

**Shanti Vs State**

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**Court :** Delhi

**Decided On :** Jul-21-2010

**Judge :** Mr. Badar Durrez Ahdmed ; Mr. V.K. Jain. J J

**Acts :** Indian Penal Code (IPC) - Sections 302 , 201; Code Of Criminal Procedure (Cr.Pc) - Sections 161

**Appeal No. :** CrI.A. 260/1997

**Appellant :** Shanti

**Respondent :** State

**Advocate for Def. :** Mr Pawan Sharma, Adv.

**Advocate for Pet/Ap. :** Ms Alpana Pandey, Adv.

**Judgement :**

1. Whether Reporters of local papers maybe allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

**ORDER**

1. This appeal is directed against the judgment and Order on Sentence, both dated 25th February, 1997, whereby the appellant was convicted under Section

302 and 201 of IPC and was sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/- under Section 302 of IPC and was further sentenced to undergo RI for 7 years and to pay fine of Rs.1,000/- under Section 201 thereof. In default of payment of fine, the appellant was sentenced to undergo RI for a period of one year.

2. On 20th November, 1991, Nand Lal, a gang man in Railways spotted a male dead body lying on the railway track near Gurudwara Damduma in Nizamuddin. He informed his superior Shri Mahender Singh, an Assistant Station Master, Railway Station Hazrat Nizamuddin, who, in turn, informed the Police Station, where this information was recorded and was given to ASI Roshan Lal for investigation.

3. On reaching the spot, ASI Roshan Lal found a dead body lying there. The head was found separated from the rest of the body. The dead body was kept in the mortuary.

4. On 21st November, 1997, Chokhey Lal, son of the deceased, came to the police station and identified the dead body as that of his father Om Prakash. The case of the prosecution, as disclosed in the FIR lodged by Shri Chokhey Lal, elder son of the deceased, is that the appellant Shanti Devi, wife of the deceased was having illicit relations with her co-accused Kanwar Pal and that on 19th November, 1991, she brought deceased Om Prakash to Delhi, on the pretext of visiting Holy Family Hospital, where her co-accused Prem Pal, with the help of the another person, strangled him and threw his dead body on the railway track. She also confessed that her co-accused Kanwar Pal had got this work done and before leaving for Delhi she had informed Kanwar Pal, who then had sent her other co-accused Prem Pal and his companion to Delhi. Her younger son Inder Pal also accompanied them. It is also the case of the prosecution that when the appellant returned to Bulandshahr, where she lived with the deceased, without the deceased accompanying her, that aroused suspicion of the neighbours who informed his elder son Chokhey Lal and that during questioning by the villagers, the appellant confessed that her husband had been murdered in Delhi.

5. The prosecution examined 25 witnesses in support of its case. No witness was examined in defence.

6. Besides ocular testimony of Inder Pal, son of the appellant and the deceased, and the extrajudicial confession alleged to have been made by her, the case of the prosecution against the appellant is based upon the following circumstances:

(i) the appellant had illicit relations with her co-accused Kanwar Pal;

(ii) the appellant who was undergoing treatment at Holy Family Hospital brought the deceased to Delhi on 19th November, 1991;

(iii) the appellant was not accompanied by her husband when she returned from Delhi to Bulandshahr;

7. Inder Pal, son of the appellant and the deceased came in the witness box as PW-4 and stated that the appellant had asked his father to take her to Delhi for purchasing medicines. He further stated that they reached Delhi at about 5.00 pm and went to Kurdi (the place where waste/rubbish is thrown), where Kanwar Pal and Prem Pal, both of whom were previously known to him, they having constructed their house in Village Pondri, met them. There, Kanwar Pal strangled his father with the help of an Angochha, who died due to strangulation. Thereafter, both of them kept the dead body of his father on the railway track. He also stated that at the time his father was strangled, the appellant had caught-hold of his legs and she was standing near the railway line when his body was placed on the railway track. According to the witness, thereafter, he returned to their village, with the appellant. He also claimed that in the village, the appellant told the villagers that Om Prakash had drowned in the river.

