

Narayan Puri Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-16-1987

Reported in : 1987(2)WLN280

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Cr. Jail Appeal No. 701 of 1976

Appellant : Narayan Puri

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Doongarsingh

Disposition : Appeal dismissed

Judgement :

Shyam Sunder Byas, J.

1. Narayan Puri, the appellant before us was convicted under Section 302, I.P.C. and sentenced to imprisonment for life by the learned Sessions Judge, Jodhpur by his judgment dated July 29, 1976. He has come-up in appeal and challenges his conviction.

2. Briefly out-lined, the prosecution case is that Smt. Devi aged about 30/35 years at the relevant time of her murder, was the wife of the accused. The marriage

between them had taken place nearly 25 yrs. before the incident. PW 2 Miss Sarla and PW 3 Miss Sushila are their daughters while PW 4 Smt. Bhikhi is the mother of Smt. Devi. The accused has also a son. They were all living together in a room of the house of one Bhanwar Lal Ghanchi situate in Mohallah Ghoron-Ka-Chowk, Jodhpur, which the accused, had taken on rent from PW 12 Bhagwati Prasad in April, 1975. The room is situate on the first floor; Smt. Bhiki was living with the accused as her relations with her husband Moolpuri PW 8 were not happy. Moolpuri was living with his sister's son Pukha Bharti. PW 11 Moolpuri sold his house to Pukha Bharti for a sum of Rs. 4000/-. This amount was paid to Smt. Bhiki for her maintenance. The accused, his wife Smt. Devi and Smt. Bhikhi jointly kept his amount with DW 2 Smt. Ram Kanwari with the understanding that they would jointly withdraw it. The accused alone approached Smt. Ram Kanwari and asked her to return the money to him. Ram Kanwari refused to oblige him and told that she would return the money jointly to him, his wife and Smt. Bhikhi. The accused approached his wife Smt. Devi to withdraw the money, but she also refused to oblige him on the ground that the money belonged to her mother Smt. Bhikhi. The suggestion is that as Smt. Devi did not oblige the accused, he became irked and annoyed.

3. As usual, in the evening of April 27, 1975, the accused, his wife Smt. Devi, his daughter & son and his mother-in-law Smt. Bhikhi were sleeping on the roof situate outside their room. PW 6 Ramdharisingh Gautam, PW 12 Bhagwati Prasad, PW 13 Brahamdutta and Mahaveersingh were also sleeping on the same roof nearly 15 yards away from the place where the accused and the members of his family were sleeping. PW 6 Gautam and Mahaveersingh were the tenants living in the first floor of the same house, which they had taken on rent from Bhagwati Prasad (PW 12). In the midnight PW 12 Bhagwati Prasad woke-up on hearing some noise. He saw that the accused was leaving the house with a bicycle. The witness called him, but the accused did not stop and went away. Bhagwati Prasad thereafter went to sleep. At about 5.00 a.m. on April 28, 1975 (i.e. the next day), it was found that the room, which the accused had taken on rent, was locked from out-side and the accused was missing. PW 2 Miss Sarla peeped into the room through the ventilation and found her mother lying inside on a cot. She and her brother went to the accused's elder brother Vishanpuri (PW 5)

and brought him to the room. Vishanpuri called aloud, but there was no response from Smt. Devi. The lock was broken. Vishanpuri and others went inside the room and found Smt. Devi dead. She had injuries on her neck and froth was coming out of her mouth. Vishanpuri went to Police Station, Sadar Bazar and presented written report Ex. P 11 at about 8.30 a.m. The police registered a case and the investigation ensued. The Station House Officer Mangi Lal (PW 10) arrived on the spot and prepared the inquest report of the victim's dead body. He seized and sealed the broken lock. He also seized and sealed the blood-stained clothes of the victim. The post-mortem examination of the victim's dead body was conducted at about 2.10 p.m. on the same day by the Medical Jurist Dr. Prakash Dayal (PW 14). He found the following ante mortem injuries on the victim's dead body:

- (1) Abrasion 0.5 c.m. x 0.2 c.m. on the posterior aspect of right forearm 7 c.m. below the elbow;
- (2) Abrasion 0.5 c.m. x 0.5 c.m. on the posterior aspect of right forearm 7 c.m. below the elbow;
- (3) Abrasion 1 c.m. linear on the neck on left side on lateral aspect 4 c.m. below the ear;
- (4) Abrasion 0.5 c.m. linear on the left lateral aspect of neck 4 c.m. below the right ear;
- (5) Abrasion 0.5 c.m. linear on the right lateral aspect of neck 3 c.m. posterior and below injury No. 4;
- (6) Abrasion 0.4 c.m. linear on the right lateral aspect of neck 1 c.m. anterior and below injury No. 5;
- (7) Abrasion 0.9 c.m. linear on the right lateral aspect of neck 3.5 c.m. below injury No. 4;
- (8) Abrasion 0.3 c.m. linear on the anterior aspect of neck just below the mandible in mid-line.

4. There was froth over the nostrils. There was also ecchymosis of the tissue on the neck on right and left lateral aspect under the abrasions. The right cornue of hyoid bone was fractured at its middle with localized collection of blood. The larynx and trachea were full of blood-stained froth and were congested. The right and left lungs were oedematous and were congested. The doctor was of the brain and the brain were found congested. The doctor was of the opinion that the death of Smt. Devi was on account of throttling. The post-mortem examination report prepared by him is Ex. P. 21. The accused was arrested on April 29, 1975 vide Ex. P.15. When his personal search was taken at the time of his arrest key (Article 6) was found in the pocket of his pants. It was seized and sealed. This key fitted with the broken lock. Afterwards, when the investigation was over, the police presented a crime sheet against the accused in the Court of the Additional Munsif cum-Judicial Magistrate (1), Jodhpur, who, in his turn, committed the case for trial to the Court of Sessions. The learned Sessions Judge framed a charge under Section 302, I.P.C. to which the accused pleaded not guilty and claimed to be tried. The defence taken by him is that of alibi. It was stated by him that on the relevant day, he was at a far distant place in district Barmer. In support of its case, the prosecution examined 14 witnesses and filed some documents. In defence, the accused examined three witnesses. On the conclusion of the trial, the learned Sessions Judge disbelieved and rejected the defence of the accused and held the charge duly brought home to him. The accused was consequently convicted and sentenced, as mentioned at the very out-set. Aggrieved against his conviction, the accused has taken this appeal.

5. We have heard the learned Counsel for the appellant and the learned Public Prosecutor. We have also gone through the case file carefully.

6. Learned Counsel for the appellant did not challenge the opinion of Dr. Dayal (PW 14) relating to the cause of death of Smt. Devi. We have also gone through his statement and find no reasons to distrust his opinion. In cross-examination, a suggestion was thrown that it was a case of suicide and the suggestion was categorically refuted that it was not a case of suicide because suicidal throttling is impossible. The death of Smt. Devi was not natural or suicidal but was homicidal

7. Admittedly, there is no eye witness of the incident and the entire prosecution case rests squarely on circumstantial evidence. The circumstantial evidence adduced by the prosecution in support of the charge may, for case and convenience, be categorised as under:

(1) the accused, the deceased and the members of his family were sleeping on the roof out-side his room in that fateful night;

(2) the accused left the house in the mid night on a bicycle and was not traceable till he was arrested on April 29, 1975;

(3) he made extra-judicial confession before PW 7 Chhotusingh;

(4) in the morning of April 28, 1975, the room was found locked and the dead body of Smt. Devi was found inside the room lying on a cot. Key (Article 6) was found in possession of the accused at the time of his arrest and this key was of that lock of the room; and

(5) the accused again made extra-judicial confession before DW 4 Dr. Vyas when, after his arrest he was sent to the Mental Hospital for treatment.

8. After a careful scrutiny and analysis of the prosecution evidence, the evidence relating to the extra-judicial confession alleged to have been made by the accused before Chhotusingh (PW 7) was rejected as he turned hostile. The other sets of circumstantial evidence were found sufficient to arrive at the conclusion that it was the accused who had committed the murder of wife Smt. Devi.

9. Mr. Doongarsingh learned Counsel for the appellant contended vehemently before us that the various circumstances relied upon by the Court below in the first place did not stand proved and even if taken as proved, they were not sufficient to bring the charge at the door-steps of the accused. He has taken us through the entire evidence and made attempts to show that it was discrepant and of no credence. It would be proper that the above sets of circumstantial evidence be dealt with at seriatim.

10. The most formidable circumstance connecting the accused with the murder of his wife is that he, the deceased, his son, daughters and the mother-in-law were sleeping on an open roof situate out-side his room in that fateful night. The witnesses examined to prove this circumstance are PW 2 Sarla PW 3 Sushila, PW 4 Smt. Bhikhi, PW 6 Ramdharisingh Gautam, PW 12 Bhagwati Prasad and PW 13 Brahamdutta, PW 2 Sarla and PW Sushila are the daughters of the accused while PW 4 Smt. Bhikhi is his mother-in-law. They stated that in that fateful night, they all along with the deceased were sleeping on the open roof situate out-side the room. The accused's son Was also sleeping there. Next-day, when they got-up in the morning, they found the room locked from out-side and Smt. Devi missing. Later on, her dead body was found inside the room, when the lock was broken. These three witnesses, of course, denied that the accused slept in that night with them on the open roof. They were declared hostile and were confronted with their earlier statements recorded under Section 161, Cr. P.C. during investigation, in which they stated that the accused had also slept on the open roof in that night. We can well understand as to why they turned hostile. The daughters had lost their mother and Smt. Bhikhi had lost her daughter. The accused was their father and the son-in-law. The mother and the daughters, thus, having already lost Smt. Devi, did not want to lose their father and the son-in law. It is the normal human conduct which prompted them to adopt hostile attitude and to speak nothing incriminating against the accused.

11. PW 5 Vishanpuri is the real elder brother of the accused. It is he who presented written report Ex. P II before the police. In Ex P 11, it has been clearly mentioned that Sarla PW 2 came to him and told him that the accused had locked the room and slipped away. This fact in Ex. P 11 against the accused could not be mentioned unless it was communicated to this witness by PW 2 Sarla. Of course, the FIR is not a substantive piece of evidence, but it does show that these witnesses had a meaning & purpose in denouncing the fact that the accused had slept on the open roof in that fateful night. Their hostile attitude, as we will see, does not detract from the evidentiary value to be attached to the other witnesses.

12. PW 6 Ramdharisingh Gautam is the tenant, who was living in the room situate in the same storey. PW 12 Bhagwati Pd. is the person who had let-out the room to

the accused a few days before the incident. PW 13 Brahamdutta is son of Bhagwati Pd. PW 12 They all were living in the same house. These three witnesses deposed that in that faithful night, the accused, his wife his son and daughters, and his mother in-law were sleeping on the open roof situate out-side their room. They further stated that they, also were sleeping on the same roof a few feet away. Next morning, they found the room of the accused locked from outside and the accused missing. PW 12 Bhagwati Prasad further deposed that at about 00.30 Hours, i.e. the mid-night, he woke up hearing some sound. He saw the accused leaving the house with a bicycle. He called as to who was leaving and the accused replied that he was Narain Puri. Saying so, the accused left the house and went towards the temple. The witness further stated that when he got-up early in the morning, he found the accused missing and his room locked from out-side. All these witnesses were cross-examined at length, but their evidence remained unshaken and unimpeached. They are all independent persons having no grouse against the accused or a soft corner for the deceased. We are unable to conceive that they would conspire and falsely implicate the accused for no reasons. Learned Counsel for the appellant could not subscribe any cogent or convincing reasons as to why the evidence of these three witnesses should not be accepted as true. If the evidence of these three witnesses is held credit-worthy, it speaks volumes against the accused. We have no reasons not to treat their evidence trust-worthy. There must be something inherently improbable in the evidence of these witnesses to disbelieve them and that is not the case here. We, therefore, endorse the finding of the Court below on the strength of the evidence of these three witnesses that the accused, his wife, his son and daughters, and mother-in-law slept on the open roof situate out side his rented room in that fateful night. The accused left the house in the mid night with a bicycle and he remained missing till he was arrested on April 29, 1975.

