

Subhan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-17-1998

Reported in : 1998CriLJ1667

Judge : Mohd. Yamin, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 43, 176, 203, 302 and 304;
Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Jail Appeal No. 441/1981

Appellant : Subhan

Respondent : State of Rajasthan

Advocate for Def. : B.S. Bhati, Public Prosecutor

Advocate for Pet/Ap. : S.R. Singhi and; Suresh Kumbhat, Adv.

Judgement :

Mohd. Yamin, J.

1. This jail appeal of accused appellant Subhan was preferred from jail as learned Sessions Judge, Balotra convicted him under Section 304 Part - II read with Section 34, I.P.C. and sentenced him to five year's rigorous imprisonment with a fine of Rs. 200/- and in default to undergo three months imprisonment. Now he is

on bail and represented by counsel.

2. In short, the case of the prosecution is that one Ahmed submitted a written report to police station Chauthan on 28-2-80 that Mst. Rani wife of Subhan hung herself on 27-2-80 in the evening and thereby committed suicide. This fact was told to him by Teja son of Deenu at 5 a.m. on 28-2-80. Police registered a case and started inquest. On 3-3-80 Jumma gave a written report that it were Subhan and Smt. Chandi who murdered Mst. Rani by strangulating her. The reason was that Subhan and Smt. Chandi were having illicit relations and they wanted to remove Rani from their way. Case No. 11 was registered at the police station Chauthan. Investigating Officer Gurubaksh Singh had reached in the dhani of accused Subhan on 28-2-80 when inquest was being made, and had found dead body of Mst. Rani. It was also found that there were impressions of fingers on both the sides of neck of Mst. Rani and that there was no basis to believe that Rani had committed suicide by hanging herself. It revealed during the investigation that Rani had illicit relations with one Chinia. The postmortem of dead body of Mst. Rani was conducted by Dr. N.T. Hirani and after investigation accused appellant alongwith certain other co-accused persons was challaned before the competent magistrate who committed the case to the learned Sessions Judge. Balotra. Learned Sessions Judge framed and read overcharge under Section 302/43 to accused appellant Subhan who denied his indictment and claimed trial. Charge of Section 302/34 was also read over and explained to Smt. Chandi who denied her indictment and claimed trial. Other co-accused persons Ahmed (informant) Jamma, Tajia were also tried for offences under Sections 176, 203, I.P.C. Prosecution examined as many as 21 witnesses. Appellant was examined under Section 313, Cr.P.C. DW-1 Chokha was produced in defence. Learned Sessions Judge after hearing both the parties acquitted all the co-accused persons but convicted the accused appellant under Section 304 Part-II, I.P.C. and sentenced him as stated above.

3. I have heard the learned counsel for the accused appellant as well as learned Public prosecutor at length and have also gone through the entire evidence on record.

4. Learned counsel for the appellant submitted that when co-accused Mst. Chandi was acquitted from the charge of Section 302/34, I.P.C. the accused appellant could not have been convicted. He also submitted that in any case, there is no evidence against the accused appellant. He submitted that the learned Sessions Judge based his conviction on conjectures and surmises. He also submitted that if this Court agrees with verdict of the learned Sessions Judge then the accused appellant should be dealt leniently because the occurrence took place in the beginning of 1980 and this appeal is being decided after 18 years. Citing 1998 (1) WLC (Raj) 69, Purkha Ram v. State of Rajasthan, he submitted that the sentence should be reduced to the period already undergone.

5. On the other hand, learned PP has controverted all these submissions.

6. First I have to see whether the trial Court was right in convicting the accused appellant? In support of his first argument, learned counsel for the appellant cited 1989 Cri. LJ 875, Rangaswami v. State of Tamil Nadu wherein there was no evidence of any enmity against the accused appellant with victims. No instigatory words were uttered by accused and there was no evidence of meeting of minds, therefore, the appellant was not convicted by the aid of Section 34, I.P.C. for offence of murder. This citation does not lay down that if co-accused is acquitted from the charge of Section 302/34, the other accused should also be acquitted. The Court has to see the quality of evidence against an accused during the trial. So the learned PP and the learned counsel for the appellant have carried me through the evidence on record.

7. The first question arises whether Rani committed suicide? Learned counsel for the accused appellant submitted that the presence of a rope at the place of occurrence leads to the conclusion that Rani might have committed, suicide. He drew my attention to the statement of PW-21 Gurubaksh Singh, the Investigating Officer who visited the site on 28-2-80 and stated that a rope was found hanging in the Jhunpa and a piece of the same rope was lying on the ground. Dantali was also lying there'. But from the statement of PW-2 Dr. Nimbraj this possibility is ruled out because the impressions of fingers were found on both the sides of the neck of deceased. He stated that there was no ligature mark on the neck of the

deceased and her tongue was swollen. In his opinion the deceased died due to asphyxia by strangulation. He prepared the post mortem report Ex. P/2. He was subjected to a lengthy cross examination but there is nothing in his cross examination by which I may conclude that the death of Rani might have occurred in any other manner. The doctor has specifically stated that in case suicide is committed by hanging, it was assessed that impressions of rope must be available on the neck and that such impressions are available till the body is decomposed. He was of the definite opinion that the neck of the deceased was pressed with hand and, therefore, there were impressions of fingers on it. He does state that the impressions were such which could have been photographed. There is definite evidence to the effect that the finger impressions were available on the neck. There is definite opinion that the deceased died of asphyxia due to strangulation. In hanging cases there is always a ligature mark on the neck. In this case if thin nylon rope of 1/2" breadth doubly twisted was used, there would have been definite ligature marks on the neck of deceased. So it is not a case of suicide.

