Ghazi and Smt. Prabhawati coming out of the house. On finding Deo Narain in theverandah Ghazi ran away, while Smt. Prabhawati at once went up to the house: of her neighbour Ram Achal, P. W. 4 and complained to him that her son Deo Narain had come back and was harassing her. Ram Achal went to the house of Devi Prasad (P. W. 1) the Sabhapati of the village and brought Devi Prasad to his house where Srnt. Prabhawati and Deo Narain were. On being asked as to what the matter was Deo Narain disclosed what he had seen that night, charged his mother with immorality, and said that he could not tolerate her conduct. He also demanded his share in the land left by his father. Devi Prasad tried to persuade Smt. Prabhawati and Deo Narain to live peacefully. At about 5.00 O'clock in the morning, however, Deo Narain left the village saying that he would return after four or five days for living in the village permanently and asking Devi Prasad to get his share in the land partitioned. Thereafter Deo Narain came back to the village on 3rd June 1.963. He met Devi Prasad at about 8.00 p.m. the same day and asked him to get the matter settled. Devi Prasad who works as a priest told Deo Narain to wait for a few days as he was busy in connection with marriage and assured him that as soon as he

was free he would collect a few persons of the village and get the share of Deo Narain partitioned Smt. Prabhawati, Shyam Kinker, Sipahi Lal and also Smt. Anar Kali who had come from her husband's place a few days earlier were all present outside the house when Deo Narain was having the above conversation with Devi Prasad and they heard it.

5. Then, according to the prosecution, at about 2,00 or 2,30 O'clock the same night, i.e., the night between 3rd and 4th June 1963, Ram Achal (P. W. 4) who was sleeping on the roof of his house and Aditya Prasad (P. W. 5) another neighbour of Smt. Prabhawati who was sleeping at the door of his house heard a choked shriek and a gurgling sound coming from the house of Smt. Prabhawati. Ram Achul and Aditya Prasad woke up and enquired from Smt. Prabhawati what the matter was. Smt. Prabhawati silenced the enquiry by replying that Deo Narain had only shrieked during sleep on account of some frightening dream. It is also alleged by the prosecution that in the night between 3rd and 4th June 1963, Sukhdeo (P.W. 12) who has his house at a distance of about 20 paces from the house of Smt. Prabhawati had seen Ghazi going to the house of Smt. Prabhawati with a Jholu in his hand at about 1.00 O'clock and coming out of the house at about 5.00 O'clock and on his enquiry at the time when Ghazi was going in the house of Smt. Prabhawati, Ghazi had told him that Smt. Prabhawati was ill and he was carrying medicine for her. At about 4.00 a.m. the same night Aditya Prasad (P. W. 5) is also said to have heard Smt. Prabhawati and Ghazi talking in the house of Prabhawati while Aditya Prasad was going to ease himself.

6. Nothing of importance is said to have happened thereafter till 8th June 1963, except that Smt. Anar Kali and Sipahi Lal went away to Achhola on 5th June 196 and Deo Narain was not seen in the village. On 8th June 1963at about 11.00 or 12,00 O'clock in the day RamAchal (P. W. 4) went: to the house of Smt. Prabhawati to bring a spade which he needed for filling up an oven. He found the door of the house chained from inside and he, therefore, called out Smt. Prabhawati told her that he needed a spade arid tried to enter her house to fetch it. Smt. Prabhawati, however, asked him not to enter the house and on an enquiry by him as to the reason for that unusual behaviour Smt. Prabhawati replied that she would no longer permit him to enter her house. This is said to have at once

