

State Vs. Jetha and ors.

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SooperKanoon Citation : sooperkanoon.com/759664

Court : Rajasthan

Decided On : Dec-22-1978

Reported in : 1978WLN(UC)485

Judge : K.D. Sharma and; S.N. Deedwania, JJ.

Appeal No. : D.B. Criminal Murder Reference No. 2/1978 and Appeal Nos. 248, 366, 402, 407 and 408/1978

Appellant : State

Respondent : Jetha and ors.

Advocate for Pet/Ap. : Mr. V.S. Dave

Judgement :

K.D. Sharma, J.

1. D.B. Criminal Appeals Nos. 366/78 and 402/78 along with D.B. Criminal Revision No. 268 of 1978 filed by Jetha, Hansa alias Hansa Ram, Smt. Hanja, Smt. Pabu and Chunni Lal and D.B. Criminal Jail Appeals Nos. 407/78 and 408/78 preferred by Hansa Ram and Chunni Lal respectively are directed against ore and the same judgment of the Sessions Judge, Jalore, whereby Hansa Ram & Chunni Lal were convicted under Section 147 & 302 & 147 & 302 read with 149, I.P.C. respectively & each of them was sentenced to undergo rigorous imprisonment for

2 years on the 1st count & on the 2nd was sentenced to death & to pay a fine of Rs. 1000/-, (one thousand only) By this very judgment, the other appellants, namely, Jetha, Mst. Hansa & Mst. Pabu were also convicted under Section 147 & 302 read with Section 149, I.P.C. & each of them was sentenced to undergo rigorous imprisonment for two years on the first count and on the second to suffer rigorous imprisonment for life and to pay a fine of Rs. 1000/-; (one thousand) in default of payment of fine to suffer further rigorous imprisonment for one year. The Sessions Judge, Jalore, has submitted the proceeding before us for confirmation of the sentences of death passed by him against Hansa Ram and Chunni Lal.

2. The prosecution case is that Mst. Mohani Devi was married to Hansa Ram appellant about 4 or 5 years ago After her marriage, she began to live with her husband in the latter's house, but the relations between the young couple were not very smooth Hansa alias Hansa Ram treated his wife badly and occasionally gave her beating with the result that there was no endeavouring affection between them. Her in-law's were, also annoyed with her, so, she was taken by her brother Uda Ram to his house at village Ahore where she stayed for some months. Thereafter, on October 20, 1977, Hansa Ram went to the house of his father in law and requested the latter to send Mohani Devi with him Anda Ram father of Mst. Mohani Devi, was not willing to send his daughter with his son-in law Hansa Ram, but the latter gave an assurance to the former in the presence of caste fellows of the village that he would not beat Mohani Devi in future & treat her with love & affection Re lying upon this assurance, Anda Ram agreed to send his daughter Mohani Devi with his son-in law Hansa Ram Accordingly, Hansa Ram brought his wife Mst. Mohani Devi to his house at village Chandrai on 21-10-1977. It is alleged that in the night between 21 & 22-10-1977, all the five appellants, namely, Jetha, Hansa, Chunni Lal, Mst. Hanja & Mst. Pabu conspired together and formed an unlawful assembly with a common object to cause the death of Mst. Mohani Devi by fire and, in pursuance of the said common object of the assembly, Harsa Ram burnt his wife Mst. Mohani Devi to death be setting fire to her body, while she was inside the room of her house. Some time after the occurrence, Hansa Ram and his father Chunni Lal rushed to the house off Anda Ram, the father of Mst. Mohani Devi, at village Ahore, in the early morning of October 22, 1977, and made extra-judicial confessions of their guilt before him by stating that

they had burnt his (Anda Ram) daughter & for that they begged to be excused. On hearing the news of the death of Mohani Devi, the members of Anda Ram's family began to weep and their cries attracted Umajj Kumar, Rakhaji Rawal and others in whose presence also Hansa Ram and Chunni Lal appellants confessed to have burnt Mst. Mohani Devi to death. Later on, Mst. Mohani Devi's father Anda Ram was informed by Hajari Mai and Sant Jetha Ram that when Hansa Ram was fating Mst. Mohani Devi to village, Chandraj, they had heard him saying that Mst. Mohani Devi would dream-off having ct me back to Ahore. A written report of this incident of murder was, therefore, lodged by Uda Ram, brother of Mst. Mohani Devi, with the Superintendent of Police, Jalore, on October 24, 1977. It will not be out of place to mention that on October 22, 1977, at 11.30 a.m. Hansa Ram himself went to the police station Ahore & made a report to the police that his wife Mst. Mohani Devi had committed suicide by pouring kerosene oil over her body & then setting fire to it. Upon receiving this information, the Station House Officer, Ahore, proceeded to enquire into the matter under Section 174. Cr.P.C. But, later on, when a criminal case under Section 302, I.P.C. was registered on the basis of written report: filed by Uda Ram, brother of Mst. Mohani Devi, on 24-10-1977, the inquiry under Section 174, Cr.P.C. was dropped & an investigation into the offence of murder was commenced. In the course of inquiry under Section 174, Cr.P.C. the Station House Officer, Ahore, visited the place of occurrence, where dead-body of deceased was lying und prepared a site-plan and a site-inspection memo. He recovered the dead body of Mst. Mohani Devi and got an autopsy performed over it by the Medical Officer, In charge Government Hospital, Chandrai (Jalore) at 1.30 p.m. on October 22, 1977. The Medical Officer, upon post-mortem examination of the dead body of Mst. Mohani Devi found as under:

Hairs burnt, eyes closed, skin of whole of body burnt, superficial muscles burnt intestines coming out of abdomen, body is in pagalistic state, bones of right leg burnt, no smell of kerosene present, also present at place of burning.

