

(2014) 11 SHI CK 0102
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 118/2011

Dhan Bahadur

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 1 ShimLC 457

Hon'ble Judges : Sureshwar Thakur, J; Rajiv Sharma, J

Bench : Division Bench

Advocate : Suneel Awasthi, Advocate for the Appellant; P.M. Negi, Dy. AG,
Advocate for the Respondent

Judgement

Rajiv Sharma, J.—This appeal is instituted by the appellant-accused (herein after referred to as "accused" for convenience sake) against judgment rendered by learned Addl. Sessions Judge, Ghumarwin in Sessions Trial No. 5/7 of 2010/09 dated 29.11.2010, whereby accused, who was charged with and tried for offence under Section 302 of the Indian Penal Code, has been convicted and sentenced to undergo to life imprisonment and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo simple imprisonment for 2 months.

2. Case of the prosecution, in a nutshell, is that Naresh Kumar PW-1, is owner of house situated at Kherian Luhnoo. He rented out two rooms in the ground floor to accused on a monthly rent of Rs. 500/-, wherein accused was living alongwith his wife and two sons. Accused was working as a labourer at Bilaspur whereas his wife Kamla Devi was working in Juice Factory situated in industrial area Bilaspur. A tap was installed outside the kitchen from where Naresh Kumar, accused and other persons used to fetch water. On 8.6.2009, while PW-1 Naresh Kumar at 7.00 am came to fetch water from the tap, he noticed that accused has not turned up though during night he was present in his house. PW-1 came near the room of the accused and called his name but nobody responded. Thereafter,

PW-1 Naresh Kumar called Kamal Sharma, Up Pradhan and Kamal Sharma alongwith Ram Pal came to the spot and when they pushed the door, they noticed blood marks near the door. Matter was reported to the police at 7.50 am by Naresh Kumar. Statement of Naresh Kumar was recorded under Section 154 of the Criminal Procedure Code vide Ext. PW-1/A, which was forwarded to the police station Sadar, on the basis of which an FIR Ext. PW-15/A was registered. The police opened the door. Blood stained body of Kamla Devi, wife of the accused was found lying on the cot. Blood was scattered on the cot. Children were sleeping in the adjoining room. Accused was found missing. Site Plan Ext. PW-18/A was prepared. Inquest reports Ext. PW-1/E and PW-1/F were prepared. Blood stained wooden bat (Thapi) was found. It was measured. It was wrapped in a parcel and sealed with 3 seal impressions of "T". It was taken into possession vide seizure memo Ext. PW-1/B in the presence of PW-1 Naresh Kumar, PW-2 Rakesh Kumar. Bed sheet was seized vide seizure memo Ext. PW-1/C. Three days after the murder of Kamla Devi, accused rang up Jamna Devi (PW-7) on her telephone No. 317010 and requested her to call his mother-in-law, who asked the accused to come back. Accused visited the house of his mother-in-law on 18.6.2009 where PW-2 Rakesh Kumar informed the police and police arrested the accused. Disclosure statement Ext. PW-9/A of the accused was recorded. He led the police party to the spot. Identification memo Ext. PW-10/A was prepared. Police also collected the call details. Post mortem was got conducted. Post mortem report is Ext. PW-14/A-B. Report of the chemical examiner is Ext. PW-14/A-C. According to the Doctor, deceased died as a result of head injury leading to Haemorrhagic and vasovagal shock. Investigation was completed. Challan was put up after completing all the codal formalities. Accused was convicted and sentenced as noticed herein above.

3. Prosecution has examined as many as 21 witnesses in order to prove its case against the accused. Statement of accused was also recorded under Section 313 of the Criminal Procedure Code. He has denied the case of the prosecution. Learned trial Court convicted and sentenced the accused, as noticed hereinabove. Hence, the present appeal.

4. Mr. Suneel Awasthi has vehemently argued that the prosecution has failed to prove the case against the accused.

5. Mr. P.M. Negi, Dy. AG has supported the judgment dated 29.11.2010.

6. We have heard the learned counsel for the parties and also gone through the record carefully.

7. PW-1 Naresh Kumar deposed that he is owner of house at Kherian Luhnoo. Accused was his tenant. He was living with his wife and two small children. He was working as a labourer. He used to fetch water from a tap installed outside the kitchen. On 8.6.2009 at 7.00 am, he got up and filled water from the tap. However, accused did not come to fetch water. On the previous night, accused was present at his quarter with his wife and children. When the accused did not