created a suspicion in the mind of Ram Achal that Deo Narain who had not been seen after 3rd June 1963 had been murdered by Smt. Prabhawati and his dead body was inside the house. On the same day at about 2.30 p.m. while Devi Prasad was returning to village Khanpur from Sirsa Bazar he met Smt. Prabhawati and Shyam Kinker who were proceeding to Sirsa. He asked Shyam Kinker as to where Deo Narain was, whereupon Shyam Kinker said that he had gone to Achhola. On reaching village Khanpur, Devi Prasad (P. W. 1) met Aditya Prasad (P. W. 5) and Misri Lal (P. W. 9) and was informed by them that there was a rumour in the village that Deo Narain had been murdered and that Ram Achal knew something about it. He at once contacted Ram Achal and after being informed by Ram Achal of what he knew about the matter he wrote out a report incorporating therein what he had himself seen and what he had heard from Ram Achal and Aditya Prasad went at once on a cycle to police station Meja which is situate at a distance of about seven miles from the village, and delivered the report there at 3.30 p.m. the same day. The Station Officer was not present at the police station but he was soon informed of the occurrence and he reached village Khanpur at about 5.00 O'clock in the evening. The house of Smt. Prabhawati was found locked from outside. The Station Officer broke open the lock and entered the house. In the inner courtyard of the house the Station Officer discovered a grave-like mound of earth covered with some tiles. He got the tiles removed and the mound of earth dug out, and then found the dead body of Deo Narain with marks of injuries thereon inside a pit of about one cubit in depth. The body was entirely naked, but two underwears, two Baniyuns and one Lungi, all stained with blood, were found in the pit underneath the dead body. After inquest the dead body was despatched for post-mortem examination. From the inner verandah of the house the Station Officer recovered two cots and one Sujani stained with blood. Near the cots he found a broom which appeared to have blood stains on it and there were some marks on the wall of the inner verandah which looked like marks of blood. The Station Officer took the broom and the strappings from the wall also in his possession. A search is said to have been made for Ghazi, Smt. Prabhawati, Shyam Kinker, Smt. Anar Kali and Sipahi Lal but none of them was found, and the Station Officer left the village on 9th June 1963 without making any arrest.

7. On 21st June 1963 Smt. Prabhawatiand Shyam Kinker surrendered in Court. A day later, i.e., on 22nd Tune 1963, according to the prosecution story, the Station Officer, went to village Khanpur for the arrest of Ghazi appellant on getting some information from an informer and reached there at about 5.30 a.m. Ghazi was found in a grove of the village and was arrested after a short chase of about: ten or twelve paces. Ghazi is then said to have told the Station Officer that he had thrown a Gandasa into a well and in the presence of Misri Lal (P. W. 9) and Ram Lal alias Ganga Prasad (P. W. 10) he pointed out the well, which is quite close to his shop. The Station Officer arranged for the services of Raghunath diver who took out from the well a Gandasa with its handle partially cut. The Gandasa was duly sealed and sent for examination to the chemical examiner.

8. The post-mortem examination of the dead body of Deo Narain was conducted on 9th June 1963 by Dr. S.C. Bashisht (P. W. 2) who round the following ante-mortem injuries on it:

(1) Incised wound 23/4' X 2' X 5th, cervical vertebrae body cut and fractured on right side, crossing mid-line, on back of neck, oblique lower end right side.

(2) Incised wound 21/2' X 1' X spine of 4th cervical vertebrae cut and fractured, 1/2' above and parallel to No. 1 crossing mid-line on back of neck, oblique, lower cud right side.

(3) Incised wound 31/2' X 2' X transverse process of 3rd cervical vertebrae cut and fractured on right side of neck, 1' below the angle of mandible, cutting all soft tissues and blood vessels, oblique, lower end anterior.

(4) Incised wound 2' X 1/2' X bone, on right side of head, 3' above the ear, right parietal indented.

(5) Incised wound 51/2' X 2' X 1st rib posterior portion cut in its whole thickness, on left side of neck, cutting all soft tissues and blood vessels in the lower 3rd, antcro posterior.

9. The doctor found that the skin of hands and feet had been separated and the skin of scalp and scrotum had become decomposed. There were decomposition

changes in the eye balls as well and mud was adhering all over the body. Internal examination revealed that the brain was liquefied due to decomposition, decomposition changes were present also in the viscera, stomach was found to contain 21/2 ounces of partially digested food material, small intestine also contained partially digested food material and large intestine contained faecal matter. In the opinion of the doctor the deceased was about thirty years old and probable time since death was about one week. Death, according to the doctor, was due to shock and haemorrhage resulting from the above mentioned injuries and the injuries in the opinion of the doctor were caused by some sharp-edged heavy weapon. The Gandasa said to have been recovered from the well was shown to the doctor during his examination in Court and he stated that the injuries found on the dead body could have been caused with it.

10. The Chemical Examiner found blood slams of minute size on the Gandasa and the sexologist reported that the stains were of humanblood. The clothes found underneath the corpse in the pit from which it was recovered and the cots and the Sujani recovered from the house of Smt. Prabhawati were also reported by the Serologist to be stained with human blood.

11. The appellants pleaded not guilty and repudiated the truth of all the allegations made against them. Ghazi appellant denied the recovery of the Gandasa from inside the well at his pointing out. He further denied that he was absconding and was arrested in a grove. He stated that he was arrested at his house and was beaten by the Station Officer after the arrest. Smt. Prabhawati stated that in the last week of May 1963 and the first and second weeks of June 1963 she was not in village Khanpur at all and that she along with her son Shyam Kinker was in village Mehewa at the house of her parents. The appellants did not, however, produce any evidence in defence.

