

Durga Devi Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-20-1992

Reported in : 1993CriLJ1723

Judge : R.S. Verma and; Rajendra Saxena, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Jail Appeal No. 86 of 1988

Appellant : Durga Devi

Respondent : State of Rajasthan

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

Advocate for Pet/Ap. : Doongar Singh and; M.C. Bishnoi, Advs.

Disposition : Appeal allowed

Judgement :

1. Learned Sessions Judge, Churu has convicted appellant Smt. Durga Devi for offence under Section 302, I.P.C. and has sentenced her to imprisonment for life and to pay a fine of Rs. 100/- by his judgment dated 7-9-1987 in Sessions Case No. 44/1985. Aggrieved, Smt. Durga Devi has come in appeal.

2. Briefly stated, the prosecution story is that the appellant was married to deceased Dhuda Ram and was living at village Kaiu with her husband. Her husband's father P.W. 2 Bhagwanta Ram and mother Smt. Mooli (P.W. 1) were also residing with the couple. On 19-8-1985, Smt. Durga Devi appellant had gone to her field. She returned in the evening from the field. Dhuda Ram was also away from the house and he also returned some time later. After taking his meals Dhuda Ram went to sleep in the chowk behind the 'Saal' of the house. Appellant remained busy with house-hold chores for some time, and thereafter, she also went to the chowk, where her husband was sleeping and slept with her husband. The prosecution story is that Bhagwanta Ram was sleeping on the chowki of his house while Bhagwanta Ram's wife Smt. Mooli was sleeping in the court-yard along with other children. It was a dark night. At about mid-night Bhagwanta Ram heard his son Dhuda Ram crying 'Mare-Mare'. At this Bhagwanta Ram went to the place where his son Dhuda Ram was sleeping. He saw appellant with a spade in her hand and further witnesses appellant striking two blows to Dhuda Ram. The prosecution story is that the cries of Dhadu Ram also attracted Smt. Mooli to the place, where the couple had been sleeping. Smt. Mooli took a lantern with her and when she reached chowk, she saw appellant dealing one spade blow on the right side of the face of Dhuda Ram. It is alleged that thereafter Smt. Durga Devi left the spade at the scene of occurrence and went to a 'Jhopda' in the house. Bhagwanta Ram raised an alaram about the incident and went to Shera Ram (P.W. 4) the same night. He informed Shera Ram that appellant had killed his son Dhuda Ram. On being informed of this incident, Shera Ram first of all went to the house of Bhagwanta Ram, where he saw Dhuda Ram breathing his last. He also found a spade lying near the cot on which Dhuda Ram was lying. Shera Ram went to summon Sanwanta Ram, Samudra Singh, Udai Singh (P.W. 8) and Bhinya Ram (P.W. 3).

3. The prosecution story is that the appellant made an extra-judicial confession of this incident the same night in presence of P.W. 3 Bhinya Ram, P.W. 4 Shera Ram, P.W. 5 Narayan Ram and P.W. 8 Udai Singh.

4. The prosecution story further is that the P.W. 2 Bhagwanta Ram along with P.W. 3 Bhinya Ram went next morning to Police Station Dungargarh, which is at a

distance of 16 miles from village Kaiu. Bhagwanta Ram lodged an oral report with S.H.O., Police Station, Dungargarh-Mahendra Singh (P.W. 9), who recorded the same vide Ex. P. 1. Mahendra Singh, thereafter, proceeded to the scene of occurrence the same day. He inspected the site and prepared site-plan Ex. P. 4 and its legend Ex. P-4A. He also prepared an inquest report Ex. P. 3 as also a memo about the condition of the dead body namely Ex. P. 13. He recovered a spade lying near the cot of the deceased and duly sealed the same vide Ex. P. 5. He also took into possession the mattress soaked with blood from the cot and also duly sealed the same. He arrested the appellant the same day vide memo Ex. P. 8. He took into possession the 'Odhana' of the appellant the same day and duly sealed the same and prepared Ex. P. 9. He also collected blood-stained and control soil from the scene of occurrence.

