

Sunder @ Lala Vs. State

Sunder @ Lala Vs. State

SooperKanoon Citation : sooperkanoon.com/695855

Court : Delhi

Decided On : May-11-2009

Reported in : 160(2009)DLT701

Judge : Pradeep Nandrajog and; Aruna Suresh, JJ.

Acts : [Evidence Act 1872](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 232 and 354; Indian Penal Code (IPC) - Sections 34, 201, 302 and 498A; [Constitution of India](#) - Article 21

Appeal No. : Crl. Appeal No. 623/2005

Appellant : Sunder @ Lala

Respondent : State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Rebecca M. John,; Vishal Gosain and; Bharvo K. Chauhaan

Disposition : Appeal allowed

Judgement :

Pradeep Nandrajog, J.

1. Article 21 of the [Constitution of India](#) guarantees that no person shall be deprived of his life or personal liberty except according to the procedure established by law.

2. Pertaining to offences under the Indian Penal Code, the various sections thereof enumerate offences contemplated by the legislature. The ingredients of the offences have to be culled out on a reading of the relevant section of the penal code. Since actus reus i.e. the doing of an act is an inseparable part of most offences, the same requires to be established by evidence. The rules of evidence have been prescribed under the [Evidence Act 1872](#). Admissibility and relevance of evidence has to be determined, at a criminal trial, with reference to the provisions of the [Evidence Act 1872](#). The Code of Criminal Procedure 1973 governs the procedure to be followed at criminal trials.

3. Chapter XVIII of the Code of Criminal Procedure 1973 contains provisions relatable to trial before a Court of Sessions. As per Section 232, being a part of Chapter XVIII of the Code of Criminal Procedure 1973, if after taking the evidence of the prosecution, a Judge considers that there is no evidence that the accused committed the offence, it is the duty of the Judge to record an order of acquittal.

4. Chapter XXVII of the Code of Criminal Procedure 1973 contains provisions pertaining to the judgment to be delivered by a Court. Section 354 mandates that the judgment shall contain the points for determination and the decision thereon with reasons for the decision.

5. A reasoned decision is not one which spans pages and pages of paper. A reasoned decision is one which shows that the decision maker has come to grip with the issues raised and has dealt with the same, reflecting the process of the mind by which the conclusions have been arrived at.

6. A judgment at the end of a criminal trial which ignores the evidence which has been brought on record, and without application of mind arrives at conclusion sans a reasoning preceding the same, resulting in the conviction of the accused, is a serious violation of the right of the accused CrI. A. No. 623/05, 624-25/05, 626-27/05 & 632/05 Page 4 of 38 guaranteed under Article 21 of the [Constitution of](#)

[India](#), because it results in deprivation of personal liberty without following the procedure established by law. Thus, at a trial, when the hand and the mind of a Judge turn cold, the first casualty is Article 21 of the [Constitution of India](#) and the second casualty is the oath taken by a Judge to decide every case brought before him as per procedure established by law.

7. We are pained to commence our present decision with a preface aforesaid, for the reason, at least qua accused Ranbir Singh, the father-in-law of the deceased and accused Jai Prakash, the brother-in-law of the deceased, for the offence of murdering Laxmi, learned Counsel for the State Shri Pawan Sharma conceded during arguments in the appeal that there is just no evidence whatsoever to sustain their conviction.

8. We are pained to note that the learned Trial Judge has incorrectly reflected the evidence and has read statements into the testimony of PW-1, not made by her, and indeed not reflected in her deposition recorded by the Court.

9. In para 47 of the impugned decision dated 11.7.2005, the learned Trial Judge has reflected upon the testimony of Smt. Rajo PW-1 as under:

47. I have gone through statement of PW-1 Smt. Rajo. She has categorically stated that on 20/7/02 at about 11 am she was present in her house when her father-in-law Randhir Singh, Balbir Singh - husband of Smt. Laxmi, Sunder Lal - her devar and his wife - Asha, Jai Prakash and her mother-in-law - Smt. Dhanpati were all present in the house when they all took Smt. Laxmi to the first floor of the house by dragging her. Accused Sunder was also having an injection syringe and one vial in his hand. She also tried to go upstairs, but she was pushed back by her mother in law Smt. Dhanpati and she was bolted in a room on the first floor. After some time her mother in law Smt. Dhanpati opened the door of the room in which she was bolted and she was taken to the room where Smt. Laxmi had been taken. There she saw Smt. Laxmi in a sitting posture on the bed in that room and a rope was around her neck which was tied with the ceiling fan. Her mother-in-law got that rope cut with a sickle which she had given to her and she threatened her that in case she raised an alarm she would also be implicated. As she cut the rope, Smt. Laxmi fell on the bed. She could feel that Smt. Laxmi still had some life. But

Smt. Laxmi was kept in the house till 4 pm. Thereafter members of her matrimonial home took Smt. Laxmi to cremation ground in the village. Somebody called the police and police arrived there before Smt. Laxmi could be cremated. From the evidence of this witness it has become clear that all the accused persons had taken Smt. Laxmi to the room on the first floor where she was given poison and then she was hanged with the help of a rope with the ceiling fan. I have also gone through the cross examination of this witness, but nothing significant could be elicited in the cross examination which could impeach the credibility of this witness.

10. It is apparent that the learned Trial Judge has written in para 47, that in her statement Smt. Rajo PW-1 has categorically stated that on 20.7.2002 at about 11:00 AM she was present in her house when her father-in-law Randhir Singh, Balbir Singh - husband of Smt. Laxmi, Sunder Lal - her devar and his wife - Asha, Jai Prakash and her mother-in-law - Smt. Dhanpati were all present in the house when they all took Smt. Laxmi to the first floor of the house by dragging her.