The cause of death, in his opinion, was shock due to extensive degree off burns. The Medical Officer further clarified, later on, that the deceased must have taken meals about 3 hours before the death and it could not be aid whether she was throttled because skin and sub-cutaneous tissues were mot present. According to

his opinion, Mst. Mohani Devi must have been burnt before her death and in addition to clothes, some other material might have been used, as ash was present at the place of burning.

3. At the time of inspection of the dead body, a silver 'Karla' was found on the legs of Mst. Mohani Devi, it was taken into possession by the Station House Officer, Ahore, in the presence of Motbirs. Later on, in the course of investigation into the offence of the murder. Mod Lal, SHO Ahore, took ornaments of Mst. Mohani Devi into his possession vide memo of seizure Ex. P. 19. The ornaments were produced before him by Smt. Pabu from her box. The SHO then arrested the appellants and recovered three wooden pieces of a cut out of which one was a burnt piece. After his arrest, Hansa Ram, appellant gave information to the Station House Officer, Ahore, that he had kept one gold 'Kanthi' and a 'Bali' (ear-ring) in a small box lying in a small room inside the 'pol', which he was prepared to get them recovered. These ornaments were soon after recovered from the box at the instance of Hansa Ram appellant in consequence of his above information, which was reduced to writing in Ex. P. 34. Likewise, a silver 'Kandora' was also recovered at the instance of Jetha appellant, who, while in police custody, informed the Station House Officer that he had kept a silver 'Kandora' in his box, which was lying in his room inside the 'Pol' of his house. All the ornaments were, later on, put up for identification in a test-parade held by Executive Magistrate, Ahore, on December 17, 1977. Uda Ram and Mst. Meeran, wife of Anda Ram, correctly identified all these ornaments to be of Mst. Mohani Devi. Moti Lal, SHO collected other necessary evidence in the case and eventually submitted a charge sheet against all the five appellants under Sections 302, 201 and 120B I.P.C. in the court of the Munsiff-cum Judicial Magistrate, Jalore. The learned Magistrate, upon finding a prima-facie exclusively triable by the court of Session, committed the appellants to the court of the Sessions Judge, Jalore, for their trial for the aforesaid offences.

4. The learned Sessions Judge, Jalore, charge-sheeted Hansa Ram under Sections 120B, 147 and 302 I.P.C. and framed charges against the other four appellants under Section 120B, 147 and 302 read with Section 149, I.P.C. After framing necessary charges, the learned Sessions Judge conducted the trial. The

prosecution examined as many as 26 witnesses to prove its case. The appellants led evidence of three witnesses in their defence, while Moti Lal, SHO Ahore, was further examined as a court witness vide order of the Sessions Judge, Jalore, dated June 27, 1978. The Sessions Judge heard arguments in the case and convicted all the appellants in the manner stated above. It appears that after recording the conviction, he was transferred from Jalore and so, he could not hear the appellants on the question of sentence & award sentences to them according to law. On Oct. 19, 1978, his successor Shri Ram H Ajwani, heard the arguments of the learned Counsel for the appellants and learned Public Prosecutor, on the point of sentence and passed the sentences as mentioned above.

5. We have carefully perused the record and heard Mr. M.M. Singhvi & Mr. V.S. Dave, learned Counsel for the appellants and Mr. M.D. Purohit, Public Prosecutor, appearing on behalf of the State. Firstly, it has been contended on behalf of the appellants that the entire prosecution case rests only upon circumstantial evidence, the several pieces of which are not inconsistent with the innocence of the appellants. It was further urged that the circumstances, from which the conclusion of guilt was drawn by the learned Sessions Judge, have neither been fully proved, nor are they consistent only with the hypothesis of the guilt of the appellants. The learned Public Prosecutor, on the other hand, vehemently argued that the incriminating circumstances established on the record are of a conclusive nature and capable of forming a complete chain of evidence from which the only inference that can reasonably be drawn is that the appellants are guilty of committing the murder of Mst. Mohani Devi by setting fire to her body at the time and place alleged by the prosecution.

6. We have given our anxious consideration to the rival contentions. Before dealing with the several pieces of circumstantial testimony led by the prosecution to prove its case, we may like to observe that where the case of the prosecution hinges only upon evidence of a circumstantial nature, the incriminating circumstances, from which guilt is to be inferred, should be of a conclusive tendency & must be proved beyond reasonable shadow of doubt. Again, the circumstances so established must lead to the only inference that the accused is guilty of the offence with which he is charged. In other words, the circumstances

proved on the record must be incapable of explanation upon any other reasonable hypothesis than that of the guilt of the accused. If, upon scrutiny, the several pieces of circumstantial evidence found to be weak links incapable of forming a complete chain of evidence against the accused, no inference can legitimately be drawn that no other person but the accused has committed the alleged crime. Reference in this connection may be made to the following authorities of the Supreme Court, wherein the referred to above principles were laid down for assessing the value and cogency of circumstantial evidence:

Govinda Reddy v. State of Mysore : AIR 1960 SC29

Bakshish Singh v. State of Punjab : 1971 CriLJ1452

Udaipal Singh v. State of U.P. A.I.R. 1972 S.C. 54

K.M. Shelke v. State of Maharashtra : [1974]1SCR266

Jainarain Singh v. State of M.P. : AIR 1973 SC2543

7. Having these settled and oft repeated principles in our view, we proceed to scrutinize the several links of circumstantial evidence, which have been brought on record by the prosecution in this case, in order to find out whether any conclusion of guilt of the appellants can reasonably be drawn from them. The circumstances brought on the record are as quoted below-

- (i) discovery of motive on the part of the appellants to kill Mst. Mohani Devi and the strained relations between her and the appellants;
- (ii) time and place of the murder of the deceased and extra-judicial confession of the husband and the father-in-law of the deceased before her father and brother;
- (iii) the appellants were last seen in the company of the deceased on the day of occurrence;
- (iv) incredible plea of some of the appellants that the deceased committed suicide;
- (v) recovery of the dead body of the deceased from the house of the appellants;

(vi) conduct of the appellants in not raising hue and cry throughout the night and the conduct of the husband of Mst. Mohani Devi, deceased, in giving wrong information to the police about her death.