8. Chokhey Lal, elder son of the appellant and the deceased, stated that Kanwar Pal, who used to come to their house during construction of their house in Village Pondri, had developed illicit relations with the appellant. He claimed to have seen the appellant lying on the cot along with Kanwar Pal and having beaten both of them. He further stated that later the appellant had eloped with Kanwar Pal taking

his younger brother Inder Pal with her. He further stated that his father used to sell chat in Bulandshahr Mandi. According to him, after about one or two months, his cousin Hira Lal came to him at Balki, where he used to reside with his in-laws, and informed him of the murder of his father. He, thereupon, came to Bulandshahr, where he found a number of people of his village having gathered there. On inquiry made from the appellant, she disclosed that she and Kanwar Pal had held his father Om Prakash in their grip and Prem Pal had strangulated him with an angochha and had thrown him on the railway track near Nizamuddin. He also stated that this confession was made after they had scolded and threatened the appellant. He further stated that his younger brother Inder Pal pointed out the place where his father had been murdered, as also the place where his body was thrown on the railway track. Since they could not find the dead body but had noticed bloodstains on the railway track, they went to the police station wherefrom they were taken to the mortuary and the dead body of his father was shown to him.

9. PW-1 Chiranji is the brother of the deceased. He stated that on 21st of the month about ten months before he was examined in the court he came to the house of the deceased in Bulandshahr along with Pritam Chokhey, Budha and some other persons from the village and asked the appellant as to how his brother was murdered. The appellant told them that deceased Om Prakash had jumped into River Yamunaji from the moving vehicle. However, on being threatened and pressed to speak the truth, she told them that Om Prakash was killed by strangulation, by Prem Pal and another person. They then brought the appellant to Delhi. She took them to railway lines near Nizamuddin Railway Station and told them that she had caught-hold of the legs of the deceased Om Prakash while her co-accused Prem Pal strangulated him with an angochha and a third person, with dark complexion, also aided Prem Pal in strangulating the deceased. She also told them that after killing Om Prakash his dead body was kept on the railway track. When they went to that spot, the dead body was not found there. They then came to police station, from where they went to the mortuary, where dead body of the deceased was identified by them.

10. PW-5 Buddha stated that about ten years ago the appellant had come to Delhi for her treatment along with her husband and her son Inder Pal. Next day, the appellant returned to the village along with her son. He was told by the appellant that the deceased had jumped into River Yamuna from the bus. On hearing this, a number of persons from the neighbourhood collected there and the appellant was beaten by them. She then stated that deceased Om Prakash was killed in rail accident. Thereafter, he along with other persons went to Police Station Nizamuddin along with the appellant, where photograph of Om Prakash was shown to them and was identified by them. The police made inquiry from them and the appellant disclosed to the police that she had killed her husband Om Prakash and put him on railway track. She also disclosed that her co-accused Kanwar Pal and Prem Pal were also there at that time.

11. PW-6 Pritam Singh stated that about 4-1/2 years ago, the appellant along with her husband deceased Om Prakash and their son Inder Pal, had come to Delhi for taking medicines. The appellant returned alone to Bulandshahr and raised alarm that her husband had been murdered by someone. When the appellant was asked as to how her husband had been murdered, she did not disclose anything. Thereafter, about 50 persons from the village gathered there and again asked the appellant as to how her husband had been murdered. She then disclosed that her husband had been murdered by Kanwar Pal and Prem Pal and she also agreed to tell them about the dead body of the deceased if she was taken to Delhi. Five/six persons, including him, then came to Delhi along with the appellant. Initially, she took them to different places but did not disclose the place where the body of the deceased was lying. On their repeated persuasions, she took them to the railway lines in the area of Nizamuddin. No dead body was, however, found there, though some blood was noticed by them on the railway lines. On being again asked about the manner in which her husband was murdered, the appellant told them that she and Kanwar Pal had caught hold of her husband whereas Prem Pal put an angochha around her neck and strangulated him with that angochha.