11. We reproduce, in verbatim, the examination-in-chief of Smt. Rajo PW-1. It reads as follows:

We two sisters i.e., myself and my elder sister Laxmi were got married to two real brothers i.e., Sh.Jai Prakash and Sh.Balbir Singh respectively in the year 1990. Laxmi had got 3 children born to her and I have two children out of this marriage. For 3 years of this marriage, our matrimonial home members kept us in normal condition but thereafter, they started acts of beating and harassment. Laxmi used to live on the first floor in the matrimonial home and I used to live on the ground floor.

Incident of the present case of 20.7.2002 and time was 11 am. Family members present in the house were myself, my father-in-law Sh. Ranbir Singh today present in Court, Sh. Balbir Singh husband of Mrs. Laxmi, Sh. Sunder Lal my Devar, his wife Smt. Asha and my husband Sh. Jai Prakash and my mother in law Smt. Dhanpati all these persons are present today in court as accused. In the morning on the date of incident, Laxmi got her children ready for school and the children were sent to the school. Laxmi after sending children to school came to me and

started crying/weeping. Her husband, Balbir, Balbir's brother Sunder and his wife Asha and my mother in law Dhanpati then took Laxmi to take her to the first floor and rather they pulled her to take her upstairs by force. Accused Sunder was then having an injection syringe and one vial. I then also tried to go upstairs but then my mother in law pushed me and bolted me in a room. The room in which I was bolted was situated on the first floor which was in occupation of accused Sunder otherwise. From that room I made a telephone call at my parents house telling at my house that my sister has been killed. Thereafter, my mother in law opened the door in which I had been bolted and took me to the room where Laxmi had been taken. I saw Laxmi in a sitting posture on the bed in that room and there was a rope around her neck and that rope then tied with a ceiling fan. My CrI. A. No. 623/05, 624-25/05, 626-27/05 & 632/05 Page 7 of 38 mother in law got that rope cut with a sickle which she had given to me. She threatened me that in case I raised hue and cry I also would be implicated. As I cut the rope Laxmi fell on the bed as I could sense Laxmi had some life. But then Laxmi was kept in house till 4:00 PM. Members of my matrimonial home then took Laxmi to the cremation ground in the village Deenpur PS Najafgarh, Delhi. Someone called police at No. 100 and then police arrived before Laxmi was cremated. I have seen my statement which bears my thumb impression and is exhibit PW-1/A which was recorded on 27.7.2002. I had left my matrimonial home on 20.7.2002 and came to my parents house with my father. Reason for lodging my report with police on 27.7.2002 by delay of 7 days was my physique not in a proper condition as I had not been keeping well.

After 15-20 days of lodging of my report on 27.7.2002, that I again visited my matrimonial home with police and I pointed out the place where I had seen Laxmi with rope around her neck and police carried out these proceedings.

12. We have read and re-read the statement of Rajo and simply do not find anywhere stated by her that all accused dragged Laxmi to the first floor of the house. In fact, she has deposed: Her husband, Balbir, Balbir's brother Sunder and his wife Asha and my mother in law Dhanpati then took Laxmi to take her to the first floor and rather they pulled her to take her upstairs by force.

13. It appears that so predetermined was the learned Trial Judge to convict all the accused, that in his zeal, he has read non-existing statements into the testimony of Rajo. 14. It is not in dispute that Laxmi was married to Jai Prakash and her sister Rajo was married to Balbir Singh. Both sisters were married in the same family to two brothers and used to reside in the joint family with their in-laws as also their brother-in-law Sunder whose wife Asha also used to reside in the same house i.e. the ancestral house in village Deenpur under jurisdiction of PS Najafgarh.

15. On 20.7.2002 at around 5:00 PM the body of Laxmi was seized by SI K.K. Mishra PW-14 from the cremation ground of Surya Vihar near Deenpur as he and Const. Shashi PW-9 had gone to the cremation ground as a telephonic information was received at the police station that a lady had committed suicide in village Deenpur and her relatives had taken her to the cremation ground without informing the police.

16. The dead body seized was that of Laxmi. It was sent for post-mortem to DDU Hospital where Dr. Manoj Nagpal PW-8 conducted the post-mortem on 22.7.2002, recording on the post-mortem report Ex.PW-8/A, the following external injuries:

Presence of faint mark seen on the neck in front extending from upper part of thyroid cartilage to the nape of the neck upward and backward. Base of the mark was congested.

17. He preserved the viscera of the deceased and handed over the same to SI K.K. Mishra as recorded in the memo Ex.PW-14/C. He wrote on the post-mortem report that the opinion pertaining to the cause of death was kept pending to await the analysis of the viscera of the deceased. It may be noted that as per FSL report Ex.PW-14/H dated 4.9.2002, the viscera of the deceased tested positive for presence of aluminium phosphide i.e. aluminium phosphide was detected in the stomach and a piece of small intestine. From the pieces of liver, spleen and kidney of the deceased phosphide was detected.

18. Reverting back to what happened on 20.7.2002, after SI K.K. Mishra seized the dead body of Laxmi and sent the same for post-mortem, SI K.K. Mishra went to the house of the deceased and summoned a photographer who took

photographs of the room in which Laxmi died. He seized a rope Ex.P-1 and a sickle Ex.P-2 which were handed over to him by Jai Prakash, husband of Rajo PW-1 i.e. the brother-in-law of the deceased and recorded the said fact in the memo Ex.PW- 14/A.

