

Sheesh Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-13-2001

Reported in : RLW2003(1)Raj432

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

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Appeal No. 314 of 1994

Appellant : Sheesh Ram

Respondent : State of Rajasthan

Advocate for Def. : R.P. Meena, Public Prosecutor

Advocate for Pet/Ap. : A.K. Gupta,; Vishal Bansal and; Alka Bhatnagar, Advs

Disposition : Appeal allowed

Judgement :

Sharma, J.

1. This criminal appeal under Section 374 Cr.P.C. is directed against the judgment and order dated 28.5.1994 passed by the learned Additional Sessions Judge, Sikar thereby convicting the accused appellant under Section 302 IPC and sentencing him to imprisonment for life and a fine of Rs. 200/-, in default of

payment of fine, to further undergo two months rigorous imprisonment.

2. The prosecution case, unfolded during trial, was that one Pramila, since deceased was posted as Constable in Police Dines, Sikar during the relevant time. On 14.7.1993, PW-19 Narendra Singh, SHO having received information, Ex.P.10 from S.K. Hospital, Sikar furnished by a lady Constable No. 753, initiated proceedings under Section 174 Cr.P.C. PW-19 Narendra Singh rushed to the Hospital and prepared inquest report Ex.P.6 of the dead body of Pramila.

3. Complainant Dharmpal Singh, PW-1, brother of the deceased and Jagmal Singh, PW-10, father of the deceased submitted a written report Ex.P.5 to the SHO, Kotwali, Sikar at S.K, Hospital, Sikar, to the effect that having seen the dead body of his sister Pramila Devi it was felt that her husband Shish Ram has administered poison, as a result of which she has passed away. On this report, Police registered a case vide FIR No. 245/93, Ex.P.13 and proceeded with the investigation. The Police then rushed to the place of incident and prepared site plan, Ex.P. 1, seized two glasses vide seizure memo Ex.P.2, seized one steel 'katori' with tea leaf etc. vide seizure memo Ex.P.3. The Police also seized plain soil and soil stained with vomiting vide memo Ex. P.4 and prepared panchayatnama, Ex.P.6 of the dead body.

4. The police got conducted post-mortem on the dead body of deceased and collected post mortem report Ex.P.11. Three Medical Jurists, namely Dr. H.S. Bunkar. Dr. S.S. Sharma and Dr. G.R. Tanwar who conducted post mortem, opined that cause of death will be given after receipt of chemical examination report. The doctors opined that duration of death was 24 to 36 hours. The police arrested the accused appellant on 17.7.93 vide Ex.P. 15 and also recorded the statements of witnesses under Section 161 Cr.P.C. The police also collected the report of Forensic Science Laboratory, Ex.P.12. The result of chemical examination was as follows :

'On chemical examination, portions of viscera (1-6) and washings of exhibits (7) and (12) from packets marked A, B, A & F respectively gave positive tests for the presence of Monocrotophos insecticide (an organophorous insecticide).

Washings of exhibits (8), (9), (10) and 11 gave negative tests for Monocrotophos insecticide.'

5. On completion of investigation, Police submitted a charge sheet against the accused appellant in the court of learned Chief Judicial Magistrate, Sikar, who in turn committed the case of the court of Sessions. The learned Sessions Judge transferred the case to the court of Additional Sessions Judge for trial.

6. The learned trial Judge, having heard the arguments on charge, framed charge against the accused appellant under Section 302 IPC, to which the accused denied and claimed to be tried. During trial, the prosecution in support of its case examined as many as 20 witnesses and exhibited various documents. Thereafter the trial Court examined the accused under Section 313 Cr.P.C. The accused in his defence examined DW-1 Mst. Sumitra.

7. On conclusion of trial, after hearing arguments of learned counsel for the accused and the learned public prosecutor and on the basis of evidence and material on record, held the accused guilty of having committed offence under Section 302 IPC and accordingly convicted and sentenced him as aforementioned.

8. We have heard learned counsel for the accused appellant and the learned Public Prosecutor and carefully examined the evidence and material on record.

9. The entire edifice of the prosecution is rested only on circumstantial pieces of evidence. What the prosecution is obliged to prove in a case which is based purely on circumstantial evidence has been a matter of consideration in a series of cases by the Apex Court and various High Courts thereby prescribing certain conditions to be satisfied in a case based purely on circumstantial evidence. In *Sharad v. State of Maharashtra* (1), dealing with a case based on circumstantial evidence, their Lordships of the Supreme Court held that following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be'

established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they 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 to 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.'

10. In the case in hand, the accused appellant Sheesh Ram is alleged to have administered poison to his wife Pramila, since deceased. In the case of Sharad (supra) dealing with a case of murder by administering poison, their Lordships observed that in such cases the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction;

'(1) there is a clear motive for an accused to administer poison to the deceased,

(2) that the deceased died of poison said to have been administered,

(3) that the accused had the poison in his possession,

(4) that he had an opportunity to administer the poison to the deceased.' ;

11. In the light of the law laid down by the Supreme Court in a case of murder by administering poison being based on circumstantial evidence, we have to consider as to whether in the facts and in the circumstances of the present case, the prosecution has been able to bring home guilt against the accused appellant that he administered poison to his wife Pramila, thereby causing murder. The prosecution, to prove its case, has relied upon four circumstances, namely, (i) the accused was last seen in the company of deceased (ii) the accused had motive to get rid of his wife (iii) extra judicial confession made by the accused before PW-3

Bihari Singh and PW-4 Haribux, and (iv) the conduct of the accused appellant at the time of incident.

12. The trial Judge relying upon the evidence of PW-1 Bhagwan Singh, PW-2 Prabhati Lal, PW-3 Bihari Singh, PW-4 Haribux and PW- 6 Chandrabhan, all police personnels and residing in different quarters in Police Lines, where deceased Pramila was also residing along with the accused appellant in one of the quarters, came to the conclusion that the prosecution has been able to prove the first circumstance against the accused appellant that it was accused appellant Sheesh Ram who was present. with deceased Pramila during the night intervening 13.7.1993 and 14.7.1993 in Quarter No. 50 and thereafter Pramila died of unnatural death.

13. PW-1 Bhagwan Singh has deposed in his statement that during the night intervening 13 and 14.7.93 at about 2.45, accused appellant Sheesh Ram came to his house and informed him that his wife Pramila is seriously ill and asked him to take her to hospital. At that time, the accused was tormented. He then informed PW-3 Bihari Singh, Head Constable at his residence about the serious illness of Pramila and the later asked Bhagwan Singh to inform the Line Officer. Thereafter Bihari Singh left for the house of Pramila. PW-3 Bihari Singh has deposed that Bhagwan Singh came to his house at about 2.45 in the night of 13/14.7.93 and told him that accused Sheesh Ram had come to his house and had informed of his wife's serious illness. The witness further deposed that he and Haribux rushed to the house of Pramila, where he found accused Sheesh Ram sitting in his house and his wife Pramila was lying in his lap. PW-4 has deposed similar to what has been deposed by PW-3 Bihari Singh. This witness has categorically stated that after Bihari Singh informed him about the illness of Pramila, he and Bihari Singh went to her house and found accused Sheesh Ram sitting, while Pramila was lying in his lap. PW-14 Chandrabhan was posted as Driver in the Police Lines, Sikar during the relevant time. This witness has stated that on 14.7.93 at about 6.00 Am Bhagwan Singh informed him that Pramila was ill. Thereafter he,rushed to the house of Pramila in a vehicle bearing No. RJV 7575, where Prabhati Lal, L.O., Bihari Singh and Haribux were already present there. Pramila was in the quarter and accused Sheesh Ram, her husband was standing outside the quarter.

Thereafter they took Pramila to Hospital.

14. Thus on scanning the evidence of the above referred witnesses, we find that all these witnesses are consistent on the point that both Pramila and her husband Sheesh Ram were present together in their house during the night intervening 13/14.7.1993. Their evidence appears to be plausible, reliable and trustworthy and we see no reason to discard their evidence. The trial Judge has very rightly recorded a finding on the first circumstance that accused was in the company of deceased during relevant time till the later died of alleged poisoning.

15. True it is that the prosecution has been able to prove the first circumstance beyond reasonable doubt. But, this circumstance being proved against the accused alone is not sufficient to conclude that it is the accused appellant who is the perpetrator of the crime in question. All circumstances must be so complete that they point only towards the guilt of the accused.

16. Now we have to consider whether the findings arrived at by the trial court on remaining three circumstances was justified being based on proper appreciation of evidence? The second circumstance found favour with the trial court in establishing charge against the accused appellant was that the accused made extra judicial confession before PW-3 Bihari Singh and PW-4 Haribux. To examine the question, we deem it proper to reappraise the evidence of these two witnesses before whom the accused appellant is alleged to have confessed. PW-3 Bihari Singh has deposed in his examination in chief that when he asked accused Sheesh Ram as to what has happened he replied 'meri galti ho gai, mujhe bachaao'. In cross examination, the witnesses has deposed that accused told him that he has committed wrong. The witness further deposed that he did not ask the accused as to what wrong he has committed. PW-4 Haribux has deposed in his statement that when he and Bihari Singh reached the quarter of the Pramila, where accused was sitting on a cot having. Pramila in his lap. The accused left Pramila on the cot and told them 'galti ho gai, mujhe bachaao'. In cross examination, the witness has deposed that he did not ask the accused as to what wrong he has committed. On the contrary, no question as to what exactly the accused appellant confessed was put to these witnesses on behalf of the

prosecution.

17. The prosecution has also examined PW-14 Samunder Ram and PW-15 Pit Ram before whom the accused confessed that he has murdered his wife by administering poison/since these two witnesses had made statements before the police, which are Ex.P.8 and P.9. Suffice it to say that these two witnesses have not at all supported the prosecution and have been declared hostile.

18. The analysis of the above evidence leads us to draw the only conclusion that mere disclosure by the accused appellant before PW-3 Bihari Singh and PW-4 Haribux that he has committed wrong and that he should be saved is, in our considered opinion, cannot at all be termed to be 'confession' made by the accused so as to infer that he is the person who has murdered his wife by administering poison. The confession by an offender as to the commission of crime must be inspecific and clear terms and the prosecution must establish it by adducing cogent and reliable evidence.

19. Now we come to the third circumstance as to the motive. To prove this circumstance, the prosecution has examined PW-5 Dharampal, PW-7 Kamla, PW-8 Rajbala PW-9 Smt. Nimmo and PW-10 Jagmal Singh. We have carefully examined the evidence of these five witnesses. PW-5 is the brother of deceased Pramili, He has deposed that his sister Pramila used to remember her first husband Dilbag Singh. After his death, she received a sum of Rs. 60,000/-, which she got deposited in her fixed deposit account. According to this witness, Sheesh Ram wanted that she should give this amount to him and for that, accused used to threaten her. This witness was examined under Section 174 Cr.P.C. and his statement has been exhibited in evidence as Ex. D9. A perusal of his statement Ex.D.9 shows that there is neither any mention about the alleged demand of Rs. 11000/- or any FDR or any demand of scooter nor there is any mention about threat by the accused. On the contrary, it has specifically, been stated in the portion marked 'C to D' that Ms sister, never informed-about her harassment either by her husband or by any other, person. Portion 'E to F' of his statement is also relevant, which shows that the witness had no doubt in his mind, against any person including the appellant as to the death of his sister. Similarly, even in the

first information report, Ex.P5 lodged by this witness himself, there is none of the allegations stated above. He could not explain the above mentioned omission in his police statement Ex.D.9 and the report Ex.P.5.

20. PW-7 Kamla, a colleague of the deceased has stated in her statement before the Court that deceased Pramila was having mental peace and used to remain sad. Pramila had disclosed that accused Sheesh Ram used to demand a scooter, Rs. 11000 and the amount of Rs. 60,000, which was lying in his fixed deposit account. However, on a perusal of her statement recorded by the police, Ex.D-4 shows that there is no such allegation against the accused appellant.

21. PW-8 Smt. Rajbala, another colleague of the deceased has deposed that deceased used to tell her about quarrel and beating by accused Sheesh Ram with her. The deceased had further told her that Sheesh Ram would kill her by administering poison. The witness deposed that Sheesh Ram demanded money which she had received on account of death of her husband Dilbag Singh and which she had deposited in her fixed deposit account. According to this witness, the accused also asked the deceased to make him available a scooter and Rs. 11000/- from her parents as he had received the same on his engagement, else he will kill her. Her statement has also been exhibited as Ex.D.5. There is no mention of any demand by the appellant in Ex.D.5 and that this witness could not explain this material omission.

22. PW-9 Nimmo is none other but the mother of deceased Pramila. She has deposed in her court statement that when she asked her daughter about her being disturbed, her daughter informed that Sheesh Ram threatens her to give Rs. 60,000/- , a scooter and Rs. 11,000/-, else he would kill her by administering poison. In her cross examination the witness has stated Pramila used to deeply remember Dilbag Singh. Dilbag Singh all the times was on her mind. Pramila used to say that he has died, Why she has not died. Pramila was telling that it would be better if she dies. She was not happy with Sheesh Ram to the extent she was happy with Dilbag Singh. The demand of Rs. 60,000/-, 11,000/- and a scooter by the appellant do not find place in her police statement, Ex.D.6 and she could not explain these material omissions.

