
(2009) 12 SHI CK 0017
In the High Court Of Himachal Pradesh

Beena Kumari

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 1 Crimes 1021 : (2010) 1 ShimLC 176

Hon'ble Judges : Surjit Singh, J; Surinder Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—Appellant Veena Kumari has appealed against the judgment, dated 30th September, 2008, of learned Additional Sessions Judge, Una, whereby she has been convicted of offence, u/s 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/-; in default of payment of fine to undergo rigorous imprisonment for a further period of one year.

2. Prosecution version, as per evidence adduced during trial, may be summed up thus. Appellant Veena Kumari while pursuing her studies used to commute daily between her parents' village Polian Prohitan and an educational institution at Chakk Sarai. Often she travelled by a bus on which PW-10 Dinesh Kumar was employed as a conductor. About two years prior to the occurrence (date of occurrence is 11th February, 2006) appellant and PW-10 Dinesh Kumar developed some intimacy. In December, 2005, they married each other. Appellant belongs to Bhatti caste, which is included in the list of Other Backward Classes while PW-10 Dinesh Kumar is a Brahmin by caste. For sometime after the marriage, appellant was kept at a place called Jawali by PW-10 Dinesh Kumar, her husband. On 29th January, 2006, he took her to his parents' place in village Seri in Tehsil Dehra of District Kangra. Within 2-3 days of her being taken by PW-10 Dinesh Kumar to his parents' place, appellant started pressurizing the latter that she would do some job. PW-10 Dinesh Kumar arranged a job for her in

a school at Bankhandi. It appears that it was planned that on joining service in the school, the appellant would stay at Bankhandi and, so, some utensils and other household articles were purchased. The mother of PW-10 Dinesh Kumar opposed it. The appellant and the mother of PW-10 Dinesh Kumar, namely Shakuntla Devi (deceased) quarrelled over the issue for two three days.

3. On 11th February, 2006, PW-10 Dinesh Kumar left for his duty, as usual. His mother deceased Shakuntla Devi and a niece named Neha, also deceased, were at home. Neha was the daughter of a deceased sister of PW-10 Dinesh Kumar.

4. After PW-10 Dinesh Kumar left his house on 11th February, 2006, the appellant and the two deceased, named above, travelled from Kaloha, a place near the native place of PW-10 Dinesh Kumar, to village Polian Prohitan in Amb Sub-Division of Una District, by a bus on which PW-8 Ravinder Kumar was a conductor. Around 1.30 or 2 p.m. on the same day, the deceased and the appellant were spotted at a well in village Polian Prohitan by PW-5 Rachna Devi and PW-3 Rajinder Singh. The same day around 3 p.m. the appellant travelled by a vehicle of PW-4 Vipin Kumar from village Polian Prohitan to Kaloha and paid him Rs. 5/- as fare. Around 3.30 p.m., on the same day, PW-10 Dinesh Kumar received a telephonic call from the appellant (his wife) as to where he was and when he told her that he was at a place called Banni, she told him that she had been informed that he (PW-10 Dinesh Kumar) had met with an accident. She asked him to remain at Banni and she would be joining him there shortly. PW-10 Dinesh Kumar then boarded a bus and proceeded towards village Kaloha. When the bus reached at a place called Garli, appellant met him there and told that a motorcyclist had come to her and informed that he (PW-10 Dinesh Kumar) had met with an accident and so, she accompanied by his mother Shakuntla Devi and niece Neha, both deceased, had gone to Kamakhya Devi temple in village Polian Prohitan and when they were present there, the aforesaid motor-cyclist again came and told that he would be carrying them on his motor-cycle to the site of the accident and took away with him both the deceased, promising that he would be returning soon and would carry her (the appellant) too, as all of them could not be carried in one go on his motor-cycle.

5. Next day, PW-10 Dinesh Kumar, according to his testimony in the Court, went to Police Station, Jawalamukhi and reported the matter to the police, because his mother and niece Neha did not return nor could they be located by him. Police of Jawalamukhi went in search of the two deceased towards Polian Prohitan, but got no clue.