8. Rani deceased was of 25 years of age. At the time when the doctor saw, her eyes were closed and prominent and there was no ligature mark on her neck. On dissection it was found that there was laceration in carotid arteries. The theory that Rani might have committed suicide by hanging is ruled out by non presence of ligature marks on the neck and the fact that her eyes were closed and the tongue was not protruding. The report was lodged with the police that Rani had committed suicide by hanging but it was not found to be correct as per the statement of Gurbaksh Singh because there was no occasion for Rani to hang herself by rope in the Jhunpa. The height of Jhunpa was not such where the rope would have been tied. The length of the main rope was 8' -11' and the height of the cot was 18-1/2'. Thus the total height was about 10'-5" from the ground. Rani was 5'-2". The knot in the rope was at a distance of 1-1/2'. It means, that if Rani would have hanged herself, she could not have removed the cot. Even otherwise there was none to remove the cot from the place. The cot was lying in the Jhunpa. She could have hanged herself only if the cot would have been removed. So the distance between the cot and the last end of the rope was not more than 5' 2" and in the circumstances it was not possible for Rani to have hanged herself. It is also

pertinent to note that a piece of rope measuring 2'-1' and a danthi were lying. The prosecution is not able to explain as to why the rope was cut to pieces. In case of such a hanging, the neck is found stretched and elongated and the head is always inclined to the side opposite to the knot and the arms of the loop of ligature. The face is usually pale and placid but may be swollen and congested if the body has been long suspended. If the ligature-knot presses on the cervical sympathetic, the eye on the same side may remain open. The tongue is drawn in, or caught between the teeth, or protruded and bitten. It is usually swollen and blue, especially at the base. Bloody froth is sometimes seen at the mouth and nostrils. Saliva is often found dribbling out of an angle of the mouth down on the chin and chest. This is a sure sign of hanging having taken place during life as the secretion of saliva being a vital function cannot occur after death. (See Modi' s Medical Jurisprudence and Toxicology, Twenty-first Edition, 1988, page 191). Since all these symptoms are missing in this case, the possibility of death by hanging is ruled out. Therefore, the argument of the learned counsel that Rani might have committed suicide is without force.

9. Learned counsel for the accused appellant submitted that the judgment of conviction of accused appellant under Section 304 part-II is based on conjectures as it is found from the language of the judgment itself. I do not agree with him. There is definite evidence against the accused appellant circumstantial of otherwise which does not absolve him, On the one hand, accused appellant was having illicit relations with Chandi and on the other hand he suspected that his wife Rani was not faithful to him.

10. PW-9 Hameer is the main witness. He has stated that he saw Subhan strangulating, Mst. Rani. He also stated that he found that the accused appellant also gave a blow by his foot on the right side of buttock of Rani as soon as accused appellant saw him beholding the occurrence.

11. PW-10 Jamma is the informant. He lodged FIR Ex.P/11. According to him Hameer told him that Rani was killed by Subhan and Chandi. He has stated that Chandi was married to Khanu who is the elder brother of Subhan. There is evidence to the effect that Rani and accused appellant were having loveaffair

which they continued even after marriage of appellant to Rani and marriage of Chandi with Khanu. He was cross Examined at length and has maintained that he had no enmity with accused appellant Subhan.

12. PW-12 Mohd. Rahim is the father of Rani. According to him Rani was married to Subhan and she never suffered from any illness. He has stated that once Smt. Chandi quarrelled with his wife and told that she was having love affairs with Subhan even before her marriage and that she used to treat him as her husband and was having relations. His wife went to Rani and Rani had corroborated it. He has further stated that Rani had told that Subhan was having illicit relations with Chandi and that the witness had done injustice with her. He further stated that Subhan appellant did not care Rani and even during the 7 years of married life he did not purchase even a single cloth for Rani. It was he who used to supply clothes to his daughter.

13. PW-14 Bhanwarlal is a motbir and has stated that Ex. P/13 bears his signatures. But he was declared hostile and has not supported that the dead body of Rani was recovered before him. He has simply stated that the police called him at the dhani of Subhan where he saw a dead body lying on a cot which was covered by a cloth. Even PW-17 Khimraj, who was the Sarpanch, turned hostile and did not support the case of the prosecution that the finger impressions were found on the neck of Rani. However, it is not much material because from the medical evidence it is proved beyond doubt that there were such impressions. By the time Vaydana, PW-18, reached at the dhani of accused appellant Subhan, Rani had been buried. Accused appellant was present in the Jhunpa when occurrence took place. Even DW-1 Chokha has proved it. DW-1 Chokha who has stated that Subhan was present in the dhani and further that deceased Rani used to live with Subhan and it were only husband and wife who used to live in the jhunpa where dead body of Rani was found. I concur with the learned Sessions Judge that it was the accused appellant who had done away with his wife for the reasons mentioned above.

14. So far as sentence is concerned, it has been submitted that the accused appellant has remained in custody from 6-3-80 to 30-6-81 i.e. for about 1-1/4 year

and it is sufficient in the circumstances of the case. Reliance has been placed on *Purkha Ram v. State of Rajasthan* (supra) in which the incident had taken place 18 years ago and sentence was reduced to the period already undergone (one year) but fine was increased.

15. In the facts and circumstances of the case when the occurrence had taken place about 18 years ago and the accused appellant has suffered sentence of jail for 1-1-/4 year's, I am of the view that jail sentence is sufficient. However, the sentence of the fine should be increased from Rs. 2007- to Rs. 3,000/-.

16. Consequently, the appeal is partly allowed. While maintaining the conviction of the accused appellant under Section 304 part-II, I.P.C. he is sentenced to the period already undergone. The amount of fine is increased from Rs. 200/- to Rs. 3000/-. In default of payment of fine he shall undergo rigorous imprisonment for a period of three months.

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