12. From the narrative of the prosecution case which has been given above it would be seen that there is no eye-witness to the commission of the offences with which the appellants are charged and the case rests entirely on circumstantial evidence. Of the various pieces of circumstantial evidence which the prosecution has sought to establish the learned trial Judge has rejected all except the

following. He has found it proved that (1) illicit relations between Ghazi and Smt. Prabhawati had developed some time after the death of Nand Kishore the husband of Smt. Prabhawati; (2) the dead body of Deo Narain was recovered from a pit in the inner courtyard of the house of Smt. Prabhawali on 8th June 1963; (3) a Gandasa stained with human blood and with its handle partially cut was recovered on 22nd June 1963 from inside a well close to the shop of Ghazi appellant, as a result of a statement of Ghazi that he had thrown the Gandasa into the well after cutting a part of its handle; and (4) the appellants were absconding from 8th June 1963.

13. The evidence relating to the other incriminating circumstances has not been accepted by the learned Sessions Judge and has been regarded by him as untrue and unworthy of reliance. We have ourselves examined the entire evidence and we are clearly of opinion that the evidence which has been rejected by the learned Sessions Judge deserved rejection; and, very rightly, no attempt has been made before its by the learned counsel for the State to show that the findings of the learned Sessions Judge are incorrect. We, however, think it necessary to briefly indicate the falsity of the prosecution evidence in regard to the various items of circumstantial evidence rejected by the learned Sessions Judge before we proceed to examine the truth and acceptability of those items on which the conviction of the appellants has been based and which have been enumerated above.

14. The prosecution has first tried to show that the relations between Deo Narain and Smt. Prabhawati were strained even during the life time of Nand Kishore. This is ascribed to the fact that Smt. Prabhawati had been leading an immoral life and Deo Narain had been takingexception to it. The only evidence in support of this part of the case is the statement of Devi Prasad (P. W. 1) that Deo Narain had once complained to him in the life time of Nand Kishore about the immorality of his mother Smt. Prabhawati and her illicit connection with Ghazi. None of the other witnesses of the village has, however, corroborated Devi Prasad in regard to this matter and in fact Aditya Prasad (P. W. 5) has stated that so long as Deo Narain lived in the village and according to the prosecution he did so till about three years after the death of his father Nand Kishore there was no complaint against the

character of Smt. Prabhawati and that such a complaint has been there only for the last three or four years. Further we find it difficult to believe that Deo Narain who was then only a lad of seventeen or eighteen years should have imputed unchastity to his mother and spoken of it to Devi Prasad without any ostensible purpose. The story must, in our opinion, be dismissed as unworthy of credit. But, apart from being unacceptable in fact, the evidence relating to the complaint made by Deo Narain appears to be inadmissible in evidence. Section 32(i) of the Evidence Act does not permit the reception in evidence of all such statements of a dead person as may relate to matters having a bearing howsoever remote on the cause or the circumstances of his death; and it is confined to only such statements as relate to matters so closely connected with the events which resulted in his death that they may be said to relate to circumstances of the transaction which resulted in his death. We may refer in this connection to the case of Narayana Swami v. Emperor , where the proper scope and limits of the expression 'circumstances of the transaction' used in Section 32(i) of the Evidence Act were laid down by the Privy Council, and to Gokul Chandra v. The State : AIR1950 Cal306 , and Public Prosecutor v. Munigan, AIR 1941 Mad 359, which have followed the Privy Council decision. The alleged statement of Deo Narain was made more than ten years before his death and its bearing in the present case is not that it relates to any of the circumstances of the transaction which resulted in the death of Deo Narain but that it affords proof of the background of those embittered relations between Smt. Prabhawati and Ghaxi on the one side and Deo Narain on the other which ultimately led to the latter's murder. The statement is, therefore, clearly outside the purview of Section 32(i) of the Evidence Act and is not receivable evidence.