6. On 14th February, 2006, PW-6 Milkhi Ram, a resident of village Polian Prohitan, spotted the dead-body of an old lady, floating on the surface of the water of his well in the said village. It was around 7 a.m. He went to the Pardhan of the Panchayat, namely PW-7 Narinder Kumar and apprised him of what he had seen. PW-7 Narinder Kumar informed Amb Police telephonically. Police reached the spot before 12 noon. They spotted, besides the floating dead-body of an old woman, another dead-body of a female child settled at the bottom of the well.

PW-17 ASI Ashok Kumar of Police Station, Amb, then telephonically informed Jawalamukhi Police. Call was attended by PW-15 ASI Sansar Chand. At that time, PW-10 Dinesh Kumar, the husband of the appellant, was also present at Police Station, Jawalamukhi. PW-1 Tarsem Lal also happened to be at Jawalamukhi at that time. PW-15 ASI Sansar Chand accompanied by PW-10 Dinesh Kumar and PW-1 Tarsem Lal then went to village Seri, where the deceased lived and from there, accompanied by some residents of that village, went to village Polian Prohitan, falling in the area of Police Station, Amb. They reached the site of the well in the area of village Polian Prohitan around 5 in the evening. By that time the dead bodies had been retrieved from the well by PW-17 ASI Ashok Kumar, with the help of the residents of the area. Dead-bodies were identified to be of his mother and niece by PW-10 Dinesh Kumar.

7. Immediately after retrieving the dead-bodies from the well, PW-17 ASI Ashok Kumar drew up report Ext. PW17/A and despatched it to Police Station, Amb, for formal registration of the case. On the basis of that report, case was formally registered vide FIR Ext. PW13/A. The time of preparation of the aforesaid report Ext. PW17/A is recorded as 7 p.m. When this report was drawn, PW-10 Dinesh Kumar, PW-1 Tarsem Lal and the appellant had already reached the spot. PW-3 Rajinder Singh, per his testimony, was also on the spot, when the report was prepared. Inquest in respect of both the dead bodies was conducted and reports Exts. PW7/B and PW17/C were prepared.

8. Dead bodies were sent to Zonal Hospital, Una, for postmortem examination. PW-2 Dr. S.K. Bansal conducted post-mortem examination. He noticed 3-4 cms lacerated wound with ragged margins on the left parietal area of the dead body of Shakuntla. Bleeding was also present. Another 3 cms cut mark above right brow with ragged margins was also noticed. On the dead body of deceased Neha, 3-4 cms wound above left eye, with ragged margins and signs of inflammation, was noticed. Left mandible was found fractured. Two left side canine teeth were missing, with inflamed and swollen gum margins. The doctor gave the opinion that the death could have been caused by means of stones Exts. P4 and P5, which had been recovered from the well, after emptying it, on 18th February, 2006. The doctor also opined that it was not a case of death by drowning, but the cause of death was the aforesaid injuries. He also gave the opinion that the time lag between the death and the postmortem examination, which was conducted on 15th February, 2006, was more than 24 hours.

9. On 18th February, 2006, the police got the well emptied and recovered from its bottom certain pieces of stones, which were quite weighty and large sized. Two tickets Exts. P7 and P8 were also recovered from the bottom of the well, which PW-8 Ravinder Kumar testified to have issued to the appellant. When the dead-bodies were retrieved from the well, two bamboo sticks, one bamboo log were also recovered from the well and taken into possession.

10. On 27th February, 2006, statement u/s 161 Cr.P.C. of PW-10 Dinesh Kumar was recorded. It was in that statement that he disclosed for the first time to the

police that the appellant, besides telling him the story of a motor-cyclist having come to her and telling that he had met with an accident, had confessed to him on 15th February, 2006, when she was accompanying him to the site of the well, where dead bodies were stated to have been spotted, that she had killed the two deceased by throwing them into the well and then hitting them with the stones, when they cried for help and attempted to come out of the well.