1. Motive.

8. As there is no direct evidence of any eye-witness to prove the murder of Mst. Mohani Devi, the existence of motive to the perpetration of the crime is of great importance. The prosecution has made an attempt to discover the apparent motive. It has, therefore, to be ascertained whether the prosecution has been able to establish the motive suggested by it. Smt. Heeri P.W. 1 stated in her deposition that Mst. Mohani Devi had seen her father-in-law Chunni Lal appellant sleeping with Mst. Hanja appellant, wife of Jetha, and so Chunni Lal and the other appellants wanted to turn her out of their house. They used to give her beatings. The evidence of Mst. Heeri is hearsay, as she was informed about illicit intimacy between Chunni Lal and Mst. Hanja by Mst. Mohani Devi, deceased, about four or five months prior to her death. The statement alleged to have been made by the deceased to this witness was made long prior to the murder and it cannot be safely held to have some proximate relations to the cause of Mst. Mohani Devi's death or to any of the circumstances of the transaction which resulted in her death. Hence, no value can be attached to the above statement of Mst. Heeri. Mst. Heeri further stated that, when in the evening of Dusshera she had gone to Prabhu carpenter's house for thrashing 'Khichari' she, saw Hansa alias Hans Raj and Jetha appellants sitting inside the house of Prabhu. Hansa told her that his sister Chhagani was not sent by her in-laws with him and that his quarrelsome wife Mst. Mohani Devi, whose face he did not want to see, had been sent along with him. Thereafter, Mst. Heeri claimed to have seen both the appellants going out of the house of Prabhu towards their house. From Prabhu's house Mst. Heeri went to the jungle after doing her work. On the next day in the afternoon she came to know that Mst. Mohani Devi was lying burnt & the police had come to the house of the appellants. Mst. Heeri was cross-examined at length by the defence. In her cross examination, she admitted that she did not state before the police that Mst. Mohani Devi, deceased, had told her about illicit intimacy between Chunnilal & Mst. Hanja appellants. The explanation given by her for the omission to state this fact is that

she forgot to depose this fact before the police. She further admitted in her cross-examination that her statement was recorded by the police about 8 or 10 days after the occurrence. During this period, she claimed to have disclosed all that was said to her by Hansa appellant to the wife of Pola, blacksmith of her village. When she was asked to disclose the name of the wife of Pola, she could not tell her name. The wife of Pola, blacksmith, has not been examined by the prosecution to show that in fact Mst. Heeri had disclosed to her all that was said to Mst. Heeri by Hansa appellant at Prabhu's house. Apart from this Mst. Heeri knew it well on the next day in the afternoon that Mst. Mohani Devi was lying burnt in the house of Chunni Lal and that police had come to the spot. If Hansa appellant had told her at Prabhu's house that his father-in-law had sent his quarrelsome wife Mst. Mohani Devi, whose face he did not want to see, she would have surely deposed this fact to the police or to any other person in the village. The evidence of a witness like Mst. Heeri, who did not come forward to depose the certain facts, within her/his knowledge at the earliest opportunity available to her or him for such disclosure and who confided the facts relevant to the crime to her or his bosom for a number of days, is not entitled to any weight. Over and above all, this witness did not impute any motive to kill Mst. Mohani Devi to the other appellants. Consequently, we are of the view that the trial judge went wrong in placing reliance on the testimony of this witness.

9. Other witnesses examined by the prosecution in proof of the motive are Hazari Mal P.W. 14 and Jetha Ram P.W. 9. The evidence of Jetha Ram is that he used to run a betal shop at bus-stand of village Ahore. On the day of Dusshera festival, he was sitting in his shop. He saw Hansa Ram appellant and his sister Mst. Chhagani along with his wife Mst. Mohani Devi. At this time Hazari Mal, gold-smith, was also standing at his shop. He heard Hansa Ram appellant telling his sister that he would not allow Mst. Mohani Devi to see Ahore village again. On the third day he came to know that Mst. Mohani Devi had been burnt to death and so he disclosed to Uda Ram brother of Mst. Mohani Devi that Hansa Ram was telling his sister Mst. Chhagani that he would not permit his wife Mohani Devi to see village again. Similar is the evidence of Hazari Mai, P.W. 14. Even if the evidence of these two witnesses is taken to be true at either face value, it does not establish that Hansa Ram appellant had a motive to kill his wife Mst. Mohani Devi. What was said by

Hansa Ram appellant to his sister Mst. Chhagani was that he would not permit Ms wife Mst. Mohani Devi to see village Ahore again and that she should not worry, Hansa Rara appellant might have consoled his sister Mst. Chhagani by saying that if her-in-laws had not sent her with him, he also would not allow their daughter Mst. Mohani Devi to come again to their house at village Ahore, meaning thereby that he would, in future, prevent Mst. Mohani Devi from paying a visit to her parents at village Ahore. The words alleged to have been uttered by Hansa Ram appellant do not necessarily lead to own inference or interpretation that he meant thereby to do away with his wife Mst. Mohani Devi. If two interpretations one incriminating and the other innocuous are possible of the words uttered by Hansa Ram, the one, which is favourable to him, should be accepted Apart from this Jetha Ram admitted in his cross examination that Hansa Ram appellant had uttered these words to his sister Mst. Chhagani in a low voice It is further admitted by Hazari Mal P.W. 14 that he was talking to Jetha Ram at his shop at that time. It is highly doubtful whether these witnesses, who were talking to each other, could hear from a distance of 3 or 4 ft the alleged words uttered by Hansa Ram to his sister Mst. Chhagani in a low voice. It is further evident from their cross-examination that they did not disclose all that they had heard from the mouth of Hansa Ram appellant to Mst. Mohani Devi's parents or her brother till October 24, 1977. Consequently, we do not attach any importance to the testimonies of these witness.