23. PW-10 Jagmal Singh is the father of deceased Pramila. This witness has also levelled allegations against the appellant as regards the demand of Rs. 11,000/-, the amount lying deposit in the FDR of the deceased and the scooter with a view to prove that appellant had motive to murder Pramila. This witness was also examined under Section 174 Cr.P.C. and his statement was produced in evidence as Ex.P. 10, a perusal of which shows that there is no such allegation against the appellant. On the contrary, the witness at portion 'C to D' has categorically stated that Sheesh Ram was residing with his daughter in a quarter and that his daughter never complained of any kind against her husband.

24. On scrutinizing the above evidence, we find that most of the witnesses have tried to improve their earlier stand when examined in court as is clear that there was nothing against the accused from their side up to the stage of investigation in their statements either Under Section 161 or Under Section 174 Cr.P.C. to suggest that accused ever demanded either in cash or in kind so as to infer that Pramila was subjected to harassment or torture by the appellant and that was the motive behind the crime. Thus, the testimony of PW-6, PW-7, PW-8, PW-9 & PW-10 cannot be said to be worthy of credence and cannot be believed to establish the motive behind commission of crime by the accused appellant. The trial court, in our view has seriously erred in relying upon the evidence of these five witnesses in recording a finding as to the guilt on the basis of motive.

25. The last circumstance relied upon is the conduct of the accused appellant. From the evidence on record, it is established that accused appellant himself immediately informed PW-1 Bhagwan Singh about her wife falling seriously ill. When other witnesses reached his house, he was sitting there and Pramila was lying in his lap. He himself took his wife to the hospital for her treatment and at that time he was weeping. The conduct of the accused appellant appears to be natural and cannot be said to be abnormal.

26. As stated above, in a case of murder by administering poison, the Court should carefully scan the evidence and determine the four important circumstances referred in the earlier part of this judgment.

27. The first circumstance in the sequence need to be proved is that the accused had motive to administer poison to the deceased. We have already recorded a finding that the prosecution has not been able to prove that the accused appellant had a clear motive so as to done away with the life of his wife by administering poison.

28. As regards the second circumstance that the deceased died of poison said to have been administered by the accused appellant, we have scanned the relevant evidence. PW-18 Dr. G.R. Tanwar who conducted autopsy on the body of deceased opined that the cause of death will be given after the receipt of chemical examination report. On chemical examination, the portions of viscera (1-6) and washing of Ex.7 and Ex.12 from packets marked A, B, A & F gave positive tests for the presence of monocrotophose insecticide (an organophosphornous insecticide). The doctor in his statement has stated on the basis of chemical examination report Ex.P.12 that monocrotophose insecticide was sufficient in the ordinary course of nature to cause death. Thus in our opinion, it is proved on record that deceased Pralima died of monocrotophose insecticide.

29. It is true that deceased died of poison, but this circumstance alone is not sufficient to prove guilt against the appellant unless it is proved that accused had poison in his possession and that he had an opportunity to administer the poison to the deceased. On a very careful scrutiny of the evidence we do not find anything on record to infer that accused had in his possession the poison. It is crystle clear that the prosecution has not been able to collect the evidence to prove that the accused appellant had poison in his possession.

30. Judged thus, we are firmly of the opinion that prosecution has not been able to prove any of the conditions precedent in a case of murder by administering poison, Except that the accused was seen in the company of deceased Pramila during the night intervening 13/14.7.1993 when this ill episode happened, ultimately resulting into death of Pramila, nothing is proved by the prosecution. Needless to say, it was absolutely natural that accused appellant was present with the deceased at the relevant time, as he being her husband.

31. There is one more lacuna, which makes the prosecution case doubtful. It may be noted that vide Ex.P.2, Shri Narendra Soingh, inter-alia, seized and sealed two glasses used for tea from the place of incident and affixed seal. Mark 'F' was put on the sealed packet. PW.2 Prabhati Lal and PW.3 Bihari Singh have certified the seizure of two glasses. Thereafter, he sent the seized items including a packet marked 'F' containing two glasses to the Superintendent of Police, Sikar vide his letter dated 28.7.1993 with the request to transmit the same to the Forensic Science Laboratory for chemical examination. A perusal of letter Ex.P. 14 shows that there is a clear mention of two glasses in packet 'F'. The seized articles including the glass were sent to the Forensic Science Laboratory vide letter dated 30.4.94 Ex.D. 13 of the Superintendent of Police, Sikar. A perusal of Ex.D.13 shows that there is a mention of only one glass at serial No. 7 Ex.P. 12 is the report of chemical examination, which also contains description of the articles received for chemical examination from the office of Superintendent of Police. Under the head of description of articles, at item No. 12 it is mentioned that one glass used for drinking tea was received in the Office of Forensic Science Laboratory. That apart, it would also not be out of place to mention that the investigating Officer has not cared even to collect the finger prints on the glasses seized by him so as to prove that accused appellant has taken use of the same. In the light of these facts, the possibility of tampering with the seal affixed on the packet marked 'F' containing two glasses cannot be ruled out and it cannot also be said that the glass sent for chemical examination was the same which was recovered from the place of incident.

