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Sher Chand Vs. the State

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Court : Jammu and Kashmir

Decided On : Dec-06-1982

Reported in : 1983CriLJ1482

Judge : Mufti Baha-ud-Din Farooqi, Ag. C.J. and; I.K. Kotwal, J.

Appellant : Sher Chand

Respondent : The State

Judgement :

I.K. Kotwal, J.

1. The appellant was arraigned before Sessions Judge, Bhadarwah, to stand his trial for offences Under Sections 302, 201, 468 and 471 R. P.C. Acquitting him of the offences under Sections 468 and 471 R. P.C. he has convicted the appellant under Section 302 R.P.C. and sentenced him to imprisonment for life and a fine of Rupees 500/-. He has also convicted him Under Section 201 R. P.C. and sentenced him to rigorous imprisonment for a further period of one year and a fine of Rs. 100/-; both the sentences to run concurrently. Whereas the appellant has appealed against his conviction and sentence, the Sessions Judge has made a reference for confirmation of the sentence of imprisonment for life imposed on the appellant. While deciding the case, he has also issued notices to three witnesses for the prosecution and one witness for the defence to show cause as to why they should not be proceeded against for offences under Sections 191, 192 and 193 R.

P.C. Out of them, only one, namely, P. W. Dr. Mohammad Sharif Khan has filed a petition Under Section 561-A Cr. P.C. for expunging the remarks made by the Sessions Judge against him in the judgment as also for quashing the aforesaid proceeding against him. This judgment will dispose of the appeal, the reference, as well as the petition Under Section 561-A.

2. Put briefly, the prosecution story goes like this:

The appellant, a constable in the Central Reserve Police Force was married to one Amar Dei, alias Amrawati, nearly six years prior to the occurrence. A daughter was also born out of this wedlock. For more or less two years, his relations with his wife remained cordial and she lived with him in his parental house. Thereafter, their relations became strained and Amar Dei along with her daughter started living in her mother's house for most of the time. As the appellant had deserted her, so much so that he had not even availed leave for more than two years, Amar Dei called a meeting of the village Baradari, re-, questing it to make suitable arrangements for her maintenance as well as for the maintenance of her minor daughter, some time in the month of September 1977. No decision, could, however, be taken by the members of the Baradari and the meeting had to be adjourned sine die, as they were informed by P. W. Krishan, while the meeting was still going on that the appellant had been seen by him at Doda bridge on that very day. The appellant came to his village in September 1977 and shortly after his arrival there, he also brought his wife to live with him. They lived together for a month or so. Thereafter, he expressed his desire to take her along with him to his place of posting. She, however, insisted that her daughter be also taken along, but the appellant persuaded her not to take the daughter for the time being on the pretext that as soon as suitable arrangements for the lodging and boarding of the entire family would be made, he would come back and bring the daughter as well. Consequently, the daughter was kept with the appellant's mother-in-law, P. W. Sebti, and the appellant along with his wife proceeded to his place of posting, some time in the last week of October 1977. After some time, he started writing letters to his mother-in-law, telling her that he and his wife were hale and hearty and that she had also become pregnant, informing her further that she was busy with knitting garments. Nearly nine months thereafter, he returned home but all

alone. He was asked by P. W. Sebti and others as to why he had not brought his wife Amar Dei along with him. He told them that she had been operated upon at Dibru Garh, as a consequence whereof, she had expired. He also told them that he had cremated her at Delhi on his way back home. This explanation did not satisfy P. W. Sebti, who told him to bring back her daughter's belongings. The appellant went back after a brief stay of four or five days in the village, undertaking to bring back soon all the belongings of his deceased wife. He returned after a week or so but did not bring the belongings. Immedaitely after his arrival in his village this time, he started performing the obsequial ceremonies relating to her death. The suspicion that was already lurking in the mind of p. W. Sebti that he might have either done away with her daughter or might have sold her to some one else, however, deepened as a result whereof she wrote two letters to the Commandant of the appellant, besides sending a couple of telegrams to him, seeking information as to what had happened to the appellant's wife. She was informed by him in writing that as disclosed to him by the appellant, his wife had expired at Udhampur on 29-10-1977, for which the appellant had produced before him her death certificate as well. On receiving this information, P. W. Sebti on 6-11-1977 lodged the FIR with Police Station, Doda. The police registered a case of murder against the appellant and also seized from P. W. Sebti on the very same day, some letters produced by her, which the appellant had, according to her, been writing to her from time to time. During the investigation, leave record of the appellant from his battalion was also seized. The appellant was taken into custody on 8-12-1977 and on his personal search two certificates, i, e. one issued by P. W. Dr. Hafiz Ullah, Medical Sperintendent, District Hospital, Doda and the other issued by P. W. Dr. Mohammad Sharif Khan, Medical Superintendent, District Hospital, Udhampur, along with their certified copies and a few other articles were recovered and duly seized by the police. The appellant was also interrogated on the recovery of the dead body of the deceased. He disclosed that he had concealed it in Nallah Ambhar near Udham-pur. His disclosure statement was duly recorded. The appellant lead the police to that place, but the dead body could not be found there. The police also seized some record pertaining to District Hospital Udhampur and on completion of the investigation, put up a challan against the appellant in the court of Chief Judicial Magistrate, Doda, who committed him to

stand his trial for the aforesaid offences before Sessions Judge, Bhadarwah.

