

Swarna Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Apr-11-1994

Reported in : 1994CriLJ3656

Judge : Bhawani Singh, Acting C.J. and; Lokeshwar Singh Panta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 302; ;Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Criminal Appeal No. 204 of 1992

Appellant : Swarna

Respondent : State of H.P.

Advocate for Def. : Shyama Dogra, Dy. Adv. General

Advocate for Pet/Ap. : Jagdish Vats, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Lokeshwar Singh Panta, J.

1. This appeal from jail is directed against the judgment and order dated 19-9-1992 passed by the learned Sessions Judge, Chamba, exercising the powers of Additional Sessions Judge, Una, in Sessions Case No. 1/92/91, whereby the

accused was convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs. 5000/-. In default of payment of fine, the accused has to suffer imprisonment for a period of six months.

2. The facts of the case, briefly stated are as under:-

Laxmi Devi eunuch was living at Gagret, and Hans Raj had taken one room on rent from her and was living there along with his family members. Laxmi Devi got a paralytic attack six months prior to the occurrence and she was looked after by the family members of Hans Raj and other tenants and neighbours vipan Kumar son of Hans Raj used to sleep in the room of Laxmi Devi to extend help to her to go to toilet etc. Swarna accused had come to Gagret on 12-8-1991 and was staying with Laxmi Devi in her room. Laxmi Devi used to say to her tenants and neighbours that accused Swarna was her Chela. On the day of occurrence i.e. 16-8-1991, the accused and Vipin Kumar were sleeping in the room of Laxmi Devi and at about 11.30 p.m. electric supply of the rooms of Hans Raj and Laxmi Devi Went off and fan was also stopped. Hans Raj got up to find out the reason for the non-supply of the electricity. The electric connection in all the three rooms including the room of Laxmi Devi was from her room, Hans Raj shouted as to who had switched off the light and came out of his room. The accused also came out of the room of Laxmi Devi. Mirasi Kaila who was sleeping in the court-yard of the house replied that he had not switched off the light. Immediately, the accused ran away from the scene of occurrence, Hans Raj went to the room of Laxmi Devi, switched on the light of her room and found her lying on her cot with blood oozing out of her mouth and her neck was tied with Parna (piece of cloth). He raised an alarm that Swarna had run away and he be apprehended. Thereafter, Hans Raj came out on the road, called Kanta living nearby and asked her to see Laxmi Devi if she was alive or dead and he himself proceeded to apprehend the accused. He was followed by Vinod Kumar and one Rajinder Kumar and they apprehended the accused near the barrier, brought him to the house of Laxmi Devi and in the way Kanta Devi's husband Ramesh Chand also met them. When they reached the house of Laxmi Devi along with the accused, they found Kanta, Vipin Kumar, Kaila and Dr. Anil Kumar present at the house of Laxmi Devi who informed them that Laxmi Devi

was dead. Hans Raj deputed his son Vipan Kumar to go to Amb for informing the relatives of Laxmi Devi, namely, Shanker Dass and he himself went to Gagret for informing the police. On the basis of information supplied by Hans Raj the First Information Report (Ex. PA) was recorded and investigation commenced. Sub Inspector Roda Ram, Station House Officer, Police Station, Gagret went to the scene of occurrence at about 2 a.m. and due to night time, he started the investigation in the next morning. He filled the inquest Report (Ex. PE) and thereafter arranged to send the dead body of Laxmi Devi to the hospital for autopsy. The investigating officer prepared site plan (Ex. PM) recovered one ear ring (Ex. P1) near the cot and took the same in possession through recovery memo (Ex. PB). He recorded the statements of the witnesses and arrested the accused. During the interrogation, on 19-8-1991 the accused made disclosure statement (Ex. PC) in the presence of Punch witnesses, namely, Shankar Dass and Karam Chand. On the basis of the disclosure statement gold chain (Ex. P2) wrapped in a handkerchief was recovered at the instance of the accused from a Bhatti near old Bus Stand, Gagret. After completion of the investigation, charge-sheet was laid before the Sub-Divisional Judicial Magistrate, Amb, who committed the same to the Court of Sessions Judge, Una and ultimately the case was assigned to the Additional Sessions Judge, for trial.

3. The accused pleaded not guilty to the charge and claimed to be tried. He contended that the murder was committed by PWs Hans Raj and Vipan Kumar and he was falsely involved by these two persons and other witnesses in this case.

4. There is no direct evidence to the incident. The prosecution case rests on circumstantial evidence. In recording a finding by the learned trial court for basing the conviction, six circumstances were taken into consideration:-

(1) Direct evidence of the witnesses that the accused was sleeping in the room of the deceased on the night of incident and tried to run away in the night; (2) corroborative evidence regarding recovery of chain belonging to the deceased at the instance of the accused; (3) other evidence about the recovery of earring belonging to the deceased found lying in her room and also blood coming out of

right ear of the deceased; (4) medical evidence; (5) motive; and (6) plea of false implication of the accused though according to his explanation the murder was committed by PWs Hans Raj and Vipan Kumar.