10. Now remains the evidence of Anda Ram and his son Uda Ram, who stated in their depositions that Mst. Mohani Devi had informed them about maltreatment meted out to her by her in-laws and her husband. Anda Ram further stated that when his son-in-law Hansa Ram appellant had come to his house at village Ahore for taking back Mst. Mohani Devi to his house, he told him that he would live with his wife separate from his parents and would not quarrel with her. He was confronted with and contradicted by his statement before the police wherein such facts were not written He could not afford any reasonable explanation for the omission of these facts in his statement before the police. Again on further cross-examination Anda Ram admitted that his daughter Mst. Mohani Devi did not tell him the names of those persons who used to maltreat her. Similarly, Uda Ram admitted in his cross examination that he did not disclose to the police that he was

informed by Mst. Mjhani Devi about illicit intimacy between Chunni Lal and Mst. Hanja appellant and that her in-laws were highly annoyed with her, because she made this fact known to others in the village. If there was any quarrel between the husband and the wife, it was not of such a nature as court necessarily lead to an inference that the husband or the in-laws of Mst. Mohani Devi were bent upon taking the life of Mohani Devi. Had the quarrel been of a serious nature, Anda Ram would not have sent his daughter Mst. Mohani Devi with Hansa Ram appellant. There is nothing on the record to show that Anda Ram or Uda Ram ever made a complaint about maltreatment or beating given to Mst. Mohani Devi to the police or to the inhabitants of the village Chandrai, in which the appellants reside. Hence, in our opinion, the prosecution has failed to establish any apparent motive on the part of the appellants to commit the murder of the deceased.

2. Opportunity

11. Another circumstance relied upon by the prosecution to prove the connection of the appellants with the murder of Mst. Mohani Devi is that the deceased was found burnt to death in a room of the house of Chunni Lal, his son Hansa Ram and his wife Mst. Pabu on the night between October 21, and 22, 1977, and that Chunni Lal and Hansa admitted their guilt before Anda Ram and Uda Ram in the presence of Rikhab Chand P.W. 2 and Uma Kumhar P.W. 18, on the next day of the incident in the early morning. It is undoubtedly true that having regard to the place and time of the murder of the deceased, it may be safely held that Chunni Lal, Hansa and Mst. Pabu appellants had the opportunity to commit the murder. The other two appellants Jetha and Mst. Hansa were not inmates of the same house in which the aforesaid three appellants were living in the house on the day of occurrence. There is evidence of Mst. Heeri on the record that the house of Moola Suthar is situated between the two separate houses of Chunni Lal and Jetha. In the absence of any evidence that Jetha and his wife also were present in the house of Chunni Lal at the relevant time, it cannot be presumed that they too had the opportunity to commit the murder of Mst. Mohani Devi. The prosecution case is that after Mohani Devi was burnt to death, Chunni Lal and Hansa appellants went to the house of Mst. Mohani Devi's father Anda Ram at village Ahore and categorically admitted before him and his son Uda Ram that they had

burnt Mst. Mohani Devi to death and that they were prepared to accept any punishment that might be imposed upon them by the caste Panchayat and that Anda Ram should bear the agony caused to him by the death of Mst. Mohani Devi. The story of extra-judicial confession having been made by Chunni Lal & Hansa Ram appellants before Anda Ram and his son Uda Ram in the presence of Rikhab Chand and Uma Kumhar appears to be a made-up one. Both Rikhab Chand and Uma Kumhar did not support this story and were declared hostile by the prosecution itself. Rikhab Chand P.W. 2 stated in the examination in-chief that on the next day of the Dasshera festival before day-dawn, he heard cries of weeping coming from the house of Anda Ram and saw Chunni Lal and Hansa Ram appellants sitting in the porch of the house of Anda Ram. In his presence Chunni Lal and Hansa Ram appellants told Anda Ram that that his daughter had burnt herself to death for which they were apologising. They also requested Anda Ram that they should not be prosecuted. Anda Ram, thereupon, retorted that they had burnt her to death and so prosecution would have to be launched against them. Rikhab Chand was declared hostile and was cross examined by the prosecution with the permission of the court. In his cross examination, when confronted with portion A to B of his police statement Ex. P. 1, he admitted to have stated before the police that he heard Hansa Ram and his father telling Anda Ram that they had committed a blunder by burning Mst. Mohani Devi to death & that they were prepared to suffer punishment. Upon being further cross examined, Rikhab Chand admitted to have stated before the police that Anda Ram was telling Chunni Lal and Hansa Ram appellants that he did not want to see their faces. The evidence of Rikhab Chand does not inspire confidence, because he has no respect for truth. In the examination in-chief he stated that he heard Hansa Ram and Chunni Lal telling Anda Ram that his daughter had burnt herself to death, but, when cross examined by the prosecution, he did not stick to his previous statement and admitted to have stated before the police that Chunni Lal & Hansa Ram appellants were telling Anda Ram that they & their family members had burnt Mst. Mohani Devi to death and they were prepared to suffer any punishment. Rikhab Chand was cross-examined at length by the defense in the trial court. In this cross examination, he could afford no reasonable explanation for not disclosing to the police that he heard Hansa Ram and Chunni Lal appellants implicating their family

member also in the commission of the crime. He was confronted with and contradicted by his police statement in which he did not say that Anda Ram upon hearing from the two appellants that his daughter had been burnt to death, told them that they would be prosecuted. Likewise, he did not state before the police that Hansa and Chunni Lal appellants requested Anda Ram not to prosecute them and, thereupon, Anda Ram told them that he did not want to see their faces. Rikhabchand could not afford any reasonable explanation for his omission to state these facts before the police. Over and above all, he dearly admitted that he did not disclose to any person in the village that in his presence Hansa and Chunni Lal appellants had admitted to have burnt Mst. Mohani Devi to death. No reliance can be placed on the evidence of such a witness as Rikhab Chand who chose to change his version in any manner he liked.