12. PW-7 Tikam Singh stated that on 20th November, 1991 at around 8.00 am one Jwala Ram of the village told him that the appellant had got his brother murdered in Delhi. On hearing this, he came to Bulandshahr along with other villagers and

found the appellant Shanti Devi present at her home with her son Inder Pal. At that time, both of them were weeping. Inder Pal told her that Shanti Devi had caught hold the legs of his father, whereas Prem Pal put his angochha around his neck and Kanwar Pal took his father in his grip. The appellant Shanti Devi, on being asked, repeated the same story.

13. PW-8 Rambir Singh did not support the prosecution and stated only this much that the appellant used to exchange jokes with Kanwar Pal, to which he had objected.

14. PW-9 Radhey is the brother-in-law of Kanwar Pal, co-accused of the appellant. He did not support the prosecution and denied knowing the appellant.

15. PW-11 Hira Lal stated that when he reached the house of the appellant, he found people beating her and asking her about the whereabouts of deceased Om Prakash. This witness is the nephew of the deceased. According to him, the appellant told them that while she was going to Delhi with the deceased, he committed suicide by jumping into River Yamuna. When she was given further beating, she confessed that Om Prakash was thrown by her, Prem Pal, Kanwar Pal and one more person, on the railway track, after killing him. On hearing this, he went to the village Balki, where Chokhey Lal, son of the deceased was living with his in-laws, and told everything to him.

16. PW-14 Onkar Singh stated that in the month of November he found the appellant weeping. Delhi Police was also present there. On enquiry made by him, the appellant stated that she had taken her husband to Delhi where Prem Pal and another person had murdered him by strangulating him. However, in cross-examination by the learned Additional PP, he admitted that police was not present when the appellant made confession implicating herself, Prem Pal and Kanwar Pal.

17. PW-15 Mahinder Verma is the Assistant Medical Record Officer of the Holy Family Hospital. He has proved the booklet Ex.PW-15/A in respect of the appellant and stated that as per record, the appellant had come to the hospital only once on 26th July, 1991.

18. PW-16 Surender Singh stated that about 5 or 6 years ago when he went to Nizamuddin Railway Station, the appellant was present there with the police and she told the police that her husband had been murdered by Kanwar Pal and Brahm Pal.

19. PW-19 Dr. L.T.Ramani is an important witness in this case. He conducted post-mortem on the dead body of deceased Om Prakash and the report prepared by him is Ex.PW-19/A. The following injuries were found by him on the body of the deceased:

"Crush injury across the neck with complete bisection of head with wide band of abrasion all around over the skin. There was no evidence of blood clot in subcutaneous tissues around the crush- injury. (Decapitation was postmortem in nature)

2. Crush injury across both shoulders. The soft tissues around crush injury were devoid of any extravasations of blood.

3. Two abrasions 1/2" and 1/2" each on the left cheek bone area. There was no blood clot beneath. There was no evidence of any antemortem external injury." On internal examination, he noticed the following injuries:- "Scalp tissues showed blood clots over right parietal region. There was depressed fracture of posterior part of right parietal bone and adjoining occipital and across to the left parietal bone. Base of skull was also fractured. All ribs were fractured on both sides and both lungs were punctured. Left kidney was lacerated and other abdominal organs were normal."

He opined that injury to the skull was ante mortem, caused by blunt object and the death was due to craneo- cerebral injury.

20. PW-25 Inspector Jagmal Singh is the Investigating Officer of this case. He stated that on 21.11.1991, Chokhey Lal (PW-10) along with Budha (PW-5) and the appellant came to the Police Post to enquire about the death of his father. He took them to Subzi Mandi mortuary, where they identified the dead body. He then recorded the statement of Chokhey Lal and carried out investigation.

21. In her statement under Section 313 Cr.P.C., the appellant admitted that her husband used to sell chat in Bulandshehr and that they were living in village Pondri. She also admitted that Kanwar Pal had constructed their house in village Pondri. She however, denied having developed illicit relations with him. She denied having come to Delhi with the deceased and having made confession to the villagers. She also denied any involvement in the murder of her husband.

