

Suresh Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-12-1995

Reported in : 1995CriLJ1853; 1996(1)WLC596

Judge : B.R. Arora and; V.G. Palshikar, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302 and 404; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Criminal (Jail) Appeal No. 31 of 1990

Appellant : Suresh Kumar

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta and; D.R. Bohra, Advs. and;Public Prosecutor

Advocate for Pet/Ap. : R.K. Charan and; Suresh Kumar, Advs.

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. These two appeals are directed against the judgment dated 1 I-12-89, passed by the Sessions Judge, Sirohi, by which the learned Sessions Judge convicted

accused-appellant Suresh Kumar for the offence under Section 302, I.P.C., and sentenced him to undergo imprisonment for life and a fine of Rs. 1000/- and in default of payment of fine further to undergo three months' rigorous imprisonment.

2. Accused-appellant Suresh Kumar was tried by the learned Sessions Judge, Sirohi, for committing the murder of his wife Smt. Manjula and daughter Kumari Meeku (aged about two years) in his house situated in village Padeev (district Sirohi) near about the Jain Festival in the year 1987 held in that village. Accused-appellant Suresh Kumar was, also, tried by the learned Sessions Judge for causing disappearance of evidence of the offence (offence under Section 201 I.P.C), i.e., the deadbodies of Smt. Manjula and Kumari Meeku, and for the dishonest misappropriation of the property (offence under Section 404 I.P.C.) possessed by deceased Smt. Manjula at the time of her death. The prosecution, in support of its case, examined thirty-two witnesses while the accused, in his defence, examined two witnesses. The learned Sessions Judge, after trial, acquitted the accused of the offences under Sections 201 and 404 I.P.C. but convicted and sentenced him for the offence under Section 302 I.P.C., as stated above. Accused-appellant Suresh Kumar, aggrieved of the judgment dated 11-12-89, preferred D. B. Criminal (Jail) Appeal No. 31 of 1990, challenging his conviction and sentence under Section 302 I.P.C. while the State has preferred D. B. Criminal Appeal No. 90 of 1990 (the State v. Suresh Kumar) for enhancement of the sentence awarded to the accused from imprisonment for life to the capital punishment. The State, also, filed S. B. Criminal Appeal No. 112 of 1990 (the State Versus Suresh Kumar) challenging the acquittal of the accused of the offences under Sections 201 and 404 I.P.C. but the same was dismissed by the Hon'ble Single Judge for non-prosecution in the year 1991 and, therefore, the order of acquittal of the accused of the offences under Sections 201 and 404 I.P.C. becomes final.

3. The learned Sessions Judge, while convicting and sentencing accused-appellant Suresh Kumar placed reliance over eight circumstances appearing against him and held him guilty for the offence under Section 302 I.P.C. There was no eye witness of the occurrence.

4. It is contended by the learned counsel for accused-appellant Suresh Kumar that the circumstances, on which reliance has been placed by the learned trial Court while convicting the accused-appellant, do not stand proved from the evidence produced by the prosecution and the learned lower Court committed an error in placing reliance over these circumstances. According to the learned counsel for accused-appellant Suresh Kumar, if all these circumstances are taken to be proved even then from these circumstances the conclusion of the guilt of the accused is not established beyond reasonable manner of doubt and the established facts are not consistent only with the hypothesis of the guilt of the accused and do not rule out the hypothesis of the innocence of the accused-appellant and, therefore, the accused-appellant was wrongly convicted and sentenced by the learned trial Court on the basis of these circumstances. It has, also, been contended by the learned counsel for accused-appellant Suresh Kumar that it is a cardinal principle of Criminal Jurisprudence that the circumstantial evidence must be fully established, from which there should be inevitable conclusion of the guilt of the accused beyond reasonable manner of doubt and the facts should be consistent only with the hypothesis of the guilt of the accused ruling-out any hypothesis of the innocence of the accused. In support of his contention, learned counsel for the accused-appellant has placed reliance over: *Harendra Narain Singh v. State of Bihar*, 1991 Cri LJ 2666 : (AIR 1991 SC 1842); *Babuda v. State of Rajasthan*, 1992 Cri LJ 3451 : (AIR 1992 SC 2091) and *Anant Bhujangrao Kulkarni v. State of Maharashtra*, 1992 Cri LJ 4027 : (AIR 1993 SC 110). The learned Public Prosecutor, assisted by the learned counsel for the complainant, on the other hand, has supported the judgment passed by the Court below and submitted that the circumstances relied upon by the prosecution and believed by the learned trial Court, complete the chain of the circumstances and prove the case against the accused beyond a reasonable manner of doubt and excludes the hypothesis of the innocence of the accused and, therefore, these circumstantial evidence have been rightly believed by the learned trial Court. It has, also, been contended by the learned Public Prosecutor and the learned counsel for the complainant that the present is a rarest of the rare cases in which the accused deserves the capital punishment and the learned lower Court was not justified in dealing accused Suresh Kumar leniently and awarding him the