3. During the course of the trial, the prosecution examined a number of witnesses, including Sebti, Prem Nath, Mangat Ram Chowkidar, Dr. Hafiz Ullah, Dr. Mohammad Sharif Khan, Commandant R. N. Sexana and Ghulam Qadir Bhat, the Investigating Officer. Statement of the appellant Under Section 342 Cr. P.C. was also recorded. The defence set up by him was one of total denial. He denied having at all taken his wife along with him to his place of posting, or having written any letter from there to his mother-in-law. He also denied having told her, or for that matter others, that his wife had died at Dibru Garh. He also denied having made any extra judicial confession before P. W. Mangtoo Chowkidar. Two witnesses, namely, Hakam Singh and Mansukh were examined by him in defence. The learned Sessions Judge on consideration of the evidence disbelieved P. Ws. Dr. Hafiz Ullah, Dr. Mohammad Sharif Khan, Ram Krishen, Senior Male Nurse as well as D. W. Hakam Singh that Amar Dei was a patient of epilepsy who had died due to the said disease at Uudham-pur in October 1977 and eventually found the appellant guilty of murdering her on his way to his place of posting. He also found him guilty of having destroyed the evidence of the crime by concealing her dead body in Nallah Ambhar and acquitting him of the other offences, convicted and sentenced the appellant for offences under Sections 302 and 201 R. P.C. as already pointed out.

4. While disbelieving P. W. Dr. Hafiz Ullah, the learned Judge observed:

The certificate of Dr. Hafizullah reveals that it was the husband of Amrawati who was advised to take the patient to All India Institute of Medical Sciences but when the accused was shown to him in the court he said that the husband mentioned in his certificate is not he who is in the dock and the certificate was 'not issued to him. In this state of evidence the certificate Ex. PM issued by Dr. Hafizullah cannot be said to be a genuine document. On the other hand it can be said that the doctor has fallen in line with Hakam Singh who had obtained the certificates in his bid to save the accused from legal punishment. The conduct of doctor is highly deplorable. He appears to have issued the false certificate for ulterior motives.

5. Similarly, while disbelieving P. W, Dr. Mohammad Sharif Khan, he observed:

The only conclusion deducible from the evidence is that the certificate issued by Dr. Khan is not only not genuine but is also faked. It is a matter of great concern that a doctor posted as Superintendent of District Hospital should have acted in the manner narrated by him in respect of the death of a person who I believe was never seen or examined by him. The doctor's conduct is not free from blame and it will not be too much to say that he has for ulterior motives issued the certificate Ex. PA. He has also been like the other doctor highly irresponsible and has abetted in fabrication of false evidence at the instance of Hakam Singh D. W.

6. In holding the appellant guilty, the learned Sessions Judge relied upon the circumstances: firstly that the appellant had taken his wife along with him to his place of posting in October 1977, whereafter she was never seen alive and no explanation was forthcoming from him as to what had happened to her, secondly, that with a view to keeping his mother-in-law, P. W. Sebti in dark about the homicidal death of her daughter, he in the letters, written by him to her, falsely disclosed that she was hale and hearty; thirdly, that more or less nine months after October 1977, he returned to his village alone and on being asked as to why he did not bring his wife along with him, he falsely represented that she had died at Dibru-garh due to an operation; fourthy, that with a view to screening the crime, he on being asked by his Commandant P. W., R. N. Sexana falsely declared that his wife had died on 29-10-1977 in Government Hospital at Udhampur due to epilepsy where he himself had taken her for treatment, and also produced before him her death certificate issued by P. W. Dr. Mohammad Sharif Khan; fifthly, that he with the active help of his brother-in-law D. W. Hakam Singh, succeeded in obtaining two false certificates i. e, one dated 25-8-1978 issued by P. W. Dr. Hafiz Ullah that his wife was a patient of epilepsy and the other dated 31-8-1978 issued by P. W. Dr. Mohammad Sharif Khan that she had died of the same disease at Udhampur on 29-10-1977, sixthly, thai he made a disclosure that he had concealed the dead body of his wife in Nallah Ambhar, and seventhly, that he had motive to kill her inasmuch as, her relations with him and his mother and brother were strained, and ultimately summed up his findings in these words:

The above circumstances are inconsistent with the innocence of the accused. The chain of evidence furnished by the circumstances is complete as not to leave any

reasonable! ground for conclusion consistent with the innocence of the accused. The circumstances unerringly point towards the guilt of the accused and the only conclusion that can be drawn is that the accused has killed his wife Amar Dei in the manner stated by the prosecution. The conclusion will be the same even if circumstance No. 18 is left out of consideration.

X X X X XOn the facts and the circumstances establishes by the prosecution it is proved beyond doubt that accused had taken his wife Amar Dei from his village along with him on the false pretext of carrying her to the place of his posting and had left the child with Mst, Sebti. The intention of accused was to liquidate the wife on account of his hostility towards her. The accused put her to death near Udhampur and thereafter went on writing false letters to his mother-in-law Mst. Sebti for concealing the killing. The accused succeeded in his attempt for more than one year and during this period the most material evidence i. e. corpse of Amar Dei got destroyed. The accused is thus held quilty for offences punishable under Sections 364, 302 and 201 R. P.C. Since my learned predecessor did not frame any charge against accused Under Section 364 R.P.C. no conviction is possible for this offence. With respect to conviction to be awarded to the accused for the other offences it is necessary to hear him on the question of punishment in terms of Section 276(2) Cr. P.C. The counsel for the defence wanted an adjournment for addressing arguments on this point and the adjournment is granted.

The accused has also been charge-sheeted for offences punishable under Sections 468 and 471 R. P.C. but both these offences are not made out on the evidence produced and, therefore, accused is discharged for these offences also.

7. There is admittedly no eye witness to the alleged crime and the case entirely hinges upon circumstantial evidence. It is well settled that conviction can be recorded on the basis of circumstantial evidence alone, provided the circumstances that tend to incriminate are fully established by cogent and reliable evidence, and provided further that they are such as cannot be explained on any hypothesis other than that of the guilt of the accused. In other words, the circumstantial evidence, if it is also consistent with the innocence of the accused, it

cannot be made the basis for his conviction, but can be used against him only if it is inconsistent with the innocence.

8. The primary circumstance that has been relied upon by the learned Sessions Judge to hold the appellant guilty of his wife's murder is the circumstance that after he had taken her along with him from his native village Jodhpur to his place of posting in October 1977, she was never' seen alive. The other circumstance that he was falsely representing to his mother-in-law that her daughter was hale and hearty, or that he had falsely represented that she had died at Dibru Garh during an operation, Or that he had procured perjured evidence to prove her natural death, has been relied upon by him as pieces of corroborative evidence fortifying the inference that the perpetrator of the crime could be none else than the appellant. Mr. Goni, however, assailed this finding and contended that the aforesaid circumstances were neither established from evidence, nor do they conclusively lead to one and one inference only that the appellant has mudrered his wife, adding, that even falsity of defence plea cannot absolve the prosecution from its initial burden of proving the guilt of the appellant beyond reasonable doubt. In any event, argued the learned Counsel, the prosecution itself having placed the other version in regard to her death that the deceased died a natural death due to epileptic attack, by examining as its witnesses Dr. Hafiz Ullah, Dr. Mohammad Sharif Khan and Ram Krishen, the learned Sessions Judge ought; to have acquitted the appellant by giving him the resultant benefit of doubt.

9. The appellant had come to his village in the month of September 1977. He had also brought his wife to live with him there and had stayed in the village for a month or so. While coming to his village in September 1977, he was seen at Doda bridge by P. W. Krishen. That he had stayed in his village for nearly a month and a half thereafter is, among others, proved from the statements of P. W. Gian Chand son of Ram Saran, who also belongs to village Jodhpur. On the expiry of his leave period, he along with his wife had proceeded to his place of posting in the end of October 1977, keeping his daughter with his mother-in-law, P. W. Sebti, the insistence on the part of his wife that she should also be taken along notwithstanding. This is borne out from the statements of P. Ws. Sebti, Prem Nath and Gian Chand s/o Channu. Surprisingly enough, not a single question was put

to these witnesses in cross-examination on these points. That the appellant remained away from duty on leave from 12-9-1977 to 31-10-1977, is also borne out from the statement of P. W. R. N. Sexana, Commandant of the 54th Battalion of the Central Reserve Police Force, to which he belonged. According to P. Ws. Sebti, Prem Nath and Gian Chand s/o Channu, Amar Dei, when she went along with the appellant, was in perfect health. She was never seen alive thereafter. The other important circumstances that must be noticed at this stage are; firstly, that he travelled by train all alone from Jamrau to reach Delhi on 31-10-1977 at roundabout 3 P. M. and secondly, that he had not obtained prior permission to keep his wife along with him at his place of posting and nor had any family quarter been ever allotted to him there. This is proved from the statement of P. W. R. N. Sexana, his railway tickets to and from Jammu and his relevant T. A. bill. These circumstances further go to show that Amar Dei disappeared between the date the appellant had left his village along with her and the date he had boarded the train at Jammu, all alone. It was, therefore, for the appellant to explain as to what else could have possibly happened to her, or where else she could have possibly gone, and in the absence of any such explanation on his part, the court could have legitimately raised the inference that she must have been murdered by him. Recovery of corpus delicti in such a case, as held by their Lordships in Rama Nand v. State of Himachal Pradesh : 1981 CriLJ298 , is not a condition precedent for holding the accused guilty of murder, even on the basis of circumstantial evidence, 'of a clinching and definitive character unerringly leading to the inference that the victim concerned had met with homicidal death'. The deceased was the wife of the appellant, who was under his care and custody and entirely depended upon him for her safe arrival at the place of his posting. The fact that she was last seen travelling with him in October 1977 and was never seen alive thereafter, is undoubtedly a circumstance of such a definite nature, which if not explained on a contrary hypothesis, will certainly lead to the conclusion that. she must have been killed by the appellant.

10. Mr. Goni, however, argued that the circumstance of last seen is not a circumstance of such a clinching nature, which even if not explained on a contrary hypothesis, will unerringly lead to the conclusion that the victim concerned had met a homicidal death. For this, he relied upon two Supreme Court decisions viz.

Mahmood v. State of U.P. : 1976 CriLJ10 and Shan-karlal Gyarasilal Dixit v. State of Maharashtra : 1981 CriLJ325 . None of these authorities supports the contention of the learned Counsel. In the first mentioned case, the circumstance that the appellant Mahmood was last seen with the deceased Dwarka had never been pleaded by the prosecution. On the other hand, the principle circumstance relied upon was that the finger prints found upon the handle of the Ghandasa, the weapon of the offence, tallied with the finger prints of the appellant. Their Lordships, on consideration of the evidence, however, held that this fact did not stand established. Similarly, in the other case, the circumstance that the appellant Shankarlal Gyarasilal Dixit was present in his house when the dead body of Suneeta, the victim of the offence, was recovered from his house, had even though been relied upon against the appellant, yet on reappraisal of the evidence, their Lordships had held that this circumstance did not stand proved, and holding further that even the other circumstances were equally consistent with the innocence of the appellant, had acquitted him of the charge. These decisions are thus clearly distinguishable on facts, and do not support the proposition propounded by the learned Counsel.

11. The conclusion that the appellant murdered his wife is, as already pointed out, further fortified by three more circumstances: firstly, that he made false representations in respect of her from time to time, with a view to concealing the crime committed by him; secondly, that with the same object in view, he produced perjured evidence; and thirdly, that he had a motive to kill her. In so far as the first circumstance is concerned, the prosecution produced a number of letters alleged to have been written by the appellant to P. W. Sebti, wherein with a view to keeping her in dark about the homicidal death of her daughter, he represented that she was pregnant, though still hale and hearty. The appellant denied having written any such letter. Specimen handwriting and signatures of the appellant were obtained during the course of investigation by P. W. Nazir Ahmed Tak, Tehsildar Executive Magistrate 1st class, Doda. These were later on sent to the Handwriting Expert for his opinion. On comparing them with the handwriting of and signatures on three out of all the letters seized by the police from P. W. Sebti, P. W. S. L. Dhar, the Handwriting Expert, stated that the handwriting of the person who had written these letters was similar to the specimen handwriting of the appellant. He

further stated that the signatures of the author of these letters tallied with the specimen signatures of the appellant.

12. Mr. Goni, however, attacked this finding of the learned Sessions Judge on the ground that P. W. Nazir Ahmed Tak had no power to obtain the specimen signatures and handwriting of the appellant under Section 73 of the Evidence Act, when the case was still at the stage of investigation, and (sic) not Section 5 of the Identification of prisoners Act had any application to the facts of the case, because handwriting or signature was not measurement as defined by Section 2 of the Act. There was thus no admitted signature- or handwriting of the appellant, argued the learned Counsel, with which PW. S. L. Dhar, the Handwriting Expert, could have compared the handwriting of or the signatures on the aforesaid three letters alleged to have been written by the appellant. For this, he relied upon two Supreme Court decisions viz. State (Delhi Admn.) v. Pali Ram : 1979 CriLJ17 and State of U.P. v. Ram Babu Misra : [1980]2SCR1067 . These decisions no doubt support the contention of the learned Counsel, but, only to the extent that when, a case is still at the stage of investigation, the court has no power to obtain the specimen handwriting or signature of the accused, under Section 73 of the Evidence Act; Section 5 of the Identification of Prisoners Act having no application at all. These decisions do not go further to say as to what would be its effect on the opinion of the expert, where he has compared the disputed handwriting or signature with the handwriting or signature of the accused, unauthorisedly obtained through court during the investigation. Will that be merely an irregularity not vitiating the opinion of the 'expert, or for that matter, the finding of the court based upon that opinion, unless prejudice has been shown to have occurred to the accused or will such an opinion or finding be vitiated on the ground that the specimen handwriting or signature obtained without authority of law being non est in the eye of law, there will be no admitted handwriting or signature of the accused before the expert to compare it with the disputed handwriting or signature? Answer to this question is not free from difficulty. A court under Section 145 Evidence Act, for instance, is entitled to discredit a witness by taking into consideration his earlier contradictory statement, even though the same has been recorded by a person not authorised to do so by law. (See Ramkishun Sao v. Emperor AIR 1946 Pat 82. 1946-47 Cri LJ 560, State v. pareswar Ghasi : AIR1968 Ori20 , and Anwarali

Sarkar v. State : AIR1955 Cal535 . Still some force is left in Mr. Goni's argument, because whereas Section 145, Evidence Act, does not specifically exclude a previous contradictory statement recorded by a person or tribunal not having jurisdiction to record the same, Section 73, Evidence Act, creates a specific bar against taking the specimen handwriting or signature of the accused when the case is still at the stage of investigation and no power vests in the court at all to obtain specimen handwriting or signature of the accused under Section 5 Identification of Prisoners Act. Be that as it may, even if this part of the evidence is to be excluded from consideration, still there is lot of other evidence to support the finding that the appellant is the perpetrator of the crime.

