

Ved Prakash Vs. the State

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Court : Rajasthan

Decided On : Apr-27-1998

Reported in : 1998CriLJ3435

Judge : P.P. Naolekar and; P.C. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Jail Appeal No. 457 of 1996

Appellant : Ved Prakash

Respondent : The State

Advocate for Def. : Ashok Upadhayay, Public Prosecutor

Advocate for Pet/Ap. : Doongar Singh, Amicus Curiae

Disposition : Appeal allowed

Judgement :

1. Accused appellant is convicted under Section 302, I.P.C. for life imprisonment and the fine of Rs. 500/- and in default RI for one month for causing murder of his wife Smt. Pushpa alias Banti.

2. On 27-1-1995 the written report was made by Ved Prakash accused at 1 a.m. in Police Station, Lalgah Jatan. The report says that Ved Prakash was employed in

a Cotton Complex as labourer and that he along with his wife and daughter aged about one year boarded Roadways bus at Sukhadia Circle for destination of his in-laws'-house at village 5 S.P.M. Around 8 p.m. he got down at Morjanda Stand and proceeding towards his father-in-law's house, when he' reached near house of his father-in-law, 3 Sardars came in Jeep, stopped Jeep near him and asked him that where they are going and then asked him to sit in the Jeep, when he refused they came out of the Jeep and caught hold of him and gagged him with mufler, thereafter, one person tied his hand and legs with the rope. One person took his wife in the Mustard field. He removed the Mufler from his mouth and shouted for the help, his father-in-law came at the spot and he removed the rope and asked about his daughter Banti. His father-in-law and brother-in-law went in sercah of Banti in the direction shown by him and found that Banti was lying in the field dead. On this report police has started investigation. The dead body of the deceased was sent for post-mortem. Post-mortem was conducted by Medical Board. The Post-Mortem report is Ex. P/1. The Medical Board found following injuries :

1. fracture of right Cornia of Hyoid bone.
 2. Contusion 1/2' x 1/4' on hyoid Thyroid.
 3. Contusion 1' x 1/6' above Thyroid Rt. Side.
 4. Devthicofter - 3/4' x 1/8' below Chin Rt. side.
 5. Contusion - 1/8' x 1/6' below left side Chin.
 6. Contusion - 1/4' x 1/4' left side neck.
 7. Contusion 1' x 3/4' below left clavical.
 8. Swelling on neck.
3. As per the Medical Board cause of death was Asphyxia.
4. According to the prosecution the death of his wife was caused by the accused appellatant on account of fact that there were only two girl children to them and that

the appellant wanted to have 2nd marriage. There is no eye-witness to alleged incidence. The whole case hinges on circumstantial evidence. The prosecution has examined PW-1 Jaideep brother-in-law of the accused who has deposed that at about 10.00 p.m. or 9.45 p.m. he was in house (Dhani) and heard the shout 'Mardia-Mardia' that shout was by Ved Prakash. On hearing the shout he along with his father rushed to the spot and saw that Ved Prakash was lying on the road and that a rope was put around the hands and legs of Ved Prakash, his father asked him, what happened then Ved Prakash informed that 3 Sardars came and they took Banti in the Mustard field and tied him with a rope, he further stated that Ved Prakash was not tied with the rope, it was only put around his legs and hands. They took Banti to their house, they did not heard voice of Jeep nor seen light of the Jeep and there was no other person seen at the spot other than the Ved Prakash. Ved Prakash used to quarrel with his sister and he was not doing any work. He was unemployed and his father used to provide for his necessities.

5. In the cross-examination when he was confronted with the diary statement he stated that he was not given a statement before police that Ved Prakash's legs and hands were tied with the rope. PW-2 Teeja Devi who is mother of the deceased Banti has stated that relation of Ved Prakash with her daughter were not good and they used to quarrel, Ved Prakash was unemployed, in the cross-examination she has admitted that no report was made regarding their quarrel. She did not went to the place of incidence and is witness to the fact that after hearing the shout of Ved Prakash her husband and son went to the spot and brought dead body of his daughter to the house and that relation between husband and wife were not cordial.

6. PW-7 Om Prakash father of the deceased Banti also the another witness examined by the prosecution. Father of the deceased has deposed that his daughter Pushpa alias Banti and his son-in-law used to live in his house at Ganga Nagar, that relation between his daughter and son-in-law were cordial. At about 10 p.m. or 9.45 p.m. he heard shout of his son-in-law 'Mardia-Mardia' on that, he along with his son Jai Deep proceeded towards the place from where they heard shout which was about two murabbas from their Dhani, they saw that Ved Prakash was lying on the road, his hands and legs were tied with rope. He opened the knot

of the rope and looked for his daughter and saw that his daughter was lying in the Mustard field. When he reached near Ved Prakash accused, he informed him that Pushpa alias Banti was taken away by 3 Sardars who came in the Jeep, thereafter Banti was taken to Dhani but, she was found dead. He approached his neighbour Om Prakash and thereafter, Police came on the same night for investigation. He has not heard any voice of the Jeep nor seen light of the Jeep nearby the place of incident but, at that time those were the election days and there was traffic of the Jeeps on the road. His son-in-law was engaged in the Cotton Complex, sometimes he used to provide some money to Ved Prakash. Ved Prakash has not manhandled his daughter nor used to quarrel with her. It is not true that accused wanted to have second marriage on account of two daughters from his daughter Band. This witness was declared hostile, in the cross-examination he has again repeated that the relationship of the son-in-law and the daughter were not strained. It was specifically denied by him that rope was only put around hands and legs to make show of the things, but he himself opened the knot of the rope. According to this witness when he reached to the spot, accused informed that 3 Sardars came in Jeep, stop the Jeep and took away Banti, he found that his son-in-law was lying on the road tied with the rope and he opened the knot of the rope.

7. On appreciation of the aforesaid evidence, it is clear that when witnesses reached to the spot after hearing shout of the accused, they saw that the accused was lying on the road and his hands and legs were tied with the rope and Banti was lying in the Mustard field far from the road. Death body was taken to the house and thereafter the report lodged by the accused himself. There is no report made by the father-in-law or brother-in-law in the police implicating accused/appellant in the crime. Investigating machinery was brought in to motion on the report made by the accused himself. In the F.I.R. he has stated that 3 Sardars came on the spot and took away his wife and thereafter, she was found dead. The witnesses examined by the prosecution PW-1 brother of the deceased and PW-7 Om Prakash father of the deceased have also stated that when they reached to the spot they were informed by the accused/appellant that 3 Sardars came and took away his wife in the Mustard field. Nothing is brought on record by the prosecution to eradicate possibility of 3 Sardars' reaching the spot and taking away deceased Banti after tying the accused/appellant which is the story narrated

by the accused immediately after the incident to his father-in-law and brother-in-law. Accused/appellant was also arrested much after the date of the incident on 9-2-1995. It may be seen that the date on which the incident took place, it was winter nights and naturally the persons would have been inside their houses at 10.00 p.m. or 9.45 p.m. and it is not strange that they did not see any Jeep or light of the Jeep at the relevant time. Moreover, it does not stand to reason that the appellant shall choose a place, to commit the heinous crime of murder of his wife, near place of residence of her father, particularly, so when he was in a position to select the place where crime could be committed, when it is not a case of the prosecution that the crime was committed on account of the situation arising at spot.

8. Conviction on the circumstantial evidence must be satisfied that the circumstances from which inference of guilt is sought to be drawn, must be cogently and firmly established by prosecution evidence. Those circumstances should be of a definite tendency and pointing finger towards the guilt of the accused, the circumstances taken; together must point towards the guilt of the accused and none else. Circumstantial evidence! in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but, should be inconsistent with the innocence of the accused.

9. On consideration of the facts on the record, we do not find that the prosecution has been able to prove the guilt of the accused in commission of crime of murder of his wife Smt. Pushpa alias Banti.

10. Appeal is allowed. Conviction and sentence of life imprisonment and that of fine Rs. 500/- is set aside. Accused/appellant be set at liberty forthwith if not required for in any other offence.