19. The next day i.e. on 21.7.2002 he recorded the statement Ex.PW-2/D-1 of Hari Singh PW-2, the translation whereof reads as under:

Statement of Hari Singh S/o Dalsher Singh R/o village Basodi Distt. Sonapat (Haryana) aged 52 years.

I reside at the afore noted address with my wife and children and am a farmer. I have five children i.e. three daughters and two sons. My eldest daughter Laxmi is aged 30 years, Rajo is aged 25 years and the youngest daughter Usha is aged 20 years. Laxmi and Rajo were married on the same day i.e. on 1.4.1990 to Balbir Singh son of Randhir Singh and Jai Prakash son of Randhir Singh resident of village Deenpur PS Najafgarh New Delhi. Whereas Laxmi started residing in her matrimonial house in the year 1990, Rajo joined her matrimonial house after three years of her marriage. After 4 - 5 years of Laxmi's marriage her in-laws i.e. her mother-in-law, father-in-law, husband and her brother-in-laws named Jai Prakash and Sunder started demanding money saying that they needed the same for opening a business. Twice I gave Rs. 20,000/- and Rs. 20,000/- but due to my financial condition was unable to satisfy their demand. Since I am a poor farmer, whenever my daughters Laxmi and Rajo used to come to my house they would complain of ill-treatment by their parents-in-law, husbands and brothers-in-law. Especially Laxmi whose husband used to consume alcohol and under influence of alcohol used to abuse and physically assault Laxmi. About 8 - 10 days prior to Laxmi's death her husband had assaulted her as a result whereof her eardrum got damaged. Some information used to be given to us by our daughters over the phone and sometimes when they used to come to my house. I am fully convinced that my daughter Laxmi has been murdered by her father-in-law, mother-in-law, her husband and her brother-in-laws. I have been read over my statement which is correct.

20. On 27.7.2002 the statement Ex.PW-1/A of Rajo was recorded by SI K.K. Mishra which reads as under:

Statement of Rajo D/o Shri Hari Singh R/o village Basondi P.O. Basondi Village and P.O. Sonapat (Haryana) aged 25 years.

I reside at the afore-noted address. We are five brothers and sisters. On 1.4.1990 myself and my elder sister Laxmi were married as per Hindu custom to Balbir and Jai Prakash both sons of Randhir Singh residents of village Deenpur PS Najafgarh, New Delhi. Three children were born to my sister Laxmi. The eldest is a daughter Barkha aged 11 years, the second is also a daughter Navita aged 7 years, the third is a son Mohit aged 5 years. Two children, both sons, Jai Vikrant aged 7 years and the second Jaidev aged 4 years were born to me. My sister went to her matrimonial house soon after her marriage and I went to the matrimonial house after three years of my marriage. Till then we sisters had no complaint and for about two years everything was fine. After two years the attitude of our in-laws changed and they became abusive towards us and we used to be beaten. Whenever sad we used to go to our parental home and on being counseled by our parents we used to return to our matrimonial house. Balbir used to drink alcohol and under influence of alcohol used to beat my sister who used to reside on the first floor. I used to reside on the ground floor. In the morning of 20.7.2002 my sister got up and sent her children to school after dressing them in the school uniform. At that time all family members were present in the house. After sending her children to school she came and sat beside me and started crying. At that time my mother-in-law, my sister-in-law Asha, Balbir - husband of Laxmi and my brother-in-law Sunder @Lala who had an injection caught her and took her upstairs. My husband Jai Prakash and my father-in-law were sitting in the ground floor. The time was around 10:30/11:00. When these people were forcibly taking my sister upstairs and I attempted to move upstairs, my mother-in-law pushed me inside a room and locked me inside. The room belonged to my brother-in-law Sunder which had a telephone and I used the same to ring up my village and inform to pass on information to my parents that Laxmi had been murdered. At that point of time my mother-in-law opened the door of the room in which I had been bolted and took me to the adjoining room of Laxmi. I saw Laxmi in a sitting posture

on the bed with a rope around her neck and tied to the ceiling fan. My mother-in-law thrust a sickle in my hand and made me forcibly cut the rope. She told me that I should tell that Laxmi has hung herself and that I had cut the rope with the sickle. Thereafter, my mother-in-law and other family members went down. I started crying at which my mother-in-law threatened that if I cried they would implicate me. The dead body of Laxmi was kept in the house till 4:00 PM when it was taken to the cremation ground from where it was seized by the police as somebody had informed the police about my sister's death.

21. The entire case of the prosecution is based on the testimony of Rajo whose presence in the house is not in dispute and who claimed to be an eye-witness to the events which took place in the matrimonial house on 20.7.2002. Needless to state, the conduct of the in-laws of the deceased of not informing the police about the death of Laxmi, which was obviously and admittedly unnatural, and their attempt to cremate the body was pressed in aid as an incriminating conduct. The FSL report which showed that Laxmi was poisoned was used as evidence to corroborate Rajo that the deceased was poisoned with a substance containing aluminium phosphide. The father, brother and mother of the deceased i.e. Laxmi were also examined to prove dowry demands and harassment to Laxmi.

22. Thus, we need not note the testimony of the police officers who were involved with the investigation. We also need not note the testimony of the doctor who conducted the post-mortem of Laxmi as also the testimony of the scientist who tested the viscera of the deceased.

23. In para 9 above, we have reproduced para 47 of the impugned decision, wherein the learned Trial Judge has held that Rajo PW-1 has categorically deposed that all the accused persons were present in the house and all took Laxmi to the first floor of the house by dragging her. With reference to the cross-examination of Laxmi, learned Trial Judge has held: I have also gone through the cross examination of this witness, but nothing significant could be elicited in the cross examination which could impeach the credibility of this witness.