13. To begin with, when he returned alone after more or less nine months in July 1978, and was asked as to why he had not brought his wife along with him he gave a false explanation that she had expired during an operation at Dibru Garh, whom he had also cremated at Delhi on his way back home. When asked further by P. W. Sebti as to why he had not brought along with him her belongings, in particular, the garments knitted by her, as he had been repeatedly representing to her in his letters, he again told a lie that since he had come without seeking leave from his officer, he would soon go back and bring all her belongings with him. He, after a brief stay, disappeared from his house and again appeared thereafter a week or so. but this time also without bringing the belongings, This is amply borne out from the cogent and unimpeachable evidence of P. Ws. Sebti, Prem Nath, Mangtoo Chowkidar, Gian Chand S/o Channu and Gian Chand S/o Ram Saram. It was at this stage that suspicion of P. W. Sebti about the apprehended foul play deepened. She consequently wrote two letters to P. W. R. N. Sexana, requesting him to tell as to what had happened to the appellant's wife. He sent for the appellant to his office and made enquiries from him in this behalf. The appellant, on 28-9-1978, told the witness that his wife had been ailing, whom he had got treated in the hospital at Udhampur, where she had ultimately succumbed to the disease on 29-10-1977. This was again a blatant lie. There is no reason to doubt P. W. R. N. Sexana that whatever he had attributed to the appellant, was stated before him by the latter. That the explanation which the appellant gave to P. W. R. N. Sexana was false, is further borne out from the fact that whereas the appellant in his statement under Section 342 Cr. P.C. failed to take any positive stand as to

under what circumstances his wife had died, the witness examined by him in defence, namely, Hakam Singh stated that it was not the appellant, but the witness, himself, who had got the deceased treated at Udhampur in the absence of the appellant, where she ultimately expired.

14. It is quite manifest that on every occasion, whenever he had to explain the suspicious disappearance of his wife, the appellant took a false plea. This he obviously did with a view to screening the crime he had committed. The initial burden of proving the guilt of the accused no doubt lies upon the prosecution, but falsity of the plea taken by the accused is also a circumstance that weighs against him in judging his culpability. In saying so I am supported by the following observations made by their Lordships in Shankar Lal's case : 1981 CriLJ325 (supra):

The last circumstance relied on by the prosecution is that the total ignoi ance of the incident pleaded by the appellant is false, and would itself furnish a link in the chain of accusation. We have come to the conclusion that the appellant was not present in the house at the time when Sunita's dead body was discovered. That makes it impossible to hold that the appellant's plea is false. Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused.

15. The last, though not the least important circumstance against the appellant is that he procured false certificates of the illness and death of his wife from P. Ws. Dr. Hafiz Ullah and Dr. Mohammad Sharif Khan. The first in point of time is the one issued on 25-8-1978 by P. W. Dr. Hafiz Ullah and reads as under:

Certified that Smt. Amro Wati W/o Sher Chand R/o Jodhpur Tehsil Doda who was suffering from Grandaman epilepsy, remained under my treatment for the same from 18-6-1977 to 20-7-1977. Her husband was then advised to take her to All India Institute, New Delhi, for further investigation and treatment.

16. P. W. Dr. Hafiz Ullah did not deny authorship of this certificate (Ex. PM), but when questioner whether he had treated the patient as an indoor patient, he replied in the negative and said that he had treated her as a private patient. When further asked as to how he could remember the particulars of a patient whom he had examined nearly ten months before issuing the certificate, he told the court that he used to maintain a personal diary wherein he would enter the particulars of his private patients. He was asked to produce that diary in the court and was also given time for that purpose, but he failed to produce any. When asked to give further details of the patient from his memory, he said that the said Amra Wati was thirty to thirty-five years old and had three issues, as was revealed to him on enquiring about the history of the patient. It is common ground that the deceased had only one issue. Nothing is, however, known about her actual age, though she in all likelihood should have been younger than her husband, who on 12-11-1980 was only 28 years old. Furthermore, the language of the certificate clearly implies that the person who had kept Amra Wati under the treatment of this witness, was her husband Sher Chand, whom the Doctor had advised to take her to All India Medical Institute, New Delhi. But, when asked who that person was, the witness said that he did not remember whether or not that person was the husband of the patient. He, however, categorically said that the appellant who was present in the court was not the person who had brought Amra Wati for treatment to him. Keeping in view these features of the statement of PW Dr. Haflz Ullah, it is not possible to hold that he had at all examined or treated the appellant's wife. The learned Sessions Judge was, therefore, perfectly justified in discarding his statement.