5. The dead body was examined the same day at about 5.30 p.m. by Dr. Tej Gopal Bhatnagar (P.W. 7). Dr. Bhatnagar found the following external injuries on the person of the deceased:--

1. Incised wound 3' x 1/4' x 1/4 Rt. mandibular reg. Grievous/sharp
2. Incised wound 4 1/2 x 1/2' x 1' middle of neck Rt. side Grievous/sharp
3. Incised wound 3 1/2' x 1' x 2' just above the Rt. chick Grievous/sharp
4. Bruise 3' x 1/6' Rt. Shoulder S/Blush
5. Bruise 2' x 1/6' below injury No. 1...S/Blush
6. Bruise 1/2' x 1/6' on centre of chest near neck S/Blush
7. Incised wound on Rt. side of Mandible-sharply cut-bleeding, all masticating muscle and Art., Vein, cut through, bone No. 1 fractured.
8. Incised wound on Rt. side neck and middle -- All large vesseles (Jugular Vain; innominate Art.) cut sharply. Shesmoundril, musch (illegible) and other (illegible) of neck under cut sharply.

9. Incised wound on Rt. side of neck of Rt. clavicle -- I is deep wound, bleeding, all neck under vein, artery cut and retracted.

According to Dr. Bhatnagar all the injuries found on the person of the deceased were ante-mortem in nature and they had been caused within 24 hours. He found that the deceased had died because of severing of neck vessels, trachea, oesophagus leading to excessive loss of blood, and shock. He prepared post-mortem report Ex. P. 11 in this regard. Dr. Bhatnagar was also requested to examine the appellant with regard to her age and upon such examination he found her to be of 19-20 years of age and he prepared Ex. P. 12 in this regard.

6. The prosecution story further is that the wearing apparel of the deceased were taken into possession by the Investigating Officer vide memo Ex. P. 7 and they were duly sealed.

7. The prosecution story further is that the various articles seized during the course of investigation, were sent to the Forensic Science Laboratory, Rajasthan, Jaipur with P.W.6 Chandra Ram on 17-9-1985. The various articles were examined in the said laboratory vide report Ex. P. 15. After completion of all the formalities of the investigation, the appellant was challenged before learned Additional Chief Judicial Magistrate, Ratangarh, who committed to stand trial to Court of Sessions at Churu for offence under Section 302, I.P.C.

8. The learned Sessions Judge, Churu framed charge under Section 302, I.P.C. against the appellant on 22-1-1986. The accused appellant pleaded not guilty and claimed trial. The prosecution examined P.W. 1 Smt. Mooli, P.W. 2 Bhagwanta Ram, P.W. 3 Bhinya Ram, P.W. 4 Shera Ram, P.W. 5 Narayan Ram, P.W. 6 Chandra Ram, P.W. 7 Dr. Tej Gopal Bhatnagar, P.W. 8 Udai Singh, P.W. 9 Mahendra Singh and P.W. 10 Kashi Ram in support its case.

9. The learned Sessions Judge recorded the statement of accused-appellant Smt. Durga Devi under Section 313, Cr. P.C., wherein she did admit that her husband had been murdered on the night between 19-8-1985 and 20-8-1985, but she denied that she had committed the murder or was concerned with the murder in any way. Her case is that she has been falsely implicated at the instance of her

father-in-law and mother-in-law, who were unhappy with her. She denied that she get any 'Odhana' recovered. She however did not lead any evidence in her defence. The learned Sessions Judge after hearing both the sides convicted and sentenced the appellant as stated above.