24. As noted by us herein above in paras 9 to 12 above, we just do not find any role attributed by Rajo to Randhir Singh - the father-in-law of the deceased or Jai

Prakash - the brother- in-law of the deceased who also happens to be the husband of Rajo. What has been deposed to by Rajo is that in the morning all family members were present in the house and that after Laxmi sent her children to the school she came to her room and started crying, at which point of time Balbir - husband of Laxmi, Sunder and his wife Asha and her mother-in-law Dhanpati took Laxmi by force on the first floor and at that point of time Sunder was having an injection syringe and a veil and that when she i.e. Rajo tried to go upstairs her mother-in- law pushed her and bolted the room on the first floor which was in the occupation of Sunder. Nowhere has Rajo spoken about her father-in-law and her husband doing any act at that point of time. In her further testimony, Rajo has deposed that after she made a call to her village informing that her parents be informed that Laxmi has been killed, her mother-in-law opened the room and took her to the room of Laxmi where she saw Laxmi in a sitting posture on the bed with a noose around her neck and the other end tied to the ceiling fan. Her mother- in-law made her cut the rope with a sickle and threatened her of being implicated if she cried. No role has been assigned by Rajo to her husband i.e. Jai Prakash or her father-in-law i.e. Randhir Singh even at stage two of the events narrated by her.

25. Indeed, the learned Trial Judge has read the testimony of Rajo, to say the least, in a most perverse manner. The testimony of Rajo has been twisted to suit the predetermined goal set by the Judge i.e. to convict Jai Prakash and Randhir Singh.

26. It is not out of place to note that even in her statement Ex.PW-1/A made to the police and as recorded by SI K.K. Mishra, Rajo substantially stated the same facts which she had deposed in Court. Even in said statement, translated version whereof we have reproduced in para 20 above, she has not assigned any role to her father-in-law and her husband. She has only said that they were present in the house on the ground floor.

27. No other incriminating evidence against said two persons has been brought on record pertaining to the death of Laxmi. Qua them, the only incriminating evidence which remains to be considered would be the act of said two persons joining the

other family members in the cremation of Laxmi without informing the police. At best, the same would relate to an offence punishable under Section 201 IPC i.e. destroying evidence. Thus, for the offence punishable under Section 302/34 IPC, Randhir Singh and Jai Prakash are entitled to be acquitted.

28. We need to discuss the testimony of Rajo with reference to the four other co-accused viz. her brother-in-laws Sunder and Randhir Singh as also her mother-in-law Dhanpati and Asha wife of Sunder.

29. It is settled law that circumstances play a very important role in the appreciation of evidence. The conduct of witnesses is a very important facet to determine their creditworthiness.

30. In para 11 above we have reproduced in verbatim the examination-in-chief of Rajo.

31. We note that in cross-examination she admitted that her parents had information of death of Laxmi by around 11:00 AM on 20.7.2002 and that her mother and brother Vijay had met her at 4:00 PM on 20.7.2002. She admitted that people of village Deenpur had collected in her matrimonial house after Laxmi died. She admitted that the distance between her matrimonial house and her paternal house could be covered in a bus by two to three hours. She also admitted in cross-examination that her brother-in-law Balbir Singh was employed with S.K.Tourist and used to leave the house in the morning for Nangal Rai and used to return in the evening. She also admitted that her brother-in-law Sunder was privately employed in a hotel and used to leave the house in the morning and return in the evening. She stated that she cannot tell whether Sunder was employed with Taj Caterers. She admitted that she did not narrate the incident to any woman from the locality who had arrived in their house after Laxmi died. She denied the suggestions that Balbir and Sunder had left the house for their job in the morning by around 6:30 AM and that her father-in-law Randhir Singh had also left the house. She denied that her husband Jai Prakash had left the house for the fields at around 7:00 AM. She denied that in fact Asha had seen Laxmi hanging by the rope from the ceiling fan and came down crying at which she and her mother-in-law went upstairs and she cut the rope around the neck of Laxmi with a sickle

and laid the body on the bed. She denied that Balbir and Sunder arrived in the house at around 12:30 PM.

32. Hari Singh PW-2 deposed that on 1.4.1990 his daughters Laxmi and Rajo were married to Balbir and Jaiprakash, both brothers. Laxmi joined her matrimonial home immediately after marriage. Rajo joined the matrimonial home after three years. For the next three years thereafter there were no complaints but thereafter his daughters started complaining that the in-laws used to compel them to bring money as they desired to set up a business and that Balbir, husband of Laxmi started consuming alcohol and started quarreling with Laxmi and started beating her. On two occasions he had paid Rs. 20,000/- each but could do no more due to his not being in a sound financial condition. That on 20.7.2002 his wife and son went to the matrimonial house of his daughters as they got information of Laxmi's death. He learnt about Laxmi's death at 3:00 PM on 20.7.2002 when he reached his house. He reached the matrimonial house of his daughters by evening and by then Laxmi's body had been sent for post-mortem. He was told by his son Vijay Pal and his wife Jago that Laxmi had been killed by hanging. He spoke to his daughter Rajo at around 11:00 or 11:30 PM but she did not narrate any details to him as she was not conscious.

