

**Rajinder Pershad Vs. the State**

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**Court :** Delhi

**Decided On :** Feb-15-1984

**Reported in :** 1984(6)DRJ323

**Judge :** R.N. Aggarwal and; Malik Sharief-Ud-Din, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 112 of 1981

**Appellant :** Rajinder Pershad

**Respondent :** The State

**Advocate for Pet/Ap. :** D.C. Mathur,; S.S. Palta and; B.T. Singh, Advs

**Judgement :**

**R.N. Aggarwal, J.**

(1) The appellant Rajinder Pershad was tried and found guilty by an Additional Sessions Judge of the charge of murdering his wife Rani by strangulation on the night of 18th/19th January 1980. The appellant was awarded life imprisonment. Along with the appellant one Onkar Nath was also tried of the said offence but he was given benefit of doubt and acquitted. Rajinder Parshad has come in appeal against his conviction and sentence.

(2) The deceased Rani was married to the appellant Rajinder Parshad at Delhi on 4th July 1979. The parties after the marriage resided in house No. 60-D Janata Flats, Ashok Vihar. At the relevant time Rani was pregnant. At the post mortem the doctor found a female fetus of 26 weeks.

(3) The flats in Ashok Vihar are in blocks of 4 flats. The flats on the ground floor are numbered A & B and on the first floor C & D.

(4) Saraswati Devi (Public Witness 1) along with her son resided in 60-C. There is a common passage to the two flats 60-C and 60-D and the entrance doors of the said two flats open in the same passage, Om Parkash PW-2 resided in Flat No. 60-A on the ground floor.

(5) On 19th January 1980 at about 10 A.M. PW-1 went to the house of Rani. The entrance door was not bolted from inside. PW-1 pushed the door and it opened. PW-1 called Rani a number of times but there was no response. PW-1 went inside the second room and she found Rani lying in the bed. The body was covered with a quilt up to the shoulders. PW-1 found blood coming from the mouth of Rani. She further saw a nara tied round the neck of Rani.

(6) PW-1 rushed out and raised alarm that Rani was lying unconscious. People from the neighborhood gathered and informed the Police Control Room. The copy of the report recorded at the Police Control Room is Ex. PW-19/A. The time mentioned in the report is 11.26 A.M. The Police Control Room further informed police station Ashok Vihar. The Copy of the said report is Ex. PW-11/A. The time mentioned is 11.25 A.M. (It seems there is some mistake in the noting of the time).

(7) Vidya Bhushan, Sub-inspector (not examined) was sent to the spot of occurrence. PW-32 Har bhag Singh, S.H.O. Police Station, Ashok Vihar on receiving the information of the crime at 11.35 A.M. went to the spot and took over the investigation. PW-32 recorded the statement Ex. Public Witness 1/A of Smt. Saraswati Devi and sent the ruka Ex. Public Witness 1/A to the police station for formal registration of the case. On the basis of the ruka Public Witness 1/A, formal report Ex. Public Witness 11/B was recorded at the police station at 12.40 P.M. The ruka Public Witness 1/A was dispatched to the police station at 1230 P.M.

(8) Public Witness 32 sent a message to the parents of Rani who immediately reached the spot. Kishan Lal Bhatia, Public Witness 4 and Smt. Bimla Rani, Public Witness 10 are the father and mother of the deceased. Madhu Bhatia Public Witness 8 is the sister of the deceased who also came to the spot. PW. 3 Pradeep Kumar is the brother of the deceased.

(9) The accused had a shop in Lajpat Rai Market and Public Witness 32 summoned him through a police officer and he reached the spot at about 2 P.M. He was made to sit in Flat No. 60-C. The crime team and the dog squad were also sent for. The dog was given the scent from the nara (Ex. P1) found tied round the neck of the deceased and the dog went to Flat No. 60-C and barked at Rajinder Parshad.

(10) PW-32 prepared the inquest report at about 7 in the evening and sent the dead body along with the inquest papers to the mortuary.