10. In the present case, the learned counsel for the accused-appellant submits that the prosecution case rests upon alleged eye-witness account of P.W. 1 Smt. Mooli and P.W. 2 Bhagwanta Ram. It is submitted that both the witnesses are unreliable and do not inspire confidence at all. It is further submitted that the story regarding alleged extra-judicial confession is also unworthy of credit and should not have been acted upon by the learned trial Judge. It is further submitted that the alleged recovery of bloodstained 'Odhana' from the accused-appellant is not also free from suspicion, and therefore, the report of the State Forensic Science Laboratory cannot be used against the appellant for holding her guilty of the charge, and therefore, the appellant ought to be acquitted.

11. Learned Public Prosecutor has vehemently opposed the appeal and supported the judgment of the learned trial Court. He has submitted that when husband and wife were sleeping at the same place and husband had been murdered, then the appellant alone must have murdered him. It is contended that the accused-appellant has not come out with a case that some person known or unknown had committed murder of her husband. He submits that testimony of Mooli and Bhagwanta Ram, recovery of blood-stained 'Odhana' from the possession of the accused-appellant in conjunction with the story of extra-judicial confession is sufficient to hold her guilty and this Court should affirm the conviction and sentence recorded by the learned trial Judge.

12. We have bestowed our careful attention and earnest consideration to the material available on record. The incident is said to have taken place on the night of 19-8-1985 and 20-8-1985 and the F.I.R. (Ex. P. 1) is stated to have been recorded at 7 a.m. on 20-8-1985. However, it appears that it reached the concerned Magistrate on 21-8-1985 at 4.15 p.m. There is no explanation forthcoming about the report reaching so late to the concerned Magistrate. This circumstance impels us to examine the evidence with care and caution.

13. As stated already, basically the prosecution story rests upon the alleged eyewitnesses account given by P.W. 2 Bhagwanta Ram and P.W. 1 Smt. Mooli, father and mother of the deceased. P.W. 2 Bhagwanta Ram has deposed that he was sleeping on the chowki of his house and his wife and children were sleeping in the court-yard while deceased and the - appellant were sleeping behind the 'Saal'. He has further deposed that at about mid-night, he heard cries of his son Dhuda Ram, at which he rushed near his son and in his presence appellant gave two blows from spade to Dhuda Ram, and thereafter, she went inside a 'Jhopda'. He has stated further that appellant left the spade at that very place and it was thereafter that his wife P.W. 1 Smt. Mooli came with a lantern in her hand and thereupon he examined the injuries on the person of Dhuda Ram and he saw injuries on the right side of the neck cheeks and the lips. In cross-examination he had admitted that when he heard the alarm of 'Mare-Mare', he was in deep sleep; it was pitch dark and from a distance of 1-4 'panwadas' nothing could be seen. He has further categorically admitted that when he reached near his son Dhuda Ram, Durga Devi i.e. the appellant had already ran away and it was thereafter that his wife Smt. Mooli had come there. This admission of Bhagwanta Ram goes to show that he could not have witnessed the alleged assault, by the appellant on the deceased and his statement made in examination chief that he had seen Durga Devi dealing two spade blows to his son is wholly unreliable and unworthy of credence.

14. Smt. Mooli has too come out with a story that she heard the alarm of her son and thereafter alarm from her husband, and thereafter, she went towards her son and saw appellant dealing one spade blow on the face of Dhuda Ram. This statement of Smt. Mooli cannot be accepted in view of what Bhagwanta Ram has deposed viz. that Mooli had come after appellant had left. It appears that these witnesses must not have seen the occurrence at all.

15. The learned Public Prosecutor has submitted that there was no reason for Bhagwanta Ram and Smt. Mooli to implicate their daughter-in-law falsely. On this point, though nothing has been elucidated in the cross-examination of these two witnesses, the appellant has stated in her statement under Section 313, Cr.P.C. that her mother-in-law and father-in-law were unhappy with her and hence they

had falsely implicated her. In view of discussion of alleged eye-witnesses account of these two witnesses, we find that the statement of appellant inspires confidence. It is trite law that the statement of an accused made under Section 313, Cr.P.C. has to be taken into consideration in the same way as the testimony of any witness of the prosecution. We, therefore, find that the testimony of Smt. Mooli (P.W. 1) and Bhagwanta Ram (P.W. 2) is wholly unreliable and no reliance can be placed on the same.