come to fetch water, he went near the room of accused and called him but nobody replied. He called Kamal Sharma, Up Pradhan. Mr. Kamal Sharma and Ram Pal came on the spot. They pushed the door and found blood marks near the door. They informed the police. Police arrived at the spot. Door was opened and blood stained dead body of Kamla Devi was found. The deceased had suffered injury on head and face. Blood was scattered on the bed and floor. Children were sleeping in the other room. Accused was not present. Police recorded his statement vide Ext. PW-1/A. Police recovered wooden bat (Thapi) lying near the Charpai. Wooden bat was taken into possession vide Ext. PW-1/B and bed sheet was also taken into possession vide seizure memo Ext. PW-1/C. Police also recovered identity card issued by the Election Commission to the accused vide Ext. PW-1/D. Identity card is Ext. P-3. Inquest reports Ext. PW-1/E and PW-1/F were prepared. In his cross-examination, he deposed that he had seen the accused and his wife living peacefully and in his presence, no quarrel had taken place. The children had disclosed about the quarrel in front of the police and prior to it, they had never told him about the same. Accused has met him on 7.6.2009 at 7-8.00 pm. He also admitted in his cross-examination that he did not hear any cries from the house. Children also did not disclose about the cries in his presence.

8. PW-2 Rakesh Kumar deposed that deceased was his real sister. Accused and his sister were living at Kherian Luhnoo. Accused was a labourer. He was suspecting the character of his sister for the last 2-3 months, prior to the death of deceased. Accused and his sister had visited his house 2-3 days prior to the incident. They also quarreled there. Police had prepared inquest reports Ext. PW-1/E and PW-1/F. Photographs of dead body were taken. His nephews had told him that during the night the accused person had quarreled with his sister. He did not take meals by saying that she would poison his food and thereafter his sister gave that food to the dog. His nephews told him that accused person slept with them in other room while mother slept in other room. His nephews told him that during night accused had proclaimed that he would take final decision during the night. These facts were also narrated by his nephews to the police. Accused person has presented his inner to the police which was taken into possession vide Ext. PW-2/A. In his cross-examination, he has deposed that his sister was married to accused 12 years back. Two-three months prior to the death of deceased, she was living peacefully with the accused person. He also admitted that his sister had visited their house alongwith accused person 3-4 days prior to her death to see her ailing mother. Accused person was a teetotaler. He has told the police that his sister and accused had quarreled at their house 3-4 days prior to the death of deceased. (confronted with his statement Ext. DA, wherein it is not recorded so). He has not made any complaint to the police about the quarrel of accused with his sister.

9. PW-3 Parwati Devi is the mother of deceased Kamla Devi. According to her, her daughter was working in a juice factory. Accused has visited her house with his wife 3-4 days prior to the death of her daughter. They had quarreled on the

way as well in her house. Accused person had threatened her daughter that he would cut her into pieces and consume them with salt. Thereafter she rang up her daughter, she was weeping. Accused person was suspecting fidelity of her daughter. In her cross-examination, she stated to the police that 3-4 days prior to the death of her daughter she reached at her house quarreling and also quarreled at her house. (Confronted with statement Ext. DB, wherein it is not so recorded that they came to her house quarreling). She also admitted that till three months prior to her death, her daughter lived peacefully with the accused person.

10. PW-4 Munish is a child witness. His statement was recorded on oath. According to him, his father used to do labour work. His elder brother Vishal was studying in 6th class. His mother and father used to quarrel. Lastly on 7.6.2009, all were present in the house. His father was also present. He had come from duty and his mother had also come from duty. When his mother came back his father asked her with whom she flirts. His mother replied that she would not flirt with anyone. His mother asked his father to take meals. He refused to take food. During night, their parents had quarreled with each other. His father, brother and he slept in one room. His mother slept in another room. Father got up and went to the room in which mother was sleeping. In the morning, they found dead body of mother was lying on the bed. In his cross-examination he admitted that besides blood and bed sheet no other thing was lying on the spot. Nothing was recovered in his presence. They got up in the morning at 7.30 am. The door of their room was open. The outer door was bolted from inside. The door which opens towards the courtyard of the room where his mother was sleeping was bolted from inside. They were taken out by the landlord. He also admitted that he has not disclosed to anyone about the quarrel between his parents.

11. PW-5 Kamal Dev deposed that on 8.6.2009, Naresh Kumar came to his house at 7.50 am. He told that his tenants have not got up that day and requested him to visit the spot to find out the factual position. Thereafter, he alongwith Ram Pal and Naresh Kumar left. He found that the door of the house was slightly open. They peeped inside and found Kamla was lying upside down on the spot. He advised Naresh Kumar to inform the police. Police was informed. Police came at the spot within 20-25 minutes. He admitted in his cross-examination that before the police awakened the children, they were sleeping. He also admitted that both the children did not make any statement before Naresh Kumar and Ram Pal.

12. PW-6 is a formal witness.

13. PW-7 Jamna Devi deposed that phone number 317010 was installed at her house. