

**Sunil Kumar Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jan-16-1997

**Reported in :** 1997CriLJ1081

**Judge :** P.C. Jain and; Mohd. Yamin, JJ.

**Acts :** Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(2)(5); Code of Criminal Procedure (CrPC) - Sections 313; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Jail Appeal No. 204 of 1994

**Appellant :** Sunil Kumar

**Respondent :** State of Rajasthan

**Advocate for Def. :** V.R. Mehta, Public Prosecutor

**Advocate for Pet/Ap. :** Anand Purohit, Amicus Curiae

**Disposition :** Appeal dismissed

**Judgement :**

ORDER

1. This appeal is directed against the judgment dated 7-4-1994 passed by the learned Special Judge SC/ST cases, Udaipur whereby he convicted the accused-appellant Sunil Kumar for the offence under Section 302, IPC and sentenced him

to rigorous imprisonment for life together with a fine of Rs. 200/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

2. The brief facts relevant for the disposal of this appeal are that P.W.I Kalidass, P.W. 5 Smt. Bindu, their daughter deceased Bhawana and other children were living in quarter No. 11, Police Lines, Udaipur. The accused Sunil Kumar and his brother Ramesh Kumar were living in Quarter No. 9E in front of the quarter of P.W. 1 Kalidass. It is alleged that on 7-10-1992, P.W.I Kalidass went to attend his duties and his wife Mst. Bindu also left for the Hospital on some assignment leaving behind Bhawana aged 14 years in the house. The other children of Kalidass viz., Aabha and Anukul had gone to some relative. Before proceeding to Hospital, Smt. Bindu asked the accused to look after Bhawana.

3. After attending his duties when Kalidass returned to his house at 7.30 PM, he found his house locked. He enquired from the accused as to where Bhawana and her mother had gone. Thereupon, the accused told that Smt. Hindu had gone to the Hospital and he had not seen Bhawana. Kalidass also enquired from his neighbours and searched for her in nearby places but he could not know about the whereabouts of Bhawana. Thereafter, he went to the Hospital and contacted his wife Smt. Bindu and told the fact that Bhawana was missing. Smt. Bindu told that before going to the Hospital, she left Bhawana at the house.

4. Thereafter, Kalidass and his wife Smt. Bindu both came to their house and found Aabha and Anukul sitting in the quarter of Devilal. At about 9.00 PM, Kalidass and others peeped into the house through the window and saw Bhawana lying on the kitchen's floor. Kalidass called Bhawana but she did not respond. The other neighbours also came there. Kalidass got, a hammer from Ramesh and broke open the lock of the house. Kalidass, his wife Smt. Bindu and others entered into the house and found Bhawana lying on the Kitchen's floor. A tie was found tied around her neck. It appeared that she had been strangled.

5. When they searched the house, they found the handle of almirah missing but the locker was intact. Kalidass then lodged a First Information Report of this incident Ex. P. 1 at Police Station, Surajpole on 7-10-1992 at about 11.00 PM.

6. On receipt of this report, the police registered a case under Section 302, IPC and started investigation. The police inspected the site and prepared the site plan and site inspection memo Ex. P. 2 on 8-10-1992. The Inquest report Ex. P. 3 was prepared on the same day i.e. on 7-10-1992. The Investigating Officer found a piece of paper, which contained the following message :

^dkyhnl vHkh rks rsjh ,d yM+dh ejh gS A rsjkoal [kks nwaxk A ftl yM+dh dks rw ?kj esa j[krk gS] oks gekjh nq'eu gS vkSj gersjs oal dks [kks,axs A rsjh yM+dh 7 cts ekjh xbZ gS A tks vkneh tsy esa gS mlhus ejokbZ gS A mlus gesa 30 gtkj :i, fn, gSa A rsjh oal dks [kRe djus ds A vtqZunknk o deyk nsoh Hkh gS A\*\*

7. According to the Investigating Officer, it was an incriminating material piece of evidence and so, the above paper was seized vide memo Ex. P. 5. The broken lock was also seized vide Memo Ex. P. 6. The handle of the almirah was also seized from the place of the occurrence vide memo Ex. P. 7. Kalidass also handed over the key-ring containing three keys to the Investigating Officer and stated that there were two sets of keys and one key-ring was found missing. The key-ring which was produced by Kalidass was seized vide Memo Ex. P. 8.

