

Smt. Jamni Vs. the State

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Court : Rajasthan

Decided On : Dec-07-1994

Reported in : 1995CriLJ3071; 1995(2)WLC84

Judge : J.R. Chopra and; R.R. Yadav, JJ.

Acts : Evidence Act - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Jail Appeal No. 381 of 1993

Appellant : Smt. Jamni

Respondent : The State

Advocate for Def. : D.R. Bohra, Public Prosecutor

Advocate for Pet/Ap. : Suresh Kumhat, Amicus Curiae

Disposition : Appeal allowed

Judgement :

R.R. Yadav, J.

1. This appeal is preferred against the judgment dt. 13-9-93 passed by learned Sessions Judge, Bhilwara in sessions case No. 85/92 by which he found accused appellant, Smt. Jamni guilty for the offence under Section 302, IPC. The learned

Sessions Judge convicted the accused appellant under Section 302, IPC for committing murder of her husband Rameshwar and sentenced her to imprisonment for life together with a fine of Rs. 500/- and in default of payment of fine to further under go one year's RI.

2. The facts of this case in nutshell can be recapitulated within narrow compass which is apparent from the written report Ex. P7 lodged by PW2, Gordhan on 18-2-92 at 6.15 a.m. on the basis of which formal FIR Ex. P8 was drawn at Police Station Gangapur Distt. Bhilwara. According to said Ex. P8 it is alleged that day before yesterday i.e. 16-2-92 the brother of Jamni namely Girdhari Lai and her maternal uncle namely Bansidhar came with her from their village Nari and on the same evening she was given in 'nata marriage' to his deceased brother Rameshwar and in lieu of 'nata marriage' with his brother Rameshwar Rs. 18,000/- in cash were paid to her brother and maternal uncle as 'tanta money' according to the custom prevailing in his caste. 'Nata Marriage' of Jamni with his deceased brother Rameshwar was reduced to writing on 16-2-92 which is Ex. P9. His father, PW4, Ratan Das has gone to village Raitalia to see an ailing relation. First informant, PW2 is alleged to have gone to his field on that fateful night to watch the standing crops and he was sleeping there. According to PW2, Kaluji and Juwaru Ji at about 12 p.m. in night came to his field to take him to his house as his brother has been murdered. When PW2, first informant, reached his house he found his brother Rameshwar was lying on a bed breathing his last and blood was oozing out from his head. His mother PW5, Ganga Devi and his sister PW8, Bali informed him that Smt. Jamni, accused appellant, and his brother Rameshwar were sleeping in a room and after an hour accused appellant, Jamni came out from the room opened the main gate (Pole) and went outside the house in the open, upon which PW5 asked her as to why she went out of the house in the night,

As according to her it is not proper to go outside the house in night as she is a newly wedded wife. In answer to the query made to accused appellant she replied that she had gone out of the house to make water. The mother of first informant, Smt. Ganga Devi advised accused appellant that if she has to urinate she can do so in 'guwari' inside the house. After aforesaid discussion with PW5 the accused

appellant went in the room where deceased Rameshwar was sleeping. According to first informant PW2 his mother & sister then thereafter started to feel drowsy and after an hour again accused appellant, Jamni opened the main gate (pole) and started to make hue and cry calling for help of her mother-in-law, Ganga Devi (PW5). Upon the hue and cry made by the accused appellant for help, the mother and sister of first informant immediately rushed up and they came outside the house but Smt. Ganga Devi did not see her son outside the house. When both of them entered the room of Rameshwar they saw that deceased was lying injured on the bed and blood was oozing out from his head. Both PW5 and PW8 made hue and cry upon which his uncle, Chhoga Dasji (PW6) and Naru Jat (PW7) came to his house. According to first informant, PW2, he entertained a strong suspicion in his mind that it is accused appellant Jamni who has committed murder of his brother, Rameshwar as she was sleeping with him after bolting the door from inside. He expressed his suspicion that she might have committed the murder of his brother Rameshwar as she might not be willing to live with him as his wife.

3. On the basis of FIR Ex. P8 drawn at Police Station Ganga purthe investigation was commenced by PW17, Azam Ali Khan.

4. After completion of investigation challan was filed against the accused appellant in the Court of learned Addl. Chief Judicial Magistrate, Gangapur who committed the case for trial before the learned Sessions Judge, Bhilwara.