33. Vijay Pal PW-4 deposed that his sisters were married to Balbir Singh and Jai Prakash on 1.4.1990 and that his father had twice given Rs. 20,000/- to Laxmi as her in-laws were demanding money. His sisters used to tell him that they were tortured by their in-laws. Eight to ten days prior to the incident Laxmi had informed that Balbir had beaten her as a result her ear got damaged. On 20.7.2002 Rajo informed them that Laxmi had been killed by her in-laws. He and his mother went to Deenpur. That his statement was recorded by the police on 5.8.2002. On being cross-examined, PW-4 stated that at 11:00 AM on 20.7.2002 they were informed by Rajo that Laxmi had been murdered.

34. Jago PW-5, the mother of the deceased deposed on same lines as her son and also stated that on 20.7.2002 at 11:00 AM she received a call from Rajo informing that Laxmi had been killed and that she reached the matrimonial house of her daughter at 3:00 PM.

35. The defence led evidence and examined five witnesses. DW-1 was examined to prove that she was present in the matrimonial house of the deceased who committed suicide. DW-2 was examined to prove that Balbir Singh was in his office at 11:00 AM on 20.7.2002. DW-3, DW-4 and DW-5 were examined to prove that Sunder was in his office at 11:00 AM on 20.7.2002 i.e. DW-2 to DW-5 were examined to make good the plea of alibi raised by Balbir Singh and Sunder.

36. Mrs. Krishna DW-1, a bangle seller, deposed that on the day of occurrence she reached the house of the accused at around 10:00 AM. Accused Randhir Singh was leaving home at that time and no other male member was present in the house. Accused Dhanpati called her inside the house and asked her to show bangles to her three daughters-in-law. As she entered the precincts of the house she saw the deceased go upstairs after washing her hands in the kitchen. She showed bangles to accused Asha and Rajo, the daughter-in-laws of Dhanpati. Dhanpati requested Asha to call the deceased so that even she could buy bangles. Asha went upstairs and returned screaming that Laxmi had committed suicide. She along with the other members of the family went upstairs and saw the deceased in a sitting posture on the bed with her neck tied with a rope and her head tilted to one side. The rope was cut by Rajo the sister of the deceased. That the neighbours collected and within half an hour Jai Prakash @Lala reached the house. The family members contacted their relatives over the phone. That the police contacted her four to five days after the incident and her statement was recorded by them and she signed the same.

37. Anil Kumar DW-2 the owner of S.K.Tourist Service deposed that accused Balbir Singh used to work with him as a supervisor and that he used to arrive at the office at around 7:00 AM and leave at 4:00 PM. That on the day of the incident Balbir came to the office at 7:00 AM and remained in the office till around 11:00 AM when he i.e. the witness received a telephone call from someone who was in a perplexed state of mind and asked for accused Balbir. He called Balbir, who after attending the call, told him that his wife had committed suicide. With his permission Balbir left the office. That the police contacted him probably on the third day after the occurrence and recorded his statement and told him that he will be sent summons from the Court as and when required. Relevant would it be to

note that during cross examination the witness stated that he used to pay salary to his employees in cash and that he had no document to show that Balbir was employed by him. He stated that his chartered accountant prepares his profit and loss account.

38. Yunus Patel DW-3 deposed that he was a co-worker along with accused Sunder at Taj Sets Air Catering near Airport and that on the day of the incident he boarded the company coach (bus) along with accused Sunder at around 7:15 - 7:20 AM. On reaching the office, as per practice they punched the computer machine to record their entry and presence in the office by inserting their I-card in the punching machine which recorded the entry. That Sunder performed his usual duties till around 11:00 AM till he received a telephone call from his house informing him that his sister-in-law had committed suicide. The information was immediately conveyed to the head chef Mr. Devinder Soni who asked him i.e. the witness to accompany the accused since accused Sunder was in a state of shock. That both left the office at around 11:00 AM and reached the house of accused Sunder at around 11:45 - 11:50 AM. A huge crowd had gathered around the house when they reached. That SI K.K.Mishra visited their office and made enquiry about presence of Sunder in the office and that he told SI K.K. Mishra that Sunder was in the office till 11:00 AM and that SI K.K. Mishra made enquiries from Ajay Sood and Devinder Soni and asked them to affirm the information given in writing. That the senior Chef Mr. Ajay Sood gave the information in writing vide Ex.DW-3/A and Devinder Soni the head Chef gave similar information in writing vide Ex.DW-3/B.

39. DW-4 Pawan Kumar Sharma deposed that he worked with Taj Sets Air Company as Manager Human Resources where accused Sunder was also an employee. On the date of the incident at 11:00 AM a phone call was received by him from the head of the department of accused Sunder viz. Chef Ajay Kumar informing him that accused Sunder had to go home as he had received a call from his house informing him that his bhabhi had committed suicide and that the accused be given the permission to leave the office. That the police visited their office one week after the incident and the afore-mentioned facts were given by him to the police in writing and that the original of the photocopy mark 'X' was given to the police.

40. Ajay Kumar Sood DW-5 deposed that he worked with Taj Flight Kitchen and that on the day of the incident, at about 10:30 AM he was informed by Mr. B.K.Soni that accused Sunder has some emergency at home and would have to leave for home. That he immediately informed Mr. Pawan Sharma DW-4 that accused Sunder was being sent home on account of the emergency. He called the person at security gate and asked him to allow Sunder to leave the premises and was informed by said person that Sunder had already left the premises with some union members, one of whom was Yunus Patel. That the police had come to him for verification of the facts of the case and that he had told the aforesaid facts to the police and that the writing Ex.PW-3/A given to the police was signed by him at point 'B'.