11. Trial Court charged the appellant with offences, under Sections 302 and 201 IPC and on her pleading not guilty, tried her for the said offences.

12. Prosecution examined PW-1 Tarsem Lal, PW-3 Rajinder Singh, PW-4 Vipin Kumar, PW-5 Rachna, PW-6 Milkhi Ram, PW-7 Narinder Kumar, PW-8 Ravinder Kumar, PW-15 ASI Sansar Chand, PW-17 ASI Ashok Kumar and PW-2 Dr. S.K. Bansal, as material witnesses, besides examining some formal witnesses.

13. Learned Trial Court did not believe the testimony of PW-10 Dinesh Kumar, with respect to the alleged extra judicial confession made to him by the appellant. However, it came to the conclusion that from the evidence adduced by the prosecution, following circumstances stood proved and the same made a complete chain pointing out to only one hypothesis that the appellant was guilty of murder of Shakuntla and Neha and to no other (hypothesis) and consequently convicted and sentenced the appellant as aforesaid:

1. Accused Beena Kumari being last seen with deceased(s) Shakuntla and baby Neha on 11.2.2006.

2. The accused Beena Kumari noticed on 11.2.2006 traveling with one old lady and a child towards Kamakhya Mata temple, Polian Prohitan.

3. The accused Beena Kumari seen returning back alone from the scene of occurrence.

4. The recovery of the tickets and the stones from the well at Panchi-ka-Paroh.

5. The medical evidence corroborating the injuries sustained by the deceased(s) with the modus operandi of the accused.

6. Failure on the part of the accused to give explanation or information as to the disappearance of Shakuntia Devi and Neha from the well.

14. We have heard the learned Counsel for the appellant as also the learned Deputy Advocate General at length and have also perused the record. Also we have inspected the case property, including the two tickets Exts. P-7 and P-8 and two pieces of stones Exts. P-4 and P-5, which according to the opinion of PW-2 Dr. S.K. Bansal, could have been used to cause the injuries found on the dead-bodies.

15. Prosecution story is that the appellant took the two deceased to village Polian Prohitan and from there to a well, located at a lonely place called Panchhi-da-Paroha and there she first pushed deceased Shakuntia, who was sitting on the

edge of the well, into the well and thereafter she threw the child, i.e. deceased Neha, into the well and when the deceased started raising alarm for being saved, the appellant threw heavy and large sized stones, including stones Exts. P-4 and P-5, on them, as a result of which they sustained serious head injuries and succumbed to those injuries and thereafter their dead-bodies sank into the well, which had 10 feet deep water. This, according to the prosecution, happened on 11th February, 2006. Dead bodies were spotted in the well on 14.2.2006 and retrieved on the same day around 5 in the evening. Post-mortem examination was conducted on the next following day around 12.15 p.m.

16. According to the postmortem reports and the testimony of PW-2 Dr. S.K. Bansal, who conducted the post-mortem examination, there was clotted blood at and around the sites of the wounds and also the wounds were bleeding. The doctor has categorically opined that it was not a case of death by drowning as there was no water in the lungs or stomach. Rigor mortis was present. There were no washer-woman's wrinkles on the palms and the soles of the deceased. Also there were no signs of goose skin. Post-mortem staining was also not noticed.

17. In the cross-examination, PW-2 Dr. S.K. Bansal admitted that if a dead-body remains in the water for too long, as in the present case, washerwoman's wrinkles are bound to be there on the palms and the soles of the feet. He also admitted that rigor mortis appears 12 hours after the death, remains for next 12 hours and then disappears after 12 hours and that normally, the rigor mortis should not be there after 40 hours,. In this case, rigor mortis was found even after 96 hours. Also, there were clots of blood at the site of the wounds, which could not have been there, had the deceased been injured inside the well and then the dead-bodies sunk in the well and remained in the water for three days. By the action of the water, firstly the blood would not have clotted and even if it would have clotted, on account of the deceased having kept their heads out of the water till they fainted, the same would have dissolved by the action of the water, during the aforesaid period of three days.

