

PETITIONER:
STATE OF HIMACHAL PRADESH

Vs.

RESPONDENT:
SHRI MANOHAR SINGH THAKUR

DATE OF JUDGMENT: 28/07/1998

BENCH:
SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Mrs. Sujata V. Manohar, J.

The respondent-accused, Manohar Singh, was tried for offences punishable under Sections 302, 307 and 394 read with Section 397 of the Indian Penal Code. By his judgment and order dated 7.4.1986, the learned Sessions Judge convicted the accused under Section 302, 307 and 394 read with Sections 397 of the Indian Penal Code. The Sessions Judge held that the crime committed by the accused was callous and burtal and was one of the rarest of rare cases where the accused had murdered one old person and attempted to murder another unsuspecting old and helpless person without slightest provocation and simply to gratify his greed. He, therefore, awarded the death penalty to the accused for offence under Section 302. For offences under Section 307 and 394 read with Section 397, he passed a sentence of rigorous imprisonment for tan years and a fine of Rs.500/-. In appeal, the High Court has given the benefit of doubt to the accused and acquitted him of all charges. Hence the present appeal is filed by the State.

Briefly stated, the case of the prosecution is as follows:

There lived an old couple in Village Deola, Tehsil Suni District Shimla. The husband's name was Kula Datt, since deceased. His wife's name is Mathru Devi. The couple had a daughter, namely, Pushpa Devi. She was married to one Khem Dass of Village Auth about 15 or 20 years prior to the date of the crime. The accused, Manohar Singh, is the son of the sister of Khem Dass. He was thus a nephew by marriage of the daughter of the old couple. The accused used to visit Kula Datt and Mathru Devi.

On the evening of 2nd of September, 1985, he visited the house of the couple. In the morning at about 7 a.m. the following day, that is to say, on 3rd or September, 1985 the accused left the house in the company of Kula Datt on the pretext that he wanted to buy some gold from one Nika Ram of village Bagh and Kula Datt being an elderly ma, could provide requisite guidance in the purchase of gold. At about 10 a.m. on the same day, the accused returned to the house of Kula Datt alone. When Mathru Devi, the wife of Kula Datt,

enquired as to where her husband was, the accused told her that he had stayed behind in the village to talk to the villagers about the ensuing panchayat elections. Mathru Devi served a meal to the accused and the accused had a nap thereafter. As Kula Datt had not returned, when the accused got up, Mathru Devi took him to the village in search of her husband. They went to the house of one Durga Dass who was a member of the village panchayat, and a lady named Hukmu to enquire about the whereabouts of Kula Datt. These persons told Mathru Devi that her husband had not been seen by them. Thereafter, the accused left the village.

However, at about 10 p.m. on the night of 3rd of September, 1985, the accused gave a knock at the door of Mathru Devi. Mathru Devi enquired as to who was knocking at her door. On being told that it was the accused, she opened the door. The accused produced a key of the box in which the couple kept their cash and ornaments. This key was normally kept always with himself by Kula Datt. The accused told Mathru Devi that her husband and her daughter Pushpa had been held hostages by some dacoits at Panchayat Ghar and the dacoits were demanding cash and ornaments as ransom. He gave the key to Mathru Devi thereupon opened the box and took out cash and ornaments of silver and gold and put them in a bag of cloth. A pattoo of Pashmina was also put in the bag by her as instructed by the accused. She then followed the accused to the Panchayat Ghar which is at a distance of about two furlongs from her house.

She found that her husband and daughter were not in the Panchayat Ghar. When the old lady asked the accused where they were, he replied that they might have gone to answer the call of nature. He asked the lady to go inside the room. As soon as she entered the room the accused hit her on the head with some heavy object. As a result Mathru Devi fell unconscious. When she regained consciousness, she found that the accused as well as the cash, ornaments and the pattoo were missing. She tried to proceed towards her house but on account of excessive bleeding from her head, she found it difficult to walk. Sometimes she walked and sometimes she crawled. When she reached the house of Durga Dass, the member of Gram Panchayat, she fell unconscious. Durga Dass thereupon removed her to her house. She regained consciousness at about 4 p.m. on 4th of September, 1985. She narrated the whole story to her daughter who had then arrived.