12. Another witness examined by the prosecution to prove the extra judicial confession is Uma Kumhar P.W. 18. The evidence of Uma also is worthless. He merely stated in his examination in chief that he was informed by Rikhab Chand that Anda Ram's daughter had been burnt to death. He was declared hostile by the prosecution and cross examined with these permissions of the court. He was confronted with and contradicted by portions marked Ke to Khe, Ge to Ghe, Ghe to Jhha, Je to jhe and Te to Tha of his statement Ex. P. 17 which he gave before the police. When confronted with these portions of his police statement, he merely stated that he did not state before the police that Channi Lal and Hansa appellants had confessed their guilt before him and Anda Ram.

13. Now remains the testimonies of Anda Ram P.W. 3 and his son Uda Ram, P.W. 25. Both father and the son stated in their depositions that Hansa and Chunni Lal appellants had visited their house at village Ahore on the next day of Dusshera festival in the early morning and informed them that they had burnt Mst. Mohani Devi to death and that they would suffer any punishment that may be imposed upon them by the Caste-Panchayat and that Anda Ram should keep quiet and bear the agony. They further stated that on hearing the news of the murder of Mst. Mohani Devi the inmates of their house began to weep and cry. On hearing their cries, Rikhab Chand Rawal and Uma Kumhar came to their house and in their presence also both the appellants confessed to have burnt Mst. Mohani Devi to

death. Thereupon, Anda Ram told the two appellants that he did not want to see their faces as they had done a misdeed. The evidence of Anda Ram and his son Uda Ram does not appear to be true and reliable. The reason is that when the two appellants had made extra-judicial confession of their guilt before them, they ought to have rushed to the police to lodge a report of the incident of the murder after detaining the two appellants. Instead of immediately making a report to the police at the nearby police station, they kept quiet for two days for reasons best known to them. It was only on Oct. 24, 1977, that a written report was filed by Uda Ram before the Superintendent of Police, Jalore, wherein the fact of the two appellants having made extra judicial confessions of their guilt before them was mentioned in para 4 thereof. When cross examined, Anda Ram admitted that he permitted Chunni Lal and Hansa Ram to go from their house after they had confessed their guilt before him and his son Uda Ram and even after their departure he did not go to the police station, which is situated at a distance of quarter to a mile only from his house, to make a report about the murder of his daughter. He further admitted that he did not send any other person also to Sedge the report. The explanation given by him for keeping quiet or not making a report or causing a report to be made by any other person is that he was mentally upset and so he slept after covering his body. Such an explanation is not convincing at all Likewise, Anda Ram's son Uda Ram could not afford any reasonable explanation for his omission to make a report of the occurrence on October 22 and 23, 1977. He merely stated in his cross-examination that the villagers informed him that police officers of Ahore police station had already reached the spot and so he did not choose to file any report on Oct. 22, 1977. He claimed to have sent one Okha Ram to village Chandrai to find out in what manner Mst. Mohani Devi had been burnt to death and what action had been taken by the police. Okha Ram met this witness Uda Ram on the next day and he informed him that the police had taken four photographs at the spot He further stated that the negatives of the photographs were with Okha Ram but he refused to hand them over to the witness despite his requests. Admittedly, Uda Ram went out of his house on October 23, 1977 and met Jetha Ram P.W. 9 who gave him the information that Hansa Ram was telling his sister Mst. Chhagani that Mst. Mohani Devi would not be permitted to see Ahore again. Then he met Hazari Mal, goldsmith, who also gave him the above

Information. Then Uda Ram went to Jalore as he came to know that the police had not arrested any of the accused persons. According to him, he could not make a complaint to the court on that day because, by that time the court time was over. Then he went to village Ahore and again came back to Jalore on October 24, 1977 and got a report typed for presentation before the Circle Officer, Jalore. The above explanation afforded by Uda Ram for delay in making the report does not carry conviction to a prudent mind. When in his presence the two appellants had confessed to have burnt his sister Mst. Mohani Devi to death, his natural conduct would have been to rush to the nearby police station to make a report & thereafter, to cause the culprits to be detained or arrested.

14. Apart from this if extra-judicial confessions of their guilt were made by Chunni Lal and Hansa Ram appellants before him and his father, they would have surely detained the two appellants or caused them to be detained then and there with the help of inhabitants of their village who had come there on hearing the cries of weeping of their family members. Their conduct, on the other hand, was abnormal in as much as they kept quiet for two days and did not take any step to lodge a report or to get the culprits apprehended.

15. There is another circumstance which throws considerable doubt on the story of extra-judicial confessions having been made by Hansa Ram and Chunni Lal appellants before Anda Ram and his son. The circumstance is that Prem Singh, SHO Ahore, sent a constable to call for the father of the deceased but Anda Ram did not turn up as he was lamenting the death of his daughter. He made a note to this effect in his case diary. Prem Singh further stated that Anda Ram told the constable to meet the SHO later on but he did not come till the evening of 23rd October, 1977. Likewise, Uda Ram and Nopa Ram, brother of Mohani Devi, did not meet the SHO. If extra judicial confessions had been made by Hansa Ram and Chunni Lal before Anda Ram and his son Uda Ram, Anda Ram would have surely responded to the call of Prem Singh and would have certainly disclosed to him that the two appellants had confessed their guilt.