18. Furthermore, the wounds would not have been bleeding after 96 hours, but the doctor, namely PW-2 S.K. Bansal, testified that wound on the parietal area of the skull of Shakuntla was bleeding. Also, we are of the considered view that the deceased, if hit and injured inside the well, could not have remained afloat till their death. With the bleeding injuries on their heads, they were supposed to have fainted before the death and in such a situation, they were bound to drown, but no symptoms of drowning were there. PW-2 Dr. S.K. Bansal categorically stated that it was not a case of death by drowning or that the drowning was not even a secondary or additional cause of death.

19. During the course of hearing, reference has been made by the learned Counsel for the appellant, to various books on medical jurisprudence in support of his submission that the dead-bodies could not have been in the well for three days, as is the story of the prosecution and that the two ladies had been done to

death a day or two, before the postmortem examination was conducted and thrown into the well, most probably on 14th February, 2006 itself. Our attention has been drawn to the following para of Chapter IX page 287 of Modi's Medical Jurisprudence and Toxicology, Twenty Second Edition:

The skin of the hands and the feet shows a bleached, corrugated and sodden appearance, after the body has laid in water for ten to twelve or more hours. This condition of the skin is known as the washerwoman's hand. It is first seen in the fingertips within three to four hours and later by twenty four hours, in both the hands. It proves only that the body was immersed for a prolonged time without reference to the. cause of death.

20. Learned Counsel for the appellant further relies upon an answer to Q.3.37 at page 3.71 of Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, Sixth Edition, per which skin of the hands and feet become loose and peels like a glove or stocking in about 2-4 days, if the dead-body remains submerged in the water.

21. Another Text Book cited by the learned Counsel for the appellant is Principles and Practice of Forensic Medicine by Dr. Umadethan, First Edition 2008. In Chapter pertaining to Asphyxial Deaths, the author writes at page 279 that bleaching and saddening of the skin of the hands and soles will be seen if the dead-body is submerged for about 12-18 hours.

22. In support of his contention that bleeding from ante-mortem injuries would not be prominent if the dead-body remains submerged in the water for too long, the learned Counsel for the appellant has drawn our attention to the aforesaid Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology, Sixth Edition. At page 3.72 in an answer to Q. 3.38 it is written that injuries sustained before or during drowning, although ante-mortem in nature, do not show bleeding prominently because they are being continuously washed by the surrounding water. A microscopic examination of the doubtful sites is, therefore, necessary.

23. We also notice from the evidence of PW-2 Dr. S.K. Bansal that the bodies were not decomposed. Liver, Kidneys, lungs, in the case of both the dead-bodies, were normal, which suggests that the death might not have taken place 3-4 days prior to the post-mortem examination.

24. Also, there was no indication of hypostasis. Had the deceased been done to death in the well, their dead-bodies were supposed to have remained at the bottom till the gases of decomposition formed inside the bodies and this process takes normally 24 hours. Now, if the dead-bodies were there at the bottom of the well for at least 24 hours, they were supposed to be in one posture, as according to PW-6 Milkhi Ram, he had not taken out the water from the well for 3-4 days, and the post-mortem staining must have appeared on those sites of the dead-bodies, which bore the weight of the bodies.

25. Condition of the dead bodies, as testified by PW- 2 Dr. S.K. Bansal, especially the absence of washerwoman's wrinkles, the presence of the clotted blood at the site of the wounds, absence of goose skin, presence of rigor mortis and absence of hypostasis, indicate that the dead bodies did not remain in the water from 11.2.2006 to 14.2.2006, i.e. for three days, and if it is so, the prosecution story that the deceased were taken to the well by the appellant on 11.2.2006 and they were seen at the well by PW-5 Rachna Devi and PW-3 Rajinder Singh on the aforesaid date and that around 2 p.m. or in any case before 3 p.m., the appellant pushed/threw the deceased into the well and then killed them by throwing heavy and large sized stones, including cut stones Exts. P-4 and P-5, is rendered highly doubtful.

