

Jai Bhagwan Vs. the State

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Court : Delhi

Decided On : Aug-09-2002

Reported in : 100(2002)DLT170

Judge : Dalveer Bhandari and; R.S. Sodhi, JJ.

Acts : Indian Penal Code (IPC) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Crl. A. No. 124 of 1993

Appellant : Jai Bhagwan

Respondent : The State

Advocate for Def. : Ravinder Chadha, Adv.

Advocate for Pet/Ap. : D.C. Mathur, Sr. Adv. and; Rebecca M. John, Adv

Disposition : Appeal dismissed

Judgement :

Dalveer Bhandari, J.

1. This appeal is directed against the judgment and sentence dated 7.8.1993 passed by the learned Additional District and Sessions Judge, Delhi in Sessions Case No. 56/91. Appellant Jai Bhagwan was tried along with Phool Hussein under

Section 302/34 IPC.

2. The short controversy which arises for our consideration in this appeal is whether the case is in fact a case of suicide or has an incident of murder been given the shape of a suicide case?

3. Brief facts which are necessary to dispose of the appeal are recapitulated as under.

4 . On 6 .1 .1991 appellant, Jai Bhagwan, reported to the police at PP Palam Colony that Raj Rani widow of his elder brother has committed suicide. D.D. No. 21 was registered and was marked to SI Mahinder Singh, in charge, PP Palam Colony, who along with HC Tej Singh, Constable Bhup Singh and Constable Matloob Ali conducted the investigation. They all proceeded to House No. 7B/2 J-11, Hanuman Mandir Marg, Palam Nagar, Palam Colony. This address was provided by the appellant Jai Bhagwan as the address of his residence. The door of the said house was found locked and on enquiry, the appellant, Jai Bhagwan himself produced the key with which the lock was opened. The dead body of Raj Rani was found hanging on the fan with a nylon rope of light yellow colour. They noticed number of injuries on her face and neck. They also noticed blood stains on the bed sheet lying on the bed nearby. Sub Inspector Mahinder Singh suspected it to be a case of murder. He sent a Ruqqa to the Police Station in this regard and on that basis FIR No. 7/91 was registered. The ceiling fan, lock, key and blood stained bed sheet were taken into possession. Inquest proceedings were conducted and the dead body was sent for post mortem examination.

5. The deceased was found dead on 6.1.1991 at 4.15 p.m. and post mortem was conducted at 11 a.m. on 7.1.1991. Dr. L.K. Baruah conducted the post mortem of the deceased, Raj Rani. In the post mortem report the doctor observed that inner aspect of the lower lip was seen bruised. Blood was seen coming out from both the nostrils and he found the following injuries:-

1. One bruise over left side cheek prominence over an area of 3.5c.m. x 3.00 c.m.

2. One bruise over left lower part of the cheek and submandibular area of size 3 c.m. x 2 c.m. .
3. Multiple linear marks some of them were concentric seen all around the mouth and more on left angle of the mouth. Some of them were resembling nail marks. Size of these injuries varied from 0.2 c.m. to 0.3 c.m. in width and length varied from 0.8 c.m. to 1.3 c.m. .
4. One horizontally placed bruise mark (ligature constriction mark) were seen all around the neck of width varied from 2.2 c.m. to 2.5 c.m. In front of the neck it was passing below the thyroid cartilage horizontally to the back side of the neck where it was seen crossed as shown in the diagram.
5. One another ligature mark tied around the neck was seen 'above the thyroid cartilage passing backwards and upwards to the back side posterior hair line. There was no ligature mark seen in an area of 5c.m. It was rope mark and its width varied from 2.5 c.m. to 3.5 c.m. These ligature marks were corresponding with the rope tied around the neck. There was no sign of inflammation seen at the margins of these marks and were pale. There was no injury mark nor any mark of violence except the injuries mentioned above found on the body of the deceased.
6. The doctor in his report has opined that all injuries except Injury No. 5 were ante mortem. Injury No. 1 and 2 were caused by blunt force. Injury No. 3 was possibly caused by finger nails. Injury No. 4 was possibly caused by soft ligature material. Injury No. 5 was caused by rope tied around the neck. Death in this case was due to asphyxia following ligature constriction of the neck by a soft ligature Material. Clothes, rope, sample of blood were preserved, sealed and handed over to police. The doctor opined that Injury No. 3 was all around the mouth and mostly on angles of the mouth and, only a few abrasions were resembling nail marks. He mentioned that these abrasions could not have been caused in the manner as suggested by the defense counsel.
7. The appellant was arrested for his suspected involvement in the crime. On interrogation he made a disclosure statement admitting therein that he had killed his sister-in-law on 4.1.1991 at 10 p.m. by strangulating her with a rope and with

the help of co-accused Phool Hussein and Kusheshwar Mahato @ Lamboo. He further stated that after killing her they hanged her on the fan to give an impression that his sister-in-law had committed suicide.