8. On inspection of the site, the Investigating Officer found a Video Cassette lying on the drum opposite the kitchen. The Video Cassette was of T-Series. In order to ascertain whether the above cassette contained finger prints or not, the Investigating Officer tested the same by spraying gray powder. It was found positive for finger prints. The specimen finger prints were taken and were marked as A, A-1, A-2 and A-3. The Video Cassette was then carefully sealed. During investigation, it was revealed that the above cassette was borrowed by Ramesh Kumar on 1-10-1992. P. W. 1 Kalidass and P. W. 5 Smt. Bindu also stated during investigation that on the date of the occurrence and particularly, when Mst. Bindu left for the Hospital, the above cassette was not in the house.

9. After investigation, the police came to the conclusion that this offence has been committed by accused Sunil Kumar and, therefore, the accused Sunil Kumar was arrested on 12-10-1992 vide Memo Ex. P. 28. It is alleged that while in custody, accused Sunil Kumar made a disclosure statement on 13-10-1992 to the effect that after committing the murder of Bhawana, he broke open the lock of the

almirah and took away the ring of the keys and after locking the house, he\_ concealed the key-ring in a pit of wash-basim. He further stated that he wrote the paper Ex. P. 21 left it near the door and the remaining portion of that paper was kept by him in the kitchen. Pursuant to the above information, the accused lee and the Investigating Officer to his kitchen and retrieved the key-ring from the pit of wash-basin after removing the Jali. Its recovery memo is Ex. P The remaining portion of the paper was also<sup>1</sup> got recovered from the possession and at the instance of the accused from his kitchen vide Memo P. 13.

10. The Investigating Officer suspected. He, therefore, also seized the underwear accused, which he was wearing at that time, the seizure memo is Ex. P. 17. The Investigating Officer deposited all these articles in the Malkhana.

11. In order to examine whether the above paper Ex. P. 21 contained the signature or hand-writing of the accused, the Investigating Officer obtained the specimen signature and writing of the accused before the Tehsildar. The specimen writings are contained in Exs. P. 18, 19 and 20. The finger prints of the accused were obtained on paper Exs. P. 30,31 and 32. The specimen finger prints, disputed finger prints, disputed paper as also specimen handwritings were sent for examination and opinion to the Forensic Science Laboratory, Jaipur.

12. The Forensic Science Laboratory, after examining all the above documents sent its reports Exs. P. 26 and 33. According to the report Ex. P. 26 the disputed handwriting on Ex. P. 21 and the specimen handwriting marked A1 to A27 and A28 to A30 tallied and it was opined that the writer of the standard writings marked as A1 to A30 also wrote the disputed writings marked as Q1. It was further opined that the disputed paper marked as Q4, Q5 and Paper marked Q2 and Q3 containing disputed writings marked as Q1 tallied with each other in quality of paper. According to Ex. P, 33, the chance print photographs marked A, M, A2 and A3 were found similar and identical with the specimen index finger print photograph marked S of Sunil Kumar. Both the prints were of Whorl pattern and bore identical ridge characteristics.

13. After collecting the above incriminating evidence against the accused, a charge-sheet was filed in the Court of the learned Addl. Chief Judicial Magistrate,

Udaipur, who committed the accused to the Court of the learned Sessions Judge, Udaipur for trial. The case was later on transferred to the Court of learned Special Judge, SC/ST Cases, Udaipur for disposal.-

14. The learned Sessions Judge framed the charge under Section 302, IPC read with Section 3(2)(5) of Prevention of Atrocities of Scheduled Caste and Scheduled Tribes Act, 1989. The accused pleaded not guilty to the above charges and claimed trial. The prosecution examined as many as 21 witnesses in support to its case. Admittedly there was no eye-witness of the occurrence and the case entirely hinges on circumstantial evidence. The statement of the accused was recorded under Section 313, Cr. P.C. The accused did not examine any witness in his defence.