15. The next fact that the prosecution has endeavoured to prove is that on account of the ill-will that Smt. Prabhawati bore towards Deo Narain she got the name of Shyam Kinker alone entered in the village records over the land left by Nand Kishore. No copy of the village records has, however, been filed and the only evidence in regard to this fact also is the statement of Devi Prasad (P. W. 1) that Deo Narain had complained to him that his name had not been entered and that Shyam Kinker in collusion with Smt. Prabhawati had got only his name mutated and wanted to deprive him ofhis rights. This statement too must at once be

rejected as inadmissible. Whether the name of Shyam Kinker alone was entered in the village records and if so when and in what circumstances could be proved by the production of copies of village records and not by means of the statement of Devi Prasad referred to above. Besides, we fail to understand how Suit. Prabhawati could manage to get the name of Shyam Kinker alone entered in the village records over a land in which Deo Narain had indisputably an equal share and how the claim pf Deo Narain could have been resisted if it had really been advanced. As to ill-will between Deo Narain on the one side and Smt. Prabhawati and Shyam Kinker on the other, it i,s completely negatived by the statement of Aditya Prasad (P. W. 5) that for three or four years after Nand Kishore's death Smt. Prabhawati, Deo Narain and Shyam Kinker lived together peacefully and there was no dispute among them.

16. We have now to consider what is said to have happened on the night when Deo Narain suddenly returned home towards the end of May 1963 after an absence of five or six years. We must at once say that the entire story relating to this part of the prosecution case is so improbable, unnatural and artificial that no credence can be given to it. Firstly, we feel that the hour of Deo Narain's arrival at his house has been so chosen by the prosecution as to make it possible for Ghazi to be inside the house of Smt. Prabhawati, because it would have been highly unlikely for Ghazi to have visited or remained inside the house of Smt. Prabhawati during the night if Deo Narain had arrived earlier. From the evidence of Aditya Prasad (P. W. 5) it appears that he had already met and talked to Deo Narain in the village at about 4.00 p. m. on the day on which he returned to the village after an absence of five or six years. Secondly, it is not possible to accept that Deo Narain returning home in such circumstances after an absence of five or six years would not be anxious to meet his mother and brother, would not care to get the door of his house opened although it was only 11.00 o' clock in the night in the month of May, and would quietly lie down on the ground in the outer verandah of the house. Thirdly, it is difficult to believe that Smt. Prabhawati who must have been surprised and taken aback for the time being by seeing that Deo Narain lay in the verandah of the house and had noticed Ghazi coming out of the house along with her should not have gone back into the house abashed and confounded but should have at once run to the house of Ram Achal and promptly invented a

false accusation against Deo Narain. It will further be noticed that in the first information report lodged by Devi Prasad who was called by Ram Achal to his house when Smt. Prabhawati went to him that night, all that Smt. Prabhawati is alleged to have said is that Deo Narain had come back and was harassing her, but in their evidence Devi Prasad and Ram Achal have made a very noticeable addition. According to their statements Smt. Prabhawati complained to them that Deo Narain was de-manding from her a sum of Rs. 500/- and saying that if she had no money to give she should procure a girl for him, otherwise, she would be beaten. We find it hard to believe that in the circumstances in which Smt. Prabhawati found herself this fantastic lie could have been manufactured by her at the spur of the moment and she could have dared to put it forward for acceptance before Devi Prasad and Ram Achal in the very presence of Deo Narain. Lastly, it is not understandable why Deo Narain should have left the village again at about 5 a. m. saying that he would return after four or five days and would then have his share partitioned and live in the village permanently. The learned Sessions Judge has observed that no such incident as is alleged to have taken place on that night really took place and we entirely agree.

17. We then pass on to what is said to have happened in the night between 3rd and 4th June 1963. The evidence led by the prosecution suggests that it was in that night that the murder was committed. Ram Achal (P. W. 4) and Aditya Prasad (P. W. 5) claimed, to have heard a chocked shriek and a gurgling sound coming from the house of Smt. Prabhawati at about 2. 30 a. m. and it is said that Rajendra Prasad another neighbour of Smt. Prabhawati also got up from sleep on hearing the sound. Looking at the injuries caused to Deo Narain it does not appear probable that he could have been able to shriek or that the shriek and the gurgling sound, if any, could have aroused the neighbours from their sleep. It may here be mentioned that Sukhdeo (P. W. 12) who lives at a distance of 20 or 25 paces from the house of Smt. Prabhawati and who claims to have kept awake all the night as he was suffering from dysentery and pain all over the body did not hear any shriek or sound. The reply which Smt. Prabhawati is said to have given to the enquiry made by the neighbours as to the cause of the shriek does not also appear to us to be probable. Then, it would appear from the statement of Devi Prasad that Ram Achal had said to him that on the enquiry made by him after hearing the shriek