(11) Dr. Ramani(PW-28) performed the postmortem on the body of Rani on 20th January at about 12.30 P.M. The doctor found that a white cord was encircled around the neck (two folds) with a slip type knot on the right side of the neck. Ligature was placed horizontally on the middle of the neck. The doctor found the ligature mark 0.5cms.to 0.8 cms. wide all around the middle of the neck over thyroid a cartilage on the front. The ligature mark was more prominent on the front cut was not very well defined on the back of the neck. Base of the ligature was depressed in the centre and margins were raised. The ligature mark was brown in colour in front of neck where it was well defined.

(12) The doctor further found the following injuries :-

(1)A linear abrasion 3 mm long on the right cheek. (2) Abrasion 0.5 cm x 0.5 cm on the upper left side near left angle of the mouth. (3) Multiple abrasions irregular in shape varying from 0.5 cm x 0.5 cm to 1 cm x 1 cm size scattered on right side in front of neck on the mid line and under surface chin.

The doctor gave the opinion that the death was due to asphyxia resulting from strangulation. The doctor further opined that the time since the death was about

30-36 hours. In cross-examination he stated that there may be margin of 2-3 hours in the time of death on either side.

(13) During the inspection of the scene of crime the almirah in the room was found open. Some Boxes meant for keeping jewellery were found empty. Two tumblers for taking tea/coffee were found on the centre table. A pyjama bearing some stains was laying on the sofa partly covered by a newspaper. A piece of ear-ring was also seen on the sofa. Experts from the Forensic Science Laboratory were sent for and they saw some finger prints on the tumblers and the tumblers were seized. Some finger prints were also seen on the Boxes meant for keeping the jewellery and they were also sealed in a parcel.

(14) On interrogation Rajinder Parshad disclosed that he had kept some jewellery in the shop and he could have the same recovered. Pursuant to the above information on 23-1-1980 the police accompanied by Rajinder Parshad went to the shop and recovered a card board from under a rack containing 4 gold churis Exs. P-6 to P-9, 1 gold ring Ex. P-13, 1 gold neck Chain Ex. P-15, 1 gold necklace Ex. P-16, 2 gold ear tops Ex. P-12/1 and 2 and 1 ladies gold ring Ex. P-14.

(15) The said gold or name us were identified in an identification parade by Madhu Bhatia and Bimla Rani as the ornaments which were given to the deceased at the time of the wedding. PW-27 Jagdish Bhasin and PW-30. Om Parkash Bhasin, proprietor of M/s. Rawal Pindi Jewellers gave evidence that 6 gold bangles and one chain were sold to Miss Rani vide receipt Ex. Public Witness 27/A. They further gave evidence that the gold Bangles were got prepared from their shop. Kishan Lal Bhatia produce a list of articles marked a. detailing the articles that were given at the wedding of Rani and the said list mentions the gold ornaments in question. Public Witness 4 Shri Bhatia testified that 86 grams of gold consisting of 6 churies, one necklace, two rings and one pair of ear ring were given to Rani at the marriage.

(16) On information given by Rajinder Parshad accused (Onkar Nath since acquitted) was arrested on 24th January 1980 and on his disclosure two gold bangles Public Witness 21/1 and 2, one ear-ring Public Witness 21/4 and one ring Public Witness 21/3 were recovered from Sushil Kumar. Onkar Nath was alleged

to have pawned the said ornaments with Sushil Kumar against a receipt. The said ornaments which are said to have been given to Rani were also identified by the sister and mother of the deceased.

(17) On an application by the police sample finger prints of Rajinder Parshad and Onkar Nath accused were obtained. The Assistant Director, Finger Prints vide communication dated 21-2-1980 reported that prints marked Q-7, Q-8 and Q-9 have been developed and photographed from the mugs but no identifiable print could be developed from the plastic jewellery case. The finger prints developed from the mugs were compared with the sample finger prints of Rajinder Parshad and Onkar Nath and the Assistant Director, on comparison of the two prints gave the opinion that finger prints Q-7 and Q-9 are identical with the left middle finger print and right thumb impression of Rajinder Parshad.