26. The aforesaid condition of the dead-bodies suggests that probably the deceased were not murdered prior to 13.2.2006 and that they were murdered outside the well and then their dead-bodies were thrown into the well, most probably on the day of their being spotted in the well, i.e. 14th February, 2006.

27. PW-2 Dr. S.K. Bansal's testimony also belies the prosecution story that the deceased were hit inside the well by throwing stones at them. The doctor very categorically stated that had the deceased been hit inside the well by throwing stones Exts. P4 and P5, they were supposed to sustain much more serious wounds than noticed on their dead-bodies, unless they were completely inside the water. Now had the deceased been completely inside the water when stones were thrown at them, they would have drowned.

28. Testimony of PW-8 Ravinder Kumar, by whose bus the deceased and the appellant allegedly travelled on 11th February, 2006 from Kaloha to Polian Prohitan, does not inspire confidence. According to the witness, he charged Rs. 20/- from the appellant as bus fare and issued 2-1/2 tickets. Two tickets were recovered from the bottom of the well on 18th February, 2006, after emptying the well.

29. Condition of the tickets is good. It does not appear that the tickets remained in the water for a week, Also, the tickets are not punched, which fact suggests that these were, most probably, never issued, but were planted. Otherwise also, the tickets were supposed to be in the pocket of the clothes worn by either of the two deceased and not lying loose at the bottom of the well.

30. PW-8 Ravinder Kumar, in his cross-examination by the defence, could not tell the name of the owner of the bus he was employed with as a conductor, though he did claim that he remained employed with him for more than two years. His cross-examination was deferred on the request of the learned defence Counsel and he was required to produce the time table and the check list, pertaining to deployment of buses and the staff on different routes. He did not produce either the time table or the check list on the next date and stated that the owner of the bus refused to give those documents to him. Prosecution made no effort to summon the owner of the bus to produce the aforesaid documents in the Court.

31. Testimony of PW-3 Rajinder Singh, who claimed to have seen the appellant in the company of the deceased at the well on 11.2.2006, also does not inspire confidence. The witness states that on that day he had gone to the forest to scare away the monkeys and that when he was in the forest he received a telephonic call around 2 p.m. that his Mausi's (mother's sister) father-in-law had expired and so, he started back for the village and when he reached near the well, he saw the appellant and the two ladies present near the well. The witness was present at the well on 14.2.2006, when the dead-bodies were spotted and the police came there. He remained present so long as the police was there, per his own statement. Dead-bodies were retrieved from the well in his presence. PW-17 ASI Ashok Kumar from Police Station, Amb, got the dead-bodies retrieved and sent report Ext. PW17/A to Police Station, Amb for registration of the case. He prepared this report at 7 p.m. The witness did not inform PW-17 ASI Ashok Kumar, at the time of preparation of the said report Ext. PW17/A, that he had seen the appellant and the two ladies at the well on 11.2.2006, even though he had been with the police throughout. We have said so, because in report Ext. PW17/A, there is no mention that anybody gave any clue of the culprits.

32. The witness also changed the time of his having seen the appellant and the deceased at the site of the well, while in the witness box. To the police, vide portion A to A of his statement Ext. PW17/G, he stated that he received the telephonic call in the forest at 2 p.m. and then proceeded towards the village and on the way he saw the appellant and the two deceased at the site of the well. In the Court, however, he stated that he received the telephonic call at 1.30 p.m. and passed by the well at 1.45 p.m. This he did with a view to bringing his statement in line with that of PW-5 Rachna Devi, who claimed to have seen the appellant and the deceased at the well at 2 p.m. and the case of the prosecution is that she passed by the well when PW-3 Rajinder Singh had already passed. PW-5 Rachna Devi is a chance witness. Her house is at a distance of 3 kms. from the well, per her own deposition.

