

PETITIONER:
BHAGWAN DASS

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 16/01/1996

BENCH:
NANAVATI G.T. (J)
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NANAVATI G.T. (J)
RAY, G.N. (J)

CITATION:
JT 1996 (1) 483 1996 SCALE (1)327

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI, J.

Bhagwan Dass has filed this appeal against judgment dated 29.10.1980 passed by the High Court of Punjab and Haryana in Criminal Appeal No.1104 of 1971 whereby his conviction and sentence imposed by the learned Sessions Judge, Bhiwani in Sessions Case No. 50 of 1978 were confirmed.

Appellant Bhagwan Dass had married Shanno Devi about eight years before the date of the incident which happened on the night between 16th and 17th July, 1978. It was alleged by the prosecution that about six months after their marriage Bhagwan Dass demanded a motor cycle and some ornaments from her parents. As this demand was not met he started ill-treating her and because of this ill-treatment she had to leave her husband's house and stay with her father. She was also required to file an application under Section 125 of the Code of Criminal Procedure for maintenance. Bhagwan Dass promised to treat her well and again they started living together. After about two months Bhagwan Dass again started ill-treating her as his demand for dowry was still not met. On this score, Tikkan Lal, Jagat Devi and Rajinder, father, mother and brother respectively of the appellant also started ill-treating her. The father of Shanno Devi was, therefore, required to take her back to his house. Bhagwan Dass then initiated proceedings for judicial separation. Again there was a compromise but as the appellant did nothing thereafter to maintain her she was required to file a petition under Section 125 of the Code of Criminal Procedure. The appellant again entered into a compromise and as a result thereof the proceedings were withdrawn by Shanno Devi on 12th May, 1978. Bhagwan Dass then took her to his house at Bhiwani on 2nd July, 1978. It was alleged against the appellant that on the night between 16th and 17th July, 1978 he with the help of his brother Rajinder killed her by strangulation and this

act of killing her was done by the two on the instigation of their parents. The appellant and his brother Rajinder were charged under Section 302 read with Section 34 I.P.C. and Tikkan Lal and Jagat Devi were charged under Section 114 read with Section 302 I.P.C.

There was no eye-witness to the incident. Evidence was lead to show that the appellant had demanded a motor cycle and some ornaments and as his demand was not satisfied he and his family members were ill-treating Shanno Devi, P.W.12, Krishan Bahadur, a Chowkidar of that area was examined to prove that on that night at about 2.00 A.M. he had heard a female voice coming from the house of the appellant and when he saw inside the house through the window panes, he found the appellant and Rajinder talking to each other. He also deposed before the court that the cry which he had heard was "mujhe bachavao". Believing that it was a domestic quarrel as usual he went away from that place. P.W.17 Karam Chand and P.W. 18 Jiwan Singh were examined to prove the alleged extra judicial confession made by the appellant and Rajinder before them. P.W.11 Gangu Ram cousin of deceased Shanno Devi deposed that after he was informed about the death of Shanno Devi he went to her house and when he enquired from Bhagwan Dass as to what had happened he was informed by Bhagwan Dass that she was all right till about 11.00 P.M. but was found dead in the morning. P.W. 19 Nand Lal was examined to prove the recovery of the towel made by Bhagwan Dass with the help of which the neck of Shanno Devi was throttled. On the basis of the medical evidence the learned Sessions Judge held that the death of Shanno Devi was homicidal and that she died because of strangulation. The learned Sessions Judge accepted the evidence with respect to the demand of dowry, the extra judicial confession and the recovery of a towel at the instance of the appellant. The learned Sessions Judge also believed the testimony of P.W.11 Gangu Ram that the appellant had told him that Shanno Devi was alive till about 11.00 P.M. on that night and was found dead in the morning. According to the learned Sessions Judge all the aforesaid links completed the chain of circumstantial evidence and was sufficient to bring guilt home to the accused Bhagwan Dass and Rajinder. He, therefore, convicted them under Section 302 read with Section 34 I.P.C. The evidence against the other two accused, namely, the father and mother of the appellant was not found to be sufficient and, therefore, they were acquitted.

Both the convicted accused preferred an appeal in the High Court. On further scrutiny of the evidence the High Court did not find the evidence of P.W. 12 Krishan Bahadur the Chowkidar, the evidence relating to the extra judicial confession and recovery of the towel as reliable. Even after discarding that evidence the High Court was of the view that the other circumstances were sufficient to lead to an irrefutable inference that the appellant and none else had murdered Shanno Devi. The High Court confirmed his conviction and sentence and dismissed his appeal. The High Court found that the evidence against Rajinder was too slender to support his conviction and, therefore, acquitted him.

