

Gulshan Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-18-2003

Reported in : RLW2004(3)Raj1464; 2004(2)WLC523

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Appeal No. 116 of 1999

Appellant : Gulshan Kumar

Respondent : State of Rajasthan

Advocate for Def. : B.M. Sharma, Public Prosecutor

Advocate for Pet/Ap. : S.R. Bajwa, Sr. Adv. and; V.R. Bajwa, Adv.; Vishal Bansa

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. The appellant was indicted before the learned Sessions Judge Alwar in Sessions Case No. 27/98 for having committed murder of his wife Raj Kumari. The learned trial Judge vide judgment dated February 8, 1999 convicted and sentenced the appellant under Section 302 1PC to undergo Imprisonment for life

and fine of Rs. 1,000/-, in default to further suffer one month Rigorous Imprisonment.

2. The facts giving rise to this appeal are that the informant Mahendra Taneja (PW2) lodged a written report around 2.35 PM on January 21, 1997 at Police Station Kotwali, Alwar with the averments that while he was sitting at his shop some unknown caller informed him on telephone that his sister had a fight with his brother-in-law and the clothes of his brother-in-law were smeared with blood. The caller further informed that the brother-in-law of the informant appeared to have made himself scarce and he might have killed the sister of the informant. On receiving the said information the informant rushed to sister's house and discovered the dead body of his sister, which was lying in a pool of blood inside a room in the house. Outside the house of his sister a crowd of neighbours had gathered. On the basis of said report Narpat Singh, SHO registered a formal FIR and launched investigation in the matter. The Investigating Officer reached house of the deceased and door of the room, in which dead body of deceased was found, was found locked, the same was broken by the Investigating Agency. The inquest proceedings of dead body of the deceased were drawn. The site was inspected and a site plan of the place of incident was prepared. The lock which was broken by the police was also seized. Some blood from the place of incident was also lifted and seized and the dead body of deceased was subjected to post mortem examination, the clothes removed from the dead body of deceased were sealed and seized. The appellant was taken in custody by the Investigating Agency on February 3, 1997. During his police custody, at his instance a handkerchief and a pull Over, which were stated to be blood stained, were recovered and seized. A report of the Forensic Science Laboratory was also received. After doing the needful, the Investigating Agency filed charge sheet against the appellant. In due course the case came up for trial before the learned Additional Sessions Judge No. 2, Alwar. Charge under Sections 302 1PC was framed against the appellant, who denied the same and claimed trial. The prosecution in support of its case examined as many as 16 witnesses. In the statement under Section 313 Cr.P.C., the appellant denied the appellation claimed innocence. He also pleaded alibi and stated that he had gone to Jwalapura (U.P.) to visit the house of her daughter's prospective in-laws. He further stated that on

account of business rivalry his brother-in-law the informant Mahendra Taneja had falsely implicated him in the case. In defence three witnesses were examined. Learned Trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. The case of prosecution is based on circumstantial evidence as there is no direct evidence connecting the appellant with the crime. It is settled legal proposition that where the evidence against the accused, particularly when he is charged with a grave offence like murder consists of only circumstances, it must be qualitatively such that on every reasonable hypothesis the conclusion must be that the accused is guilty, not fantastic possibilities nor freak inferences but rational deductions which reasonable minds make from the probative force of facts and circumstances.

4. In convicting and sentencing the appellant learned trial Judge has placed reliance on the following circumstances:-

(i) Death of Rajkumari was homicidal and at the time of the incident, the appellant and the deceased were alone in their residential house.

(ii) When the appellant came out of his house, his clothes were smeared with blood.

(iii) While coming out of his house the appellant was disturbed and on seeing Smt. Meena Taneja in the crowd outside his house he had admitted his mistake and made a statement to come back with the doctor.

(iv) Mutual relations of appellant and the deceased were not cordial and the appellant used to harass and beat the deceased.

(v) The appellant disappeared after the incident and was arrested on February 3, 1997 while he was in Delhi.

5. We have heard the rival submission and scanned the record.

6. In order to establish that death of Rajkumari was homicidal, the prosecution examined Dr. Amar Singh Rathore (PW15), who conducted the post mortem on

the dead body of Raj Kumari and found following external injuries:-

'1. Stab incised wound: 3 x 1cm x lung deep, hear deep with red clotted blood, spindle shaped, tail towards Rt. shoulder

On right side back chest between vertebra & scapular border.

2. Incised wound: 3 x 1/2 x 1/4cm middle finger Rt. hand spindle shaped.

3. Incised Wound: 1 x 1/2 x 1/4cm ring finger wedge shaped Rt. hand.

4. Abraded bruises 1/2 x 1/2cm to 1 x 1/2cm numbering 5 anterior neck.

The internal injuries were these:-

- both sides pleura ruptured with haemothorax about 700cc in each cavity.

- Right lung lower lobe has got incised wound through & through 3 x 1cm with red clotted blood.

- Pericardium & both ventricles ruptured with incised wound 3 x 1cm each.

- Left lung in lower lobe has got incised wound 3 x 1cm with red clotted blood.

- All above mentioned injuries were ante mortem in nature.

The cause of death as was opined by the doctor was shock due to hemorrhage caused by injury to heart and lungs.

7. The prosecution has examined Smt. Meena Taneja (PW1) and Mahendra Taneja (PW2) to show that at the time of incident the appellant and the deceased were alone in their residential house. While submitting the written report (Ex.P-1) Mahendra Taneja informed Investigating Officer Narpat Singh (PW16) that when he reached to the house of his sister he found his wife Meena Taneja in the crowd out side the house of his sister. The children of his sister were not present in the house and his wife told him that his brother-in-law killed his sister and fled after locking the room. Meena Taneja (PW1) in her deposition stated that at the time of incident she was out side the house. The incident occurred in the first floor of the

house and she had seen the appellant coming out of the house. She had also seen the dead body of her sister-in-law. Learned counsel for the appellant vehemently canvassed that Meena Taneja was not present at the time of incident and she was introduced as a witness at a later stage in connivance with the Investigating Officer Narpat Singh. Learned counsel also contended that the statement under Section 161 of Meena Taneja was recorded after two days of the occurrence i.e. January 23, 1997 and her name did not appear in the written report but it was introduced afterwards and no reliance can be placed on her statement. This submission was also advanced 'before the learned trial court, but the learned trial court rejected the argument and observed that the presence of Meena Taneja out side the house of deceased was natural. Placing reliance on the testimony of Investigating Officer Narpat Singh and Mahendra Taneja learned trial court observed that police could not record the statement of Meena Taneja as she was mentally disturbed. Learned trial court also observed that the provisions under Sections 162 Cr.P.C. were not attracted as the written report was only handed over and investigation did not commence.

8. In order to appreciate the submissions advanced by the learned Senior Counsel we have closely scrutinised the material on record. The arguments of learned Senior Counsel appear attractive on first blush but on dwell deep into the testimony, presence of Meena Taneja out side the house of the appellant seems quite natural. How can the visit of Meena Taneja to her Nanad's house be termed as unnatural. It was only a coincidence that she had reached the house at that point of time when the incident had taken place and the appellant came out of the house. She saw the appellant's clothes smeared with blood and on seeing her he admitted to have committed the mistake and left with a promise to come back with doctor. She then went inside the house and saw the dead body of her Nanad Rajkumari in a room which was locked from the outside. After sometime her husband arrived and lodged report with the police. Learned Senior counsel persuaded as to discard her testimony as her statement was not recorded promptly and her presence was not shown in the Inquest-report and site plan but we are not impressed by the submissions. The question of delay in examining a witness is material only if it is indicative and suggestive of some unfair practice by the investigating agency. In the instant case we do not find concomitant

circumstances to suggest that the investigation was deliberately marking time with a view to decide about the shape to be given to the case and the witnesses to be introduced. Two days delay in recording the statement of Meena Taneja, in our view do not cast a cloud of suspicion on the credibility of the prosecution story. In *State of U.P. v. Sikander Ali* (1), the Apex Court indicated that merely delayed recording of statement of a witness by the police does not render the testimony untrustworthy, if it is otherwise found confidence inspiring. In *Pukh Ram v. State of Rajasthan* (2), it was observed that the presence of witness is not required to be shown in the Inquest report or in the site- plan. It is no doubt true that there are numerous incongruencies in the statement of Meena Taneja but they are not material. The version set forth by the prosecution does not smack of fabrication. The FIR was made, by Mahendra Taneja soon after the incident. Immediately after handing over the FIR to the Investigating Officer the informant gave details that his wife Meena Taneja was present out side the house. The provisions of Section 162 Cr.P.C. in such a situation are not attracted and the FIR can not be discredited in view of ratio indicated in *Kartar Singh v. State of Punjab* (3). We are therefore in agreement with the finding of the learned trial Court and hold that the prosecution is able to establish first, second and third circumstances against the appellant.