33. Testimony of PW-10 Dinesh Kumar, the husband of the appellant, about the alleged disclosures made to him by the appellant, cannot be used as evidence, in view of the bar contained in Section 122 of the Evidence Act. Otherwise also, his testimony is highly doubtful. According to his statement in the Court, the appellant made the disclosures to him, when both of them alongwith their co-villagers and PW-15 ASI Sansar Chand, were going to the site of the well from village Seri. He testified that they reached the site of the well when the dead-bodies were still in the well. Dead-bodies were taken out around 5 p.m. Report Ext. PW17/A was prepared by PW-17 ASI Ashok Kumar of Police Station, Amb at 7 p.m. The witness did not tell PW-17 ASI Ashok Kumar about the alleged disclosures made to him by the appellant. He made statement to the police about the aforesaid disclosures thirteen days later, i.e. on 27th February, 2006 and no plausible explanation for not narrating the aforesaid facts to the police earlier, has been offered by him.

34. Conduct of PW-10 Dinesh Kumar also suggests that he did not suspect the involvement of the appellant in the commission of the crime. According to him, the appellant told him a concocted story about a motor-cyclist coming to her and telling that her husband had met with an accident and then her taking the two deceased with her to Kamakhya Devi temple and from their the motor-cyclist taking the two deceased on his motor-cycle to the alleged site of the accident on 11.2.2006. But he did not lodge any report with the police about the disappearance of his mother and the niece, in spite of the aforesaid alleged disclosures having been made to him. No doubt he stated that on the next day he went to Police Station, Jawalamukhi and lodged report, but no such report is entered in the record of Police Station, Jawalamukhi.

35. Of course, PW-15 ASI Sansar Chand did state that PW-10 Dinesh Kumar had reported about the disappearance of his mother and niece on 12.2.2006, when he met him at Pragpur, where he had gone in connection with patrolling, but the entries in the Rojnamcha, copies Exts. PW14/ A and PW14/B, give a lie to his testimony. According to Ext. PW14/ A, PW-14 ASI Sansar Chand left Police Station, Jawalamukhi at 9 a.m. on 12.2.2006 for patrolling towards villages, Banni, Seri and Kaloha. He returned to the Police Station at 8 p.m. on 12.2.2006 and made entry Ext. PW14/B, that it was all well in the area patrolled by him. Now when all was well, as entered in the Roznamcha, then the testimony of the witness that PW-10 Dinesh Kumar met him at Pragpur and informed that a motor-cyclist had taken away his mother and niece and that they were missing since then, cannot be correct. In his statement, u/s 161 Cr.P.C. Ext. PW17/A, with which he was duly confronted, he, however, stated that PW-10 Dinesh Kumar had visited the Police Station on 12.2.2006 and reported that someone had taken away his mother and the niece, on his motor-cycle towards Polian Prohitan. He denied having made such a statement. Otherwise also, this portion of the statement does not fit into the prosecution story, because according to the prosecution story, motor-cyclist had taken away the two deceased not towards Polian Prohitan, but from Polian Prohitan to the site of the alleged accident.

36. Further, we do not find any evidence on record, indicating that on 11.2.2006, the appellant was at the house of PW-10 Dinesh Kumar, when he left for his duty. PW-10 Dinesh Kumar stated that the deceased were at his place, when he went to duty on 11.2.2006. He did not say that the appellant was also there.

37. For the foregoing reasons, we are of the considered view that the case of the prosecution does not stand established. Hence, the appeal is accepted, judgment of the trial Court, convicting and sentencing the appellant of offence, u/s 302 IPC is set aside and she is acquitted. She being in jail, serving the sentence awarded by the trial Court, is ordered to be set at liberty, in case her detention is not required in any other case.