13. It was argued by Doongar Singh that these three witnesses have not spoken that the deceased was taken in the room by the accused. The possibility that somebody else or any of these three witnesses could have taken the deceased in the room cannot be ruled out. The possibility placed before us by Mr. Doongar Singh is fantastic and irrational. The son or the daughters or the mother of the deceased, by no stretch of imagination could have taken her in the room. The

possibility of their taking her in the room stands completely eliminated. The possibility that any of the three witnesses viz., Ramdhari Singh Gautam, Bhagwati Prasad and Brahamdutta, could take the deceased in the room also stands completely eliminated for want of some cogent reasons. If any of them attempted to take the deceased in the room, the deceased must have resisted and raised noise. The deceased's husband (accused) was sleeping by her side. Nobody could, therefore, take her inside the room when her husband was sleeping by her side.

14. The possibility that some body else might have intruded into the house and taken the deceased in the room is certainly not there. There were so many persons sleeping on the roof and nobody from out-side could have dared to intrude into the house and take the deceased to the room.

15. When the possibility that any person from out-side or any of PW 6 Ramdhari Singh Gautam, PW 12 Bhagwati Prasad and PW 13 Brahamdutta could take the deceased in the room, is ruled-out or eliminated, the only irresistible conclusion, at which we can safely arrive at, is that it was the accused who had taken the deceased in the room. After-all, the victim was his wife and if the husband takes the wife in the mid-night in the room, the wife, unaware of the illdesigned intention of her husband, would not put resistance. She will willingly go with the husband in the room in the mid-night. These circumstances, taken together, are sufficient to conclusively show that it was the accused who had taken his wife (deceased) in the room in that faithful night. In the mid-night, he left the house with a bicycle and remained absconding till he was arrested on April 29, 1975.

16. The accused had pleaded alibi and stated that he was far away in some village in district Banner. Such sort of evidence can be easily manufactured. We find no merit in the accused's defence of alibi It was rightly rejected by the trial Judge. The first two circumstances, thus, stand fully established against the accused.

17. The accused was arrested at about 5.00 p.m. on April 29, 1975 out-side the Railway Station, Jodhpur by the Investigating Officer Mangi Lal (PW 10), vide arrest memo Ex P 15. The Motbir witness of his arrest is PW 9 Ahmed Ali. Both these witnesses stated that when the personal search of the accused was taken,

key (Article 6) was found in the pocket of his pants. The key was seized and sealed Bicycle (Article 1) was also found with the accused. PW 10 Mangi Lal further deposed that when he went to the scene of the occurrence, he found lock (Article 2) there in the broken condition. This lock, as per evidence of the prosecution, was broken by PW 5 Vishan Puri. The Investigating Officer Mangilal (PW 10) deposed that key (Article 6) fitted with the lock (Article 2). That is to say, the key was of the broken lock. That again suggests strongly that the accused had locked the room after committing the murder of his wife inside it. Learned Counsel for the appellant made a faint attempt to show that the lock (Article 2) is not that which was found at the scene of the occurrence. We find no merit in the contention. The Investigating Officer Mangi Lal (PW 10) clearly stated that lock (Article 2) is the same which he had lifted from the scene of the occurrence. His evidence on this point is not open to any doubt.