41. As noted above, the learned Trial Judge has convicted the accused for the offence of murdering Laxmi believing the testimony of Rajo PW-1. The plea of alibi and the evidence related thereto has been turned down as discussed in para 54 and 55 of the decision. In para 54, the testimony of Anil Kumar DW-2, has been discussed, who deposed that Balbir was his employee and was in the office at about 7:00 AM on 20.7.2002 and left for his house when he received information that his wife had died. He did not produce any documents to show that Sunder was his employee or was in the office as stated by him. The learned Trial Judge has held as under:

54. DW-2 Sh.Anil Kumar has deposed that he is running business of transport and accused Balbir was working as supervisor with him since 1995 and had remained with him as supervisor till 20/7/2002. On 20.7.2002 he had arrived at his office at about 7 am. At about 11 am on that day he received a telephone call for Balbir. After hearing telephone call, Balbir Singh told him that his wife had committed suicide and he had to go. He permitted him to leave the office immediately. In his cross examination he has stated that he did not issue any appointment letter to accused. There are about 15 employees with him and he did not keep any attendance or service register of the employees. He did not give salary by cheque to the employees. He did not keep any Profit and Loss Account. He cannot show any document to show that accused Balbir was working with him or attended office on 20/7/2002 at about 7 am. Testimony of this witness is of no help to the accused

persons because he has failed to show any document to prove that accused Balbir was working with him or that he attended office on 20/7/2002 at 7 am and was with him up to 11 am. No reliance can be placed on the evidence of this witness.

42. DW-3 to DW-5 deposed that Sunder was employed with Taj Sets Air Catering and had reported for duty in the morning of 20.7.2002 and had left when he received telephonic message that his sister-in-law had died. Noting that evidence led by Sunder, in the form of his presence being recorded at the computerized punching machine which recorded the same with reference to the I-Card of Sunder, was unimpeachable, the learned Trial Judge has held that there is no proof that Sunder left the office at a particular time. The learned Trial Judge, in para 55 has held as under:

55. DW-3 Yunus Patel has stated that he is working in Taj Sats Air Catering near airport since 1990. Accused Sunder was also working as cook in the same kitchen. On 20/7/2002 they boarded the bus together and when they reached office together at 7.20 am he along with accused Sunder got the entry card punched. On that day accused Sunder attended his duties till around 10.45-11 am when he received a telephone call about the fact that his Bhabhi had committed suicide and accused thereafter immediately left the kitchen. This witness has further deposed that at the time of departure at about 11 am he was along with accused, but at that time he did not put his card in the computer as he was in a hurry and that accused Sunder also did not put his card in the computer at that time. He made no complaint in writing to any police officer about the false implication of this accused in this case or about the facts stated by him in the court. Testimony of this witness is also of no help to the accused persons as the punching time on the card is given 7 am on 20/7/2002, but no departure time of 11 am is mentioned in the card. If he along with accused Sunder had left the office at 11 am on 20/7/2002, they should have put their card in the punching machine, but he says that neither he nor accused Sunder put his card in the machine so that time could be printed on the card as and when he along with DW-3 left the company. He has further stated that he did not make any complaint with police stating that accused Sunder, present in court, was in the company at the time when this incident took place or that accused has been falsely implicated in this

case by the police at the instance of complainant. He should have made a complaint to the senior police officers when he came to know that accused has been falsely implicated in this case. Testimony of this witness is of no help to the accused persons.

43. Pertaining to the plea of alibi set up by Sunder and the evidence brought on record by him, it is apparent that the learned Trial Judge has accepted that the same conclusively established, that in the morning of 20.7.2002, Sunder had reported for duty in his office, inasmuch as, his presence was recorded in the computerized punching machine installed by the employer, where all employees had to mark their attendance. This evidence of unimpeachable character was duly corroborated by the testimony of DW-3 to DW-5. But the learned Trial Judge has held, that since there is no departure entry recorded in the punching machine, and that since Sunder did not raise a hue and cry and did not make complaints to superior police officers of being falsely implicated, an inference had to be drawn that the plea of alibi set up by him, of not being in the house at 11:00 AM, was not proved.

44. The first reason given by the learned Trial Judge that from the fact that there is no departure entry punched by Sunder in the computerized punching machine at the time of departure and hence it does not stand established that he was present in his office at 11:00 AM, is in sweet ignorance of the requirement of appreciating the conduct of a person with reference to the circumstance in which the person was, at the relevant time.

45. The sister-in-law of Sunder had suffered an unnatural death and said information given to Sunder, would obviously trouble the mind of Sunder, who would obviously, think of his brother and desire to reach back home as soon as possible. Was it the concern of Sunder to follow the protocol of the office by applying for leave and punch the punching machine to record his departure or was the concern to reach back home at the earliest' Commonsense tells us that his concern was the latter. Besides, why should DW-3 to DW-5 be lying. Nothing has been brought out in the cross examination of these witnesses to discredit their testimony, which we find is corroborated by the information they gave in writing

contemporaneously to SI K.K.Mishra, as recorded in Ex.DW-3/A, Ex.DW-3/B and the document marked X. In this connection, we may note that Rajo stands totally falsified when she stated that in the morning, everybody was present in the house. At least qua Sunder leaving the house in the morning at around 7:00 AM, we have unimpeachable evidence on record in the form of his reporting for duty as recorded in the computerized punching machine. We are surprised that this unimpeachable evidence has been ignored by the learned Trial Judge to carefully analyze the deposition of Rajo who, if not more, is proved to the hilt to have spoken a lie when she said that everybody was present in the house in the morning soon before her sister sent her children to school. The other reasoning given by the learned Trial Judge that since Sunder did not complain of false implication to the senior police officers, requires an inference to be drawn qua his guilt, to say the least is based on convoluted logic, for if this be the premise to hold a person guilty, in virtual every criminal trial, the guilt of the accused would have to be sustained because one seldom comes across cases where the accused persons, proved to be innocent after the trial, have been found to be complaining to superior officers.