Shyarn Kinker. Smt. Prabhawati, Smt. Anar Kali and Sipahi Lal had all told him turn by turn that Deo Narain was dreaming and was shrieking in dream. The reason for this kind of statement is patent, All the four persons mentioned above are said to have been present in the house that night and the case sent up by the police was against all of them along with Ghazi. The inference is, therefore, obvious that it was with the object of associating all the above named bur persons with the murder that this story which must be characterised as ridiculous was introduced. Its ridiculousness appears to have been subsequently realised and Ram Achal did not, therefore, depose to it in his statement. Quite apart from this, the presence of Smt. Anar Kali in the house of Smt. Prabhawati on the night between 3rd and 4th June 1963 appears to us to militate against the theory of the murder having taken place that night. There is not the slightest suggestion of any bad feeling between Smt. Anarkali and Deo Narafn. Smt. Anar Kali wasmarried ten years ago and her visit to village Khanpur on that occasion appears to have been only of a casual nature. It is extremely improbable that the murder should have been committed while Smt. Anar Kali was present in the house and it is inconceivable that Smt. Anar Kali should have participated in the perpetration of the foul and ghastly crime. Having regard to the circumstances mentioned above we have no hesitation in rejecting the evidence of Ram Achal (P. W. 4) and Aditya Prasad (P. W. 5) as the learned Sessions Judge has done.

18. The evidence of Sukhdeo (P. W. 12) is equally unworthy of belief. As noted above he states that on the night between 3rd and 4th June 1963 he saw Ghazi appellant going with a Jhola to the house of Smt. Prabhawati at about 1.00 a. m. and again coming out of her house at 5.00 a. m. He explains this strange accident of his having been awake on both these occasions by stating that he had no sleep at all in that night as he was suffering from dysentery and pain in his body. He does not remember whether the night was a dark or moonlit night. He admits that he can see in the night only upto a distance of four to six paces and yet he claims to have not only recognised Ghazi but also marked that Ghazi had a Jhola in his hand while going to the house of Smt. Prabhawati and had no Jhola with him when he came out of the house. He states that Ghazi passed at a distance of only two or three steps from the place where he was lying on a cot and he made enquiries from Ghazi both when the latter was going to and coming back from the house of

Smt. Prabhawati. We find this evidence altogether unconvincing. Ghazi was a resident of the same village and he must naturally have been aware that the eye-sight of Sukhdeo was poor. He would have been careful to keep his movements in that night a secret and he could have easily avoided being observed by Sukhdeo. Besides this it would appear from the statement of Ram Achal that although A rumour was already afloat in the village by 8th June 1963 that Deo Narain had been murdered and his dead body was lying in the house of Smt. Prabhawati and by the evening of 8th June 1963 the dead body of Deo Narain had been recovered by the police, it was not until 9th June 1963 that even Ram Achal came to know what Sukhdeo had seen. The learned Sessions Judge was, therefore, perfectly justified in rejecting the evidence of Sukhdeo.

19. Aditya Prasad (P. W. 5) has further stated that at about 4.00 a. m. in the night between 3rd and 4th June 1963 when he got up to ease himself he heard the voices of Ghazi and Smt. Prabhawati who were talking in the latter's house. After having rejected the evidence of Aditya Prasad in regard to the hearing of a shriek in the night it is not possible to give credence to his testimony in regard to this matter, and the story too is inherently lacking in probability. That Ghazi and Smt. Prabhawati should have been talking in the house so loudly after the murder that they could be audible outside the house is difficult to accept. Moreover, this fact does not find mention in the first information report which, according to thestatement of Devi Prasad the maker of the report, was written out by him after he had met Aditya Prasad and heard from Aditya Prasad what he knew in regard to the rumoured murder of Deo Narain.

20. The next link in the chain of circumstantial evidence produced in the case is that on 8th June 1963 Smt. Prabhawati prevented Ram Achal from entering her house when he wanted to do so for taking out a spade which he needed for filling up an oven. We have found Ram Achal to be an unreliable witness and we have refected his statement in regard to the hearing of the shriek in the night between 3rd and 4th June 1963 as untrue. Apart from that it appears to us to be unnatural that Ram Achal should have at once tried to enter the house of Smt. Prabhawati after she had opened the door on being called out by Ram Achal. Normally Ram Achal should have asked her to bring her spade and give it to him. At any rate, it is

not possible to believe that Smt. Prabhawati said to Ram Achal that although Ram Achal had free access to her house formerly she would no longer allow him to enter her house. It is also to be noted that the business for which Ram Achal wanted to enter the house of Smt. Prabhawati when he was prevented by her from doing so is not mentioned in the first information report. This link in the evidence too much, therefore, be discarded as untrue.