sentence only of imprisonment for life.

5. We have considered the submissions made by the learned counsel for the parties.

6. There is no eye witness of the occurrence and the prosecution case wholly rests upon the circumstantial evidence. It has been held by the Hon'ble Supreme Court in a catena of decisions, including some of the decisions on which reliance has been placed by the learned counsel for the accused-appellant that where the case rests on the circumstantial evidence, the circumstances, from which the conclusion of guilt is to be drawn, should, in the first instance, be fully established and all the facts, so established, should be consistent only with the hypothesis of the guilt of the accused. There must be a chain of evidence, complete in all respects, leaving no reasonable ground of conclusion consistent with the innocence of the accused and it must be such as to show that within all human probabilities the act must have been done by the accused. In view of the law laid-down by the Supreme Court, in the case where the evidence is of circumstantial nature, it has to be seen: (i) whether in the present case the various links in the chain of circumstantial evidence, laid by the prosecution, have been satisfactorily proved; (ii) the circumstances point the guilt of the accused with reasonable definiteness; and (iii) the circumstances are proximate to time and situation and all the conditions are fulfilled.

7. The first circumstance, on which reliance has been placed by the prosecution and relied-upon by the learned trial Court, relates to the strained relations of the accused with his wife Smt. Manjula. To prove this circumstance, the prosecution has placed reliance over the evidence of five witnesses, viz., PW 14 Smt. Urmila, PW 15 Bhooba Ram, PW 19 Kewal Ram, PW 20 Lalit Kumar and PW 23 Prakash. PW 14 Smt. Urmila is the cousin sister-in-law of deceased Smt. Manjula. She has stated that she, alongwith Smt. Basanti, had gone to Padeev from her village Dudwa for attending the Jain Festival on the last day of Jain Festival which fell on Monday, the 11th day of the month and met her sister-in-law Smt. Manjula. At that time Smt. Manjula was in her house in village Padeev. On her meeting Smt. Manjula started weeping and informed her that accused Sur,esh Kumar has sold

her jewellery and there is a marriage of her sister-in-law in the family and her husband has asked her to bring some money from her parents. She, also, informed her that her husband accused Suresh Kumar has committed the theft in her parental house. She, also, informed her that her husband has threatened her that if she will not bring money for him then he will kill her. PW 15 Bhooba Ram is a neighbour of Kewal Ram the father of deceased Smt. Manjula. He went to village Padeev and met Smt. Manjula. The accused was not there at that time. When he met Smt. Manjula, she started weeping and informed him that her husband used to give threatening to her that if she will not bring money from her parents for the marriage of his sister then he will kill her. She, also, informed him that earlier, also, she had brought money for him from Bombay. PW 19 Kewal Ram the father of deceased Smt. Manjula has stated that the relations between deceased Smt. Manjula and the accused were not cordial, rather they were strained and this fact was told to him by his daughter Smt. Manjula. PW 20 Lalit Kumar and PW 23 Prakash Kumar - the two brothers of deceased Smt. Manjula - have stated that they were informed by their sister Smt. Manjula that the accused was a man of loose character and the relations of the accused with Smt. Manjula were strained. She, also, informed them that the relations of the accused with his own parents are, also, not cordial. From the evidence of these witnesses it has, therefore, been proved beyond reasonable manner of doubt that the relations of the accused with the deceased and, also, with his parents were strained. This circumstance, therefore, stands proved against the accused from the evidence produced by the prosecution and the learned Sessions Judge was justified in believing this circumstances against the accused.