46. We hold that the evidence on record establishes that Sunder was not present in the house at 11:00 AM on 20.7.2002 and therefore the question of his participating in the commission of the crime as deposed to by Rajo does not arise.

47. The plea of alibi set up by Balbir has been negated by the learned Trial Judge, with reference to the fact that his employer Sh. Anil Kumar, who claimed to be the owner of S.K. Tourist Service, could not produce any documentary evidence to show that Balbir was his employee. Prima facie, the reasoning of the learned Trial Judge may be correct if the issue has to be seen only with reference to the testimony of Sh. Anil Kumar. But, as noted above in para 31 of our decision, during cross examination, Rajo admitted that her brother-in-law Balbir Singh was employed with S.K. Tourist and that he used to leave the house in the morning for Nangal Rai and return in the evening.

48. The un-officious manner in which business is conducted in the unorganized sector in India is well known. In a country where tax avoidance is the norm and tax

compliance the exception, it is not unknown of petty businessmen not maintaining any record of their business. Once Rajo admitted that Balbir, her brother-in-law, was employed with S.K.Tourist, it was the duty of the learned Trial Judge to have scrutinized the plea of alibi set up by Balbir with reference to the admission made by Rajo. The learned Trial Judge has not done so. It reinforces our belief that the learned Trial Judge had pre- conceived a decision to convict all the accused and thereafter proceeded to write the decision, ignoring such evidence as was uncomfortable with the line of reasoning adopted by the learned Trial Judge.

49. Though, *falus uno falsus omnibus*, is not the principle adopted by Courts in India, but it has been repeatedly held that once the testimony of a witness is found to be false, in some respect or qua some accused, it becomes the duty of the Court to carefully sieve the testimony of the witness and only if grain can be separated from the chaff, ignoring the chaff, the grain can be used. The learned Trial Judge has ignored this rule of caution while analyzing the testimony of Rajo.

50. If Sunder was not present in the house, the offence obviously could not be committed in the manner alleged by Rajo. As per her testimony, it was Sunder who had an injection and a vial in his hand when Laxmi was dragged upstairs. The logical conclusion would be that it was Sunder who injected the poisonous substance. Obviously, this could not have happened, because Sunder was not in the house. Thus, on this short ground alone, the entire version of Rajo needs to be disbelieved.

51. But that is not all. If indeed, Laxmi was dragged upstairs as claimed by Rajo, it is not believable that some bruise marks and some contusion marks would not have resulted as injuries on her body. The post-mortem report Ex.PW-8/A does not record a single bruise or contusion mark and the same is yet another indicative fact which demolishes the version of Rajo.

52. The viscera of the deceased, as noted hereinabove, tested positive for the presence of aluminium phosphide as per FSL Report Ex.PW-14/H. Toxicological information on aluminium phosphide guides us, that aluminium phosphide reacts with moisture i.e. water, acids and many other liquids to release hydrogen phosphide, a poisonous gas. Mild exposure causes malaise (indefinite feeling of

sickness), ringing in the ears, fatigue, nausea and pressure in the chest which can be relieved by exposure to fresh air. Moderate poisoning, causes weakness, vomiting, pain just above the stomach, chest pain, diarrhea and dyspnea i.e. difficulty in breathing. Symptoms of severe poisoning leading to unconsciousness and death resulting from pulmonary edema i.e. fluid in lungs, occurs within a few hours to several days, depending upon the intensity of the poisoning.

53. Thus, after it enters the body, aluminium phosphide has to react inside the body to release hydrogen phosphide, which is lethal. As noted above, symptoms of severe poisoning followed by death, occur within a few hours. It is obvious that aluminium phosphide is not as lethal as say cyanide which causes instant death.

54. The learned Trial Judge has totally ignored the toxicological literature on the subject and had he considered so, it would have dawned on him, that it was an obvious case of death by poisoning, resulting from consuming aluminium phosphide, where symptoms preceding the death are noticeable not in seconds or minutes, but after some time. Obviously, Laxmi consumed, herself or was fed forcefully, aluminium phosphide some time prior to 11:00 AM and not 11:00 AM as claimed by Rajo. We may emphasize over here that though there are strangulation marks on the neck of Laxmi, death is not the result of asphyxia as per the post-mortem report.

55. The toxicological literature on the subject conclusively rules out poison being administered to Laxmi at 11:00 AM as admittedly at said point of time her condition was extremely critical; even as per Rajo, Laxmi was breathing her last. The aluminium phosphide consumed or fed to Laxmi was an event which preceded, by at least an hour or so.

56. The ligature marks on the neck of Laxmi are moving upward, suggestive of hanging and not strangulation, in which case the ligature marks traverse horizontally on the neck.

57. As per Rajo, her sister was noted by her in a sitting position on the bed, with a noose around her neck and the other end of the rope tied to the ceiling fan. As per the defence, Laxmi had committed suicide by not only consuming aluminium

phosphide but reinforcing her intent by hanging herself.

58. Death of Laxmi is by poisoning and not hanging. As held above, the poison had entered Laxmi's body at least an hour prior to 11:00 AM and thus, this is another nail in the testimony of Rajo that her sister was poisoned at 11:00 AM.