16. This leads us to another aspect of the matter namely the story of the alleged extra judicial confession made by the appellant.

17. In this very context, we would like to observe that there was no motive for the appellant to commit murder of her husband. Smt. Mooli has categorically stated that she never saw any dispute or quarrel between her son Dhuda Ram and appellant Smt. Durga Devi P.W. 2 Bhagwanta Ram has admitted in his examination in Chief that he did not know as to what sort of relation existed between his son Dhuda Ram and Smt. Durga Devi. He has categorically stated that he did not know why Durga Devi had killed Dhuda Ram. The testimony of these two witnesses goes to show that apparently there was no motive whatsoever for the appellant to commit murder of her husband.

18. This takes us to the consideration of the evidence regarding alleged extra-judicial confession made by the appellant in presence of the witnesses namely P.W. 3 Bhinya Ram, P.W. 4 Shera Ram, P.W. 5 Narayan Ram and P.W. 8 Udai Singh. The said alleged extra judicial confession is said to have been made on the very night on which the incident took place. P.W. 1 Smt. Mooli and P.W. 2 Bhagwanta Ram do not at all speak of any such alleged extra-judicial confession having been made by the appellant. F.I.R. Ex. P. 1 is conspicuously silent with regard to such extra judicial confession. It may be stated that P.W. 3 Bhinya Ram, who is one of the witnesses of the alleged extra judicial confession, had accompanied P.W. 2 Bhagwanta Ram to the police Station. Had such an extra judicial confession been made, then it is natural that he would have told Bhagwanta Ram of such a confession and Bhagwanta Ram would have disclosed this to the Investigating Officer when report Ex. P. 1 was made. Non-mention of

the story of alleged extra judicial confession in the F.I.R. makes the story suspect and doubtful.

19. We have carefully gone through the testimony of P.W. 3 Bhinya Ram, P.W. 4 Shera Ram, P.W. 5 Narayan Ram and P.W. 8 Udai Singh on this aspect of the matter and we find that their evidence is discrepant in this regard. None of them deposed about the manner in which the appellant is said to have committed murder of her husband. Had appellant made any extra judicial confession in presence of these witnesses then she would have stated in what particular manner she had committed the murder of her husband. The statements of witnesses of the alleged extra judicial confession are also contradictory to each other. Therefore, we find that this story of alleged extra judicial confession does not inspire any confidence, whatsoever.

20. This takes us to the consideration of circumstances that 'Odhana' of the appellant was recovered next morning and this 'Odhana' had human blood-stains on it. We may stat that according to the investigating Officer, he had arrested the appellant, the day he reached the scene of occurrence i.e. on 20-8-1985. The Ex. P.8 is the memo prepared in this regard. It mentions that the appellant was wearing a 'Odhana' but does not mention at all that it had any blood-stains. Of-course a memo Ex. P. 9 has been prepared showing recovery of blood-stained 'Odhana' which had stains at about 8 places. But in view of the Ex. P. 8, this alleged recovery becomes suspect. Moreover, the prosecution has failed to establish that the 'Odhana' recovered from the appellant was sent to the State Forensic Science Laboratory in the self-same condition in which it had been recovered from the appellant and had been sealed. In this connection, we may refer to the evidence of witnesses of carriage of 'Odhana'. First reference to this regard is the evidence of Mahendra Singh, S.H.O. Though he claims to have recovered the 'Odhana' on 20-8-1985, he does not state as to when he deposited the sealed 'Odhana' in the Malkhana of the police Station. P.W. 6 Chandra Ram is the persons, who is said to have carried the various sealed articles from Dungargarh Police Station to State Forensic Science Laboratory, Jaipur. He has deposed that he carried six sealed packets on 17-9-1985 to the State Forensic Science Laboratory, Jaipur which were handed over to him by Shri Gheesa Lal,

Maalkhana Incharge. It, is surprising that Gheesa Lal has not been examined to show as to when he received the various articles and in what condition from the S.H.O. Mahendra Singh and in what condition they were kept in the Maalkhana. Non-examination of Gheesa Lal snaps the link which prosecution ought to have established for showing that self same 'Odhana' reached the State Forensic Science Laboratory in self same condition in which it had been allegedly recovered from the appellant. We, therefore, find that even this recovery does not advance the prosecution story.