(18) The clothes of the deceased, bed sheet, pillow cover and the pyjama were sent to the Central Forensic Science Laboratory for their opinion and the report shows that the pyjama had human blood of A group. The blood group of Rajinder Parshad accused is also A group. The petticoat of the deceased was found to be stained with human blood of O-group. The report of the Central Forensic Science Laboratory in this regard is not of any help in determining the guilt.

(19) Rajinder Parshad accused in his statement under Section 313 Cr. P.C. took the plea that he had left Delhi on 16th January 1980 on a business tour to Ludhiana; that he was in Ludhiana from 17th January 1980 up to the morning of 19th January 1980, that at Ludhiana he had stayed in hotel Gulmarg that he had left for Delhi by a bus on 19th January at about 4 or 4.30 A.M. and reached Delhi at 10 or 10.15 A.M. that since he was late for his shop he did not go home and went straight to the shop; that at about 2 P.M. Sub-inspector Malooq Singh came to his shop and informed him of the death of his wife; that he closed the shop and went to the spot of crime; that he stayed for some time at Flat No. 60-C and, there after, the police took him to the police station where he was beaten. Rajinder Parshad stated that his relations with his wife were good. As regards the Jewellery recovered from the shop Rajinder Parshad stated that a few days before the occurrence his wife Rani and her parents had requested him to keep the jewellery

in a locker and that in order to keep the jewellery in a locker he had taken it to the shop; that he could not get time to place the jewellery in the locker and it remained with him in the shop. Rajinder Prashad claimed that all the gold ornaments belonged to him and that the parents of the deceased Rani had given him money for preparing two bangles. Rajinder Parshad admitted that he used to park his scooter in the verandah of the flat of Om Parkash PW.

(20) Rajinder Parshad denied the rest of the prosecution case. Rajinder Parshad in support of his defense examined DW-1 Bhagwan Gupta, DW-2 Harish Chander and DW-3 Subhash Chand.

(21) DW-1 Bhagwan Gupta is the milk vendor and he gave evidence that on 16th January 1980 Rajinder Parshad had told him that he would be going out of Delhi and he should not supply the milk. The witness stated that on 17th January the wife or Rajinder Parshad had taken milk and told him that she would be going away. In cross-examination the witness stated that on 18th January he had gone to the house of Rajinder Parshad to give milk but he found the house locked and that same is his reply in regard to 19th January, 1980.

(22) DW-2, Harish Chander testified that he is one of the partners of Hotel Gulmarg situated at G.T. Road, Jagraon Bridge; that he has brought with him the register of visitors from 8th January 1980 to 20th March 1980; that at Serial No. 117 dated 17-1-1980 there is an entry of the arrival of Inderjit Singh, resident of G-65 Greater Kailash, Part II New Delhi at 10.15 A.M. that Inderjit Singh had occupied a double bed room and he had left on 19th January 1980 at 2 P.M. that one guest was staying with the said Inderjit Singh but he is unable to identify the guest who stayed with Inderjit Singh. The witness in cross-examination stated that he has not brought the bill of Inderjit Singh.

(23) DW-3 Subhash Chand is the brother-in-law (sister's husband) of Rajinder Parshad. DW-3 gave evidence that on 18th January 1980 at 8 P.M. Rajinder Parshad had come to his house and he had his dinner with him, that thereafter he left him at hotel Gulmarg at 10.15 P.M. that he was staying with Inderjit who was introduced to him; In cross-examination DW-3 stated that Rajinder Parshad Along with his wife had come to Ludhiana on the Lohri festival; that he had come to

Ludhiana on 11th January 1980 to celebrate the Lohri. DW-3 further deposed that he cannot tell the date of the mundan ceremony of his sister's son. The witness refuted the suggestion that he had gone to attend the mundan ceremony of his sister's son at Amritsar on 18th January 1980.