5. The learned Sessions Judge framed charges against the accused appellant for the offence under Section 302 IPC.

6. Accused appellant pleaded not guilty and claimed trial.

7. The prosecution examined 17 witnesses and produced 17 documents Ex. P1 to Ex. P17 in support of prosecution story.

8. The statement of accused appellant, Jamni was recorded under Section 313 Cr. P. C. in which she had stated that after taking her meals she was sleeping in 'guwari' as she was in menstruation period, she was awakened when one man opened the main gate (pole), and gone out of the house. She told her mother-in-

law that the man who had gone out of the house looked like her 'jethji' Gordhan. Her mother in law came outside the house but she did not see any one outside the house. Then the accused appellant, her mother-in-law along with her 'nanad' (PW8) went in the room and found deceased Rameshwar in an injured condition and after seeing him they started to weep. It is stated by the accused appellant that her sister in law, PW8 started to console her not to weep. Villagers living in vicinity of her house rushed to the scene of occurrence, to whom her mother-in-law, told that, some unknown person after committing murder of her son, had run away from the house. The villagers advised her to implicate the accused appellant otherwise she would be arrested by Police. Police came and gave her thorough beating at her house as well as at the Police Station.

9. After hearing the learned Public Prosecutor appearing for the State and amicus curiae appointed by Court to do 'pervi' on behalf of accused appellant the learned Sessions Judge convicted the accused appellant under Section 302 IPC and sentenced her as mentioned hereinabove.

10. We have heard Mr. Suresh Kumbhat, learned counsel for the accused appellant (amicus curiae) and Mr. D.R. Bohra, learned Public Prosecutor at length and gone through the oral and documentary evidence on record. Learned counsel for the accused appellant Shri Suresh Kumbhat urged before us that firstly in the instant case number of links of the chain of circumstances are conspicuously missing. Learned counsel urged before us that the circumstantial evidence in the instant case is incomplete, vague and inconsistent and on such unreliable evidence the accused appellant cannot be convicted under Section 302 IPC. It is submitted by the learned counsel for the accused appellant that the weakness of the defence cannot be used as a circumstance in favour of the prosecution as has been done in the instant case by the learned Sessions Judge and lastly according to the learned counsel for the appellant the 'Kassi' Ex. P4 connecting the accused with the commission of offence was deliberately neither produced before the Court nor shown to the Doctor to complete the chain of circumstances.

11. The learned Public Prosecutor appearing for the State Shri D.R. Bohra refuted the aforesaid contentions advanced on behalf of the accused appellant and

supported the Judgment rendered by the learned Sessions Judge, Bhilwara holding the accused appellant guilty of the offence under Section 302 IPC.

12. Before we proceed to examine the rival contentions raised at the Bar in seriatim it would be expedient to keep in view that the present case is based on circumstantial evidence and there is no eye witness in the instant case. It is well to remember that in case of circumstantial evidence the Court will have to bear in mind the cumulative effect of the circumstances in a given case and weigh them as an integrated whole and missing links may be fatal to the prosecution case. Where the case of the prosecution rests purely on circumstantial evidence motive undoubtedly plays an important part in order to tilt the scales against the accused. It is also well settled that the accused can be convicted on circumstantial evidence only if the circumstances are wholly inconsistent with the innocence of accused. Even where the circumstances raise a serious suspicion against the accused, however grave it may be, it cannot take the place of proof. A Court of judicial conscience, while deciding a criminal case wherein the evidence is purely of circumstantial nature the fact and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond all reasonable doubt and the facts and circumstances should not only be consistent with the guilt of the accused but they must be such in their effect as to be entirely incompatible with the innocence of accused and must exclude every hypothesis consistent with the innocence of the accused.

13. The word 'proof has been defined under Section 3 of Indian Evidence Act according to which a fact is said to be proved when after considering the matters before it the Court either believes or considers its existence so probable that a prudent man ought under the circumstances, of a particular case to act upon the supposition that it exists. It is also worthy of remembrance that Court may, presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events and of human conduct.

14. Now we proceed to examine the first argument advanced on behalf of the accused appellant to the effect that in the instant case vital links in the chain of circumstances are conspicuously missing and the circumstantial evidence relied

upon by the learned Sessions Judge is incomplete, vague and, therefore, on such weak and unreliable evidence the accused appellant cannot be convicted under Section 302 IPC. In support of his first contention the learned counsel for the appellant relied on a decision rendered by the Apex Court in case of Sharad v. State of Maharashtra reported in, : 1984 CriLJ1738 , where their; Lordships ruled that there are five golden principles constituting the 'Panch Sheel' of a proof of a case based on circumstantial evidence. It would be expedient to quote paragraph 15 of the aforesaid judgment in extenso:-

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatically but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Saheb Rao Dobade v. State of Maharashtra, : 1973 CriLJ1783 , where the following observations were made:

'certainly, it is primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be 'and 'must be' is long and divides vague, conjectures from the conclusion.'

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

3. the circumstances should be of a conclusive nature and tendency,

4. they should exclude every possible hypothesis except the one to be proved, and

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

15. Now we propose to examine the circumstantial evidence of the present case on the anvil of the five golden principles formulated by their Lordships in case of Sharad, (1984 Cri LJ 1738) (supra) in seriatim. According to the first golden

principle formulated by their Lordships a circumstance from which the conclusion of guilt is drawn by the learned Sessions Judge is to be examined. In this regard it is important to mention that the incident alleged to have taken place on 17-2-92 at 12 p.m. and immediately after the occurrence a jeep was made available to the first informant, PW2, who is a real brother of the deceased. It is stated by PW5 Mst. Ganga Devi as well as PW6 Chhoga Das that a jeep was made requisitioned and placed at the disposal of PW2 to take the deceased Rameshwar to hospital. It is further stated that accused although expired at about 12 p.m. on 17-2-92 and the jeep was placed at the disposal of PW2 after the death of deceased Rameshwar, as per PW5, Mst. Ganga Devi one hour was taken in arranging the jeep. Although she has not given the specific time about the availability of the jeep but it is easily deducible from her statement that jeep was made available and was put at the disposal of PW2, first informant, at 1 a.m. on 18-2- 92. PW6 has stated in his deposition before the learned Sessions Judge that the jeep was made available at 2 a.m. on 18-2-92. According to site inspection memo Ex. P3 the distance of police station from the place of occurrence is 12 kms while according to FIR Ex. P8 the distance from the place of occurrence to the police station is shown as 14 kms. It is not understandable as to why the first informant, PW2 after being satisfied that his real brother has been killed did not promptly proceed to lodge the FIR at police station, Gangapur.

16. In this regard it is pertinent to mention that first informant, PW2 lodged a written report at police station Gangapur at 6.15 p.m. on 18-2-92. A close scrutiny of written report Ex. P7 dated 18-2- 92 on basis of which FIR Ex. P8 was drawn the name of scribe is not shown in the said written report Ex. P7. A pointed question was put to PW2, first informant, who deposed before the learned Sessions Judge about the identity of the scribe of the FIR but he has stated that he does not recollect the name of scribe of Ex. P7. The name of the scribe is also not mentioned in the FIR Ex. P7. Thus it is a mistry who wrote or in scripted this Ex. P7, This resumes importance in the light of the testimony of PW2, Gordhan. first informant.

17. According to the depostion of PW2, Gordhan, first informant, he reached at his home at about 12 p.m. on 17-2-92 and that time when he reached at his home his

uncle Chhoga Das (PW6) and Naru (PW7) have already reached at the scene of occurrence and in presence of these witnesses and also in presence of PW8 Bali the accused appellant Smt. Jamni has already made her extra judicial confession to PW5, Smt. Ganga Devi. It remained unexplained by the prosecution as to why the reference of extra judicial confession made by the accused appellant, Smt. Jamni to the mother of deceased Rameshwar (PW5) in presence of PW6, Chhoga Das, uncle of deceased, Naru (PW7) and PW8, Bali, real sister of the deceased was not mentioned in the written report Ex. P7 and FIR Ex. P8. A man can speak lies but circumstances do not. In the present case in the natural course of human event if the accused appellant would have made extra judicial confession about committing the murder of her husband before PW5, Smt. Ganga Devi real mother of the deceased in presence of PW6, PW7 and PW8 then it ought to have been mentioned in the first information report by PW2, Gordhan, first informant. Thus, this testimony of these witnesses that such an extra judicial confession was made by Mst. Jamni to Smt. Ganga Devi is an after thought improvement.

18. There is yet another reason which points to a serious infirmity in the prosecution story for which there is no explanation available on record. The aforesaid extra judicial confession alleged to have been made by accused appellant before PW5 in presence of PW6, PW7 and PW8 between 12 p.m. to 1 a.m. i.e. the night intervening between 17-2-92 and 18-2-92 and the FIR was lodged after a long interval of more than six hours after consultation between the family members of deceased as well as other witnesses collected on the spot but even then the first informant, PW2, Gordhan was suspicious about the identity of the accused appellant who is alleged to have committed murder of deceased Rameshwar. Even while lodging a report against the accused appellant he only expressed his doubt against the accused appellant about her involvement in the crime. It is surprising to note that if the accused appellant herself had made extra-judicial confession before PW5, Ganga Devi in presence of PW6, PW7 and PW8 and FIR was lodged after six hours that too after consultation then there was no occasion to be in doubt and in suspicion about the involvement of accused appellant in the crime in the written FIR Ex. P7.

19. A close scrutiny of FIR Ex. P. 7 further throws a flood of light that motive attributed to the accused appellant by first informant was also based on suspicion that it seemed to P.W.2 that accused appellant was not willing to live as wife of deceased Rameshwar, therefore, she might have committed murder of his brother Rameshwar. The aforesaid motive attributed by the first informant, P.W.2, to the accused appellant is again based on suspicion which is contrary to the deposition made by P.W.5 before the learned Session Judge. According to the deposition of P.W.5, Smt. Ganga Devi Jamni, accused appellant, came to deceased in 'nata marriage' as his wife with her consent. According to P.W.5 before 'nata marriage' was solemnised between the deceased and accused appellant she called her son from Gujrat and both of them had an opportunity to see each other. According to her deposition before learned Sessions Judge 'nata marriage' between the accused appellant and deceased was solemnised with their consent and both of them willingly and unhesitatingly agreed for their 'nata marriage'.

20. The court must bear in mind human psychology and behavioural probabilities whenever the reliability (testimonial potency) of a circumstantial evidence is to be assessed. It is apparent from the material on record that accused appellant was married in her childhood but she became a widow in her childhood. She also lost her parent in her early childhood and she was being brought up by Banshi and Girdhari who are not her real brothers. It is worth to while to remember that a child who lost her parents in her childhood and became a widow before attaining majority such girls never receive respectability in Indian Society unless they are remarried. In low birth Hindu Families remarriages are permissible. In the present case, remarriage of accused appellant took place with the deceased who gave her respectability in society and also gave her a ray of hope to live a degnified happy life. It is apparent from the Post Mortem report Ex.P. 16 that deceased husband of accused appellant possessed well built body and was of 23 years of age which was equal to the age of accused appellant. Thus, in such a situation it is impossible to think that she would commit murder of her husband in natural course of human events. The great poet Goswami Tulsi Das aptly said in Ram Charit Manas:

^^fgr vufgr i'kq ifNu phUgk** i.e. even birds and animals understand and identify 'where their welfare lie. Therefore, it is impossible to think that accused appellant being human being was not able to understand her welfare by living as wife of her deceased husband. The alleged motive attributed by P.W.2 in FIR Ex. P.7 is not substantiated by any of the prosecution witness during the course of their depositions before the learned Sessions Judge. Even P.W.2 has not stated a single word about motive attributed to accused appellant in the FIR. Investigating Agency did not make any effort to collect evidence as to why the accused appellant was not willing to live deceased husband Rameshwar as his wife who possessed sufficient agricultural land together with a well and was also employed in Gujrat. Instinct of self preservation and to live a happy life is a strongest human instinct. Thus, it is unthinkable that accused appellant could have acted against her own interest by committing murder of her own husband who could have given respectability in society and offered all pleasures of married life of which she was deprived in the childhood and from whom there was a ray of hope for accused appellant to live a happy and deginified life and to bear children from his association which is the wish of every married woman.

21. From the aforesaid discussion we are of the opinion that motive attributed by P.W.2 first informant which was based on suspicion was not proved at all in the instant case. Investigation Officer did not make any effort to collect evidence in support of motive attributed to accused appellant as to why the accused appellant was not willing to live as a wife of her deceased husband. In our humble opinion the failure of prosecution agency to prove the alleged motive in the instant case which was based on suspicion is bound to tilt the scales in favour of the accused appellant as regard her innocence.

22. An identical question came up in the year 1979 before the apex court in the case of State (Delhi Administration) v. Guzarilal, reported in AIR 1979 S.C. 1389 : 1979 Cri L.J. 1057, where their Lordships ruled as follows (Para 1):

'We might also mention that in case where the case of the prosecution rests purely on the circumstantial evidence, motive undoubtedly plays an important part in order to tilt the scale against the accused. It is also well settled that the accused

can be convicted on circumstantial evidence only if every other reasonable hypothesis of guilt is completely excluded and the circumstances are wholly inconsistent with the innocence of the accused. In the instant case the prosecution has clearly fallen short of proving this fact as rightly found by the High Court.'