16. Over and above all, Anda Ram clearly admitted in his cross examination that the two appellants confessed their guilt in Marwari language by stating **eksguh

us cky us ekj nh gS** According to his version the two appellants did not say any thing more. When further cross-examined by Madan Mohan Joshi, Anda Ram could not say what was stated before him by Chunni Lal and what were the words uttered by Hansa appellant. The following lines appearing in his cross-examination clearly indicate that his evidence relating to extra-judicial confession by the two appellants is not consistent:

pqUuh yky o gkalk jke us ml le; eq>s ;g dgk Fkk fd bu nksuksa us eksguh dks tyk dj ekjk Fkk ekjokMh Hkk'kk esa dgk Fkk pqUuh yky gkalk jke us dgk Fkk fd eksguh us cky dj ekjh ;g ckr tc pqUuh yky o gkalkjke us dgh Fkh rc eSaus ;gh le>k Fkk fd bu nksuksa us gh cky dj ekjh FkhA pqUuh yky o gkalkjke tc lqcg esjs ?kj vk;s rc ;g vius vki gh cksys Fks **fd eksguh us cky us ekj nh gS** eSaus viuh rjQ Is dqN ugha iqNk FkkA pqUuh yky o gkalk jke tc lqcg esjs ?kj ij vk;s Fks rc eSaus ?kj vkus dk dkj.k iqNk rc mUgksaus ;g ckr crk;h Fkh ij crk;h ckr ds vykok bu nksuks us eq>s vkSj dksbZ ckr ugha crkbZ FkhA

Uda Ram, P.W. 25 claimed to have stated before the police that the 2 appellants confessed before him and his father that they along with their other family members had burnt Mohani Devi but when he was confronted with his police statement, wherein it was not mentioned that the other members of the family also participated in the commission of the offence, he could not afford any reasonable explanation why this fact was not mentioned in his statement before the police. Consequently, we are of the view that the evidence led by the prosecution to prove the extra-judicial confessions of Hansa Ram and Chunni Lal is unworthy of credence for the reasons stated above.

17. The recoveries of the ornament of the deceased from the houses of Hansa, Pabu and Jetha appellants are of no value, because there is no proof that the deceased was wearing them on her body on the day of occurrence.

3. Last seen, and (5) recovery of the dead body

18. Another link in the chain of circumstantial evidence against the appellants is that the deceased was last seen in their company. The prosecution has relied upon the testimony of Than Singh, P.W. 4, Mst. Roopi P.W. 6 Ranchod P.W. 11

and Poonam Chand P.W. 19 to prove this fact. We have carefully scrutinised their evidence and find it untrust-worthy for reasons quoted below:

(a) Than Singh P.W. 4 is a chance witness. He is a resident of village Pachoto ka Golia, Tehsil Jalore. His evidence is that he had gone to village Chandrai for getting his wooden logs sown by Prema carpenter, brother of Chunni Lal on 'Aatham', i.e. two days prior to Dusshera festival. Prema Ram sowed his wooden logs and he brought the planks to his house the very day in the afternoon. This witness was cross-examined by the prosecution with the permission of the court as he had gone back upon his previous statement before the police. In his cross-examination he denied have heard the cries of any woman in Chunni Lal's house in the evening, nor did he claim to see the wife of Chunni Lal appellant standing therein and Jetha Ram appellant going out of the house of Chunni Lal. His evidence, therefore, does not throw any light on the fact that the deceased was seen in the company of the appellants on the day of Dusshera festival in the evening.

(b) Another witness is Mst. Roopi P.W. 6. She stated at the trial that in the night of Dusshera festival at about 10.15 p.m. she had gone to her enclosure, which is situated near the house of Chunni Lal appellant and saw smoke coming out of the house of Chunni Lal. She asked Chunni Lal's wife Mst. Pabu appellant about the smoke. Thereupon, Pabu replied that nothing was burning in her house at that time. Mst. Pabu was standing at the gate of the 'Pol' of her house along with Mst. Hanja appellant. Mst. Roopi then went to her house and on the next day in the morning proceeded to her field from where she returned in the evening. Upon her return, she came to know that Mst. Mohani Devi, wife of Hansa Ram appellant, had been burnt to death. The evidence of Mst. Roopi does not inspire confidence because she did not disclose this fact of having seen smoke coming out of the house of Chunni Lal in the night of Dusshera to the police till December 14, 1977. She clearly admitted in her cross-examination that her statement was recorded by the police about 1 and 1/2 months after the occurrence. She further admitted that for 4 or 5 days she did not tell any person that she had seen smoke coming out of the house of Chunni Lal. She was confronted with portion Ke to Khe of her statement Ex. D2 which she gave before the police and wherein she stated that on

seeing smoking coming out of the house of Chunni Lal, she asked the inmates of the house, who were sleeping in the 'Pol', as what was burning in the house. Thereupon, Chunni Lal's wife replied that nothing was burning in the house. When confronted with the aforesaid portion of her police statement, Mst. Roopi admitted to have given such statement before the police. In her statement at the trial, she did not say that she had asked the inmates of the house in a loud tone as what was burning in their house. On the other hand, she stated before the trial Judge that Mst. Pabu and Mst. Hanja appellants were standing at the threshold of their 'Pol' when she had made enquiries from them about the smoke. Apart from this, Mst. Roopi did not claim to have seen Mst. Mohani Devi deceased in the company of any of the appellants at that time. Consequently, her evidence is of no help to the prosecution, especially when she did not come forward to inform the police or any other person in the village about the smoke for a long time despite having come to know on the next day that Mst. Mohani Devi was found burnt to death.