Occular Evidence

22. We would like to first deal with the testimony of PW-4 Inder Pal, who is stated to be eye-witness of the murder of the deceased. According to Inder Pal, the murder of the deceased was committed by strangulating him with an Angochha and he died on account of strangulation. However, the opinion of PW-19 Dr L.T. Ramani, who opined that the death occurred due to craneo-cerebral injury, falsifies the cause of death given by this witness. The learned Trial Judge specifically noted that the observations of Dr Ramani run contrary to the ocular version given by PW-4 Inder Pal and disproves his story that deceased Om Prakash was strangulated by tying Angochha around his neck. He was of the view that though bisection of the neck under a running train on account of the dead body of the deceased having been put on rail track may have obliterated the ligature mark but the symptoms of strangulation would be found in the other organs of the body. He noticed that Dr Ramani did not find blood clot in sub- cutaneous tissues around the crush injury on neck and also observed that the heart was NAD and the abdominal organs were normal. The learned Trial Judge referred to the following symptoms of strangulation given at page 199 in Chapter IX ("Deaths from Asphyxia") of 21st Edition of Modi's Medical Jurisprudence:-

"The lungs are usually markedly congested, showing haemorrhagic patches and petechiae and exuding dark fluid blood on section.....The bronchial tubes usually contain frothy blood stained mucus. The right side of the heart is full of dark fluid blood and the left empty.....The abdominal organs are darkly congested."

Noticing that none of these symptoms had been mentioned in the postmortem report, the learned Trial Judge declined to hold that the death of deceased Om Prakash was caused by strangulation and was of the view that the story of

Angochha having been put around his neck for strangulation could not be believed.

23. The finding of the learned Trial Judge, ruling out strangulation, has not been disputed before us and no material has been placed before us from which we may infer that the deceased was strangled before his body was put on the rail track. As noted earlier, Dr Ramani was categorical in opining that injury to the skull was ante mortem caused by a blunt object and death was due to craneo-cerebral injury. PW- 4 does not say a word about any injury being caused on the skull of the deceased. If the deceased died due to craneo- cerebral injury and was not subjected to strangulation, the version given by PW-4 Inder Pal is totally false and shows that in fact murder of the deceased was not witnessed by him and that is why he has given a false version of the manner in which the deceased was subjected to death. Neither does he say a word about injury to the skull of the deceased nor has the story of strangulation given by him been found to be true. It will, therefore, not be safe to rely upon the testimony of this witness, particularly when the co-accused of the appellant, who also were implicated by this witness have been given benefit of doubt and have been acquitted by the trial court.

24. The learned Trial Judge refused to base the conviction on the basis of this witness considering the infirmities noted by him. He noted that when he was examined in Court on 18.01.1995, he claimed that Prem Pal as well as Kanwar Pal both were known to him, they having constructed their house in village Pondri, but, since this was not the case of the prosecution that Prem Pal was also engaged in the construction of house, this witness, when he was examined further on the next day, changed his previous statement and stated that Prem Pal was not involved in construction of the house. He, therefore, concluded that the witness was under some influence. It would be appropriate to note here that this witness is residing with the sister of the deceased. It was also noticed by the learned trial Judge that at one stage this witness stated that Prem Pal was known to him he having come to their village along with his mother, but in the next breath he stated that he had never seen Prem Pal prior to this occurrence. Noticing that Kanwar Pal was not named by the witness in his statement to the Police, he also felt that since Kanwar Pal was alleged to be the person responsible for the death of his father, the

witness could not have omitted his name at the first opportunity when his statement was recorded by the police on 21.11.1991. It would be pertinent to note here that Kanwar Pal was not unknown to this witness, he admittedly, having constructed their house in the village and, therefore, he could not have described him as an unknown person, when he was examined by the police. In fact, he specifically named Kanwar Pal in his statement under Section 161 of Cr.P.C. when he said that Prem Pal used to come to their house along with Kanwar Pal, who was a regular visitor to their house.