17. The other certificate has been issued by PW Dr. Mohammad Sharif Khan on 31-8-1978 and reads as under:

Certified that Smt. Amrawati W/o' Sherchand R/o Jodhpur Tehsil Doda had acute attack of status epilepticus. She was given all possible remedial measures but expired on 29-10-1977.

How and under what circumstances this certificate came to be issued is to be found out from the statements of P. Ws. Ram Krishen, the Senior Male Nurse and

Dr.. Mohammad Sharif Khan, the than Medical, Superintendent of District Hospital Udhaaapu JV While P. W. Ram Krishan, as he stated, was standing outside his quarter, he came across a person, who was carrying, a female patient on his back. That man asked him to show him the residence of Dr. Khan, so that he could get the patient examined by him. The witness on humanitarian grounds went to the house of P. W. Dr. Mohammad Shrif Khan and: requested him to examine the patient, Dr. Khan examined her and asked the witness to give the patient the life saving injection, which was accordingly given to her. The Doctor then advised that man, who was also accompanied by an old woman and a minor girl, to re move the patient to the hospital. But, soon thereafter that man carrying the patient again met P. W. Ram Krishen in the way and requested him to ask Dr. Khan to examine the patient once again The Doctor examined the patient and: declared her dead. Nearly nine months thereafter, a person came to this very witness again and requested him to ask Dr. Khan to issue death certificate in respect of the female patient whom he had examined in October 1977, as according to that man, he would get death-compensation on production of the aforesaid certificate. He, on humanitarians grounds once again took him to P. W, Dr. Mohammad Sharif Khan. He categorically stated that beyond that he had' no knowledge about anything, whatsoever.

18. To almost the same effect was the statement of P. W. Dr. Mohammad Sharif Khan. He, however, contradicted P. W. Ram Krishen and stated that at both times he had examined the patient not at his own house, or elsewhere, but he had examined her in the verandah of P. W. Ram Krishen. He also contradicted him to the extent that the man whom P. W, Ram Krishen had brought to him for issuing the death certificate did not want the same because he himself would get the death compensation, but wanted it because someone else who was the husband of the deceased, and was employed in the army, would get it. According to this witness, the age of the patient at the relevant time was between 30 to 40 years. He also went to add that P. W. Ram Krishen had with him certificate issued by P. W. Dr. Hans Ullah on the basis whereof he too had issued the certificate, even though P. W Ram Krishen did not say even a word about it. When asked whether the accused present in the court was that person, the witness replied in the negative.

19. The hospital record seized during the investigation also did not reveal that any Amra Wati wife of Sher Chand of village Jodhpur was ever admitted in District Hospital at Udhampur, where she ultimately died on 29-10-1977. The record to this extent, therefore, gives a direct lie to the plea taken by the appellant before his Commandant that he had got his wife admitted in the hospital where she had died a natural death. This certificate was issued at least nine months after the death of the patient. How did P. W. Dr. Mohammad Sharif Khan remember the name and other particulars of the patient, he tried to explain by saying that he had mentioned these details on the basis of the certificate issued by Dr. Hafiz Ullah, which was produced before him by P. W. Ram Krishen. P. W. Ram Krishen, however, expressed complete ignorance about all this. That apart, age of Amar Dei deceased could not be between thirty and forty years. The learned Sessions Judge took all these facts and circumstances into consideration and disbelieved P. Ws. Ram Krishen and Dr. Mohammad Sharif Khan, and rightly so, that they ever came across the appellant's wife.

20. At this stage, it becomes necessary to examine the statement of DW Hakam Singh. The appellant, even though he did not take a positive stand in his statement under Section 342, in regard to the circumstances leading to the death of the deceased, as already noticed, had yet examined this witness in defence to prove by exploiting the statements of P. Ws. Dr. Hafiz Ullah, Dr. Mohammad Sharif Khan and Ram Krishen that the deceased died a natural death at Udhampur. According to him, P. W. Sebti and the deceased's daughter were proceeding to New Delhi when on their way thereto, the deceased had a severe epileptic attack at Udhampur, which proved fatal. He is contradicted by P. W. Sebii, according to whom, the deceased was not suffering from any disease at all but had gone along with the appellant to his place of posting leaving her daughter with the witness. He is belied by yet another circumstance. According to him, the appellant was informed about the death of his wife and on receiving the information he had come to village Jodhpur nearly a month after her death. The record, however, shows that after 31-10-1977 the appellant did not proceed on leave at all till 4-7-1978. The appellant was admittedly a person belonging to armed forces. It is unthinkable that he could have managed to come to his village without obtaining proper leave. That apart, if the deceased had really been advised by P. W. Dr. Hafiz Ullah as far back

as in July 1977 to go to New Delhi, keeping in view the gravity of her condition, then one fails to understand as to why she was not taken there till the end of ' October 1977. And even if this delay is also ignored, then why did not the appellant himself take his wife to New Delhi in October 1977, when he had resumed his duties there on 31-10-1977, on the expiry of the leave period? All said and done, why at all P. W. Sebti would have falsely implicated her own son-in-law, had her daughter really died a natural death The statements made by the appellant and D. W. Hakam Singh that P. W. Sebti had falsely implicated the appellant, because she did not want him to inherit the property of his wife, Araar Dei, are clearly afterthought, for not a single question was put to her in cross-examination whether this was a fact. All this leads to the irresistible conclusion that the deceased was neither suffering from any disease nor had she been ever examined by P. Ws. Dr. Hafiz Ullah and Dr. Mohammad Sharif Khan and nor did she die a natural death at Udhampur on 29-10-1977.

