

(1966) 12 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 58 of 1965

Atma Ram

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 15-12-1966

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : AIR 1967 P&H 508 : (1967) CriLJ 1697

Hon'ble Judges : Shamsheer Bahadur, J;A.N. Grover, J

Bench : Division Bench

Advocate : Harbhagwan Singh and R.L. Sharma, for the Appellant; S.S. Sandhawalia, Advocate-General, for the Respondent

Judgement

Shamsheer Bahadur, J.—Atma Ram charged for his wife's murder at about 1-0 p.m. on 6th May 1964, in village Dhaula was found guilty of this offence by the Sessions Judge, Barnala, and has been sentenced to undergo a term of life imprisonment u/s 302, Indian Penal Code. This appeal of Atma Ram is directed both against his conviction and sentence.

2. The deceased Parsini was a middle-aged woman like the appellant and they had been married for some years. The couple had grown-up children, and it appears that their relations have not been quite friendly. She did not possess a very good temper and had quite a pungent tongue. Somewhere in 1958, she was given a beating by her husband and her brother Lal Chand, P. W. 10 got her medically examined on 10-5-1958 by one Dr. Sardul Singh, P. W. 2. This matter was brought before the Panchayat and perhaps on their intervention no criminal case was brought against her husband. The appellant and his wife have also been in the habit of accusing each other of leading immoral lives.

3. On the 6th May 1964, at about 1-0 p.m. the appellant called his wife in the sabat for massaging his belly. Their young son Giana, aged 7/8 years, was also present at that time. Parsini took this unusual demand as an overture for cohabitation and reacted somewhat sharply by saying:--

"Bhain dia yara, chouthe bhain kolon visha pura karke auna si." (You should have satisfied your lust with your sister whom you went to see three days ago).

The appellant on hearing these words gave a blow with the wrong side of the kulhari on the left side of neck of Parsini bringing her low on the cot lying nearby. Thereafter, he gave three or four blows with the wrong side of the kulhari near her left ear. Dev Raj, a neighbour, hearing the shrieks climbed the roof and came over the kotha of the appellant and saw him giving injuries to his wife. Parsini must have died instantaneously and the appellant left the house after having concealed the kulhari. Giana, the young son of the appellant and deceased, went crying to Gurbachan Singh son of Pala Singh. Zora Singh, and Achhru Ram and narrated the incident. They all went to Kartar Singh, another neighbour. Bir Singh Sarpanch was apprised of this incident and in the company of some other persons he visited the spot. After having informed himself about the details of the occurrence, Bir Singh Sarpanch deputed Kartar Singh, another Panch, to lodge a report at the police station. Kartar Singh proceeded to the police station and in the way also met the appellant who made a confession about his guilt and told him that he had killed Parsini a fit of anger after she had told him that he should have satisfied his lust with his own sister. The report was lodged at Police Station Dhanaula, at 4-30 p.m. the police station being six miles from village Dhaula.

4. Hardev Singh A. S. I., who recorded the report, left for Dhaula village and reached the house of Atma Ram appellant at 6-45 p.m. He found present there Dev Raj, Giana, Bir Singh Sarpanch, Bhag Singh, Gurbachan Singh and others. The dead body was found lying on a cot in the sabat of the house of Atma Ram. After preparing the injury statement and the inquest report, bloodstained earth underneath the cot was recovered along with the bloodstained chadra lying on the cot. The dead body was sent to the mortuary.

5. Jarnail Singh. P. W. 7 produced Atma Ram appellant at 10-00 p.m. the same day. The shirt Exhibit P-2 and chadra Exhibit P-8 which the appellant was wearing were taken into possession and these clothes have been found to be bloodstained. On interrogation of (he appellant, a Kulhari lying behind a wooden box in a room on the left side of the sabat of the house of the appellant was recovered and it has been found to be bloodstained. The investigation was completed after the statements of the witnesses had been recorded.

6. Dr. Bachittar Singh performed the postmortem on the body of Parsini, whom he described to be a woman of 35 years, at Civil Hospital Barnala, on 7th May 1964. Nine Injuries were found, six of these being incised, two contusions and one lacerated wound. The doctor further stated that Parsini had a pregnancy three or four months old. The temporal Bone on the left side was broken into ten pieces of varying sizes. There was also rupture and laceration of left internal carotid artery and the nerves as well cut on way to the carotid. The cause of death, according to the doctor, was haemorrhage and shock resulting from injuries Nos. 3, 5 & 6, these being lacerated wounds in front of the pinna of the

left ear, incised wound on the back of left ear. In the written opinion given by this doctor on 5th of June 1964 (Exhibit P. D. 1) he stated that the injuries could have been caused by the kulhari which had been taken into possession at the instance of the appellant.

7. The case for the prosecution rests on the statement of the eye-witness Dev Raj, P. W. 3, the extra-judicial confession made by the appellant to Kartar Singh, P. W. 5 and the recovery of the bloodstained Kulhari at the Instance of the appellant. Giana, who was examined as an eye-witness has not chosen to support the prosecution case.