(24) This is all the evidence produced by Rajinder Parshad in support of his alibi.

(25) The prosecution case admits of no-doubt that Rani was strangulated to death on the night of 18th/19th January 1980. The formal report Ex. PW1/B was recorded on the basis of the statement Ex. PW1/A by Saraswati. The statement PW1/A was recorded round about 12 Public Witness . and it was dispatched at 12.30 P.M. and the formal report was recorded at 12.40. Saraswati in the statement Ex. PW1/A stated that on 19th January at 7 A.M. she was Rajinder going to fetch milk and that at about 8.15 A.M. she saw Rajinder going away on his scooter.

(26) PW-1 in Court fully supported her above statement. The above statement of Public Witness 1, if believed, would prove that Rajinder was in his house on the night of 18th 19th January 1980.

(27) The plea of Rajinder as earlier stated in that on the night of 18th/ 19th January he was at Ludhiana. The learned trial Judge has dis-believed the plea of alibi of the appellant Rajinder. We have carefully pursued the record and we find ourselves in complete agreement with the Trial Judge that the plea of alibi set up by Rajinder is true.

(28) DW-2 gave evidence that one Inderjit Singh had stayed in his hotel Gulmarg from 17th January to 19th January 1980 and he had vacated the room at 2 P.M. on 19th January 1980. The witness further stated that one guest had stayed with Inderjit. The witness stated that he could not identify the guest who had stayed with inderjit.

(29) We find from the record that no serious attempt was made by the appellant to examine Inderjit. True, two or three attempts were made to summon Inderjit but on 26th February 1981 the defense counsel made a statement that Inderjit Singh is

not available as he is away to Bombay and he is not likely to come for another two months and, therefore, he closes his defense. The summons issued in the name of Inderjit Singh as well as the statement of DW-2 shows that Inderjit Singh is a resident of G-65, Greater Kailash, New Delhi. We may straightway say that if the defense version of Rajinder had any truth, he would have left no stone unturned to examine Inderjit Singh. We find that Rajinder in his statement at the trial did not say that at Ludhiana he had stayed in hotel Gulmarg with Inderjit Singh. He only stated that he stayed in hotel Gulmarg on 17th-18th January 1980. Had Rajinder stayed in hotel Gulmarg at Ludhiana with Inderjit Singh he would not have missed to mention this fact. We have carefully gone through the testimony of DW-3 Subhash Chand. We are not convinced with the truthfulness of his statement. Had the appellant gone to Ludhiana on 16th he would have definitely met his brother-in-law soon after his arrival at Ludhiana. There is nothing in the record to show that Rajinder had on any previous visit to Ludhiana stayed in hotel Gulmarg. In the normal course he would have stayed with his sister. In any case he would not have failed to meet them soon after his arrival at Ludhiana. Moreover we find nothing in the record that Rajinder had taken the plea of alibi when he was called by the police from his house. Had there been any truth in the plea of alibi of Rajinder accused he would certainly have taken the plea of alibi from the very start and pursued it vigorously. He would have moved the higher authorities and asked them to inquire into this plea. He also would not have failed to bring this fact to the notice of the magistrate before whom he was produced for remand on 21st January. PW-32 refuted the suggestion that Rajinder accused had told him that he had gone on tour to Ludhiana. We in the circumstances of this case have no reason to disbelieve the above statement of PW-32.