23. It is settled principle of law that prosecution story may be true but it must be true and between a fact which may be true and which must be true there is a large gap which is to be travelled by the prosecution agency by unimpeachable evidence. There can be no doubt that the circumstances in the present case may raise a serious suspicion against the accused appellant but suspicion however grave it may be, cannot be allowed by Courts of laws to take place of proof.

24. A perusal of Ex. P-16, Post Mortem report prepared by Dr. Satish Kumar Dabhi as well as his deposition before the learned Session Judge throw a flood of light that deceased had received total five injuries out of which injury No. 1 was incised wound which is deposed by Medical Jurist, P.W.16 has been caused by sharp edge weapon while injuries Nos. .2 and 3 were lacerated wounds which have been caused by blunt weapon. According to medical jurist, P.W. 16 injury No. 4 which was bruise injury could be caused by blunt weapon and injury No. 5 is also a bruise but no question has been asked to P.W. 16 about the weapon which could cause injury No. 5. It is settled principle that a bruise could be cause in normal course either by blunt weapon or by fall. In the present case there is no allegation and no chance about fall of deceased, therefore, this injury No. .5 can also be taken to have been caused by blunt weapon.

25. The aforesaid discussion leads towards an irresistible conclusion that deceased Rameshwar had received injuries by two types of weapons i.e. sharp edged weapon as well as by blunt weapon which does not rule out the possibility that these injuries have been caused by two assailants, one who was armed with sharp edge weapons and another who was armed with blunt weapon in natural course of human events. Ex. P.4 is the recovery memo of kassi which is a sharp edged weapon. No eye witness has seen the commission of crime, therefore, it cannot be presumed that kassi which is a sharp edged weapons also used as a blunt weapon from the side of its 'danda'. Even if, the aforesaid circumstance is

capable of two interpretations that kassi being a sharp edged weapon can also be used from its blunt side then too the interpretation which is favourable to the accused appellant has to be accepted and any preferred interpretation which is favourable to the prosecution normally has to be overlooked in absence of reliable and convincing eye-witness account. No eye-witness in this case has seen the actual assault on the deceased.

26. In his deposition before the learned Sessions Judge P.W. 16. Dr. Salish Kumar Dabhi medical jurist has stated that injury No. 1 which was caused by sharp edged weapon was sufficient in ordinary course of nature to cause death of deceased. During the course of cross-examination a pointed question was asked to him on behalf of the accused appellant whether injury No. 1 can be caused by kassi and in : reply' to the said question the medical jurist has stated as follows:- .

^eSus dLlhgfFk;kj dks ns[kk gS A ;fn dLlh dsvkxs dk eqag /kkjnkj gks rks mlls pksV ua- 1 vk ldrh gS A**

27. It is important to mention here that kassi Ex.4 was neither produced before the court during trial nor it was shown to the medical jurist, P.W. 16 Dr. Satish Kumar Dabhi. In our humble opinion the failure of prosecution to produce kassi recovered vide memo Ex.P.4 during trial and failure to show it to P.W. 16, medical jurist, is fatal to the prosecution story specially when P.W. 16, medical jurist, has given his opinion that injury No. 1 could be caused only by a specified type of kassi. Now in the instant case whether kassi, Ex. A/4 can be held to be of the specified type as stated by the doctor cannot be presumed. It has to be proved like any other fact by clear cogent and reliable evidence. No conclusions are possible on the basis of conjectures and surmises. Since, the prosecution agency has with-held the production of kassi, during the trial and also failed to show the said kassi to the medical jurist it is certainly fatal to the prosecution case. We have no option except to draw an adverse inference against the prosecution and are constrained to hold that if the prosecution had produced this kassi before the court or it had been shown to the medical jurist (P.W. 16) then the accused could have proved that injury No. 1 on the person of the deceased could not have been caused by that kassi Ex. 4.

27A. In the instant case, the prosecution has placed reliance on partisan and interested witness viz., P.W.5 Mst. Ganga Devi and P.W.8 Smt. Bali, who are mother and sister of the deceased and also placed reliance on the testimony of P.W.6 Chhogadas and P.W.7 Naru. P.W.6 Chhogadas is the uncle of the deceased while P.W.7 Naru is a neighbour of deceased. Therefore, we propose to focus our attention on the question whether the substratum of the story narrated by the aforesaid witness viz., P.W.5 Mst. Ganga Devi, P.W.6 Chhogadas, P.W.7 Naru and P.W.8 Mst. Bali can be said to be consistent with other evidence on record and accords with the natural course of human events and is also consistent with the probabilities of the case which are sufficient to carry conviction with a prudent person to put implicit reliance on the statements of these witnesses.