21. We have then the circumstance that on 8th June 1963 while Devi Prasad was coming back to village Khanpur from Sirsa he met Smt. Prabhawati and Shyam Kinker going in the opposite direction and on an enquiry made by him as to where Deo Narain was Shyam Kinker replied that he had gone to Achhola. Devi Prasad's testimony has been found to be false on the other and more important circumstances sought to be proved by the prosecution, and in our opinion he is a wholly unreliable witness. We are, therefore, not prepared to hold that he had really that Smt. Prabhawati and Shyam Kinker and the latter had given a false information to him about Deo Narain. Further, the reply given by Shyam Kinker to the enquiry regarding Deo Narain does not appear to be admissible in evidence against Smt. Prabhawati.

22. It was after returning home from Sirsa at about 2.00 or 2.30 p. m. on 8th June 1963 that Devi Prasad claims to have written out the first information report at his house and then to have lodged it at 3.00 p. m. It was contended on behalf of the accused before the learned Sessions Judge that the first information report of the case was not lodged at the police station at 3.30 p. m. as alleged by the prosecution but was written at the dictation of the Investigating Officer when he came to the spot. The learned Sessions Judge has observed that the circumstances of the ease show that the contention was correct. The conclusions of the learned Judge in this respect are mainly based upon the discrepancy between the statements of Devi Prasad (P. W. 1) and Ram Achal (P. W. 4) on the one hand and Misri Lal (P. W. 9) on the other. According to Devi Prasad and Ram Achal the report was writtenout by Devi Prasad at his own house after ascertaining the facts from Ram Achal who had gone there. On the contrary Misri Lal has stated that Ram Achal did not go to the house of Devi Prasad and that Devi Prasad talked to Ram Achal for two or three minutes at the latter's house and then

proceeded to the police station. We have examined the evidence of these witnesses with care and we find that the statement of Misri Lal does negative the possibility of the report having been written in the village. But it is really the falsities introduced in the report that go to discredit its genuineness and to justify the conclusion reached in respect of it by the foamed Judge.

23. Then we come to the recovery of the dead body of Deo Narain in a pit in the inner courtyard of the house of Smt. Prabhawati and the recovery of the other articles which were found to be stained with human blood. This part of the prosecution story must be accepted as correct and its correctness has not been challenged before us by the learned counsel for the appellant. It is the recovery of the dead body and other articles from the house of Smt. Prabhawati coupled with the finding that Smt. Prabhawati had for a few years before the occurrence illicit intimacy with Ghazi that has formed the basis for the conviction of Smt. Prabhawati by the learned Sessions Judge under Section 201/34 I. P. C. Before dealing with the question whether there is sufficient basis for the conviction we think it necessary to say a tew words about the evidence relating to the illicit intimacy between Smt. Prabhawati and Ghazi during three or four years preceding the occurrence. On this matter we have the evidence of Brij Narain (P. W. 6) who is the son of Ghazi appellant. He states that he had once beaten Smt. Prabhuwati while she was coming out of the shop of his father Ghazi and that he was living separately from his father for the last four years on account of the illicit connection between his father and Smt. Prabhawati. We have examined the statement of Brij Narain carefully and it appears to us to be substantially correct.

24. The main thing to be borne in mind in judging the sufficiency of the evidence for the conviction of Smt. Prabhawati is that the house from which the dead body and the other articles were recovered was not in the sole occupation of Smt. Prabhawati. Her adult son Shyam Kinker was also living in the same house and the case of the prosecution itself is that the relations between the two brothers Shyam Kinker and Deo Narain were not good and there was a dispute among them regarding their deceased father's property. Shyam Kinker was also prosecuted. Can it then be said that the charge has been brought home to Smt Prabhawati The answer, in our opinion, has to be in the negative. For an inference

of guilt to be drawn against Smt. Prabhawati there should have been exclusiveness of opportunity for committing the offence. In the present case exclusiveness of opportunity was admittedly lacking. Shyam Kinker himself could have concealed the dead body in the house either alone or with the assistance of someothers and Smt. Prabhawati might have taken no part in the concealment. The date on which the concealment took place is not known and it cannot be said with any certainty whether Smt. Prabhawati was even present in the house at the time of concealment. She might have come to know later of the fact of concealment and been persuaded to keep quiet over the matter. She might even have keen a helpless spectator of the concealment by others, but she would not on that account be guilty of an offence under Section 201/34 I. P. C. The illicit connection which she had with Ghazi appellant does not, in our opinion, carry the case against her any further. The circumstances no doubt are such as to create a very grave suspicion against Smt. Prabhawati, but they are insufficient for establishing the offence of which she has been convicted. Her absence from the house either on the date of the recovery of the dead body or subsequently is not a circumstance to which much value can be attached. There can thus be no doubt that reasonable possibility of the innocence of Smt. Prabhawati has not been excluded, and she is consequently entitled to acquittal.