(30) Shri Mathur relying on the statement of PW-2 Om Parkash that 3 or 4 days prior to the death of his mother which was on the 19th of January he had met Rajinder accused who had told him that he was going on tour, contended that the above statement supports the version of Rajinder accused that he had gone to Ludhiana on 16th January. We have carefully perused the statement of PW-2 and we find that he is not wholly a reliable witness and he has tried to favor the appellant. PW-2 gave evidence that on 18th at about 11 P.M. he had seen Onkar Nath accused going to the flat of the appellant and that in

the morning at about 6.15 A.M. he had seen Onkar Nath going away. The witness was declared hostile and was cross examined by the Additional Public Prosecutor. PW-2 denied to have stated before the police that on 18th January at about 11 P.M. he had seen Rajinder accused accompanied by one other person going to flat 60-D, we are not discussing further the evidence of PW-2 since it concerns mainly Onkar Nath who has been acquitted. There is one more circumstance which needs to be noticed. Rajinder admittedly had a scooter. He has admitted that he used to park the scooter in the verandah of the house of PW-2. If Rajinder had gone to Ludhiana and returned from there on 19th at about 10 A.M. and gone straight to his shop, his scooter would have been in the verandah of the house of PW-2. There is no evidence that the scooter of the appellant was found in the verandah of the house of PW-2.

(31) For the above reasons we have no hesitation in holding that the plea of alibi taken by Rajinder accused is not true. PW-1 Saraswati in her statement Ex. PW1/A made before Public Witness 32 within about two hours of her detecting the crime in clear words stated that she saw Rajinder at about 7 A.M. taking the milk and again at about 8.15 A.M. going away on his scooter. PW-1 in court fully supported the statement made by her before the police. PW-1 is a woman aged 60 and resides in 60-C along with her son. There is nothing in the statement of PW-1 to show that she had any motive to make a false statement against Rajinder. In fact, her statement shows that she had good relations with the wife of Rajinder. PW-1 has given evidence that on the previous day Rani had told her that she had some pain in her back and that on 19th January at about 10 A.M. she had gone to the house of Rani to enquire about her health. The falsity of the plea of alibi further lends credence to the statement of PW-1. We would place PW-1 in the category of a wholly reliable witness.

(32) Shri Mathur referred to the following statement of PW-1:

'Sub-Inspector came within 15-20 minutes. I do not know the name; of that Sub-inspector, but he is standing outside the court and is a sikh. After 10-15 minutes thereafter. Inspector had also come there. Statement of 4 to 5 witnesses were recorded including myself by the Sub-inspector. One mona Thanedar had also

come and my statement was recorded by the mona thanedar'.

And contended that the above statement of PW-1 shows that her statement was recorded twice, one by the police inspector and second time by a mona thanedar, and that the prosecution has suppressed the statement made by PW-1 before the mona thanedar.

(33) We find no force in the above contention of Mr. Mathur. PW-1 had made the statement before Har Bhag Singh Public Witness 32 in Hindi. The statement is signed by Saraswati and it is attested by Har Bhag Singh. Public Witness 32 has stated that the statement of PW-1 was recorded under his supervision by S.I. Vidya Bhushan. We may say that it is in the statement of PW-32 (page 107) that when he reached the spot Vidya Bhushan Sub-inspector was present. The statement of PW-1 that her statement was recorded by a mona thanedar is correct.

(34) Mr. Mathur contended that the substance of the report Ex. Pw 1/A was not entered in the daily diary and that throws doubt if the statement Ex. PW1/A was recorded at the time it purports to have been recorded. Mr. Mathur; in this regard further contended that in the entry Ex. PW11/D the name of the complainant and the accused Rajinder is not recorded.

(35) We find no merit in this contention. PW-1 cannot be put in the category of a complainant. PW-1 in the report Ex. PW1/A had not named or suspected any one as an accused. She had merely stated that she saw Rajinder taking milk in the morning and later leaving his house. Entry Ex. PW11/D in the daily diary mentions that a writing in Hindi has been received and this obviously refers to the statement Ex. PW1/A of Saraswati.

(36) Shri Mathur next contended that in the inquest report which was prepared at about 7 P.M. in Column No. 21 it is written that she (Rani) has been strangled by someone, according to the counsel above writing shows that the report Ex. PW1/A was recorded sometime after the inquest report was prepared.