28. We have already held that there are no eye witness of the occurrence. The case entirely hinges on the circumstantial evidence. It is alleged that on the date of the occurrence i.e. the night intervening between 17th and 18th February, 1992, P.W.4 Ratandass, who is the father of the deceased had gone out to village Raithaliyas to look after his ai ling relation. It is further alleged that P.W. 2 Gordhan who is the first informant has gone to water the field and to look after the crop at about 8 PM in that night. It was only Mst. Jamani, the wife of the deceased and P.W.8 Mst. Bali, who happened to be the sister of the deceased were present in the house. It is alleged that deceased Rameshwar and his wife accused Mst. Jamani slept in the same room on the same cot. There is contradiction in the evidence of the witness about the facts as to whether any other cot was lying there and if at all it was lying there whether it was laid by the side of the cot on which both of them slept or whether it was empty or certain goods were lying on it or whether this cot was there in the room in a standing position. It has come in the evidence of the witness that a bedding was spread only on one cot on which the deceased was lying injured and was bleeding. Be that as it may, P.W.2 Gordhan has stated that he went to his field after 10 PM when deceased Remeshwar and accused Mst. Jamani slepat in the room whereas P.W.5 Mst. Ganga, P.W.6 Chhogadass and P.W.8 Mst. Bali have stated that he had left for the field either at 8 PM or before 8 PM. Thus, there is contradiction in the testimony of the witness as to whether P.W. 2 Gordhan left his house after 10 PM or nearby 8 PM. Be that as it may, it was only P.W. 5 Mst. Ganga and P.W.8 Mst. Bali who were in the

house along with deceased Rameshwar and accused Mst. Jamani and both of them have stated that at about 8 PM, accused Mst. Jamani came out of her room, where she was sleeping. She was remonstrated by P.W.5 Mst. Ganga as to why she has come out of the room and has gone out. On this, Mst. Jamani told her she has gone out to urinate. She was then advised that she should not go out of the house in the night for urinating. Thereafter, it is alleged that she went inside the room. P.W.5 Mst. Ganga has stated that she heard the noise of verbal altercation between Mst. Jamani and deceased Rameshwar, after Mst Jamani entered the room after urination. P.W.8 Mst. Bali has stated that this noise of altercation was heard before Mst. Jamni went for urination at about 8 PM. Therefore, it is alleged that between 12or 1 PM, although no definite time has been stated by the witness, Mst. Jamani again came out of her room and cried that your son is running away. This woke up P.W.5 Mst. Ganga and P.W. 8 Mst. Bali and then they came out of the pole of the house and saw in the lane but nobody was spotted by them. Thereafter, it is alleged that they went inside the room and found Rameshwar in an injured condition. They detected one injury his head, which was a bleeding injury. They have not stated about any other injury. Even P.W.6 Chhogadas and P.W.7 Naru who have reached the place of the occurrence soon after have also not detected any other injury. The Panchanama Lash of the dead body was prepared and has been marked as Ex. P. 1 and it has been proved by P.W. 17 Ajam Ali Khan and P.W. 1 Bardichand. P.W. 1 Bardi Chand also says that he had seen only one visible injury and no other injury was seen by all the panchas of the Panchnama Lash. However, P.W. 16 Dr. Satish Kumar Dabi has stated that there were as many as 5 injuries on the person of deceased Rameshwar, two of which were lacerated wounds which were bleeding and could have been visible to naked eyes.

29. Be that as it may, it is alleged by P.W.5 Mst. Ganga that thereafter, she enquired from accused Mst. Jamani as to what she has done and she confessed that on account of the altercation between herself and her husband, she inflicted a kassiya blow on his head and she begged for their pardon for this act. Thereafter, it is alleged that Rameshwar died. When this confession was by Mst. Jamani, P.W.6 Chhogadas and P.W.7 Naru have also reached the place of the occurrence, which is situated just adjacent to their houses.