In the meanwhile, the dead body of Kula Datt had also been spotted in a nala near village Bagh. A resident of Village Bagh came to Village Deola and informed Durga Dass in his capacity as a member of the Gram Panchayat about the spotting of the dead body of Kula Datt in a nala. Durga Dass went to the site in the company of other residents of village Deola. Thereafter they sent a person Prem Lal to the police station Dhali to lodge first information report. Accordingly, a first information report was lodged in the daily diary of the police station Dhali. The police reached Deola at about 4 p.m. on 5th of September, 1985. The statement of Mathru Devi was recorded and she was sent to hospital for examination and treatment. An inquest report on the dead body of Kula Datt was prepared and the body was sent for postmortem. The postmortem examination revealed that the deceased had received a head injury with a heavy blunt object which resulted in his death.

On 9.9.1985 the accused was arrested. A sum of Rs.2,000/- in currency notes was found on his person at the time of arrest. The next day he made a disclosure statement in the presence of two witnesses that he had hidden the

ornaments and the silver coins in a hole near a Kuhl in a forest known as Thana forest. He also said that the Pattu and the cloth bag had been hidden under a bush near Village Thana. He also stated that an axe had been given by him to a blacksmith at Shimla for sharpening on 5.9.1985. Pursuant to this statement of the accused, the ornaments, silver coins, Pattu Bag and axe were recovered from the places disclosed by the accused.

The doctor who conducted the post-mortem examination on the dead-body of Kula Datt opined that his death had occurred on 3.9.1985 and had resulted from a blow given on his head with some heavy object like the reverse side of the head of an axe, such as the axe recovered pursuant to the statement of the accused. Similarly, the doctor who conducted the medical examination of Mathru Devi opined that the wound on her head was inflicted with some blunt object like the back side of the head of an axe. X-rays of the head injury suffered by Mathru Devi revealed that she had a fracture of the skull. Hence her injury was opined to be grievous. After investigation charges were prepared and presented in the court of the learned Judicial Magistrate 1st Class (2), Shimla, who committed the case to the Sessions Court.

The prosecution examined 26 witnesses. Thereafter the accused was examined under Section 313 of the Code of Criminal Procedure. In his statement the accused denied the correctness of the entire evidence and pleaded that he had been falsely implicated by Mathru Devi at the instance of her son-in-law Khem Dass, who was inimical to the accused. After considering the entire evidence the Sessions Judge convicted the accused of the charges as framed.

Mathru Devi (P.W.1) has stated in her evidence that the accused came to her house on the night 2nd of September, 1985 and on the morning of 3rd of September, 1985 at about 7.00 a.m. the accused left with her husband Kula Datt. That was the last time that she saw her husband alive. Her statement, that the accused left in the company of Kula Datt, is corroborated by (P.W.10) Shyam Lal, a resident of Village Deola. He has stated in his evidence that on 3rd September, 1985 in the morning when he was coming to Shimla he saw the accused and deceased Kula Datt going towards Village Bagh. In his Cross-examination he has stated that he saw the accused for the first time that day. The statement of Mathru Devi that her husband left in the company of the accused, and the corroborative evidence of Shyam Lal, has been discarded by the High Court for reasons which are untenable. The High Court has discarded the evidence of Mathru Devi on the ground that in her statement to the police, she had only stated that her husband had gone with the accused on the morning of 3rd of September, 1985 to Village Bagh for some work. In her evidence, she stated the nature of the work also. She said that at the request of the accused, her husband accompanied him because the accused wanted to purchase some gold and he wanted an elderly person like her husband to guide him. The basic fact that at the request of the accused, the deceased Kula Datt had accompanied the accused to go to Village Bagh on 3rd of September, 1985, is clearly stated both in the evidence of Mathru Devi as also in her statement to the police and she should not have been disbelieved on this score. The evidence of Shyam Lal is also not accepted by the High Court for reasons which are difficult to understand. The learned Judge has said that there is no evidence to prove that the path from Deola to Bagh "falls in the way" if one goes from Deola to Shimla. No question in this connection was asked in cross

examination of Shyam Lal. The testimony of Shyam Lal is quite clear about seeing the accused and the deceased together on the morning of 3rd September, 1985 and the evidence of both these witnesses ought not to have been rejected by the High Court.