(37) We do not agree. We have earlier observed that PW-1 has not named any one as an accused in the report Ex. PW1/A. PW-32 in the brief statement of facts Ex. PW32/A has referred to the statement made by PW-1.

(38) For the above reasons we find no basis to hold that the statement of PW1 was not recorded at the time and place it purports to have been recorded.

(39) The next circumstance appearing in evidence against the appellant is the recovery of the gold ornaments at his instance from his shop at Lajpat Rai Market. The recovery of the gold ornaments is not disputed by Rajinder. His plea is that a few days before the occurrence Rani and her parents asked him to deposit the jewellery in a locker and he had taken the jewellery to his shop for being placed in a locker and since he did not get time he could not put the jewellery in a locker. Rajinder has further claimed that all the jewellery belonged to him and that Public Witness 4 had only given money for two churies. We are of the view that the accused has failed to substantiate his above pleas. We fully agree in the reasoning and conclusion of the Additional Sessions Judge that the gold ornaments were removed by the appellant Rajinder from the almirah and he left the almirah open to create an impression that a robbery had taken place.

(40) PW-20 Shri Khushi Ram, owner of shop No. 507 Lajpat Rai Market gave evidence that he had let out two almirahs fixed on the tharah in front of Shop No. 507 to Rajinder accused and he used to carry on business of radio parts and keep his business stock in the almirahs. He further deposed that in front of the tharah a shutter is fixed.

(41) We find no reason for the accused Rajinder to have kept the jewellery in a rack in the almirah. There is another circumstance which belies this defense of Rajinder. Two pieces of churies. one piece of ear ring and a ring were recovered from Sushil Kumar at the instance of Onkar Nath. PW-23 Sushil Kumar gave evidence that Onkar Nath had pawned with him two bangles, one piece of ear ring and a ring. The recovery of the said gold ornaments from Sushil Kumar has been believed by the Sessions Judge and in our view rightly. The said gold ornaments have been identified as belonging to Rani and which were given to her in dowry. PW-2 gave evidence that he saw Onkar Nath going to the flat of the accused at

about 11 P.M. on 18th January and on the next morning he saw him going away. There is strong evidence on the record that Onkar Nath was with Rajinder on the night of 18th/19th January and he had taken away part of the jewellery and which was recovered at his instance from Sushil Kumar. But since Onkar Nath has been acquitted we do not wish to say anything further qua Onkar Nath.

(42) PWS. 27 and 30 identifies the gold churries having been prepared at their shop and sold to Rani vide Cash Memo Ex. PW7/A. PW-4 Shri Bhatia gave evidence that conclusion that the appellant Rajinder was in the house on the night of 18th/19th January. The post mortem report shows that the occurrence took place sometime between 12 mid-night and 6 A.M. of 18th/19th January. In our opinion the circumstances established on the record put it beyond doubt that it was the appellant Rajinder who has committed the crime.

(43) Beside that the crime is heinous and brutal, it has been committed in a cunning and treacherous manner. The murder is pre-planned. The crime is motivated by greed and the desire to marry a second time. We wish to put on record that during the hearing of the appeal we were inclined to give notice to the appellant for enhancement of the sentence, but we have decided not to do so because of time lapse between the conviction by the trial judge and hearing of the appeal.

(44) We are also not very happy with the acquittal of Onkar Nath but since there is no appeal against his acquittal, we are not interfering with his acquittal.

(45) The learned Additional Sessions Judge regarding the ornaments has given the order that they be returned to the person who is finally declared to be entitled to receive it by the civil court. We find no sufficient reason to postpone the delivery of the ornaments to the parents of the deceased till the decision of the suit. We direct that the gold ornaments be handed over to the parents of the deceased forthwith. The trial Judge shall see that the gold ornaments are handed over either to the father Shri Kishan. Lal Bhatia, Pw 4 or to the mother Smt. Bimla Rani, Public Witness 10.

(46) We affirm the conviction and sentence and dismiss the appeal.

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