32. It is proved that there is no direct evidence on two points. Firstly, the prosecution has not been able to lead evidence that the accused had secured the poison from a particular source, and secondary that there is no direct evidence to prove that the accused appellant administered poison to his wife Pramila. However, it is not necessary to prove each and every fact by a direct evidence. The circumstantial evidence can be a basis for proving this fact. In the instant case, on the basis of circumstantial evidence, the prosecution has been able to prove the fact of presence of the appellant with his wife at the relevant time and the fact that she died of poisoning.

33. The circumstance of last seen having been proved by the prosecution alone is not sufficient to lead to the conclusion that it was the accused appellant who was guilty of commission of crime. We are fortified in our view by the observations of the Apex Court in *K. Sukumaran v. State of Kerala* (2). The relevant observations are quoted below :

'If that circumstance is excluded from the purview of consideration then the other circumstances proved by the prosecution evidence can only go to the extent that the accused and the deceased were seen together on 16.2.1991 at 6.15 P.M. That circumstance alone cannot lead to the conclusion that it is the accused who is the perpetrator of the crime in question, in the aforesaid premises, it must be held that in the circumstances established it cannot be said that the charge of murder against the accused appellant has been proved beyond reasonable doubt. Therefore, the conviction and sentence against the appellant are set aside and he is acquitted of the charge levelled against him.'

34. From the facts and circumstances of the case, it comes out that there is no evidence connecting the appellant with the crime or at least for drawing an inference that he administered poison or whether he purchased the poison from any shop or that he mixed the poison with tea and then administered to his wife. In other words the main link in the chain of circumstances is completely broken and there is no connecting evidence whatsoever worth mentioning incriminating the appellant with the crime in question. Dealing with a case involving more or less the facts similar as that of the present case, the Supreme Court in *Swinder Singh v. State of Punjab* (3), has observed as under :

'We see no reason to depart from the above conclusion arrived at by the High Court. In the hospital the appellant has given his name as the person who brought the deceased in drunken condition, Barring the above circumstances, there is no other evidence connecting the appellant with the crime or at least for drawing an illation as to whether he gave alcohol or whether he purchased any poison from any shop or whether he mixed any poison with alcohol and administered it to him. In other words, the main link in the chain of circumstances is completely broken and there is no connecting evidence whatsoever worth mentioning incriminating

the appellant with the crime in question.

35. Their Lordships of the Supreme Court further observed :

'It is no doubt true as we have pointed out earlier that there is a strong suspicion against the appellant, but as pointed out by this court in *Pabitar Singh v. State of Bihar* (1972) 3 SCC 354 : (AIR 1972 SC 1899) although there may be grave suspicion against an accused person, still the prosecution is bound to establish facts from which the Court can reasonably arrive at a conclusion that the offence was committed by the accused. It may be recalled that this Court repeatedly observed that the suspicion however grave cannot take the place of legal proof.' It is a settled proposition that in a case where two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt.

36. It is a settled proposition that in a case where two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In the case in hand, the resultant position of the above discussion is that there may be two possibilities, namely (i) the deceased died on poison administered by the accused appellant and (ii) the deceased might have committed suicide if it is considered in the light of the evidence of PW-5 Dharampal, PW-7 Kamla, and PW-12 Nimmo. We have already discussed the evidence of these important witness. From their evidence it becomes clear that deceased's earlier husband Dilbag Singh was all the time in her mind and she used to remember him very often. It appears that she had not been able to forget the time spent with her husband late Diibagh Singh and that she was not happy with her husband, the present appellant. On the contrary, her husband, as it appears from the evidence, was suspicious about her character and that was another reason of dispute and quarrel between the deceased and the accused. Thus, in the light of the law laid down by the Apex Court, we must hold that keeping in mind the mental state of affairs of the deceased, the possibility of the deceased having committed suicide being strong as compared to the possibility of accused having administered poison, the accused must get the benefit of doubt.

37. The result of the above discussion is that this appeal must succeed. It is accordingly allowed. The accused appellant is entitled to the benefit of doubt and he is acquitted of the offence charged with. The judgment of conviction and sentence passed against the appellant is set aside. The accused appellant is in jail and he be set free forthwith if not required in any other case.

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