25. When he was examined in the Court PW-4 Master Inder Pal stated that at the time his father was strangled, the appellant had caught hold of his legs. No such averment was, however, made by him in his statement under Section 161 of the Code of Criminal Procedure. In his statement, under Section 161 of Cr.P.C. Inder Pal stated that it was Prem Pal, co-accused of the appellant, who had strangled the deceased. The same was the allegation made in the FIR lodged by his brother Chokhey Lal, but, when he was examined in the Court, Inder Pal claimed that his father was strangled by Kunwar Pal as well as Prem Pal. There was no reference to the third person during his deposition in the Court. In his deposition in the Court, this witness stated that when the villagers asked the appellant as to where her husband was, she stated that he had drowned in the river. However, no such averment was made by him in his statement under Section 161 of Cr.P.C. The contradiction and infirmities found in the testimony of this witness cannot be said to be minor, attributable to loss of memory with the passage of time, and the age of the witness. They go to the very root of his testimony and cast a serious doubt on his truthfulness.

26. The case of the prosecution is that there was a conspiracy between the appellant and her co-accused Kanwar Pal to commit murder of deceased Om Prakash since they were having illicit relations and wanted to get rid of him and it was pursuant to that conspiracy the deceased was brought by the appellant to Delhi, on the pretext of purchasing medicines for her. If the appellant was party to a criminal conspiracy to commit murder of her husband, it is most unlikely that she would have brought her son to Delhi along with her husband. If she had planned murder of her husband, she obviously would not be so foolish so as to bring her

son with them and also take him to the place where the murder was to be committed. She knew it that if she took her son with her to the place her husband was to be murdered, he would be an eye-witness of the murder and there would always be a threat of his spilling the beans and disclosing the incident to other members of the family, the deceased being none other than his father. There was no compulsion on the appellant to bring PW-4 to Delhi. She could as well have brought only her husband with her, leaving PW-4 at home. Hence, the presence of this witness at the time of murder of the deceased was not at all likely in case the appellant was a party to the murder. Taking into consideration the facts and circumstances noted above, we find no reason to take a view contrary to that taken by the learned trial Judge as regards reliability of this witness and feel that his presence at the time of the murder of the deceased is highly doubtful. Hence, the testimony of this witness cannot be used for the purpose of convicting the appellant. Extra-judicial Confession

27. It is trite law that a confession cannot be used against an accused, unless the court is satisfied that it was made voluntarily. Section 24 of the Evidence Act lays down that a confession caused by inducement, threat or promise is irrelevant in criminal proceedings, under certain circumstances. A confession would be irrelevant if the following conditions were satisfied:

- (1) it appears to the court to have been caused by any inducement, threat or promise;
- (2) the said threat, inducement or promise has reference to the charge against the accused person;
- (3) it proceeds from a person in authority; and
- (4) the inducement, threat or promise is sufficient to give the accused person grounds, which would appear to him reasonable, in believing that he would gain an advantage or avoid any evil of a temporal nature, in reference to the proceedings against him.

28. In *Aher Raja Khima v. State of Saurashtra*: AIR 1956 SC 217, the Supreme Court, inter alia, observed as under: "It is abhorrent to our notions of justice and fair play, and is also dangerous to allow a man to be convicted on the strength of a confession unless it is made voluntarily and unless he realises that anything he says may be used against him; and any attempt by a person in authority to bully a person in to making a confession or any threat or coercion would at once invalidate it if the fear was still operating on his mind at the time he makes the confession if it "would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

29. If the facts and circumstance surrounding the making of a confession appear to be casting doubt on its veracity or voluntariness, the court may refuse to use it against the accused even if it is found to be otherwise admissible in evidence. What the court has to see is whether the accused, while making the confession was of free mind or not. No doubt a free and voluntary confession deserves the highest credit since it is presumed to flow from a sense of guilt in the accused, but if it is tainted by inducement, promise or threat, that would be enough to exclude the confession from consideration. The inducement may take the form of a promise or a threat and often it involves both, a promise to the accused to forgive him if a disclosure was made by him and a threat to punish him if the disclosure was not made. The promise is attached to making the confession, whereas threat is attached to the silence on the part of the accused. If the inducement, promise or threat extended to the accused, tend to give him reasonable grounds to believe that by making confession he would gain any advantage or avoid an evil that would be enough to exclude the confession from consideration.