8. The appellant in his statement u/s 342, Code of Criminal Procedure, has attributed the case against him to the enmity of Dev Raj, P. W. and it has been suggested in cross-examination of this witness that he had a liaison with Parsini and had actually killed her.

9. Dev Raj, P. W. 3 has his residential house near that of the appellant Atma Ram. At the time of occurrence, he was actually in his cattle-yard which adjoins the residential house of the appellant and heard the shrieks of Parsini. He climbed over to the roof of the verandah of the accused with the help of ladder and from there saw the appellant inflicting injuries with a kulhari on his wife. Giana was standing nearby and crying. The appellant paid no heed to Dev Raj who inquired why Parsini was being beaten. Dev Raj saw the kulhari being thrown away by the appellant before he ran away.

10. It has been very strenuously urged by Mr. Harbhagwan Singh, the learned counsel for the appellant, that Dev Raj was not in a position to see the assault. According to the draftsman, Pardaman Singh, P. W. 11, the size of the door of the sabat is 3" X 6" and the height of the verandah from where the occurrence was witnessed, is stated to be 8 or 9 feet. He was asked the question whether the inside of the sabat could have been seen from the verandah and he was not able to give a precise reply to this question. Hardev Singh, the investigating officer, as P. W. 13, stated that the door of the sabat is quite a big one, being 9 feet in height and 5 feet in width. Though the learned Sessions Judge is of the view that the occurrence could have been seen by Dev Raj, it seems difficult to be definite on this point by looking at the site plan. The appellant could certainly have been seen, however, when he left the house throwing the Kulhari aside. Dev Raj is not in any way inimical to the appellant and in cross-examination stated that he had seen Parsini and the appellant quarrelling about four years ago. Though he is unmarried, he denied any illicit connections with Parsini. He also denied that the appellant used to object to his visits to his wife. It is hardly likely that Dev Raj, if he had really been the lover of Parsini, would have committed her murder, as suggested by the defence. In agreement with the learned Sessions Judge, we regard the testimony of Dev Raj to be reliable and we cannot accede to the suggestion made in his cross-examination and also in the statement of Giana. P. W. 4 that he had any illicit intimacy with Parsini. Giana, it appears, was persuaded to say in cross-examination that Dev Raj used to visit his mother. This

witness, who is a young boy, could easily have been tutored to give replies to questions which were put in a suggestive form. Giana also stated that his father and his elder brother Prem were in the fields at that time and he had gone there with their meals. When he returned, he found his mother lying dead on the cot and the blood-stained kulhari was lying nearby. He stated that Dev Raj used to come to visit his mother when his father was away.

11. The learned counsel for the appellant has contended that the evidence of Dev Raj and Giana about the kulhari is not in consonance with the story of recovery. According to the prosecution, the appellant after his arrest, made a disclosure statement and the kulhari was recovered from a concealed position. It is submitted that if the kulhari had been concealed by the appellant it could not have been seen by Giana, and Dev Raj would not have stated that he had seen the appellant throwing away the kulhari. It might well be that Dev Raj saw the appellant putting aside the kulhari in a concealed position. There is no inconsistency in the statement of Dev Raj and the recovery of the kulhari at the instance of the appellant.

12. We next come to the testimony of Kartar Singh, P. W. 5, who is an independent witness in the sense that he has no animus to depose against the appellant. He has a house which is 10/15 karams from that of the appellant and at about 1-0 p.m. he was informed by Bir Singh Sarpanch that Atma Ram had murdered his wife and he should go to Dhanaula police station to make a report. Before he reached the bus stand of Dhaura, Kartar Singh met the accused who told him that he had murdered his wife who on being asked to have sexual intercourse with him uttered an abuse which the appellant could not tolerate. The appellant accordingly murdered her with the kulhari. Bir Singh gave the information to Kartar Singh in the presence of Gurbachan Singh, Zora Singh, Asa Ram and Kartar Singh tailor. This witness gave the first information report at Dhanaula police station and it was recorded at 4-30 p.m. It is true that in the first information report, Kartar Singh mentioned that Giana and Dev Raj were the eye-witnesses. It may be that Bir Singh had not given these details to Kartar Singh who had otherwise obtained this information from the persons who were present when the news was imparted to him. Kartar Singh also witnessed the recovery of the bloodstained earth and was present when the appellant surrendered himself to the police and made the disclosure statement which led to the recovery of the kulhari. In cross-examination the words of the extra-judicial confession were reproduced and towards the end he stated that Dev Raj had met him before Bir Singh actually asked him to proceed to the police station. There is nothing improbable in the story given by Kartar Singh and nothing has been elicited in his cross-examination to suggest that his evidence is untrue or untrustworthy. We accept his evidence unreservedly.

