

PETITIONER:
THE STATE OF PUNJAB

Vs.

RESPONDENT:
BIMAL KAUR

DATE OF JUDGMENT: 24/10/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

The two appellants alongwith Bimal Kaur (acquitted) were put up for the trial for committing the murder of Surinder Kaur, an offence punishable under Section 302/34 of the Indian Penal Code. Surinder Kaur was the wife of Amarjit Singh (A-1) whereas Bimal Kaur (acquitted accused) happens to be the wife of Prem Singh (A-2). The trial court vide its judgment and order dated 28-7-1986 convicted that appellants under Section 302/34 of the Indian Penal Code and sentenced them to suffer life imprisonment and to pay a fine of Rs. 3,000/-. Bimal Kaur, however, was given the benefit of doubt and acquitted. The appellants aggrieved by the order of conviction and sentence passed by the trial court preferred an appeal to the Punjab & Harayana High Court at Chandigarh. The Division Bench of the High Court on re-appraisal of materials on record vide its judgment and order dated April 5, 1988 dismissed the appeal and confirmed the order of conviction and sentence passed by the trial court. It is this judgment and order passed by the High Court which is the subject matter of challenge in these two criminal appeals filed by A-2 and A-1 respectively.

2. Briefly stated the prosecution case is as under :-
Surinder Kaur (since deceased) was the resident of village Mithumajra in Patiala district. She was married to Amarjit Singh (A-1) on March 10, 1985. Prem Singh is the brother of Amarjit Singh. Both the brothers were staying together in their house at village Mehma Walian. About seven and a half month's after the marriage, on October 27, 1985, at about 7.50 p.m., A-2 brought the corpse of Surinder Kaur in the emergency department of Rajinder Hospital Patiala. Dr. Mohinder Singh (PW 1), Emergency Medical Officer, immediately conveyed a telephonic message to Police Station, Civil Lines, Patiala, which thereupon was passed over by wireless to the Station House Officer, Police Station, Jhulkan, as the death was suspected to be due to poisoning.

3. It was alleged by the prosecution that on October 27, 1985, A-2 accompanied by his wife Bimal Kaur went to the parental house of Surinder Kaur at village Mithumajra and informed the inmates that Surinder Kaur was suddenly taken

ill and was admitted to Rajinder Hospital, Patiala, however she died there. Jaspal Singh (PW 3) and Sahib Singh (PW 4) as also some other relatives of Surinder Kaur reached the hospital where the dead body of Surinder Kaur was lying in the emergency ward. ASI Jhanda Singh (PW 9) attached to the Police Station, Jhulkan came to the hospital on October 28, 1985, at about 12.05 p.m. and recorded the statement of Sahib Singh (PW 4) which was treated as an FIR (Ex. PF). It was stated in the complaint that Surinder Kaur was complaining that she was being harassed because A-1 (husband) was not given as promised a Rajdoot Motor Cycle in dowry. It was further stated in the complaint that some of the family members of A-1 and A-2 had administered the poison which caused her death. The dead body of Surinder Kaur was sent for post mortem examination and thereafter it was taken to village Mithumajra for cremation.

4. It was alleged by the prosecution that since the brothers suspected a foul play in the death of Surinder Kaur, on October 29, 1985, Jaspal Singh (PW 3) went to village Mehma Walion with a view to get the correct information as regards the cause of her death. SI Gurnam Singh (PW 8), Station House Officer, Police Station, Jhulkan, during investigation recorded the statements of various persons. Since the death of Surinder Kaur was suspected due to poisoning, the viscera was sent to the Chemical Analyser for examination. After completing the investigation, SI Gurnam Singh (PW 8) opined that an offence was made out against the appellants and, therefore, submitted his report accordingly.

5. It appears that the superior police officers did not, prima facie agree with the opinion given by SI Gurnam Singh (PW 8) and therefore, further investigation was entrusted to DSP Ajit Singh (PW 12) attached to the City Police Station, Patiala. After conducting necessary investigation, he submitted his report to the contrary and on the basis of the said report, the appellants and the acquitted accused came to be charge sheeted for the aforesaid offences.

6. The appellants in their statements recorded under Section 313 Cr. P.C. denied the accusations and pleaded that they are innocent and were not responsible for the death of Surinder Kaur. They pleaded that it was a pure and simple case of suicide. They, therefore, prayed that they be acquitted.

7. The prosecution case entirely rested on the circumstantial evidence and to prove the guilt of the accused, it relied upon five circumstances which are set out herein below :-

- i) Motives ;
- ii) On October 27, 1985 at about 4.00 p.m., Surinder Kaur was beaten by A-1, A-2 and the acquitted accused;
- iii) Extra judicial confession made by the accused to Bharpur Singh which was overheard by Bagicha Singh (PW 7);
- iv) Medical evidence proved the death of Surinder Kaur due to violence and poisoning; and
- v) No explanation was forthcoming from the accused as to under what circumstances Surinder Kaur died.