The learned counsel appearing for the appellant submitted that there is no reliable evidence on record to show that Shanno Devi died during the night between 16th and 17th July, 1978. He also submitted that there is no evidence on record to show that the appellant was present in the house during that night. He further submitted that the appellant was working at Rohtak and that he had gone to

Bhiwani on the morning of 17th and that his defence to that effect has not been properly appreciated by the High Court. Lastly, he submitted that the evidence led, in this case, is not sufficient to lead to the only hypothesis that the appellant alone and none else had committed the murder of Shanno Devi. In order to appreciate these submissions we have gone through the evidence carefully. We find that the High Court was not right in believing the evidence of P.W.11 Gangu Ram that when he enquired from Bhagwan Dass about the death of Shanno Devi he was informed by Bhagwan Dass that she was all right till 11.00 P.M. on that night. According to Gangu Ram on learning about the death of Shanno Devi he had gone to the house of Bhagwan Dass at about 9.00 A.M. as Shanno Devi was his cousin. After going there he had enquired from Bhagwan Dass as to what had happened and he was informed by Bhagwan Dass that she was all right till 11.00 P.M. Thereafter he stayed at the house of the accused till about 11.00 A.M. and then went home. In his cross-examination he had stated that when he had gone out to purchase vegetables accused Rajinder had come to his house and had informed his wife that Shanno Devi had died. Thereafter he had gone to the house of the appellant. He had to admit that he did not tell the police that Bhagwan Dass had told him that Shanno Devi was all right till 11.00 P.M. Obviously, this is an important omission. If really, such a statement was made by the appellant the witness would not have failed to mention it in his police statement. The High Court failed to appreciate that on this material point the witness was making an improvement. The High Court has heavily relied upon this part of his evidence, as can be seen from the following observations in its judgment:

"This information is stated by Gangu Ram in those terms. "On my enquiry Bhagwan Dass told me that Smt. Shanno Devi was all right at 11 P.M. but was dead by morning." On Sunday, 16th of July, 1978, Bhagwan Dass was at Bhiwani. He was there on the morning of 17th of July, 1978. During the intervening night he could not be anywhere else except his house where his wife Shanno Devi was strangled to death. According to the version given by Bhagwan Dass appellant to Gangu Ram, she was alive and all right uphill 11 P.M. After 11 P.M. people normally retire to bed. Unless it was stated otherwise it has to be taken that Bhagwan Dass appellant and his wife must have retired together for the night. On the following morning, that is, 17th of July, 1978, Shanno Devi was pronounced dead and her death was not from natural cause but from homicidal injuries. The irrefutable inference flowing from these circumstances is that Bhagwan Dass, who had a motive to get rid of his wife, had murdered Shanno Devi and none else."

To hold that the appellant was at his house at Bhiwani on 16th July, 1978, the High Court has also relied upon the statement made by the appellant during his examination under Section 313 of the Code of Criminal Procedure that he had reached his house on 17.7.1978 being Sunday at about 10 A.M. Really 16th July and not 17th July was Sunday. Therefore, the High Court held that the appellant had committed a

mistake while stating the date but it was clear from his said statement that he had gone to his house at Bhiwani at 10.00 A.M. on 16th July, 1978 which was a Sunday. The said statement was made by the accused in reply to the question put to him that he was not available to the police till 20.7.1978 as he was absconding. In reply to that question the appellant stated: "I was employed at Rohtak. I had reached my house on 17.7.78 being Sunday at about 10.00 AM and came to know about the death of Smt. Shanno Devi and by that time my younger brother and co-accused Rajinder had already informed about the death of Smt. Shanno Devi to her relations. I never absconded." It is significant to note that in reply to Question No.23 which reads as follows:

"Why this case against you? and why the PWs are deposing against you?"

the appellant stated that "The PWs are falsely deposing against me. From Rohtak where I am employed I returned to Bhiwani on Monday in the morning (17.7.1978)." If both these statements are read together it becomes apparent that according to the appellant he had returned to Bhiwani on 17.7.1978. While replying to one question he stated that 17.7.1978 was Sunday while replying to the other question he stated that it was Monday. Therefore, it was not proper for the High Court to treat the first answer of the appellant as an admission that he had gone from Rohtak to Bhiwani on Sunday, the 16th July. The appellant had pleaded his absence from Bhiwani during that night and there is no other evidence on record to show, except the statement of Gangu Ram, that the appellant was present at Bhiwani during that fateful night. As pointed out above on this most vital aspect witness Gangu Ram has made an improvement and that makes the presence of the appellant at Bhiwani during that night doubtful.

One other aspect which is required to be noted is that the doctor who had conducted the post mortem examination has stated that he did it at 9 A.M. on 18.7.1978 and that probable time between the death and the post mortem examination was between 24 and 48 hours. In cross-examination he stated that it was not possible for him to fix the nearest point of time when the deceased had died. Therefore, according to the medical evidence death of Shanno Devi could have taken place between 9 A.M. on 16.7.1978 and 9 AM of 17.7.1978. When he examined the dead body he found that rigor mortis was absent and that in summer rigor mortis usually passes off in 36 hours after death in North India. In view of this medical evidence no definite conclusion could have been drawn that Shanno Devi died during that night at about 2.00 A.M. and not earlier or later. On careful scrutiny of the evidence we find that there are various missing links in the chain of circumstances and on the basis of the evidence it cannot be said that the appellant and the appellant alone had caused the death of Shanno Devi even if it is believed that the appellant had a strong motive to get rid of her. It was the prosecution case that not only the appellant but Rajinder and the parents of the appellant were also ill-treating Shanno Devi and wanted to get rid of her. The allegation was that at the instigation of the parents and with the help of his brother Rajinder, the appellant had caused the death of his wife. We are therefore of the opinion that the High Court committed a grave error in coming to the conclusion on the basis of such insufficient evidence that it was the appellant and appellant alone who caused the death of Shanno Devi.

We, therefore, allow this appeal, set aside his conviction under Section 302 I.P.C. and acquit him. The

appellant is on bail and, therefore, his bail bonds are discharged.

JUDIS