15. After appreciating the evidence on record, the learned Special Judge vide his judgment dated , 74-1994 convicted and sentenced the accused for the offence under Section 302, IPC as aforesaid. According to the learned Special Judge, this was wholly based on circumstantial evidence and the following circumstances were found against the accused:

1. That on 7-10-1992, at about 5.15 PM when Mst. Bindu left for the Hospital to attend her duties, she found the accused standing in front of her house and the accused made an enquiry from Mst. Bindu as to where she was going. Whereupon, Mst. Bindu told him that she was going to, Hospital and she also asked him to look after Bhawana. Thus, the accused was in the know of the fact that at that time, Bhawana was all alone in the house. The accused was also aware of the fact: that other children of Mst. Bindu and Kalidass had also gone to some village on a picnic.

2. That a Video Cassette was found near the dead body of Bhawana lying on an iron drurril which contained the finger prints of accused Sunil, Kumar. The above Video Cassete was borrowed by P.W. 17 Rajesh Kumar, the brother of accused Sunil Kumar on 1-10-1992 and was not returned up to the time Smt. Bindu left her house.

3. That a piece of paper Ex. P. 21 containing the message as stated above was found lying near the main door at the place of the occurrence and the writings of Ex. P. 21 tallied with the specimen ' handwritings of accused Sunil Kumar as is proved by the report of the Forensic Science Laboratory Ex. P. 26.

4. That the key-ring of the lock that was placed on the house of P.W.I Kalidass was found possession of the accused as it was recovered from the drain of the kitchen of the wash-basin, from the possession and at the instance of accused Sunil Kumar.

5. That the piece of paper Ex. P. 21 was ; allegedly removed from the diary Ex. D. 1.

16. We have heard Mr. Anand Purohit, the learned Amicus Curiae for the appellant and Mr. Vishal Raj Mehta, the learned Public Prosecutor appearing for the State and have carefully gone through the record of the case.

17. The learned counsel for the appellant has assailed the conviction of the accused-appellant on the ground that the learned Special Judge did not appreciate the circumstances against the accused properly. He submitted that since the house of the accused and his brother Rajesh Kumar was situated in front of the house of P.W. 1 Kalidass, the presence of accused Sunil Kumar at his house at the time when Mst. Bindu left her house for Hospital was natural. He further submitted that if the accused would have been guilty, he would have left the house when Kalidass and his wife came in the evening after a desperate search of Bhawana but he was found present in the house, which shows that the accused was not guilty. The recovery of the key-ring is also fake and planted by the police against the accused.

18. It was further contended that when Kalidass, Mst. Bindu and other neighbours after breaking open the locks entered into the house, they did not notice any paper lying near the main door. It is, therefore, very surprising how the police recovered the paper Ex. P. 21 lying near main door at the time of the site inspection. The recovery of the piece of paper Ex. P. 21 is highly doubtful. The piece of paper appears to have been fabricated by the police in order to implicate the accused in

the case. Hence if the specimen writings of the accused tallied with the writings contained in Ex. P. 21, no adverse inference can be drawn against the accused.

19. Regarding the Video Cassette, the learned counsel submitted that it is possible that the accused might have handled the same in his house when the same was borrowed by his brother Rajesh Kumar from Smt. Bindu. Hence even if some finger prints were found on the Video Cassette, this circumstance should not be read against the accused.

20. On the other hand, the learned Public Prosecutor has supported the impugned judgment of the learned Special Judge. He submitted that the learned trial Court correctly spelt out the incriminating circumstances found against the accused. The prosecution evidence regarding each of the circumstance is impeccable and cannot be assailed on any ground.

21. We have given our thoughtful considerations to the rival submissions made at the bar. We have very carefully perused the evidence as also the facts and circumstances of the case.