18. It was next argued by the learned Counsel that the prosecution has not alleged any adequate motive for prompting or stimulating the accused to commit the murder of wife. The absence of motive or inadequacy of it, it was argued, is a major circumstance to be taken into consideration. The absence or inadequacy of motive strongly suggests the innocence of the accused. We are again not impressed by the contention.

19. PW 9 Moolpuri is the father-in-law of the accused and husband of PW 4 Smt. Bhikhi. Relations between Smt. Bhikhi and Mool Puri were not happy. Moolpuri sold his house to his sister's son Pukha Bharti (PW 11) and out of that money, he gave Rs. 4,000/- for maintenance to his wife Smt. Bhikhi. This amount was given to DW 2 Ram Kanwari by the accused, the deceased and Smt. Bhikhi. The accused approached Ram Kanwari to take the money back from her. Moolpuri (PW 8) stated that Ram Kanwari refused to return the money to the accused alone. She stated that she would return the money if the accused, his wife and mother-in law jointly came to her. The witness further stated that the accused put pressure on his wife (deceased) to take the money from Ram Kanwari and she refused. It appears that when the wife refused to oblige the accused, the accused got irked and annoyed. The relations between the accused and the deceased became so unhappy that he wanted to cancel the nomination made in her favour

by him in the insurance policy. The relations between the deceased and the accused were, thus, far from being happy.

20. It was argued by the learned Counsel that the accused is innocent. When he was arrested and he learnt that his wife had been killed, he became mentally unbalanced and was taken for treatment to the Mental Hospital. He was treated by DW 4 Dr. Vyas of the Mental Hospital. Had he been not innocent, he would have not become mentally imbalanced. We again find no substance in the contention. When the accused was arrested, he realised the horror of the crime he had committed. It was why he became mentally imbalanced. He did not become mentally imbalanced because he was innocent or because he was full of agony due to his wife's murder.

21. It is true that the accused is not required to prove his innocence to the hilt and at times his explanation may be taken as sufficient to exonerate him from the guilt. But at the same time, it does not mean that any explanation furnished by him, however unfounded, fantastic and irrational it may be, should be accepted to exonerate him from the guilt. The explanation should be reasonable, rational and must be ex-facie acceptable. Here, the explanation furnished by the accused and the defence adduced by him in support of it, do not inspire confidence. The defence taken by the accused is false and fantastic. It was rightly dismissed by the trial court.

22. The case against the accused rests squarely on the circumstantial evidence. When a case rests on circumstantial evidence, it is the sum and totality of the various circumstances which is to be taken into consideration to find out if the charge stands established. The circumstances established must be inconsistent with the innocence of the accused and incapable of explanation of any hypothesis other than that of guilt. The chain of circumstances should not leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstance must show that within all human probabilities, the offence must have been committed by none else other than the accused. The accused must be so holed in as not to leave any out let for his slipping away. In the instant case, the circumstances (1) the accused and the deceased were sleeping along with other

members of the family on the open roof in that fateful night; (2) it was only he who have taken her inside the room where she was killed; (3) the accused's locking the room from out-side; (4) his leaving the house in the mid-night with a bicycle; (5) his remaining absconding till he was arrested; (6) his possession of the key with which the room was locked; and (7) the motive, when read and assimilated together, leave no room for doubt that it was the accused who, within all human probabilities, must have committed the murder of his wife. He has been so hold in by the circumstances that he has no out-let to escape. He was rightly convicted and sentenced under Section 302, I.P.C. No interference is called for.

23. In the result, the appeal of accused Narainpuri is dismissed. His conviction and sentence under Section 302, I.P.C. are maintained. He is on bail and is not present today. He is directed to surrender himself before the learned Sessions Judge, Jodhpur within a month from today, to serve out the unexpired portion of his sentence, failing which the learned Sessions Judge will get him arrested and send him in the jail for the aforesaid purpose.

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