(c) The third witness examined by the prosecution is Ranchod P.W. 11, who is resident of another village Kotra, district Jalore. He also appears to be a chance witness. His evidence is that on the day of Dusshera festival, he had come to Chunnaji's shop at village Ahore for getting his water-pumping machine repaired. Chunnaji told him that the engine could not be repaired and he should purchase another engine from Bagaji or Chunni Lal appellant at village Chandrai. So he came to Baga's house in the evening. As Baga was not present in house, he went to Chunni Lal appellant's house and entered his 'Pol', after opening the doors of the main gate in the 'Pol' he heard noise of beating and cries of weeping but after a short-while he was turned out of the house by Chunni Lal appellant and he immediately returned to his village Kotra from there. Ranchoda was cross examined at length by the defence. In his cross-examination he was confronted with and contradicted by portion Ke to Khe of his police statement Ex. D.3, wherein he stated that he had eaten his evening food at the house of Begaji in village Chandrai. When confronted with this portion of his statement, he denied to have made such a statement before the police and further stated that no question of his taking food at Baga's house could arise, because Baga was not present in the house and he had gone merely to see the engine. He was again confronted with his statement Ex. D3, which he gave before the police & wherein he did not

say that he was informed by Chunaji at village Ahore that Chunni Lal appellant also had an engine for sale. Apart from this, this witness also did not come forward to tell the police or any other person about these facts till December 14, 1977. He clearly admitted in his cross-examination that his statement was recorded by the police about 1 1/2 months after the incident and during this period he did not disclose these facts even to the inmates of his house. This witness further stated in his cross-examination that he had met Chunni Lal appellant a day or two before the Dusshera festival along with one of his relatives who had come there for getting his wooden log sown by Chunni Lal. When further cross-examined, he could not even tell the name of his relative. No reliance can be placed on the testimony of such a witness who is a chance witness and is a liar.

(d) The other witness examined by the prosecution is Poonam Chand P.W. 19. His evidence is that on the day of the Dusshera festival at about 8 p.m. he had gone to Chunni Lal appellant's house for purchasing fuel for his machine. At that time he claimed to have seen all the appellants inside the house. According to his version, Hansa Ram appellant was beating his wife and the other four appellants were instigating him to administer beating as his wife had lowered then down in the estimation of their caste fellows. On seeing the wife of Hansa Ram appellant being beaten by her husband at the instigation of the other four appellants, Poonam Chand retired from there and purchased fuel from Prema Ram's house. Poonam Chand was cross examined at length. In his cross-examination, he admitted that he did not disclose all these facts to the police on the next day in the evening although he claimed to have seen the police visiting the house of Chunni Lal appellant. He further admitted that his statement was recorded by the police about 1 1/2 months after the incident. He further admitted in his cross examination that he came to know about the murder of Mat Mohani Devi when her dead body was taken to cremation ground and when some of the villagers were telling that Mst. Mohani Devi had been burnt to death. Had he been an eye witness to the beating administered to Mst. Mohani Devi by her husband, Hansa Ram appellant, at the instigation of the other appellants on the day of the Dusshera festival, he would have surely disclosed all these facts to the villagers or to the police within a reasonable time and would not have confided this secret to his bossom for about 1 1/2 months.

19. Hence upon careful scrutiny of the entire evidence, we are unable to hold that the prosecution has proved beyond reasonable doubt that the deceased was beaten by Hansa Ram at the instigation of the other appellants in the house of Chunni Lal in the night of Dusshera festival before her death.

20. The learned Public Prosecutor laid great emphasis on the fact that the dead body of Mst. Mohani Devi was recovered from the house of Hansa, Pabu and Chunni Lal appellants. According to his submission, this fact by itself is highly incriminating circumstance which requires some explanation from the aforesaid three appellants as to how Mst. Mohani Devi caught fire and met her death in a room of their house. The above contention has no force, because Hansa Ram appellant afforded an explanation that fire broke out in the house when he was sleeping in another room by the side of his ailing mother. His explanation may not be true, but, in the absence of cogent and satisfactory evidence direct or circumstantial to prove the connection of the appellants with the death of Mst. Mohani Devi, the mere fact that she was found burnt to death in the room of the house occupied by Hansa, Chunni Lal and Pabu and her dead body was subsequently recovered there from could raise a suspicion of guilt against the aforesaid three appellants but any amount of suspicion, however strong it may be, cannot be a valid substitute for proof, especially when the medical evidence also is not of much help in coming to a definite conclusion that Mst. Mohani Devi was burnt to death by any person other than herself. It may not be out of place to mention that the testimony of the Doctor who performed the postmortem examination over the dead body does not clearly establish that the death must have been homicidal and that it could not have been a suicide. It leaves the question more or less at large no definite finding can be based on it that Mst. Mohani Devi was done away with by the appellants after setting fire to her body. Dr. Hanuman Dutta, P.W. 8, no doubt stated in his examination-in-chief, having regard to the burns found on the dead body, that the death of Mst. Mohani Devi was not suicidal but in cross-examination he did not stick to his above opinion and in the re-examination the Medical Officer again said that the chances of having committed suicide were least in this case, but, upon cross examination, he definitely stated that possibility of her having committed suicide could not be eliminated in this case. Hence, for the reasons stated above the mere fact that the

three appellants were present in the house along with the deceased at the time of the occurrence and that her dead body was recovered therefrom having extensive burns on it, it cannot be considered so strong as to show that within all human probability Ma. Mohani Devi was burnt to death by the appellants.