5. The law as to the circumstantial evidence for the purpose of basing the conviction is no longer *res integra*. If the conviction is to be based on the circumstantial evidence, the circumstance must be such that it is the accused and none else who committed the offence. It must be categorically shown from the evidence that the circumstances lead to the irresistible conclusion that it was the accused who was responsible for causing death of the deceased.

6. The prosecution has placed strong reliance on the evidence of Hans Raj (PW 1), Mirasi Kaila (PW 2), Vinod Kumar (PW 3), Shanker Dass (PW 5) and Vipan Kumar (PW 8), besides evidence of Sub Inspector Roda Ram (PW 17), medical evidence and evidence of the recovery witnesses, namely, PW Shanker Dass and Karam Chand (PW 16). There is no dispute as to the death of the deceased Laxmi Devi. The post mortem of the dead body was conducted by Dr. H. R. Sharma (PW 9) on 17-8-1991 and he found the following injuries:-

Observations.

(1) Dry clotted blood on right side face, neck and right ear, rigor mortis was present, post mortem staining on that was present, synosis was present, eyes and mouth closed.

Injuries'.

(1) A bruise right side neck 3'1/2' below the right pinna in around the neck size 3 cm. long on dissection muscular layer infiltrated with blood. The bruise was 1/4th cm. broad. Multiple superficial abrasions in the thyroid area anterior side a bruise of dark colour 1' lateral to the right angle of the mouth underneath muscle infiltrated with blood. Dark colouration lateral orbital area right eye. Underneath bones of these injuries was normal.

7. According to the report (Ex. PJ) of the Doctor, the cause of death was asphyxia due to respiratory failure. He admitted that a person suffering from paralytic attack

can die due to insufficient circulation of blood, but according to his opinion it was not so in this case. He also stated that the death was suggestive of throttling and not because of strangulation since there was bruises on the neck on the front side. He denied the suggestion of the defence that the injuries in the present case could be caused if the patient suddenly got up and had a fall. It is clear from the medical evidence that the deceased died a homicidal death.

8. Now the only question is whether the prosecution has been able to prove beyond reasonable doubt that it was the accused who caused the death of he deceased. In this regard, we may first of all turn to the evidence of material witnesses. In order to prove the first circumstance against the accused, the prosecution has examined Hans Raj (PW 1) who was a tenant living in the same house in which the deceased was living and his son used to sleep in the room of the deceased since she had a paralytic attack. He stated that at about 11-30 p.m. when he was sleeping in his room, the electric supply went off, the connection of which was in the room of the deceased and when he came out, he was told by Mirasi Kaila (PW 2) that the latter had not switched off the light. At that relevant time, he saw the accused running from the room of deceased. He went inside the room, switched on the light and found Laxmi Devi lying on the cot/bed with blood oozing from her mouth with one Parna tied over her neck. He called Kanta (PW 4) and asked her to remain in the room of Laxmi Devi and himself followed the accused in the company of Vinod Kumar (PW 3) and Rajinder Kumar and the accused was apprehended by them near the barrier. He was brought back and was made to sit in the court-yard. His son Vipin Kumar (PW 8) was sent to inform the relatives of the deceased. He himself went to the police station Gagret to lodge the F.I.R. which was thumb marked by him.

9. The next witness is Mirasi Kaila (PW 2). According to this witness, he had come to Gagret and was staying in the house of the deceased to help her to earn her livelihood and used to sleep in the court-yard while PW 8 used to sleep in the room of the deceased. He stated that the accused was staying with the deceased since 12-8-1991 and used to massage her. When the light of the room of PW- Hans Raj went off, he opened the door and came out of his room and at the same time the accused also opened the door of the room of the deceased and ran away.

PW-Hans Raj switched on the light of the room of the deceased and found blood coming out of her mouth. An alarm was raised by PW 1 that the accused had killed Massi and he be apprehended. He could not follow the accused he has a weak eye-sight and PWs-Hans Raj and Vipin Kumar went to apprehend the accused who was apprehended near the barrier and was brought to the house of the deceased.

10. Vinod Kumar (PW 3) a tenant of the deceased on the top floor corroborated the version of the PWs 1 and 2. He stated that he along with his brother Rajinder Kumar and PW-Hans Raj followed the accused and apprehended him near the barrier. He also noticed blood coming out of the mouth of the deceased Laxmi Devi and her ear was injured and her earrings and gold chain were missing. Kanta (PW 4) was living just next to the house of the deceased. She has fully corroborated the version of PW 1. She stated that she was called by PW 1 by raising an alarm and when she went inside the room of the deceased, she saw Laxmi Devi lying on the bed with blood coming out of her mouth. She awakened PW 8, sent him to the doctor and doctor Anil Kumar (PW 10) came on the spot who declared Laxmi Devi dead. According to her also the accused was apprehended by PWs Hans Raj and Vipin Kumar etc.