25. We now come to that piece of circumstantial evidence which has formed the basis of the conviction of Ghazi appellant and that is the recovery of a Gandasa stained with human blood and the statement said to have been made by Ghazi to the effect that he had thrown it into the well near his shop. Before, however, we deal with this part of the case we must observe that the reliability of the evidence relating to a recovery of this kind depends upon a large measure on whether the investigation has been honest and straightforward and inspires confidence. In the present case it has been found that false links in the chain of circumstantial evidence have been created, evidence of facts of the most damaging character has been manufactured and produced in Court, and a first information report incorporating such facts was got prepared in an improper manner. Our confidence in the bona fides of the investigation is, therefore, completely shaken and we cannot accept the evidence relating to the discovery of the Gandasa unless it is free from all suspicion and is above board. The evidence, far from being of such a

character, is in our opinion positively unreliable.

26. We will first take up the question of the arrest of Ghazi. What is surprising in this connection is that although the Investigation Officer had, as he says, come to suspect the complicity of Ghazi in the murder he took no steps to search the house of Ghazi during his stay in the village Khanpur on 8th and 9th June, 1963. It is in evidence that Ghazi was living in the same building in which he had his shop and the Investigating Officer admits that on 9th June 1963 he found the shop of Ghazi open although Ghazi was absconding. Even if the Investigating Officer had somehow learnt that Ghazi was not inside the house a search of the house of Ghazi for recovery of the weapon of attack or other incriminating articles was an absolutely necessary step in the investigation of a crime of this nature. What is again surprising is that al-though Ghazi is said to have been absconding no action was taken by me Investigating Officer for proceeding under Sections 87 and 88, Cr, P. C. against him. Our attention has also been drawn to the fact that when the Investigating Officer started from the police station for the arrest of Ghazi on 22nd June 1963 after getting some information from an informer he did not take with him any fetters. This fact might not be of any serious importance but in the circumstances of the case it cannot be said to be entirely without significance.

27. Then there is the manner of the arrest of Ghazi. The case of the prosecution is that Ghazi was found sitting in a grove and when he saw the police be tried to escape but fell down on the ground two or three times in the course of the chase and was arrested after covering a distance of ten or twelve paces. Ghazi on the other hand states that he was arrested at his house and was beaten by the Investigating Officer. It may be that he was arrested in the grove but that is not of any importance. What is important is whether the injuries which wore admittedly found on his person were the result of his falling down on the ground during the course of the chase or to beating as alleged by him. On a consideration of the circumstances of the case and the nature of the injuries we are of the opinion that the injuries were not due to fall but due to the fact that Ghazi was subjected to 'third degree' methods. Firstly, we think it unlikely that Ghazi fell down on the ground twice or thrice in the course of a chase of ten or twelve steps only. Secondly, the nature of the injuries on his person are more consistent with a

beating having been administered to him than with falls on the ground. These injuries were noted in the general diary of the police station when Ghazi was brought there under arrest on 22nd June 1963. The entry in the copy of the general diary (Exhibit Ka. 13) shows mat Ghazi had some swelling on the front side of both of his knees and some swelling on the back of the middle finger of both or his hands, and there was also a swelling on the left elbow. It is a matter of no consequence that these injuries are not found entered in the jail register as stated by the Jail Doctor who was examined by the learned Sessions Judge as a Court witness. The fact remains that the injuries were there and they were explained by the prosecution as having been caused during the course of arrest. We have already noted the improbability of Ghazi having fallen down on the ground twice or thrice in covering a distance of ten or twelve steps and we further find that none of the injuries is an abrasion which one would expect in falls on the ground. Then there is a marked symmetry in the injury on the knees and the fingers of the hands and a similarity in the nature of all the five injuries. We are, therefore, inclined to accept the statement of Ghazi appellant that the injuries were due to a beating to which he was subjected by the police.

28. The point that then arises is whether the evidence of the prosecution relating to the manner in which the Gandasa is said to have been recovered can safely be relied upon. Wehave found that there has been a deliberate attempt to create false evidence in regard to the various items of circumstantial evidence discussed above and we further find that third degree methods were employed by the police after the arrest of Ghazi. We do not, therefore, think that the evidence relating to the recovery of the Gandasa can be accepted with confidence. It also appears to us that the use of the statement alleged to have been made by Ghazi in regard to the Gandasa may also be barred by the rule against testimonial compulsion embodied in Article 20(3) of the Indian Constitution. We may refer in this connection to Dhoom Singh v. State : AIR1957 All197 and Amin v. State : AIR1958 All293 .