30. In *Sibu Ganjhu vs. State of Jharkhand*: 2004 Cr.L.J. NOC 35, an extra-judicial confession was alleged to have been made by the appellant after he was apprehended and assaulted by the villagers. The confession was held to be involuntary.

31. We find that the learned Trial Judge himself noted a number of contradictions and discrepancies with respect to the alleged confession and in fact he refused to

base the conviction of Kanwar Pal and Prem Pal on the basis of this confession. As noted earlier, according to PW-1, the appellant, who initially claimed that Om Prakash had jumped into river, was threatened and pressed to speak truth before she stated that he was killed by strangulation by Prem Pal and another person. PW-5 Budha who, according to the prosecution had accompanied the informant and the appellant to the police station on 21.11.1991 has stated that the appellant was beaten by a number of persons from the neighbourhood, who had collected at her house. PW-1 Hira Lal also stated that initially the appellant told them that the deceased had committed suicide by jumping into river Yamuna, but, when she was given further beatings, she confessed that he was thrown by Prem Pal, Kanwar Pal and one more person on the railway track, after killing him. Thus, it is quite clear that the appellant was given a beating by the villagers before she made the alleged extra judicial confession. The confession alleged to have been made by her, therefore, cannot be said to be voluntary since there is a reasonable possibility of the appellant having made it with a view to avoid further beating at the hands of the villagers.

32. As per the extra judicial confession alleged to have been made by the appellant, the deceased was killed by strangulating him using an Angochha. As noted earlier, there is no evidence of the deceased having been strangulated. The postmortem report reveals that an ante mortem injury was caused on the skull of the deceased from a blunt object and his death was due to craneo-cerebral injury. None of the witnesses of the alleged confession have said that the appellant had told them about injury to the skull of the deceased. The very fact that the cause of death alleged to have been disclosed in the confessional statement of the appellant was not correct is a strong indicator that either no confession was made by the appellant or the confession made by her was not voluntary, having been made only with a view to escape further beating at the hands of the villagers and that is why the cause of death of the deceased disclosed in the confessional statement is at variance with the cause of the death found in the post-mortem report.

33. According to PW- 5 Budha, when the appellant was beaten she stated that Om Prakash was killed in a rail accident, whereas according to PW-1 Chiranji Lal,

when the appellant was asked as to how the deceased was murdered, she initially claimed that he had jumped from a moving vehicle and when threatened and pressed further, she told that he was killed by strangulation by Prem Pal and another person. PW-6 Pritam Singh on the other hand said that the appellant had stated that her husband was murdered by Kanwar Pal and Prem Pal. Thus, according to this witness, the appellant had implicated Kanwar Pal whereas according to PW-1 Chiranji she did not name Kanwar Pal but, implicated another person. The version of the alleged extra judicial confession given by PW-7 Teekam Singh is also different. According to him, it was Inder Pal, who stated that appellant had caught hold of the legs of his father, whereas Prem Pal had put Angochha around his neck and Kanwar Pal had taken his father in his grip. Thus, this witness does not claim any extra judicial confession on the part of the appellant, whereas other witnesses do not say that it was Inder Pal, who had told them as to how deceased Om Prakash was murdered. The version given by PW-11 Hira Lal is altogether different. According to him, the appellant confessed that Om Prakash was thrown by Prem Pal, Kanwar Pal and one more person on the rail track after killing. Thus, according to this witness, three persons, besides the appellant were implicated in the confessional statement of the appellant. According to PW-14 Onkar Singh, the appellant had stated that it was Prem Pal and another person, who had murdered her husband by strangulating him. Thus, according to this witness, the Kanwar Pal was at all named in the extra judicial confession of the appellant. The contradictions in the testimony of the prosecution witness on the extra judicial confession alleged to have been made by the appellant cannot be said to be minor or insignificant. These contradictions relate to the core part of their testimony, i.e., who were implicated by the appellant for the murder of her husband. Material contradictions on the most vital part of their testimony seriously impinge upon the credibility of these witnesses and it will not be safe to base the conviction on the testimony of such witnesses.