59. There is yet further intrinsic evidence to disbelieve Rajo. Admittedly, to the police, she disclosed her version of her sister's death on 27.7.2002, but she claims to have rung up her parents house and, to quote her testimony: from the room I made a telephone call at my parents house telling at my house that my sister has been killed. Rajo claims to have lost her moorings after her sister died, and we believe her by giving her the benefit of being disturbed on the death of her sister, who also happened to be her sister-in-law and both were living in the same house after marriage and hence shared a very strong emotional bond. But, Rajo claims to have informed her parental house that Laxmi had been killed. She does not claim to have informed that Laxmi had died. Information to parents that their daughter has died would ring a different alarm bell vis--vis the information that their daughter has been killed. Rajo's brother PW-4 Vijay Kumar and her mother Jaggo PW-5 have affirmed having received a telephone call from Rajo at 11:00 AM. Both claim that Rajo informed that Laxmi had been killed. Hari Singh PW-2, father of Rajo claims to have received the information about his daughter's death at 3:00 PM when he reached his house. He claims that thereafter he reached Delhi, by which time the police had seized the dead body of Laxmi. It is apparent that PW-2 would have spoken to his wife and his son at Delhi with respect to Laxmi's death. He would have obviously spoken to Rajo as well, a fact admitted by him. He claims that Rajo was disturbed and did not tell him anything. We give benefit of said fact. But, it is unbelievable, that his wife and son did not tell him that when Rajo rang up, she informed that Laxmi had been killed. This makes very relevant the statement made by Hari Singh to SI K.K. Mishra on 21.7.2002, contents whereof have been noted in para 19 above.

60. It is apparent that Hari Singh told the police that he was suspicious of the conduct of the in-laws of his daughter, because in the past they had been demanding money from him for commencing some business and that, after

consuming alcohol, husband of Laxmi used to verbally abuse and beat her. It is of significance that Hari Singh did not tell SI K.K. Mishra on 21.7.2002 that Rajo had informed his wife and son that Laxmi had been murdered.

61. It appears to be a case where Rajo stated wrong facts in her statement Ex.PW-1/A recorded on 27.7.2002 and the possibility and probability of her doing so, being influenced by her parents, cannot be ruled out. It may be noted that during cross examination Rajo admitted that the day after her sister died, she had been living in the house of her parents.

62. During cross examination, Rajo admitted that the death of Laxmi spread in the vicinity immediately, and ladies from the neighbourhood reached the house. The conduct of Rajo in not telling even a single lady that her sister has been murdered, in the manner alleged by her, is also indicative of the fact that with the passage of time, Rajo spun out a concocted version.

63. We are thus left with the conduct of the appellants in not informing the police and taking the body of Laxmi to the cremation ground for cremation.

64. No doubt, the said conduct is suspect and a possible inference can be drawn that the in-laws of Laxmi were wanting to hide something.

65. But, conduct is weak evidence because it is based on presumptive logic. By itself, as the only incriminating circumstance, conduct is insufficient wherefrom the only inference possible is that of the guilt of the accused; ruling out the innocence.

66. Though irrelevant to state, lest the reader of the judgment forms an opinion that we are entering upon surmises and conjectures, but it may have happened that the in-laws of Laxmi, being aware that even a suicide may create problems with the police, were ill advised to cremate the body of Laxmi without informing the police. On said premise, the conduct which prima facie appears to be of a guilty mind can be explained as the conduct of a mind under fear.

67. It is settled law that howsoever strong a suspicion may be, it cannot take the place of proof and that the prosecution has to cover the journey from may be, through could be, to shall be.

68. It would not be out of place to note that the prosecution has made no attempt to find out as to who purchased aluminium phosphide and from which place. Had an attempt been made to do so, some light would have been thrown on the issue, for if Laxmi was found to have purchased aluminium phosphide, said fact would have been relevant. Similarly, if any of the accused had purchased aluminium phosphide and had failed to give a satisfactory explanation as to why he/she did so, said fact would have thrown considerable light on the issue. Further, the charge against the accused was of having injected poison to Laxmi and no syringe has been recovered by the police.

69. We accordingly hold that the evidence on record does not justify the acceptance of the testimony of Rajo, whose testimony does not inspire any confidence and stands contradicted by evidence brought on record, pertaining to Sunder being absent in the house. The toxicological Jurisprudence makes it highly improbable that Laxmi was fed or administered aluminium phosphide at 11:00 AM. These two facts totally demolish the manner of commission of the crime as alleged by Rajo. Thus, all the appellants are entitled to be acquitted for the offence of having murdered Laxmi.

70. Pertaining to the offence punishable under Section 498A IPC, we note that the brother, mother and father of the deceased as also Rajo have made general allegations of money being demanded by the in-laws of Rajo and Laxmi for commencing some business. No date or even the month when the amounts were paid have been spoken of. What has been said by Hari Singh is that once he gave Rs. 20,000/- in the year 1997 and the second time he gave Rs. 20,000/- in the year 2001. The allegations of harassment, mental and physical, are vague. We find that the learned Trial Judge has not considered this aspect of the matter. In fact, the impugned judgment has totally centered itself on the question, whether the deceased was murdered. We find no discussion whatsoever in the impugned judgment pertaining to the commission of the offence punishable under Section 498A IPC. Thus, the appellants are entitled to be acquitted of the charge framed against them for having committed the offence punishable under Section 498A IPC.

71. The charge of destruction of evidence as framed is inextricably linked with the offence punishable under Section 302 IPC. Since the charge for the offence punishable under Section 302 IPC has failed, the charge pertaining to destruction of evidence to hide the offence of murder must fail.

72. The appeals are allowed. The impugned judgment and order dated 11.7.2005 is set aside. The appellants are acquitted of the charges framed against them.

73. The appellants are on bail. Their bail bonds and surety bonds are discharged.

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