11. Shanker Dass (PW-5) is the relative of the deceased. He came to the spot on being informed by PW-8 during night that his Massi had been killed by the accused. He also noticed that the ear-rings and gold chain of the deceased were also missing. Vipin Kumar (PW-8) is the son of PW-1 who was sleeping in the room at the time of occurrence. He was awakened by PW-4 and went to call the doctor and also informed PW 5.

12. Shri Jagdish Vats learned counsel appearing on behalf of the accused has pointed out some minor contradictions in the testimonies of the witnesses. The first contradiction pointed out is that PW-5 deposed that PW-8 had come on a cycle to call him. However, according to the doctor (PW-10) 3-4 persons had gone in a van or vehicle with PW-8 to call some persons from Amb but he did not know their names. However, this contradiction is of minor nature and the doctor was called to see if the injured was dead or alive and' he could not be expected to keep an

account as to whether PW-8 had gone on cycle alone or with some other persons. The second contradiction pointed out is that PW-2 has stated that sometime prior to the occurrence the deceased had gone to Phillaur to bring him and others and she came back alone, whereas PW-1 has stated that he had accompanied the deceased when she went to Phillaur. The mere fact that there is some contradiction of this nature, it does not affect the merits of the case since it does not relate to the occurrence in question and does not improve the defence version.

13. The learned counsel has next condemned the unnatural conduct of Vipin Kumar (PW-8). According to his submission, PW-8 remained sleeping in the room even when the alarm was raised which clearly proves that he was privy to the commission of the offence and has deposed falsely against the accused. This contention of the learned counsel is not acceptable. This witness is a boy of about 16 years old. He stated that he was sleeping in the room and was only awakened by PW-4. There is nothing on record to show that the deceased raised cries when she was killed. Alarm was only raised by his father in the court-yard who immediately called PW-4 and himself proceeded to apprehend the accused followed by other persons. PW-4 categorically stated that it was she who awakened PW-8 forcibly when he was sleeping in the room. It has come in evidence that this witness was looking after the deceased properly and was helping her in her day to day routine matters such as taking her to toilet etc. It has also come in evidence that his father PW-1 was also sincerely looking after the deceased and giving her food etc., during her ailment besides the deceased was being looked-after by her tenants and neighbours and she had no cause to complain about their conduct and behaviour. It has come in evidence of PWs 1 and 4 that the meals etc., used to be supplied to the deceased by the tenants as well as neighbours as she was suffering from paralytic attack. The fact that the accused was staying in the room of Laxmi Devi since 12-8-1991 has been admitted by him in his statement recorded under Section 313, Cr. P. C. He was present in the room at the time of the murder of the deceased and was seen running by PWs 1 & 2 and further was apprehended by PWs at the barrier as stated above. We have carefully gone through their evidence. After perusing the evidence of these witnesses, we are left with the impression that they are truthful witnesses. They have given evidence in a straightforward manner and remained

unshaken in cross-examination. We are unable to discover any reason to discredit their testimony. The evidence of these witnesses clearly established that the accused was seen running in the night from the place of incident and later on apprehended at short distance by some of the witnesses.

14. The second circumstance about the recovery of gold chain at the instance of the accused has been proved by Sub-Inspector Roda Ram (PW-17) and recovery witnesses, namely, Shanker Dass (PW-5) and Karam Chand (PW-16). The recovery witnesses have clearly stated that the accused made the disclosure statement (Ex. PC) stating therein that after taking away the gold chain of the deceased, he had put the same in black cloth in a Bhatti near old bus Stand, Gagret. This statement was thumb marked by the accused. The chain (Ex. P2) was identified by PW-5 belonging to the deceased which she used to wear. It has come in evidence that the chain (Ex. P2) was got prepared from Surinder Kumar (FW-11) by PW-5 relative of the deceased. PW- 1 stated that on 19-8-1991 he was present at Bus Stand Gagret, where PW-5 came in a Gypsy and asked him to identify the chain. Chain was brought out from Bhatti and he identified the same having been prepared by him earlier. This witness is working as goldsmith for the last many years and there is nothing in his statement to show as to why he is deposing falsely to favour the prosecution. It has come in evidence of PWs Hans Raj, Vipin Kumar, Kanta and Shanker Dass that the gold chain which was put by the deceased in her neck was found missing after her murder. The learned counsel appearing on behalf of the accused has submitted that it is quite improbable that the accused would try to hide the chain at a distance of 160 yards from the place of incident when he was being followed by Hans Raj (PW-1) and other witnesses. We find no substance in this submission. There is nothing unnatural if the accused who had committed the murder and was in possession of gold chain had tried to conceal the same before he could be apprehended. The prosecution has proved by cogent and reliable evidence that the gold chain belonging to the deceased was recovered at the instance of the accused which he concealed while running from the place of incident.