34. We would also like to note that as per PW-5 Budha, who according to the prosecution had accompanied the appellant and the informant to the police station on 21.11.1991, when the appellant was given a beating and was questioned in the village, she told them that the deceased was killed in the rail accident and when they came to police station Nizamuddin, she disclosed, before the police, that she

had killed Om Prakash and put him on the rail track and at that time Prem Pal had strangulated Om Prakash and, thereafter, all the three i.e., the appellant, Prem Pal and Kanwar Pal had put Om Prakash on the rail track, after lifting him from the place where he was strangulated. If the testimony of PW-5 Budha is to be believed, there was no confession made before the villagers and the confession was made only before the police on 21.11.1991. Though this witness was cross-examined by the learned Addl.PP, this part of his deposition was not disputed in his cross-examination. Even according to PW-16 Surender Singh, the police was with the appellant when she disclosed that her husband was murdered by Kanwar Pal and Prem Pal. Though this witness was also cross-examined by the learned APP, the prosecution did not dispute his deposition that the police was present at the time the appellant made this statement. Therefore, if we go by the deposition of PW-11 and PW-16, the confessional statement was made by the appellant in the presence of the police officers. If that be so, the statement made by the appellant would be inadmissible in evidence.

According to PW-10 Chokhey Lal, elder son of the appellant, she had told them that it were she and Kanwar Pal, who had held deceased Om Prakash in their grip when he was strangulated by Prem Pal. However, in the FIR lodged by him, he stated that the appellant had told them that it was Prem Pal who had strangulated her husband with the help of another person whose name was not known to her and who had held both the hands and legs of the husband. Thus as per the version given in the FIR, the appellant had not disclosed, the involvement of Kanwar Pal in the actual murder of husband, when she was questioned by the villagers. Thus, there are serious contradictions in the testimony of Kanwar Pal as to what the appellant had actually disclosed to them.

35. It has come in the deposition of PW-1 Chiranji and PW-6 Preetam Singh that when the appellant was brought to Delhi, she took them to railway track near Nizamuddin Railway Station and at that time, she confessed that she had held the legs of deceased Om Prakash when he was strangulated. However, no such claim was made by PW-10 Chokhey Lal either in the FIR lodged by him or in his deposition in the Court. This is yet another material contradiction as regard the alleged confessional statement.

36. According to PW-25, Inspector Jagmal Singh, the informant, accompanied by PW-5 Budha and the appellant Shanti Devi, had come to the Police Post to enquire about the death of the father of the informant. This part of the deposition of the Investigating Officer discredits the story of extra-judicial confession alleged to have been made by the appellant in the village or near railway track in Nizamuddin on 21st November, 1991. Had the appellant already confessed to the murder of the deceased, there could be no question of she and her companions, making enquiry about the deceased. In that case, the informant Chokhey Lal and Buddha, immediately on reaching the Police Post, would have complained to the Investigating Officer that the murder was committed by the appellant, Kanwar Pal and Prem Pal and that she had confessed to the crime. Here, the version given by PW-5 Budha becomes important since, according to him, it was during the enquiry made by the police that the appellant had disclosed that she, alongwith Kanwar Pal and Prem Pal, had killed her husband. Circumstantial Evidence