22. At the very outset, it may be stated that it has not been disputed by the learned counsel appearing for the accused-appellant that the death of Bhawana was homicidal in nature. We, therefore, feel no difficulty in holding that Bhawana died as a result of strangulation and her death was homicidal in nature.

23. It may be stated here that there is no direct evidence against the accused. The case is solely based on circumstantial evidence. For appreciating the nature, character, and essential proof required in a criminal case resting on circumstantial evidence alone, the most fundamental and basic decision on the point is *Hanumant v. State of Madhya Pradesh*, AIR 1952 SC 343 : 1953 Cri LJ 129, which has been discussed in detail by their Lordships of the Supreme Court in its recent decision in *Sharad v. State of Maharashtra*, AIR 1984 SC 1622 : 1984 Cri LJ 1738 and after analysing the decision in *Hanumant's* case, their Lordships of the Supreme Court observed as under:

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.

2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3. The circumstances should be of a conclusive nature and tendency.

4. They should exclude every possible hypothesis except the one to be proved; and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

24. The above five golden principles were laid down and it was observed that they constitute 'Panchsheel' of the proof of a case based on circumstantial evidence.

25. Now we may advert to the circumstances which the learned trial Court held to be proved against the accused. We may state that the learned trial Court culled out all the possible circumstances which have come up against the accused-appellant.

26. The first circumstance is that the accused saw Mst. Hindu leaving her house for the Hospital at about 5.15 PM on 7-10-1992. The accused also confirmed by asking Mst. Hindu as to where she was going. Mst. Hindu told him that she was going to the Hospital and asked to have a look at the house. It is also in evidence that the other children of Kalidass and Mst. Hindu had gone to Khokhadara. This fact has been proved by the testimony of P.W. 1 Kalidass, P.W. 5 Mst. Hindu, P.W. 9 Aabha and P.W. 10 Anukul. Since the accused was residing just in front of the house of Kalidass, he must be aware that Kalidass normally returns in the

evening after attending his duties. It is, thus, clear that the accused was aware that Mst. Bhawana was all alone in the house and that there was no likelihood of any of the members turning up for some-time.

27. The other circumstance against the accused is that a Video Cassette was found lying on an iron drum near the place of the occurrence. This fact is proved by the testimony of P.W. 21 Ramgopal, who saw the above cassette and seized and sealed the same vide Memo Ex. P. 10. P.W. 1 Kalidass, P.W. Gajsingh; P.W. 4 Mangilal, and P.W. 5 Mst. Hindu have also supported this fact. They have further stated that when the Investigating Officer P.W. 21 Ram Gopal found the above cassette positive for finger prints, finger prints were lifted and marked as A, A1, A2 and A3.

28. Along with this circumstance, we may also appreciate the alleged recovery made at the instance of the accused of the key-ring from the drain of the kitchen wash-basin. P.W. 21 Ram Gopal has stated that on 13-10-1992, while in custody, the accused made a disclosure statement that after committing the murder of Bhawana, he locked the house by taking out the key-wring from the almirah and after placing the lock, concealed the same in the drain of the kitchen's washbasin in his house and he was prepared to get the same recovered. Similarly, the accused also made a disclosure statement regarding the recovery of the piece of paper Ex. P. 21 on which the message was written. After giving this information, the accused led the Investigation Officer P.W. 21 Ramgopal into his house and in his presence, lifted the Jali of the drain and took out the key-ring from there, which was seized and sealed by the Investigating Officer. Similarly, the accused also produced a piece of paper and diary Ex. D.1, from which, it is alleged that he tore one page and wrote the chit Ex. P. 21. Thus, from the above evidence of P.W. 21 Ramgopal and other witnesses produced by the prosecution, it has been proved satisfactorily that all the articles seized and sealed by P.W. 21 Investigating Officer Ram Gopal were placed in sealed condition in the Police Malkhana till the same were sent to the Forensic Science Laboratory, Jaipur.