Thus, this entire evidence shows that P.W.2 Gordhan had gone of the house to water the field and to look after the crop at the time when this occurrence has occurred. Mst. Jamani came out of the room, in which she and her husband Rameshwar were sleeping at about 8 PM, which could have been possible, if we disbelieve the testimony of P.W.2 Gordhan that deceased Rameshwar and his wife accused Mst. Jamani slept at 10 PM and he left for the field thereafter. P.W.5 Mst. Ganga and P.W.8 Mst. Bali have further stated that accused Mst Jamani came out of the room second time and cried that your son is running but none was found in the lane and ultimately, when they entered the room of Rameshwar, they found Rameshwar in an injured condition lying on the cot with a bleeding injury on his head. Thereafter, it is alleged that Mst. Jamani confessed her guilt.

30. The confessional part of the testimony of accused Mst. Jamani has been discussed by us in detail above and we have already held that if such a confession has been made in the presence of these two witnesses, there was no occasion for P.W.2 Gordhan to record in the FIR Ex. P.7 that he suspects that it is Mst. Jamani who has killed her husband. Had this confession been made by Mst. Jamni in the presence of P.W. 5 Mst. Ganga, P.W.6 Chhogadas, P.W.7 Naru and P.W. 8 Mst. Bali then P.W. 2 Gordhan would have certainly got it recorded in the FIR Ex. P.7 that it is Mst. Jamani who has killed her husband. Moreover, as per the testimony of P.W. 8 Mst. Bali, this confession was made by accused Mst. Jamani in the presence of the Police and the Police came at the place of the occurrence on the next day in the morning and if this confession was made in the presence of the police then the testimony of these four witnesses that Mst. Jamani confessed her guilt in the night itself becomes totally unreliable and if the testimony of P.W.8 Mst. Bali is believed then the confession that has been made in the presence of the Police cannot be acted upon.

31. In their statements before the Court, P.W.5 Mst. Ganga and P.W. 8 Mst. Bali have stated that on the date of the occurrence, at about 8 PM, Mst Jamani came out of the room to make water. This fact is belied by the testimony of P.W.2 Gordhan, who has stated as under:

^^teuh vksj jkes'oj tc lkady yxkdj lks x;s Fksmlds ckn eSaa dq, ij x;k Fkk A jkr ds 10
cts lks;s Fks A**

Thus, it is clear that up to 10 PM, P.W.2 Gordhan was very much present in the house and, therefore, the question of Mst. Jamani sleeping with her husband in that room and coming out of it at 8 PM does not arise. So far as the verbal altercations between Mst. Jamani and her husband Rameshwar is concerned, P.W.5 Mst. Ganga says that this altercation took place after Jamani came out of the room to urinate whereas P.W.8 Mst. Bali says that this took place before Mst. Jamani came out of the room to urinate. This fact is not at all mentioned in their police statements, with which they have been confronted. Moreover, this fact does not find mentioned in the FIR Ex. P.7, which has been lodged by P.W.2 Gordhan, after talking with his mother and sister. Thus, this is an after-thought improvement. Moreover, the testimony of both these witnesses about this fact is mutually contradictory and against their police statements and, therefore, no reliance can be placed on this part of their testimony.

32. Moreover, in this case, the FIR seems to be a post investigation document. It has been categorically stated by P.W. 17 Shri Ajam Ali Khan that the FIR was lodged at about 6.15 AM on 18-2-1992 and he reached the place of the occurrence at about 7 AM and this is what has been stated by other witness also that they reached the place of the occurrence in the morning. However, in his statement before the Court, P.W.2 Gordhan has stated that he went to the police station to lodge the FIR at 10 A.M. and not at 6 A.M. The exact words used by him are as under:

^^Fkkus ij eSa lqcg 10 cts x;k A eq>s /;kuugha fd fjiks VZ fdlus fy[kh Fkh**

Thus, it is clear that P.W.2 Gordhan went to lodge the report at about 10 AM and not at 6AM. This fact further finds corroboration from the testimony of P. W. 5 Mst. Ganga, who has stated as under:

^^esjs dks /;ku ugha fd Fkkus ij fjiks VZ djusdkSu x;k A ;g ckr iqfyl igyh ckgj vkbZ
rc rd xksj/ku gekjs ?kj ij gh Fkk A**

Thus, it is clear that till the police arrived at the place of the occurrence, P.W.2 Gordhan did not go to the police station to lodge the report and was at his own residence all the time till the police arrived. Thus, this makes the FIR Ex. P.7 to be a suspicious document and it appears that it is a post investigation document, which has come into existence after full consultation with the police as to on whom the guilt should be fastened.