37. The learned Trial Judge convicted the appellants on the circumstance that (i) she had illicit relations with Kanwar Pal; (ii) she came to Delhi alongwith deceased and her son and (iii) when she returned, the deceased was not with her. As noted earlier, Kanwar Pal, co-accused of the appellant has been acquitted by the Trial Court. If the appellant was having illicit relationship with Kanwar Pal, that became a motive not only for her, but also for Kanwar Pal to eliminate the deceased, so that there was no impediment in their illicit affair. Kanwar Pal having been acquitted, it would be difficult to sustain the conviction of the appellant on the same set of evidence considering the unacceptable quality of the evidence and other facts and circumstances of the case. In any case, mere illicit relationship between the appellant and the Kanwar Pal is not sufficient to prove her complicity in the murder of the deceased though it could be a motive for her to eliminate him or get him eliminated. This circumstance does not unerringly point out towards the complicity of the appellant in the murder of her husband and is not totally incompatible with her innocence and does not show that in all human probability the murder of her husband could not have been committed, without her being involved in the crime.

38. As regards the appellant coming to Delhi with her husband and younger son, the case of the appellant is that she did not come to Delhi, as claimed by the prosecution. PW-6 Pritam Singh has stated that about 4-1/2 years ago the appellant had brought her husband to Delhi for purchasing medicines and had returned without him. This witness also deposed about the extra-judicial confession alleged to have been made by her. We have not believed the case of the prosecution in respect of the alleged extra-judicial confession. We found serious contradictions and discrepancies in the deposition of witnesses in this regard. More importantly, the witness also does not claim to have actually seen the appellant going to Delhi with the deceased on 19th November, 1991 or having seen her coming without him on 20th November, 1991. He does not say at what time he saw the appellant coming to Delhi with the deceased, and their son. How did he come to know that they were going to Delhi and at what time and on which date he saw the appellant returning from Delhi. He claims that while going to Delhi with the deceased, the appellant was accompanied also by her son Inder Pal. We have disbelieved the story of Inder Pal having accompanied her to Delhi and having witnessed the murder of his father. In these circumstances, it is difficult to hold, on the basis of a bald statement of this witness, that the appellant had brought the deceased to Delhi on 19th November, 1991 and had returned to the Village, without him, on 20th November, 1991. PW-1, PW-7, PW-10 and PW-11 do not claim having seen the appellant coming to Delhi with her husband and returning to the village without his accompanying him. As far as PW-5 is concerned, he has admitted that he had not seen the appellant coming to Delhi, with the deceased. The story of the appellant having brought her husband to Delhi and having returned alone also does not harmonize with the statement of the Investigating Officer that she along with Budha and her son PW-10 Chokhey Lal had come to the Police Post to enquire about her husband. Had she brought her husband to Delhi, as the case of the prosecution is, the informant Chokhey Lal, instead of going to the Police Station with her to enquire about his father, would have directed this enquiry to the appellant. Even otherwise, it is difficult to accept that the appellant would have, in the knowledge of others, brought the deceased to Delhi, for the purpose of getting him murdered and then returned alone to the village, since she knew that if she returned alone, she was bound to be questioned

by her family members, relatives and neighbours, as to what had happened to her husband, who had accompanied her to Delhi and she would not have any convincing answer to give to them.

39. It has also come in the deposition of some witnesses that when questioned in the village, the appellant had told them that the deceased had jumped in river Yamuna from the moving bus. PW-6 Pritam Singh, however, contradicted these witnesses when he said that the appellant, on returning alone to Bulandashahr, had raised an alarm that her husband had been murdered by someone. Moreover, we find no such averment either in the FIR lodged by PW-10 or in his deposition in the Court. We, therefore, are not inclined to believe this part of the evidence.

40. One reason given by the learned Trial Judge for convicting the appellant was that dead body of the deceased was recovered at her instance. This is factually incorrect since the case of the prosecution is that the dead body was discovered at 01.30 AM on 20th November, 1991, whereas the appellant is alleged to have come to Delhi with her son and the villagers only on 21 st November, 1991 and at that time, the dead body was lying in the mortuary.

41. For the reasons given in the preceding paragraphs, the appellant is given benefit of doubt and is hereby acquitted. Her bail bond stands discharged. The appeal is allowed.

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