8. The next circumstance against the accused, on which reliance has been placed by the prosecution and believed by the learned Sessions Judge is that the accused left Ahmedabad along with his wife and children and was seen in village Padeev in house during the Jain Festival and thereafter deceased Smt. Manjula and Kumari Meeku were not seen alive. The evidence on this point consists of the statements of PW 1 Shanti Lal - the father of the accused - and, PW 2 Smt. Nani Bai - the mother of the accused. The evidence of both these witnesses is only to the effect that in the month of January, the accused, along with his wife Smt. Manjula and daughter Miss Meeku, came to Ahmedabad and left for Padeev with

the keys to the locks at the house in Padeev, which he had already taken and refused to hand-over the same to Shanti Lal. Though both these witnesses have been declared hostile but merely by declaring them hostile, their whole evidence is not wiped-off and the evidence found reliable can be relied-upon. From the evidence of these two witnesses, the fact of leaving Ahmedabad by the accused along with his wife Smt. Manjula and daughter Miss Meeku, taking the keys of the house, the strained relations of the accused with his wife as well as with his parents, stand established.

9. The other circumstantial evidence is the last seen of the accused along with deceased Smt. Manjula and Kumari Meeku, which consists of the statements of PW 3 Bhopal Singh, PW 6 Nawal Mal, PW 10 Shankar Lal, PW 12 Kastoor, PW 14 Smt. Urmila and PW 15 Bhooba Ram. All these witnesses have seen the accused in village Padeev along with Smt. Manjula and Kumari Meeku during the Jain Festival. These witnesses met the accused during this period and had seen the accused as well as Smt. Manjula and Miss Meeku in the house of the accused at village Padeev. PW 5 Rakesh has seen the accused at the Bus Stand, Padeev sometime in the first week of February and PW 26 Lakh Raj had, also, seen the accused at the Bus Stand, Sirohi in the second week of February, 1987. Though a lengthy cross-examination has been conducted on these witnesses but nothing could be elicited to discredit their testimony. From the evidence of all these witnesses, the last seen of the accused alongwith deceased Smt. Manjula and Miss Meeku in village Padeev during the Jain Festival, therefore, stands established and it has, also, been established from the statements of PW 5 Rakesh and PW 26 Lakh Raj that the accused left the village all alone and after that Smt. Manjula and Kumari Meeku were not seen by any other person. The contention of the learned counsel for the accused-appellant, on this point, is that during this period PW 20 Lalit Kumar and PW 23 Prakash Kumar - the brothers of the deceased - stated to have seen the accused in Bombay, also. It is true that these two witnesses have stated that at some days during this period the accused was seen at Bombay, but the accused was also, seen by the aforesaid witnesses at village Padeev, also, during Jain Festival. The accused himself has admitted in his statement recorded under Section 313, Cr. P. C, that he was with Smt. Manjula and Kumari Meeku in village Padeev up to 21-1-87 and he left the village on that

day and thereafter he did not go to village Padeev again. In this view of the matter, the presence of the accused in village Padeev during Jain Festival along with his wife Smt. Manjula and daughter Kumari Meeku, thus, stands established and it is, also, established that after the accused left Padeev, Smt. Manjula and Kumari Meeku were not seen alive by any other person.