8. The appellant Jai Bhagwan got blood stained Kurta and Pyjama recovered from a box lying in that room. Phool Hussein after arrest made a disclosure statement and pointed out the shop in Palam Colony Market from where they purchased the nylon rope. According to the report of the Chemical Examiner human blood of B group was detected on the bed sheet, and Kurta and Pyjama of the appellant. Kusheshwar Mahato could not be arrested and was declared a proclaimed offender.

9. The prosecution examined 18 witnesses to prove its case. The appellant in his statement under Section 313 Cr.P.C baldly denied his involvement and stated that he has been falsely implicated.

10. PW. 1 Satpal is the brother of the deceased. He mentioned that on 6.1.1991 at 9 p.m. police and a neighbour came to his house and told him to accompany them to the police station as there had been a quarrel with his sister. At the police station he saw the dead body of his sister.

11. PW. 2 Nanak Chand is the father of the deceased. He stated that he had gone to the house of Raj Rani deceased and had identified her body.

12. Both PW 1 & 2 resoled from their statements under Section 161 Cr.P.C. Hence, they were declared hostile witnesses and were cross examined by the Additional Public Prosecutor.

13. PW. 6 Deen Dayal is a neighbour. He mentioned that the fan and the clothes including Kurta and Pyjama and one bed sheet were taken into possession by the police. He also did not support the prosecution version and he resoled from his previous statement and therefore, he was cross-examined by the Addl. Public Prosecutor.

14. PW .7 Matloob All stated that the appellant Jai Bhagwan had taken out a key from the pocket and opened the lock and thereafter they saw a lady hanging on a

ceiling fan and her neck tied with a rope.

15. PW.15 SI Mahinder Singh and PW.17 Inspector Kapoor Singh are the investigating officers. On receipt of D.D. No. 21 on 6.1.1991 PW.15 SI Mahinder Singh went to the spot along with the appellant Jai Bhagwan and also along with some constables'. He has fully supported the prosecution version. He had sent the Ruqqa Ex. PW.15/A to the police station through Constable Matloob Ali and on that basis the case was registered. He interrogated the appellant Jai Bhagwan, who thereafter made a disclosure statement and got recovered one Kurta and Pyjama. The clothes were kept in a sealed parcel sealed with the seal of 'KS'. On 8.1.1991 accused Phool Hussein was arrested. PW.15 mentioned that he had arrested the appellant formally on 7.1.1991 after he made the disclosure statement and primarily because the key of the house was produced by him.

16. Appellant Jai Bhagwan's statement under Section 313 Cr.P.C was recorded. In reply to question No. 1 he mentioned that he came to know about the suicide of his sister-in-law and he accordingly informed the police. The appellant did not deny the fact that he had produced the key of the house No. J-II. Puran Nagar, Palam Colony. The body of deceased was found hanging in this house .

17. According to the prosecution the appellant had developed intimacy with his widowed sister-in-law which led to her pregnancy. In order to avoid any insurmountable social ignominy and embarrassment the accused decided to eliminate Raj Rani. According to the prosecution the accused appellant had a strong motive to commit this crime. The prosecution also relied on the photograph Ex. P. 14 which was found at the time of search of the room in which the dead body of Raj Rani was hanging. In the said photograph the accused appellant is holding the hand of his widowed sister-in-law, who is having her left arm around the shoulders of the accused appellant.

18. Dr. L.K. Baruah, PW. 18, who had conducted the post mortem examination found a small fetus of about one and a half months duration. According to the prosecution this circumstance further strengthens the prosecution case that Raj Rani had conceived from the appellant and in order to save ignominy and family honour the accused had eliminated her -

19. In D.D. No. 21 the appellant gave his residential address as J-11 Puran Nagar, Palam Colony. Even in his statement under Section 313 same address was given. This is the place where the dead body of deceased Raj Rani was found hanging.

20. Another most important circumstance which connects the accused with the crime is production of the key by the accused before the Investigating Officer, SI Mahinder Singh, PW. 15. The house was locked and only after the key was provided by the appellant the house was opened in which the dead' body of Raj Rani was found hanging. It may be pertinent to mention that PW.15 SI Mahinder Singh and PW. 7 Constable Matloob Ali were cross-examined at length, but the defense could not shake the credibility of these witnesses to any extent.

21. Another important circumstance in this case is that there were multiple injuries on the face and inner aspect of lower lip of the deceased Raj Rani was bruised. The blood was oozing out of those injuries. PW.18 Dr. Baruah observed several bruises on the left side of the face, lower part of the neck and multiple linear marks all around the mouth resembling hail marks shows that her mouth was pressed with great force to prevent her from crying and consequently she-received a number of injuries on her mouth, ordinarily no woman who commits suicide would have such injuries. This circumstance also corroborates the prosecution version that it was in fact not a case of suicide, but murder which was given the name of suicide by the appellant.