21. We may now refer to the blood group found of the alleged Odhana. The prosecution has not led any evidence to show that the blood group found on the 'Odhana' allegedly recovered from the appellant was not the same as that of appellant herself. It may here be stated that Durga Devi had been medically examined and it would not have been difficult for the prosecution to adduce evidence to show that the blood-stains found on the 'Odhana' did not belong to Durga Devi. We may state that the blood group found on the 'Odhana' belong to blood group 'B', which is ordinarily found in large number of people.

22. This takes us to the consideration of recovery of the alleged weapon of occurrence of offence i.e. spade. It is said to have been found lying at the scene of occurrence. It is an ordinary article which is usually found at the house hold of the agriculturists. This fact has been admitted by Bhagwanta Ram (P.w. 2) in his statement. There is nothing to connect this recovery of spade with the appellant.

23. After careful perusal of the evidence on record, we are satisfied that the Investigating Officer was highly negligent and careless and due to his negligence and carelessness a brutal murder is going unpunished. He has claimed to have prepared site-plan Ex. P.4 along with its legend Ex. P.4A. The legend Ex.. P.4 A refers to various figures namely 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 denoting different places at the scene of occurrence. However, Ex. P. does not mention these numbers at all and we are left guessing as to what these figures had denoted. Site-plan Ex. P4 shows as many as three Johpadas and it is not clear, to which Jhopda the appellant had gone after the incident as claimed by the two alleged eye-witnesses. The principal prosecution witness P. W. Bhagwanta

Ram is said to have been sleeping on a chowki in the house. But there is no reference to this chowki in Ex. P. 4 at all. There is one more peculiar feature of the case. According to the prosecution there was a wall about 4 ft. high between points X and Y. The Investigating Officer has not shown this wall at all and has come out with a curious explanation that the wall was of a lower height, therefore, he did not mention it, whereas the other witnesses had admitted that there was a wall of 4 ft. height.

24. We may also regretfully state that the inquest report Ex. P.3 does not even indicate the prosecution story briefly. Inquest report is a very vital document in the investigation of a criminal case and it was expected that prosecution story would have been delineated though very briefly in the inquest report. The Apex Court has indicated the importance of recital of prosecution case in the inquest report in criminal cases in 1975 SCC (Cri) 601 : (1975 Cri LJ 1734) (Balak Singh v. State of Punjab) is a vital factor.

25. We may here state that at best grave suspicion attaches to the accused appellant, but suspicion itself, however, strong it may be, cannot take the place of unimpeachable evidence on the basis of which conviction may be recorded. It is bounden duty of the prosecution to prove the guilt beyond any shadow of reasonable doubt. In the instant case the prosecution has failed to discharge its onus. We do not mean to say that appellant might not have murdered her husband. However, we may state categorically that prosecution has failed to establish beyond reasonable doubt that it was the accused appellant who had committed the murder of Dhuda Ram. The possibility that Dhuda Ram might have been murdered by some body else after the appellant retired to one of the Jhopdas cannot be ruled out. When it is so. the accused is entitled to benefit of this reasonable doubt.

26. No other point has been pressed before us.

27. In view what we have stated above, we accept this appeal and set aside the judgment, conviction and sentence passed on the appellant and acquit her of charge under Section 302, I.P.C. and direct that the appellant Smt. Durga Devi may be released forthwith, if she is not required in any other case.