28-A. In his statement under Section 313, Cr. P.C., the accused has admitted that he has made the specimen handwritings contained in Exs. P. 18, 19 and 20. The

same were forwarded to the Forensic Science Laboratory along with the disputed handwriting contained in Ex. P. 21. The report of the Forensic Science Laboratory is Ex. P. 26. According to the report Ex. P. 26, the Assistant Director (Documents) compared the disputed handwritings Q1, Q2, Q3, Q4 and Q5 with the specimen hand writings contained in A-1 to A-30 and after a very careful and thorough scientific examination of the documents, he opined that the writer of the standard writings marked A-1 to A-30 also wrote the disputed writings marked as Q-1 and the dispute paper marked as Q4, Q5 and paper marked A2, Q3 containing disputed writings marked as Q1 tallied with each other in quality of paper. However, it was not found possible to express any opinion regarding the fact whether the dispute parts Q2, Q3, Q4 and Q5 are portions of one and the same paper.

29. The report Ex. P. 33 is with regard to the finger prints found on Video Cassette Article 5. The Assistant Director found that the chance print photograph marked A was similar and identical with the specimen right index finger print photograph marked S of Sunil Kumar. Both the prints are of whorl pattern and possessed identical ridged characteristics and other identical characteristics.

30. Thus, from the above, it is clear that the piece of paper Ex. P. 21 contained the writings of the accused and Video Cassette Article 5 also contained his finger prints. It has been proved by the statements of P.W. 5 Mst. Hindu and P.W. 17 Rajesh Kumar, the brother of accused Sunil Kumar that the above Video Cassette was borrowed by Rajesh from Mst. Hindu. From the statement of Mst. Hindu, it has been further proved that the above Video Cassette was not in her house when she left for the Hospital. P.W. 17 Rajesh Kumar has further stated that he had not returned the above cassette to Mst. Hindu and that it was lying in his house upto 7-10-1992. He was unable to furnish any explanation as to how the above cassette was found in the house of Mst. Bindu. Since the above Video Cassette contained the finger prints of the accused, it was necessary for the accused to furnish an explanation as to how his finger prints were found on the above cassette. Thus, from the above, it can reasonably be concluded that the above cassette was handled by the accused and since the above cassette was proved to be lying in the house of P.W. 17 Rajesh Kumar Upto 7-10-1992, there is a strong

possibility that the above cassette was removed by the accused from the house of P.W. 17 Rajesh Kumar and it found place in the house of Mst. Hindu. It must, therefore, be the act of the accused Sunil Kumar in removing the above cassette from the house of Rajesh Kumar. The above movement of the cassette took place between 5.15 PM to 7.30 PM on 7:10-1992. The accused has also not furnished any explanation regarding the paper Ex. P. 21. It is Correct that before the above piece of paper was found near the main door of the house by the Investigating Officer and it was seized and sealed, Mst. Hindu, Kalidass and other witnesses who entered the house did not happen to spot the same. 'If he reasonable explanation for this may be that Kalidass, Mst. Bindu and others saw the dead body of Bhawana, they must be feeling emotionally disturbed and might not have noticed the paper there. Moreover, the house was immediately locked in order to keep every thing intact for investigation. Thus, we do not find the statement of Investigating Officer doubtful as regards the recovery of Video Cassette as also the piece of paper Ex. P. 21.

31. It is also in evidence that P.W. 1 Kalidass stated that he had two key-rings and when he broke open the doors of his house, he found the other key-ring lying in the almirah missing. He produced the other key-ring before the Investigating Officer and the missing key-ring was also recovered from the possession of the accused at his instance.

32. In view of the above discussion, we can Conclude that all the circumstances narrated above have been proved beyond all reasonable doubt and these circumstances constitute a formidable evidence against the accused beyond all reasonable doubt.

33. For the reasons above, we do not find any substance in this appeal and it is hereby dismissed.

34. Let the accused be intimated about the decision of this appeal and the record of this case be transmitted to the learned lower Court forthwith.