The evidence of Durga Dass also clearly shows that sometime in the afternoon of 3rd or September, 1985 Mathru Devi and the accused had come to him and Mathru Devi had enquired about the whereabouts of her husband. This also establishes the presence of the accused in the Village Deola on the afternoon of 3rd of September, 1985. The visit of the accused to the house of Mathru Devi on 3rd of September, 1985 is also corroborated by the evidence of (P.W.16) Bimla Devi who has deposed that on 3rd of September, 1985 she had gone to Kula Datt's house in Deola Village when she found that Kula Datt's wife Mathru Devi and the accused Manohar Singh were present. Kula Datt was not present. She owed some money to Kula Datt on account of the price of some grass which she had purchased from him. She paid Rs.325/- to Mathru Devi for the price of that grass. When she enquired from Mathru Devi as to where Kula Datt had gone, she told Bimla Devi that Kula Datt had gone to Village Bagh with the accused Manohar Singh in the morning.

The only reason why her evidence has not been accepted by the High Court is that the village of Bimla Devi is at distance of about 10 or 12 kilometers from the house of Kula Datt and, therefore, she could not have been expected to be present at the house of Kula Datt. This reasoning of the High Court is patently unacceptable when Bimla Devi has explained her presence at the house of Kula Datt by saying that she had come to pay the price of grass to Kula Datt.

Mathru Devi has also deposed in detail about what took place on the night of 3rd of September, 1985, about her being given the key of the box which normally used to be kept with her husband, by the accused. She has also stated that the accused said that he had brought the key so that she could take out the money and ornaments from the box as they were required for paying a ransom to the dacoits. She had further deposed that she accompanied the accused on the night of 3rd of September, 1985 along with cash and ornaments as well as the pattu, to Panchayat Ghar in the hope of finding her husband and daughter there. Instead the accused hit her on the head with a heavy object and decamped with cash and ornaments. She fell unconscious and she regained consciousness only on the morning of the 4th of September, 1985. The medical evidence regarding her head injuries is also quite clear. This evidence is not shaken in cross examination.

Durga Dass in his evidence has also stated that he saw Mathru Devi, partly walking and partly crawling coming from the direction of Panchayat Ghar on the morning of 4th September, 1985 and that when she reached his door she fell unconscious. When the accused was arrested currency notes of the value of Rs.2,000/- were found on his person. Cash, ornaments and axe have also been recovered on the basis of the statement given by the accused. Even if we disregard this part of the evidence for the sake of arguments, the evidence of Mathru Devi is not shaken in cross-examination and is corroborated in material particulars by other witnesses. There is no reason why the evidence of Mathru Devi and Durga Dass should be disbelieved. The High Court has rejected her evidence merely because there are more details in her evidence than her statement. It has failed to note that the statement was recorded at a time when Mathru Devi had suffered grievous head injuries and had been

unconscious as a result, for several hours.

The medical evidence relating to the post-mortem disclosing death on account of injuries caused on the head of the deceased by a heavy blunt object such as the back of the head of an axe is also unequivocal. The injuries on the head of Mathru Devi are similar. The evidence of Mathru Devi, an injured witness, ought not to have been discarded.