9. In regard to fourth circumstance, we have before us the testimony of Meena Taneja (PW1), Mahendra Taneja (PW2), Dharmendra Kumar (PW6) and Ram Kishan (PW11). Meena Taneja deposed that the appellant was in the habit of beating Rajkumari and just ten days before the incident the appellant beat her. Mahendra Taneja . (PW2) stated that the relations of the deceased and the appellant were strained and the appellant used to beat Rajkumari. On January 10, 1997 there was a quarrel between the deceased and the appellant and he had gone with Rajkumari 19 the Police Station Kotwali to lodge the report but their relatives persuaded them to enter into compromise. Appellant then begged excuse and executed a Mafinama (Ex.D-1) on a stamp-paper. Dharmendra Kumar (PW.6) and Ramkishan (PW.11) also corroborated the testimony of Mahendra Taneja. Learned trial court placed reliance on these statements and observed that the relations of appellant with his wife Rajkumari were strained. Having closely considered the material on record, we do not find any infirmity in the finding of learned trial Judge and we are of the view that the prosecution is able to establish

that the appellant used to beat his wife Rajkumari and their relations were strained.

10. Another circumstance against the appellant is that after the incident he disappeared from Alwar and could only be arrested on February 3, 1997 from Delhi. The fact of arrest of appellant on February 3, 1997 is not in dispute as he himself admitted in his explanation under Section 313 Cr.P.C. that he was arrested on February 3, 1997 from Delhi but the appellant asserts that on January 19, 1997 he had gone to Jwalapur to meet the prospective in-laws of his daughter and was away from Alwar on the date of incident. In support of his plea of alibi, the appellant examined his daughter Mamta (DW.1), Sister Rajrani (DW.2) and brother Suresh (DW.3). Mamta in her deposition stated that as her sister Shabana was going to be married on February 17, 1997, his-father had left Alwar for Jwalapur on January 19, 1997 for making arrangement of clothes and furniture for his prospective son-in-law. On January 21, 1997 she was in her house along with her mother (deceased), brother and sisters. On the said day around 9.00 AM three persons came to her house for the purpose of white washing and painting the house and they inspected the whole house. After inspecting the rooms they gave certain directions for removing the goods from the rooms of upper story and left. Around 12, 12.30 PM they came back with covered faces and out of the three one was having a knife. Seeing them she bolted herself along with her brothers and sisters in a room and gave telephone call to her uncle Suresh. After 5-10 minutes she heard cries of her mother. Rajrani (DW.2) and Suresh Kumar (DW.3) corroborated the version narrated by Mamta. On scanning the statements of these witnesses from the point of view of trustworthiness, we find that they are not speaking the truth. Mamta did not raise hue and cry to attract the attention of neighbours. Rajrani (DW.2) though admitted that there situated Kotwali and Police Chowki between her house and the house of the appellant but the matter was not reported to police. It is rather strange that nothing was stolen by the alleged intruders from the house of appellant and even the ornaments on the dead body of Rajkumari were found intact. The defence of the appellant is so unnatural that no prudent person would believe it. There is no substance in the plea of alibi of the appellant. If he was innocent then why did he not attend the funeral and the last rites of the deceased. Why did he not come back to Alwar and lodge the report

against the three alleged intruders. From the record it is established that he deliberately remained away from his house and it was the police' which had to make attempt to arrest him.

11. Not only the presence of appellant at the time of occurrence is established by the statement of Meena Taneja, but Kundan Lal (PW5), an independent witness, has categorically deposed that on January 21, 1997 appellant came to his shop around 12, 12.30 PM along with a child aged 10-11 years and after had a telephone call from his shop the appellant left the child in his shop. We do not see any reason to disbelieve the testimony of Kundan Lal which could not be shattered in the cross examination. The plea of alibi raised by appellant appears palpably false and we hold that the prosecution is also able to establish fifth circumstance against the appellant.

12. Thus we find a combination of facts treating a network through which there is no escape for the appellant. It has been established beyond reasonable doubt that it was the appellant who killed his wife Rajkumari. The death of Rajkumari was homicidal and the injuries sustained by her were sufficient in the ordinary course of nature to cause death. The dead body of Rajkumari was found in the room belonging to appellant. Immediately after the incident the appellant was seen coming out of his house with blood stained clothes and after admitting his mistake he made promise to come back with doctor but never returned back and could not only be arrested on February 3, 1997 from Delhi. The last rites of his deceased wife were performed in his absence. It is also established that his relations with the deceased wife were strained and he used to beat her and executed Mafinama not to ill treat her in near future. There was nobody in the house at the time of incident except the appellant and the deceased. The evidence collected by the prosecution is qualitatively such that on every reasonable hypothesis the conclusion is that the appellant is guilty. We find that the chain of circumstantial evidence against the appellant is complete and incapable of any explanation or any other hypothesis than of the guilt of the appellant. Learned trial Judge in our considered opinion has not committed any error in convicting and sentencing the appellant.

13. Resultantly, we find no merit in the appeal and the same is dismissed.