22. Another significant circumstance which corroborates prosecution 'version are the photographs which were taken and are part of the record, wherein, the dead body is seen hanging from the ceiling fan, the feet of the deceased were touching the floor. This cannot ordinarily happen in a case of suicide. Normally the jump is taken from a higher level and a stool or a table is kept which is removed and thereafter one can comprehend a case of suicide,

23. The learned Additional¹ District and Sessions Judge also relied on another important circumstance which connect the appellant with the crime is the recovery of Kurta and Pyjama Ex. P1 and P2 at the instance of the appellant. Both PW .15, SI Mahinder Singh and PW .17 Inspector Kapoor Singh meticulously supported the case of the prosecution and totally discarded the theory of suicide.

24. The Chemical Examiner detected B group blood on the Kurta and Pyjama of the accused. It is clearly borne out from the evidence on record that in the family there was only one male member living in that house and therefore, it can be reasonably inferred that the male clothes belonged to the appellant.

25. Mr. Dinesh Mathur, learned senior counsel appearing for the appellant argued that there are many serious lacunas in the prosecution version and it would not be safe to base conviction on the basis of such a quality of evidence. Mr. Mathur submitted that the appellant was resident of Haryana and was only a casual visitor to Delhi and merely because key of the house was given by him on demand to the police officials should not lead to the conclusion regarding guilt of the appellant. On scrutiny of the entire record and the impugned judgment we can safely say that appellant's producing the key of the door of the house from which the dead body of deceased was recovered is indeed a very important circumstance which connects the appellant with the crime. Similarly, if the appellant is the resident of Haryana and only a casual visitor to Delhi, then ordinarily the key of the house should not be found with the appellant.

26. Mr. Mathur also argued that the prosecution is silent regarding whereabouts of mother and sister of the appellant who used to reside in that house. The prosecution's not highlighting' this aspect does not affect the credibility of the prosecution version.

27. Mr. Mathur also submitted that the intimate photograph of the appellant with the deceased should not lead to the inference that they had illegitimate relationship. We have perused the photograph Ex.P. 14. The photograph gives an impression of a normal photograph of a husband and wife. It is most unusual for a widowed sister-in-law to have such a photograph with her brother-in-law particularly from the social strata from which appellant and deceased belonged.

28. Mr. Mathur placed reliance on the following judgments of the Supreme Court *Sakharam v. State of Madhya Pradesh* : 1992 CriLJ861 , *tori Singh and Another v. State of Uttar Pradesh* , : [1962]3SCR580 , and *Jagdish Narain and Anr. v. State of U.P.* : [1996]3SCR250 . We have carefully analysed these judgments. As far as legal propositions are concerned, there is no quarrel with the same. But this is one

of the most unusual cases where each circumstance unequivocally leads to the inference that the appellant alone in all probability had committed this crime.

29. It is the settled position of law that in a case which is based on circumstantial evidence the chain of circumstances should be so complete as to exclude every hypothesis consistent with the innocence of the accused and must unequivocally lead to the inference that it is the accused alone in all probability who committed the offence. In the instant case, all the circumstances, when properly examined, lead to the conclusion that the appellant alone was guilty of committing the murder of deceased Raj Rani. He had a strong motive of committing this crime and all circumstances comprehensively exclude every hypothesis, consistent with the innocence of the accused appellant. . All these circumstances unequivocally lead to the inference that the appellant accused in all probability had committed this crime. The learned Additional District and Sessions Judge has carefully examined the entire evidence on record and in our considered opinion came to the correct conclusion.

30. If we examine the instant case on the basis of the settled legal position as crystallised by a number of judgments of the Supreme Court, the position becomes abundantly clear that in a case of circumstantial evidence the conviction can only be sustained when the chain is absolutely complete and there are no missing links. In the instant case important links of the chain such as key, photographs, pregnancy of the deceased, the post mortem examination finding a small fetus of one and half months duration, recovery of blood stained Kurta and Pyjama and bed sheet, the blood group of the deceased matched with the blood group found on Kurta and pyjama of the appellant, photograph of the deceased hanging on the ceiling fan showing that her feet were touching the floor, injuries all over on the lip and the face of the deceased form all important links of the main chain. All links form a complete chain so as to exclude all hypothesis consistent with the innocence of the accused.

31. We have carefully considered the entire evidence on record and heard learned counsel for the parties at length. In our considered opinion, the prosecution has been able to establish its case beyond any reasonable doubt. All the

circumstances put together, lead to only conclusion i.e. guilt of the accused appellant. In our opinion, no interference is called for in the well reasoned judgment of the trial court.

32. We have not dealt with the case of Phool Hussein because, according to the submission of the learned counsel for the State, Mr. Chadha, no appeal has been preferred by the State against the acquittal of Phool Hussein.

33. Before parting with this case we would like to observe that the prosecution has been able to establish the guilt of the accused primarily because of sincere and honest investigation.

34. This appeal is accordingly dismissed. The conviction imposed by the Additional Sessions Judge is confirmed. The bail bond executed by the accused appellant is cancelled. The appellant who is on bail shall be taken into custody forthwith to serve the remaining part of the sentence.

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