4. Incredible plea of the accused, and (6) their conduct

21. It has been strenuously urged by the Public Prosecutor that the subsequent incriminatory conduct of the husband of the deceased and the other appellants and their contradictory or false statements pertaining to the circumstances of the crime provide important links in evidence against them. The above contention is not acceptable, because, in this case there is no evidence from the side of the prosecution to show that any of the appellants showed consciousness of the guilt or made efforts to avoid detection of the crime or offered false excuses by making untrue statements. It is evident from the record that Hansa Ram appellant made a report of the incident to the police on the next day, i.e. on October 22, 1977, at 11.30 a.m. That report is Ex. P20, wherein he did not make any self harming statement but, on the other hand, stated that when he was sleeping by the side of his ailing mother in the 'Pol' of the house, he heard some sound of sobbing. He got-up and went inside the house where he saw light of fire. As the door of the room was closed, he opened it and saw his wife Mst. Mohani Devi burning after pouring kerosene oil and setting fire to her body. Upon receipt of the report, the Station House Officer, Ahore, asked better particulars from Hansa Ram. Then Hansa Ram disclosed that his wife used to insist upon him to live separate from his parents. He did not like to do so. This led to a wordy quarrel between him & her. So she committed suicide after pouring kerosene oil on her body and setting fire to it. There is evidence of Phutar Mal, P.W. 5, on the record to whom Hansa Ram appellant disclosed on the next day of the Dusshera festival in the morning that his wife had burnt herself to death and that he wanted to go to Ahore for bringing his father. Phutar Mal brought his car and took Hansa Ram to Bhenswara and then to Ahore. Hansa Ram's father Ghunni Lal met them at the crossroads of Ahore. Hansa Ram talked to his father and then made a report to the police. This witness was cross-examined by the prosecution with the permission of the court but from his evidence it does not appear that Hansa Ram or any other appellant

showed consciousness of guilt or desire for concealment of any crime.

22. There is another witness Sabbal Singh, P.W. 15, who admitted in his cross examination that Hansa Ram appellant had come to his house in the early morning before the arrival of the police and informed him that his wife had burnt herself to death. Sabbal Singh took him to the house of a doctor, but the house of the Doctor was found locked & so they thought that the Doctor had gone out. Then Sabbal Singh asked Hansa Ram about his father Chunni Lal. Hansa Ram replied that Chunni Lal had gone to village Ahore. Sabbal Singh advised him to go to Ahore to lodge a report about the incident. There is no reason to disbelieve the evidence of Sabbal Singh, Upsarpanch of village Chandrai. Consequently, the prosecution could not succeed in showing that the conduct of Hansa Rani or any other appellant was such as could not be explained away reasonably except on the hypothesis that they were guilty. There is no definite evidence on the record that Mst. Mohani Devi died in the early hours of the night of Dusshera festival and the appellants avoided detection of her death by keeping silent or by offering false excuses or making false statements. In the absence of any reliable and convincing evidence that the appellants actually took part in setting fire to the body of Mst. Mohani Devi or were, in any manner, responsible for burning her to death, they cannot be held liable for the offences punishable under Sections 147, 302 and 302 read with Section 149 I.P.C.

23. A revision-petition also was filed on behalf of the appellants by their learned Counsel Mr. M.M. Singhvi, for setting aside the conviction of the appellants and for sending the case back to the trial court with a direction to hear the appellants and then to pronounce judgment according to law. The grounds on which the revision-petition is based is that it is highly doubtful whether any appeal lies against the order of conviction only before the sentence is passed on the accused according to law after hearing him, We may observe that in the instant case the revision-petition has become infructuous, because the appellants filed appeals against their conviction and the sentences. However, as the question involved in the revision-petition is a legal one, we may observe that under Section 372, Cr.P.C. an appeal is to lie from any judgment or order of a criminal court if provided for by this Code or by any other law for the time being in force. No definition of the word 'judgment'

is given in the Code of Criminal Procedure. However, the wordings of Section 354 Cr.P.C. clearly show that what is meant by the word 'judgment' is a decision in a trial which terminates either in conviction or acquittal of an accused and by which the case is finally decided, so far as the court trying it is concerned. Section 354, Cr.P.C. further indicates that sentence is a part of the judgment, because, Clause (c) of Sub-section (1) thereof lays down that the judgment shall specify the offence, if any, of which, and the section of the Indian Penal Code or other law under which, the accused is convicted and the punishment to which he is sentenced. Under the Code of Criminal Procedure, 1973, in a trial before a court of Sessions, if the accused is convicted the judge, unless he proceeds in accordance with the provisions of Section 360, is bound to hear the accused on the question of sentence and then pass sentence on him according to law (see Sub-section (2) of Section 235, Cr.P.C.). Likewise, in a trial of warrant cases by Magistrates if a Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he is bound to hear the accused on the question of sentence and thereafter to pass sentence on him according to law. Hence, unless the judgment of a criminal court specifies the offence, of which and the section of the Indian Penal Code or other law under which the accused is convicted and punishment to which he is sentenced, the requirements of Section 354, Cr.P.C. are not substantially complied with & no appeal can lie from such a judgment. Hence the judgment must contain the punishment, to which the accused is sentenced, after his conviction except in a case where the Judge proceeds in accordance with the provisions of Section 360 & the Magistrate proceeds under the provisions of Section 325 or Section 360, Cr.P.C. after the accused is convicted. In this view of the matter, the revision-petition filed by the appellants is liable to be dismissed, because appeals have been preferred by them against their convictions and the sentences.

24. For the reasons stated above, D.B. Criminal Appeals Nos. 366 of 1978, and 402 of 1978, and D.B. Criminal Jail Appeals Nos. 407 and 408 of 1978 filed by the five appellants are accepted and their convictions and the sentences under Sections 302 and 147 and 302 read with Section 149 147, I.P.C. are set aside and they are acquitted of the same. The D.B. Criminal Murder Reference No. 2 of 1978 for confirmation of the death sentences automatically stands rejected and D.B.

Criminal Revision No. 268 of 1978 is dismissed. The five appellants namely, Jetha, Hansa, alias Hansa Ram, Smt. Hanja, Son Pabu and Chunni Lal are in jail. They shall be released forthwith, if not required in connection with some other case.

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