The entire approach of the High Court is unsatisfactory. For example, (P.W.9) Mauji Ram, the brother of the deceased has deposed that he was not present at village Deola on 3rd of September, 1985 since he had gone to Shimla to receive his pension. On 4th of September, 1985 while returning he learnt about the murder of the deceased. The High Court has commented that it is surprising that Mauji Ram never saw the accused entering the house of Kula Datt. If Mauji Ram was not present at his house on 3rd of September, 1985 and was returning to the village only on 4th of September, 1985, one fails to see how he could be expected to have seen the accused on 3rd of September, 1985. Mauji Ram seeing or not seeing the accused on any other occasion is not of much significance when there is clear evidence of the accused being present on 3.9.1985 in village Deola at the house of the deceased.

The High Court has also observed that there is no direct or circumstantial evidence to establish that the accused had inflicted head injury to Kula Datt as a result of which he died. But the Sessions Court has set out the entire chain of circumstances leading to this inference alone. The evidence establishes that Kula Datt was last seen alive on the morning of 3rd of September, 1985 going to Village Bagh in the company of the accused. The accused returned alone to the house of Mathru Devi within 3 hours at 10 a.m. on 3rd of September, 1985 and gave Mathru Devi an excuse for the absence of Kula Datt. The fact that Mathru Devi was searching for her husband on 3rd of September, 1985 is corroborated by the evidence of Durga Dass. He has deposed that the deceased was not seen by him in the village that day. The presence of the accused at the house of the deceased on 3rd September, 1985 is also corroborated by the evidence of Bimla Devi. The entire narration of events by Mathru Devi has not been shaken in cross examination. She is an injured witness. She has deposed that the key of the box which used to be with the deceased was produced by the accused. She had given detailed evidence as to how she came to sustain those injuries at the hands of the accused and how she was duped by the accused into going to Panchayat Ghar at night with valuables which were taken away by the accused. There was no reason why her evidence would have been discarded by the High Court. There is also no reason why Mathru Devi should have falsely implicated the accused. The High Court ought not to have disbelieved Mathru Devi on the ground that the events as narrated by Mathru Devi were not convincing because the accused could have killed the old couple in their own house. These are pure conjectures. It is true that some details of the evidence given by Mathru Devi are missing in her initial statement to the police. But her statement substantially contains the entire narration of events to which she has deposed in her evidence before the court. The Sessions Judge has rightly observed that the statement of Mathru Devi was recorded when she was in an injured and shocked condition and her mental faculties were not up to the mark. It is possible that she may have missed out some of the details. Thus the evidence of Mathru Devi clearly establishes the guilt of the accused under Section 307/394 read with Section 397 of the Indian Penal

Code.

There is also sufficient circumstantial evidence against the accused to convict him under Section 302. The accused and the deceased were last seen together. The deceased gave a false explanation to Mathru Devi about the deceased having stayed back in the village; the key which used to remain on the person of the deceased was in the possession of the accused on the night of 3rd of September, 1985. The dead body of the deceased was found at bagh nulla - in the direction in which the accused and the deceased were observed as going. The death occurred on 3.9.1985. The injuries which were inflicted by the accused on the head of Mathru Devi on the night of 3.9.1985 are similar to the injuries which were found on the dead body of Kula Datt as per medical evidence. The axe of the accused was found as directed by the accused who stated that he had delivered the axe for sharpening on 5th of September, 1985. The currency notes of Rs.2,000/- were also found on the person of the accused when he was arrested.

Looking to the totality of evidence the Sessions Judge rightly convicted the accused of all the charges. The observation of the Sessions Judge, however, that this was one of the rarest of rare crimes does not appear to be justified. Crimes such as murder are committed for gain and there is nothing exceptionally gruesome about the manner of committing this murder. A murder by its very nature is shocking. But that per se does not justify death penalty.

We, therefore, set aside the order of acquittal passed by the High Court and confirm the order of conviction by the sessions Court. However, the death sentence imposed by the Sessions Court is set aside and is substituted by imprisonment for life. The sentence of rigorous imprisonment for ten years and fine of Rs.500/- for offences under Section 307 and 394 read with Section 397 is restored. Sentences to run concurrently. The appeal is allowed accordingly.