21. This brings me to the last and perhaps the most important argument advanced by Mr. Goni that the prosecution by examining P. Ws. Dr. Hafiz Ullah, Dr. Moh'd Sharif Khan and Ram Krishen having placed two probable versions about the death of the deceased, the learned Sessions Judge ought to have acquitted the appellant by giving him the benefit of doubt, that had thus arisen. Two questions immediately arise for consideration at this stage. These are; (i) Did the prosecution really place two probable versions about the death of the deceased by examining these witnesses and (ii) If so, was the appellant still entitled to any benefit of doubt? Both these questions, in my opinion, have to be answered in the negative. To begin with, the prosecution was never in doubt about the involvement of the appellant in the crime. The circumstance that the two certificates issued by the two doctors evidencing the illness and consequent death of his wife, when in fact she was neither ill, nor did she die a natural death due to any disease, was sought to be used by it as an additional circumstance to prove the guilt of the appellant. This is amply borne out from the following statement contained in the report under Section 173 Cr. P. C: (matter in Urdu omitted -- Ed.). To prove this circumstance, the prosecution cited and examined Dr. Hafiz Ullah, Dr. Mohd. Sharif Khan and Ram Krishen themselves as its witnesses, though more appropriately, it should have proved these certificates by other evidence, or else relied upon the testimony

of P. W. R. N. Saxena before whom these were produced by the appellant, or that of the witnesses to the search list Ex. P XY-2, before whom two such certificates were recovered from the appellant on his search, leaving it to him to examine these witnesses in defence. But, the mere fact that it chose to examine all these persons as its witnesses, will not provide a lever in the hands of the appellant to exploit the situation and tilt the scales is his favour, and nor shall it detract from the power of the court to find out the truth, after sifting the entire evidence as a whole. Where lies the truth, or who has made a true or false statement in the court, to find out the same, is undoubtedly the exclusive domain of the court, for it is the court upon which alone lies the sacred duty of doing justice between the parties.

22. Even assuming that the prosecution examined these witnesses with a view to putting a probable alternative version about the death of the deceased, the question still remains: was the appellant entitled to any benefit of doubt? The doubt of which the benefit is to be given to an accused has to be a reasonable one. Explaining as to what is implied by reasonable doubt, their Lordships in Himachal Pradesh Administration v. Om Prakash : 1972 CriLJ606 observed as under:

The benefit of doubt to which the accused is entitled is reasonable doubt - the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy - though unwittingly it may be - or is afraid of the logical consequences, if that benefit was not given or as one great Judge said it is 'not the doubt of a vacillating mind that has not the normal courage to decide but shelters itself in a vain and idle scepticism.' It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence, if that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether. It is for this reason the phrase has been criticised. Lord Goddard C.J. in Rex v. Kritz (1950) 1 KB 82 at p. 90 said that when in explaining to the juries what the prosecution has to establish a Judge begins to use the words 'reasonable doubt' and to try to explain what is a reasonable doubt and what is not, he is much more likely to

confuse the jury than if he tells them in plain language. 'It is the duty of the prosecution to satisfy you of the prisoner's guilt.' What in effect this approach amounts to is that the greatest possible care should be taken by the Court in convicting an accused who is presumed to be innocent till the contrary is clearly established which burden is always in the accusatory system, on the prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt. This then is the approach.

23. Applying this test to the facts and circumstances of the present case, it is not possible to hold that the state-ments of P. Ws. Dr. Hafiz Ullah, Dr. Mohd. Sharif Khan and Ram Krishen are capable of creating a reasonable doubt in the mind of the court about the involvement of the appellant, entitling him to earn acquittal, for, these are not only replete with inherent improbabilities, but also fail to establish the identity of the appellant's wife, Amar Del To elucidate a little further: can a rational thinking person believe that the deceased would have been taken for treatment to Delhi by D. W. Hakam Singh, when her husband, the appellant was himself present in the village and had himself to go to Delhi, exactly in those very days Or can a rational thinking person believe that P. W. Sebti would have falsely implicated her own son-in-law for the murder of her daughter had she really died a natural death due to some disease Or would the appellant have given false explanation in regard to her death, as late as in July 1978, had she: in fact died at Udhampur due to attack of epilepsy almost nine months earlier Let alone the false representation that he made to P. W. Sebti, in his letters that his wife was quite hale and hearty, I could have posed many other similar questions, but I have deliberately refrained from doing so with a view to obviating any possible prejudice that might be caused to these witnesses, against whom rule nisi for perjury has been issued by the learned Sessions Judge. Suffice it to say, that the statements of Dr. Hafiz Ullah, Dr. Mohammad Sharif Khan and Ram Kri-shen fail to make any dent in the prosecution case, which stands amply proved against the appellant beyond any shadow of doubt.