8. The prosecution mainly relied upon the evidence of Jaspal Singh (PW 3) and Sahib Singh (PW 4) the de facto complainant, who are brothers of Surinder Kaur and Amar

Singh (PW 6) a neighbour who deposed to the beating to Surinder Kaur. To prove the extra judicial confession, which was alleged to have been made by the accused, the prosecution examined Bagicha Singh (PW 7). In addition to the above witnesses, the prosecution examined formal witnesses i.e. Dr. Mohinder Singh (PW 1) and Dr. O.P. Agarwal (PW 2), who conducted the post-mortem examination and the report of the chemical analyst.

9. The trial court on appraisal of the oral and documentary evidence on record found that the prosecution had successfully established all above circumstances which completed the chain of circumstantial evidence which was pointer to the guilt of the appellants (accused) excluding any other hypothesis of their innocence, however, gave benefit of doubt to Bimal Kaur and acquitted her of all the charges. The trial court consistent with its findings vide its judgment and order dated July 28, 1986, convicted the appellants under Section 302/34 of the Indian Penal Code and sentenced both of them to suffer imprisonment for life and to pay a fine of Rs. 3,000/-; in default of payment of fine, further RI for six months.

10. Being aggrieved by the order of conviction and sentence passed by the trial court, the appellants (A-1 and A-2) preferred an appeal to the High Court of Punjab and Haryana at Chandigarh. The State of Punjab also preferred an appeal against the order of acquittal in respect of Bimal Kaur. Both these were heard together and the learned Division Bench of the High Court vide its judgment and order dated April 5, 1988 dismissed both the appeals. Feeling aggrieved by the judgment and order passed by the high Court, Prem Singh-appellant (A-2) has filed criminal appeal No. 556 of 1988 whereas Amarjit Singh-appellant (A-1) has preferred criminal appeal No. 618 of 1988 to this Court. The State of Punjab has also filed criminal appeal Nos. 305-306 of 1989 to this Court challenging the order of acquittal of Bimal Kaur. Since these three appeals arise out of a common judgment passed by the High Court, they are being disposed of by this judgment.

11. Mr. M.S. Gujral, learned Senior Counsel appearing in support of the appeals filed by A-1 and A-2 assailed the impugned judgment on several grounds. He urged that there is no convincing evidence on the record to come to the conclusion that the appellants meted out an ill treatment to Surinder Kaur. The evidence of Jaspal Singh (PW 3) and Amar Singh (PW 6) is totally artificial and it would not be safe to rely upon their evidence for proving the ill treatment. Mr. Gujral also assailed the evidence of Amar Singh (PW 6) who deposed about the beating to Surinder Kaur by the appellants on October 27, 1985, at about 4.00 p.m., being concocted and totally unreliable. The evidence of Bagicha Singh (PW 7) who claimed to have overheard the extra judicial confession is totally untrustworthy especially when the prosecution had failed to examine Bharpur Singh to whom the appellants alleged to have confessed their guilt. As regards non explanation by the appellants as to how Surinder Kaur died, Mr. Gujral urged that prosecution had led no evidence on the record to show that Amarjit Singh was present at the time of the incident in question. Explanation given by the appellant (A-2) that Surinder Kaur might have swallowed the poison for committing suicide deserved to be accepted in view of the failure of the prosecution to prove that the appellants meted out any ill treatment to Surinder Kaur. Learned Counsel, therefore, urged that the prosecution had failed to prove the most vital circumstances against the appellants and in view of thereof, both the appellants be

acquitted.

12. Ms. Rupinder Kaur, learned Advocate appearing for the State of Punjab supported the impugned judgment of conviction. She urged that both the courts below have concurrently held that the prosecution has proved all the circumstances, it would not be appropriate for this Court to interfere with the said findings in an appeal under Article 136 of the Constitution of India. In support of an appeal filed by the State of Punjab, she urged that on the proved circumstance, even Bimal Kaur ought to have been convicted alongwith other co-accused and no distinction could have been made. She, therefore, prayed that the order of acquittal of Bimal Kaur be set aside and she be punished in accordance with law.

13. We have given our careful thought to the submissions urged before us. We are also conscious that the two appeals filed by the appellants (A-1 and A-2) are on obtaining Special Leave under Article 136 of the Constitution and ordinarily the findings recorded by the courts below are not disturbed by this Court. In the present case, motive is a vital issue and evidence adduced by the prosecution in that behalf is not satisfactory and there are certain inherent improbabilities which were overlooked by the courts below. Jaspal Singh (PW 3) in his evidence has stated that about 20/22 days prior to the death of Surinder Kaur, she had come to his house on a condolence call accompanied by her husband Amarjit Singh (A-1). Both of them went back and neither of them then visited his house when Bhog ceremony was held. His brother Sahib Singh went to the house of Surinder Kaur to enquire as to why she did not attend the Bhog ceremony ? At that time, she alleged to have told that she had a quarrel with her husband and Bimal Kaur (acquitted accused) taunted her. Surinder Kaur then told him that her husband and Prem Singh (A-2) were not satisfied with Rajdoot Motor Cycle and that A-1 wanted a Bullet motor cycle which was promised. He admitted that he did not receive any letter or oral complaint from Surinder Kaur as regards the ill treatment meted out to her for Bullet Motor Cycle at anytime. The omission was brought on record as regards the Bullet Motor Cycle which was promised in dowry and was not given. This is a very vital omission being suggestive of the fact that it was an improvement at the trial. Same is the evidence of Sahib Singh (PW 4) who testified to have come to know about the demand of Bullet Motor Cycle, there is no other evidence adduced by the prosecution to prove the ill treatment meted out to Surinder Kaur. There is no dispute that the parents of Surinder Kaur (deceased) had given Rajdoot Motor Cycle.