13. Bir Singh, P. W. 6 is a Sarpanch of Gram Panchayat Dhaura and naturally took upon himself the initiative of having the report lodged in proper quarters without any delay. He has stated that Zora Singh, Asa Mall, Gurdev Singh, Kartar Singh,

Achhru Ram and Giana came to him at about 1-0 p.m. and the occurrence was narrated to him by Giana who was crying. He assured himself about the veracity of this incident by going to the spot in the company of others and then asked Kartar Singh, a member of the Panchayat, to make a report to the police. We see no discrepancy in the statement which he made that Dev Raj did not himself tell him that the appellant had murdered his wife and the evidence of other witnesses. Giana may have omitted to tell Bir Singh that Dev Raj had seen the occurrence, but this circumstance does not destroy the value of the evidence of Dev Raj whose presence at the spot is borne out by the earliest version given by Kartar Singh in the first information report. There are certain omissions to which our attention has been invited by Mr. Harbhagwan Singh in the statement of Bir Singh, but these could hardly affect the prosecution case.

14. Jarnail Singh P. W. 7 of Dhaula is the person who actually produced Atma Ram before the investigating officer at 10 p. m. on the day of occurrence. According to him, Atma Ram had come to his house at 9-0 p. m. and told him that he had called his wife for sexual intercourse and her blatant refusal and the foul language used by her. The appellant admitted to have given kulhari blows which resulted in her death. It is true that after this occurrence Jarnail Singh applied for a gun license and Sub-Inspector Surjit Rai recommended his case. It may be that the witness used to cooperate with the police but it would be too fanciful to imagine that he was persuaded by the investigation agency to depose falsely against the appellant. Gurbachan Singh, P. W. 8, has supported the other evidence that he as well as Asa Ram, Zora Singh, Kartar Singh tailor, and Achhru Ram had been given the information by Giana.

15. The evidence of recovery of the bloodstained kulhari at the instance of the appellant carries a ring of conviction and is an assuring circumstance in the case. The evidence, therefore, leads to the conclusion about the complicity of the appellant in the crime. The explanation offered by the accused that the case has been fabricated against him on account of his enmity with Dev Raj does not carry any weight and it is hardly possible to believe that all the persons of the village would conspire together to bring a false case against the appellant.

16. It is next argued by Mr. Harbhagwan Singh that even assuming the prosecution version to be correct, the offence of the appellant is not murder but culpable homicide, not amounting to murder, falling as it does under the first exception to Section 300, Indian Penal Code, which says:--

"Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident."

The counsel for the State, Mr. Sandhawalia, however, contends that the first proviso to this exception is applicable and the offence would be still of murder. This proviso says:--

"That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person."

17. It is the central point in the prosecution case that the sudden assault was preceded by an abuse uttered by Parsini which would be regarded on all hands as foul and contemptible. The innuendo which it contained would enrage and infuriate any husband and the words per se would amount to grave and sudden provocation causing deprivation of the power of self-control of a husband. It is important to emphasise that the impact of provocation on human frailty is to be judged in the context of the social position and environments of the person concerned. The restraint which is generally shown by sophisticated persons used to modern living is hardly to be expected in the case of a villager who still regards a wife as his personal property and chattel amenable at all times to his desire for sexual intercourse. The standard exacted by Courts in England in this respect is quite different from that what has been laid for the guidance of Indian Courts.

In *Holmes v. Director of Public Prosecutions* (1946) AC 588 it was held by the House of Lords that "as a matter of law, a confession of adultery is insufficient provocation where a husband kills his wife." It was added by Lord Simon, speaking for their Lordships, that "in no case could words alone, save in circumstances of a most extreme and exceptional character" reduce the crime to manslaughter. This case came up for consideration before the Supreme Court in *K.M. Nanavati Vs. State of Maharashtra*, and Mr. Justice Subba Rao (as the Chief Justice then was) said that:

"The test of "grave and sudden provocation is whether a reasonable man, belonging to the same class of society, as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first exception to Section 300. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

18. In the instant case, there is evidence to suggest that the appellant and the deceased used to accuse each other of loose character. The matter seems to have come to a head in 1958 when Parsini got herself medically examined and it was only at the intervention of the Panchayat that the case was not brought to Court. This may not be sufficient to bring it within the "mental background" envisaged by their Lordships of the Supreme Court, but it cannot be denied that the words uttered by Parsini would be sufficient to provoke such a degree of frenzy and resentment in the man situated in the position of the appellant as would make him lose all power of self-control. Looked in this perspective, it

seems to us that the offence committed by the appellant is one which is covered by the provisions of Section 304, Part I, Indian Penal Code, and in this view of the matter, we would convert the offence from Section 302, Indian Penal Code, to Section 304, Part I, Indian Penal Code. In the circumstances, we consider that a sentence of five years" rigorous imprisonment would be appropriate. The appeal is allowed to this extent.

A.N. Grover, J.

19. I agree.