10. The next circumstance, on which reliance has been placed by the prosecution is that the accused was seen all alone after Jain Festival was over in village Padeev. To prove this circumstances, the prosecution has placed reliance over the statements of PW 3 Bhopal Singh, PW 4 Man Singh, PW 5 Rakesh, PW 10 Shankar Lal, PW 12 Kastoor and PW 26 Lekh Raj. On enquiry by these witnesses from the accused regarding the whereabouts of Smt. Manjula and Kumari Meeku, the accused gave different versions to different witnesses. PW 4 Man Singh has been declared hostile. He has not supported the prosecution case and nothing could be turned-out from his statement. But so far as the other four witnesses are concerned, they have supported the prosecution case on this point. PW 5 Rakesh met the accused at Bus Stand, Padeev. He has stated that he was standing at the bus stand and accused Suresh Kumar met him there. At that time the accused was all-alone. He gave a currency note of Rs. 5/- to him on account of his sacred-thread ceremony. When he enquired from him where his wife and daughter were, the accused replied that his wife and daughter had already gone earlier. On enquiry by PW 10 Shankar Lal regarding the whereabouts of the wife and the daughter, the accused told that they had already left the village earlier. To PW 12 Kastoor the accused informed that Smt. Manjula and Kumari Meeku had gone to village Gole. He gave different version to PW 26 Lekh Raj and when he enquired about the whereabouts of Smt. Manjula and Kumari Meeku, the accused told that they had gone to village Gole and will come direct at the bus stand. To PW 20 Lalit Kumar the accused informed that Smt. Manjula and Kumari Meeku had gone to Ankaleshwar. The accused informed PW 21 Bhanu Bhai that Smt. Manjula and Kumari Meeku are in Ankaleshwar and this information given to PW 21 Bhanu Bhai by the accused relates to the period 11-3-87 to 13-3-87 when Smt. Manjula and Miss Meeku were not alive even.

11. The next circumstance, on which reliance has been placed by the prosecution and which has been relied upon by the learned trial Court, is the unnatural conduct of the accused after leaving Padeev. The accused left village Padeev and did not take any care of his wife and children. He even did not attend the marriage of his real sister Varsha which took place on 1 -3-87 though he was the only son of his parents. He assured his father earlier that he would bear the marriage expenses but neither he helped his father in the marriage of his sister nor he even attended the marriage of his real sister. Even as per his own version he had stayed in a hotel in Ahmedabad though his parents were living in Ahmedabad. He was earning nothing but still he used to stay in the hotels. His leaving village Padeev without Smt. Manjula and Kumari Meeku, not taking any care of them and not attending the marriage of his real sister, stand proved from his own statement recorded under Section 313, Cr. P. C, as well as from the evidence of PW 1 Shanti Lal, PW 2 Nani Bai, PW 7 Raghunath, PW 21 Bhanu Bhai etc. even from the statement of PW 1 Vinod Bhai. This circumstance, also, stands established against the accused.

12. The next circumstance relied upon by the prosecution and believed by the learned trial Court is the recoveries of keys to the locks at the house in village Padeev from the accused and opening the doors of the house by PW 1 Shanti Lal and PW 2 Smt. Nani Bai by calling Narain (a black-smith) by breaking the latches. PW 1 Shanti Lal and PW 2 Smt. Nani Bai - the parents of the accused - had not heard anything about his son (the accused) and his family after he had left his house in the month of January, 1987. They reached village Padeev on 9-7-87. The house was locked and the keys to the locks were with the accused and they, therefore, called PW 9 Narain (a black-smith) who broke the lathches and opened the doors of the house. When they entered in the house, they found that the kitchen was locked and the other rooms were, also, locked. PW 9 Narain opened the latches of mother's room also and on opening the door of Mataji's room, a foul smell came from inside the room and the matter was reported to the police and later on the deadbodies of Smt. Manjula and Kumari Meeku, covered by Gadda, were recovered from an iron box. The opening of the doors of the house at Padeev by breaking the latches and the recoveries of the dead bodies of Smt. Manjula and Kumari Meeku as well as noticing the foul-smell coming from the

mother's room, therefore, stand proved from the statements of PW 1 Shanti Lai, PW 2 Smt. Nani Bai, PW 3 Bhopal Singh and PW 9 Narain. The keys to the locks of the house at Padeev were recovered on the information and at the instance of the accused-appellant from the bag which was locked and kept by him in a room of 'Haradiya Guest House, Kolaba Road, Bombay. These recoveries were made in the presence of PW 7 Raghunath-the Manager of the aforesaid Guest House. Five keys (Articles 6 to 10) were recovered from the accused, which were the keys to the locks put on the doors at the house in village Padeev where he stayed with them during the Jain Festival and after that Manjula and Meeku were not seen alive by anybody. The accused himself has admitted in his statement recorded under Section 313, Cr. P. C, that there were two sets of the keys - one was with him and the other set was with his mother. The recoveries of these keys from the bag of the accused by the police on the information and at the instance of the accused in the presence of PW 7 Raghunath, thus, stand established. This circumstance, also, speaks against the accused.