14. It is wholly unnecessary to reproduce the evidence of Sahib Singh (PW 4) on this issue because he had first time heard the alleged demand of Bullet motor cycle from his brother. In this view of the matter, it is very difficult to accept the evidence of Jaspal Singh (PW 3) and Sahib Singh (PW 4) on the issue of ill treatment meted out to Surinder Kaur and a cause for administering the poison to her. Surinder Kaur was studied upto Matriculation and a knowledgeable girl. During the period of seven and a half month of her marital life, at no stage such a demand of Bullet Motor Cycle was ever insisted by A-1 or any other accused. If this be so, in our opinion, motive sought to be relied upon by the prosecution cannot be said to have been proved.

15. Coming to the next submission of Mr. Gujral, namely, beating to Surinder Kaur on 27-10-1985 at about 4.00 p.m., the only evidence on record is that of Amar Singh (PW 6)

who was residing in a house adjacent to the house of the appellants. He has stated in his evidence that on October 27, 1985, at about 4.00 p.m., he had gone to the house of the appellants to borrow his Rehri for paddy crop and at the time, he heard the rule of a girl from the house of the appellants saying "Chachi Marti Chachi Marti". He then stated that he climbed upon the boundary wall of the house of appellants and from there he saw the beating given to Surinder Kaur by the appellants and Bimal Kaur. When he wanted to intervene, he was told that it was their domestic matter and no one should interfere in it. He admitted in his evidence that his statement was recorded by the police after 20 to 22 days of the incident. He also denied that his statement was recorded by Executive Magistrate, Sh. Acharya at Patiala on 19th December, 1985. When he was shown his sworn statement (affidavit Ex. Dx), he denied his thumb impression thereon and stated that he did not make such statement. We have gone through the evidence of this witness very carefully and we are satisfied that his evidence is not trustworthy and cannot be accepted to prove the fact of beating or ill treatment meted out to Surinder Kaur on October 27, 1985.

16. Coming to the next circumstance, namely, the extra judicial confession alleged to have been made by the appellants to Bharpur Singh, the prosecution had not chosen to examine him as a witness at the trial. One Bagicha Singh (PW 7) was examined who in his evidence has stated that on 10th November, 1985 at about 11.00 a.m., he had gone to the house of Bharpur Singh for some work and at that time both the appellants had come to his house; they were nervous and when he (Bharpur Singh) inquired from them the reason, Amarjit Singh (A-1) told that they had committed the murder of Surinder Kaur on October 27, 1985. During the cross-examination, several material omissions were brought on record. He had not stated before the police that he was on visiting terms with Bharpur Singh or A-1 and A-2. The evidence of this witness is full of material omissions. If this witness was not close to the appellant it is extremely doubtful whether they would confess the guilt in his presence. The courts below have over looked this aspect and erroneously held that the prosecution has proved the extra judicial confession alleged to have been made by the appellants. In our considered view, it is not safe to accept this evidence in the absence of corroboration.

17. Coming to the medical evidence and the report of the chemical analyser, there is no serious challenge to this part of the evidence by the defence. Therefore, we may safely conclude that Surinder Kaur met with a homicidal death due to poison.

The sole question that needs to be considered in the light of this expert's evidence is as to whether it was a suicidal death or homicidal. Having regard to the facts and circumstances of the case, we are of considered view that prosecution has failed to prove beyond reasonable doubt that Surinder Kaur met with a homicidal death. The defence plea of suicide cannot be ruled out.

18. It also needs to be noticed that the prosecution had led no evidence to show that Amarjit Singh (A-1) was present at his house at the time of incident in question. It is really unfortunate that the marriage of Surinder Kaur which took place seven and a half month's before the date of occurrence ended in such a tragic death. From the evidence on the record we are unable to pin point the guilty person although her death is shrouded with suspicious circumstances. It is in these circumstances, we are

constrained give benefit of doubt to both the appellant. 19. In the result, Criminal Appeal No. 556 of 1988 filed by Prem Singh (A-2) and Criminal Appeal No. 618 of 1988 filed by Amarjit Singh (A-1) are allowed. The impugned order of conviction and sentence dated April 5, 1988 passed by the High Court against both the appellants under Section 302 read with Section 34 of the Indian Penal Code is quashed and set aside and they are given the benefit of doubt and are acquitted. The Criminal Appeal Nos. 305-306 of 1989 filed by the State of Punjab and dismissed. Both the appellants are discharged from their respective bailbonds.

JUDIS