29. We cannot, therefore, with confidence accept the evidence of the prosecution relating to the circumstances in which the Gandasa was recovered and hold that the recovery was the result of the statement alleged to have been made by Ghazi

appellant. Even if we accept that it was the statement of Ghazi that led to the recovery of the Gandasa we do not think that in the circumstances of the case the recovery can lead to a clear inference of guilt against Ghazi. It is necessary to note in this connection that some part of the statement of Ghazi proved before the learned Sessions Judge and apparently admitted by him in evidence was in our opinion, clearly inadmissible. The prosecution led evidence to the effect that after the Gandasa had been taken out of the well, the appellant Ghazi stated that it was the same Gandasa which he had thrown into the well. No statement made by Ghazi subsequent to the recovery can be covered by the provisions of Section 27 of the Evidence Act and this part of the evidence has, therefore, to be ignored. The prosecution also tried to prove that Ghazi had stated that he had cut off a part of the handle of the Gandasa. This statement too must clearly be excluded from consideration. In order that a statement may be admissible under Section 27 of the Evidence Act it must relate to such information as relates distinctly to the fact thereby discovered. That portion of the statement of Ghazi which is to the effect that he had himself cut away a part of the handle of the Gandasa is not a statement of that description and it is, therefore, inadmissible. Thus the evidence to be taken into consideration is that Ghazi threw a Gandasa with its handle partly cut into the well and a Gandasa with its handle partly cut was recovered from the well and it was found to he stained with human blood. The question is whether this evidence coupled with the evidence relating to the illicit intimacy of Ghazi with Smt. Prabhawati is sufficient for proving a charge of murder against Ghazi. After giving our best consideration to the question we have come to the conclusion that the evidence is not sufficient and it does not exclude a reasonable possibility of the innocence of Ghazi. He might have had no hand in the murder of Deo Narain and yet he might have somehow got possession of the Gandasa and thrown it into the well. It is true that in his statement he has denied the recovery of the Gandasa at his pointing out but that does not, in our opinion, prevent theCourt from taking into consideration the possibility mentioned above.

30. On the fact and circumstances of the present case therefore, we are neither satisfied beyond doubt that the recovery of the Gandasa was made in the circumstances alleged by the prosecution nor that the recovery, even if made in those circumstances, is sufficient to prove me charge of murder. We may here

point out that Ghazi was not charged with having concealed the Gandasa by throwing it into the well and the charge under Section 201/34 I. P. C. against him also was confined to the concealment of the dead body.

31. As to the illicit intimacy of Ghazi with Suit. Prabhawati we may observe that there is no reliable evidence to show that Deo Narain was in any manner proving himself to be an obstruction. Even if there was reason for Ghazi to look upon Deo Narain with disfavour and even if this circumstance is also taken into account along with the recovery of the Gandasa, the charge of murder against Ghazi cannot be said to have been established beyond reasonable doubt,

32. There is no evidence that Ghazi was absconding. We have already noted the fact that his house was not searched although his shop was open, and no proceedings under Sections 87 and 88 Cr. P. C. were taken against him. The Investigating Officer has stated that there is nothing in his papers to indicate that any constable was deputed to find out Ghazi, and since the Station Officer never came back to village Khanpur between 9th June 1963 and 22nd June 1963 he was not competent to state whether Ghazi was in the village or not.

32a. On a consideration of the facts and circumstances of the case we are clearly of opinion that the charge against Ghazi appellant also has not been brought home and he is entitled to acquittal.

33. The result is that both the appeals, namely Criminal Appeal No. 2108 of 1964 and Criminal Appeal No. 2366 of 1964, should be allowed, the convictions and sentences of Ghazi and Smt. Prabhawati, the respective appellants in the said two appeals, should be set aside and they should be acquitted; and the reference made by the learned Sessions Judge for the confirmation of the sentence of death passed against Ghazi should be rejected.

34. On 4th June 1965 we passed orders allowing both the appeals setting aside the convictions and sentences of Ghazi and Smt. Prabhawati appellants and acquitting them; and we rejected the reference under Section 374, Cr. P. C. for the confirmation of the sentence of death passed against the appellant Ghazi for reasons to be given later. This judgment contains the reasons for our orders.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com