13. The next evidence relied upon by the prosecution and believed by the learned trial Court is the recoveries of two of the accused, in which an entry has been made by the accused in his own handwriting regarding the death of Smt. Manjula and Kumari Meeku on 28-1 -87. These diaries are Ex. P. 57 and Ex. P. 58, which were recovered on the information and at the instance of the accused. PW 20 Lalit Kumar and PW 23 Prakash Kumar, who are the brothers-in-law of the accused, have identified the handwriting of the accused in Ex. P. 57 and Ex. P.58. From the evidence of these two witnesses and the entries made in the aforesaid diaries in the handwriting of the accused, it has been established that Smt. Manjulla and Kumari Meeku died on 28-1-87. This circumstance, therefore, also, stands established against the accused.

14. The next circumstance relied-upon by the prosecution and believed by the learned trial Court 1858 Poornasree Agencies v. Universal Enterprises Cri. L. J. is the recoveries of Payal, Borla, ring, sweater and Muffler of the accused on the information and at the instance of the accused. This circumstance, though proved, does not land any assistance to the prosecution because these were the articles of the deceased which were found in the house and the accused could have come in

possession of these articles. This circumstance, therefore, cannot be read against the accused. The learned Sessions Judge was, therefore, not justified in placing reliance on the recoveries of these articles.

15. The next circumstance, on which reliance has been placed by the prosecution and which has been believed by the learned trial Court is the recovery of a Khunt - the article of the offence - on the information and at the instance of the accused. The recovery of the Khunt cannot be said to be made on the information and at the instance of the accused-appellant. The house was opened and the Khunt was found lying in the house and, therefore, the Khunt had already been recovered by the police. It cannot be said to be a discovery made under Section 27 of the Indian Evidence Act. This evidence, also, therefore, cannot be read against the accused-appellant.

16. The last evidence, on which reliance has been placed by the prosecution and which has been believed by the learned trial Court is the recovery of the blood-stained T-Shirt of the accused on the information and at the instance of the accused. The T-Shirt was found concealed in a stone-rack (Aala) in the house. The presence of this T-Shirt in the Aala was not known to any of the witnesses. It was for the first time that the accused gave information regarding placing of the T-Shirt there which was recovered on his information and at his instance. PW 3 Bhopal Singh PW 11 Jutha Ram and PW 31 Hari Ram have supported this recovery. The T-Shirt of the accused was found stained with human blood of AB+ Group. The same group of the blood was found on the Gadda in which the deadbodies were found wrapped, which was the blood-group of the deceased. This evidence, therefore, also, connects the accused-appellant with the crime. This circumstance, also, stands established from the evidence led by the prosecution.

16-A. These circumstances, which stand established against the accused-appellant, complete the chain and conclusively establish the guilt of the accused-appellant and prove beyond reasonable manner of doubt that it was the accused and the accused alone who had committed the murders of his wife Smt. Manjula and the daughter Kumari Meeku. The learned Sessions Judge was, therefore,

justified in convicting the accused-appellant for the offence under Section 302, I.P.C.

17. The next question, which requires consideration in the present case is : what should be the appropriate sentence which should be awarded to the accused-appellant. It is only in the rarest of rare cases in which the capital sentence of death is imposed. The present is not a case which falls in the category of such rarest of rare cases. The accused, at the relevant time, was in his late twenties and has suffered the agony of prosecution for the last about seven years. We are, therefore, of the view that it is not a case in which the accused-appellant should be given death penalty. The appeal, filed by the State for enhancement of the sentence, therefore, deserves to be dismissed.

18. In the result, D. B. Criminal Appeal No. 90 of 1990 filed by the State for enhancement of the sentence, is dismissed. The appeal, filed by the accused-appellant (D. B. Criminal (Jail) Appeal No. 31 of 1990) is, also, dismissed for having no merit.