33. It has been stated by P.W.5 Mst. Ganga and P.W.8 Mst. Bali that when Mst. Jamani came out of her room second time, she cried that your son is running away. According to P.W.5, the door of the pole was opened by Mst. Jamani whereas P.W. 8 Mst. Bali has stated that the gate was not opened by Mst. Jamani but it was already opened, when she raised hue and cry, Mst. Jamani could not have stated about the running of Rameshwar because he was lying in such a serious condition in the room. Thus, it appears that the gate of the pole was already opened and it was definitely opened by somebody else, who could be none else than P.W.2 Gordhan, who is the other son of P.W.5 Mst. Ganga, about whom Mst. Jamani told that your son is running away. There was no reason for Mst. Jamani to raise hue and cry, if she was the author of all these injuries. The door of the pole was just adjacent to her room and after killing her husband, she could have run away from the place of the occurrence rather than attracting the attention of the mother and sister of the deceased. Thus, the explanation given by Mst. Jamani that it was her husband's elder brother i.e. P.W.2 Gordhan who was running away, appears to be more probable. There was no reason for her to inflict injuries on her husband on the very first night when she fully knew that she is a child widow, who has been re-married at this young age on payment of Rs. 18,000/- by her husband to her brother and maternal uncle and by this re-marriage, she will get full respect in the society and she will enjoy all the pleasures of a good wed-lock. Thus, there appears to be no earthly reason for her to kill her husband. Every body says that there was verbal altercation between Rameshwar and Mst. Jasmani and therefore, she struck a blow on the head of her husband. Nobody has bothered to enquire from her as to what was the cause of the verbal altercation between them and what words were used by the deceased and whether they were so harsh, which infuriated her to cause such deadly injuries on the head of her husband, if the testimony of P.W.5 Mst. Ganga and P.W.8 Mst.

Bali is believed that Rameshwar was awake and the cause of death was the verbal altercation between them then too, the deceased was a man of stout health, how could he allow his wife to inflict such deadly blows on his head when he was awake and was in the midst of hot exchange of words with his wife and, therefore, the entire story that has been put forward by the prosecution appears to be totally unbelievable and against the normal human conduct.

34. So far as the recoveries are concerned, although P.W. 1 Bardichand has stated that the blood stained Kassi and the Shawe of Mst. Jamni were taken into possession by the police and were seized and sealed at the place of the occurrence but when he was cross-examined, he has stated that he does not know whether these articles were sealed there or not P.W.2 Gordhan has stated that the clothes of the deceased and the shawl of Mst. Jamni were taken by the police by tying them in a cloth. He does not say that there were sealed at the place of the occurrence. P.W. 6 Chhogadas has stated that the police took the kassi in his presence but he cannot say that it was taken as it was found or it was tied in any cloth. He was also unable to say whether the clothes of the deceased and the accused were taken as they were found or they were tied in a cloth? However, he has categorically stated that they were not sealed in his presence. P.W. 11 Santosh has categorically stated that the shawl was taken by the police and was sealed in the police station and not at the place of the occurrence. Under these circumstances, when articles were not sealed when they were recovered by the police, nothing turns upon the chemical and serological reports obtained by the prosecution as regards the presence of blood on the recovered articles and that circumstance is not sufficient to connect the accused with the guilt.

35. It appears quite probable that P.W.2 Gordhan also had no wife and, therefore when he saw that his younger brother has been married overlooking his claim and he himself is aged about 25 years then it might have come to his mind to kill his brother and to enjoy his newly wedded wife. P.W.5 Mst. Ganga and P.W.8 Mst. Bali have tried to save him because one son/brother has already been killed and if they spoke the truth the other will be behind bars and as such they thought it safe to entangle this young lady which was purchased by them as the wife of Rameshwar.

36. Undoubtedly, every effort has to be made to find out who committed the murder but the duty cannot be discharged by holding someone guilty somehow or the other, in this case, the discussion of the entire evidence goes against the conclusion that the accused-appellant Mst. Jamni has committed the murder of Rameshwar, who had given her respectability in the society, being a child widow, and has also generated a hope of happy life in her. This allegation of killing her husband is most unnatural and against human conduct and, therefore, she deserves the benefit of doubt and consequent acquittal.

In the result, this appeal succeeds. The conviction and sentence recorded against the accused-appellant by the learned Sessions Judge, Bhilwara are set aside by giving her the benefit of doubt. The accused-appellant is in jail. She be released forthwith, if she is not required in any other case.

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