15. The third circumstance is the other evidence produced on record by the prosecution. It has come in evidence of PWs 1, 2 & 4 that blood was coming out of

the ear of the deceased and her earrings were also missing. This is also corroborated by the medical evidence that the dry clotted blood was on the right ear of the deceased. One of the earrings (Ex. P1) was recovered by the police at the door near the cot which fact was corroborated by the evidence of Ashok Kumar (PW-6), a witness of recovery in whose presence (Ex. P1) was taken into possession and also by the statement of PW-17 who recovered the same. This Evidence shows that the accused robbed the deceased in the darkness after killing her

16. The medical evidence as discussed above shows that the deceased died a homicidal death.

17. The next circumstances is about the motive of the crime. The prosecution has relied upon the evidence of PW-2 who has stated that one day prior to the murder of Laxmi Devi, the accused told him that he would kill/rob her. This witness told him not to do so. It has come in his statement that he had told this fact to the deceased one day prior to the occurrence and the deceased hurled four-five abuses to him and said that her chela could not do so and upon this he kept silent. No other witness has stated in this regard and the motive sought to be established was to rob the deceased who according to the evidence on record was a rich lady and used to wear gold ornaments. We find that on the facts of this case, discovery or non-discovery of the motive behind the crime has no importance. Motive is, of course, a relevant factor on which evidence can be given at the trial, proof of which certainly lends additional support to the prosecution case, failure on the part of the prosecution to discover motive would, however, not adversely reflect on the credibility of other evidence adduced to prove the crime if the same otherwise looks cogent and creditable. This is all the more so in cases which depends upon ocular evidence like the instant case. Although this fact was not disclosed to any person by this witness, yet his statement was not shattered in the cross-examination to show that he has deposed falsely or had any reason to falsely state against the accused in this regard with whom he had no enmity. Omission on the part of the prosecution to discover motive is, therefore, in our view of no consequence in the instant case which, as observed earlier, is proved beyond doubt by the ocular evidence and other circumstantial evidence discussed above.

18. The last circumstance is the plea of false implication of the accused since the murder in question according to him was committed by PWs Hans Raj and his son Vipan Kumar to grab her ornaments and money as she was a rich lady. As discussed above, these two witnesses were looking-after the deceased and PW-8 was extending help to her in taking her to toilet etc., and giving food to her since the time she got a paralytic attack. They had been doing so for the last about six months prior to the incident. The accused came only on 12-8-1991 and was staying in the room of the deceased. He was immediately apprehended after the commission of the offence at the barrier. The false implication of the accused by the witnesses was not put to any other witnesses except PWs 1 and 8. It has not been shown that the witnesses were inimical towards the accused. Simply because the prosecution witnesses were tenants or neighbours of the deceased is not sufficient to hold that they had murdered Laxmi Devi and conspired to involve the accused. The accused in his statement has stated that PW-1 was also sleeping in that room on the day of incident. However, a perusal of the statements of the PWs 1, 2 and 8, clearly show that on such suggestion was ever made to these witnesses. In reply to question No. 23, the accused stated that he raised an alarm and deceased Laxmi Devi was crying at that time but no such suggestions were made to any of the witnesses in this regard. The pleas raised by the accused in his defence were never put to the witnesses in their cross-examination. All these pleas appear to be an afterthought which clearly lead to the only inference that these pleas have been falsely taken by the accused. There was no opportunity for PWs 1 and 8 or other witnesses to conspire since they did not lose any time in reporting the matter to the police and apprehending the accused at the barrier. The police came immediately on the spot after half/ one hour of the report. The investigation started immediately on the arrival of the police and the chain was also recovered at the instance of the accused. There is also no such suggestion as to why Shanker Dass the relative of the deceased has deposed falsely against the accused nor any enmity has been shown against other recovery witnesses by the accused. The case of false implication pleaded by the accused has established itself to be a false one. The false explanation was rightly used by the Additional Sessions Judge as an additional link to the chain of events presented by the prosecution.

19. The totality of the evidence and the circumstances relied on clearly establish the guilt of the accused. The learned Addl. Sessions Judge reached the correct conclusion.

20. The appeal is dismissed. The conviction and sentence passed by the learned Addl. Sessions Judge Una, against the accused are maintained.

21. Shri Jagdish Vats was appointed amicus curiae and argued, the case with his usual vehemence. We record our appreciation for the assistance he rendered.

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