24. -Adverting now to the other circumstances relied upon by the learned Sessions Judge, the motive for killing the deceased might not have been so strong, still it

cannot be said that the appellant had no such motive at all. His relations with her do not appear to be cordial. She had convened a Baradari meeting, obviously to the annoyance of her husband, to separate his share from his other brothers, and that too against his wish. He had kept her in her mother's house for more than two years, without caring to meet her during the interregnum. All these facts and circumstances show that he was not happy with her. It is not, however, possible to uphold the view taken by the learned Sessions Judge that mere pointing out of the place by the appellant, where he had concealed the dead body of the deceased, was a circumstance that could be considered against him in holding him guilty of murder, even if no recovery of the dead body was made pursuant thereto. Be that as it may, this circumstance and the motive, even if the same are excluded from consideration, still much evidence, as pointed out heretofore, is left to connect the appellant with the crime. He has been rightly convicted and sentenced Under Section 302 R. P C. for murder of his wife. Dead body of the deceased not having been traced, no fault can be found with his conviction and sentence Under Section 201 R. P.C. either. Consequently his appeal fails, which is dismissed accordingly and the reference made by the learned Sessions Judge for confirmation of the sentence of imprisonment imposed on him accepted.

25. This brings me to the petition. Under Section 561-A, What the court is required to see before proceeding Under Section 476 Cr. P.C. is that it is expedient in the interests of justice to hold an enquiry against the accused into any offence referred to in Section 195 (1)cls. (b) and (c) of the Cr. P.C. The Court intending to proceed against the accused is not supposed to express any opinion on his guilt or innocence, which can be determined only at the conclusion of his intended trial. In taking this view I am supported by the observations made by their Lordships in M. S. Sheriff v. State of Madras : [1954]1SCR1144 which read as under:

The High Court has scrutinised the evidence minutely and has disclosed ample material on which a judicial mind could reasonably reach the conclusion that there is matter here which requires investigation in a criminal court and it is expedient in the interests of justice to have it enquired into. We have not examined the evidence for ourselves/and we express no opinion on the merits of the respective cases but after a careful reading of the judgment of the High Court and the report

of the District Judge we can find no reason for interfering with the High Court's discretion on the score.

We do not intend to say more than this about the merits as we are anxious not to prejudge or prejudice the case of either side. The learned Judges of the High Court have also very rightly observed in their order under Section 476 that they were not expressing any opinion on the guilt or innocence of the appellants.

The learned Sessions Judge in the concluding part of his judgment, no doubt said that it was expedient in the interests of justice to hold such an enquiry against the aforementioned three prosecution and one defence witnesses, but earlier to it, he made observations against the two Doctors, reproduced heretofore, which clearly tantamount to expression of opinion on their guilt, He, there can be no manner of doubt, should have refrained from making such observations. Here I have no doubt in my mind that he committed an error. He should have restricted his findings to disbelieving them that they had ever examined the appellant's wife, or that she had died of epilepsy at Udhampur, and proceeded against them in terms of Section 476, after recording his satisfaction that it was expedient in the interests of justice to put them on trial for offences under Sections 191, 192 and 193 R.P.C. These observations were thus clearly uncalled for and are accordingly expunged from the judgment. The petition is, consequently, allowed to this extent.

26. I, however, find no justification for quashing the entire proceeding Under Section 476. I have already confirmed the finding of the learned Sessions Judge that P. Ws. Dr. Hafiz Ullah, Dr. Mohd. Sharif Khan and Ram Krishen never came across the appellant's wife, nor did she die of epilepsy at Udhampur. Whether or not these two Doctors, or for that matter, male nurse Ram Krishen had examined even any other patient before these two certificates came to be issued, or in case they had examined any, then who she was and who had brought her to them, and under what circumstances the Doctors had issued the certificates, are all questions which can be determined only on taking evidence during the proposed trial, if at all ordered. The learned Sessions Judge having already expressed his opinion, undubitably based upon evidence, that it would be expedient in the interests of justice to hold such a trial, it is neither desirable, nor even possible to

quash the proceedings at this stage by presuming everything in favour of these persons. A fair chance shall have to be given to the learned Sessions Judge to prove their guilt as also to them to prove their innocence before the trial Magistrate, in case the prosecution is ordered by the learned Sessions Judge. To this extent, therefore, the petition Under Section 561-A is misconceived which is rejected accordingly. Since the proceeding Under Section 476 has been stayed by this Court, the stay is vacated and the learned Sessions Judge is directed to issue fresh notices to these persons to appear before him for proceeding further in the matter.

Mufti Baha-ud-Din Farooqi, Acting C.J.

27. I agree.

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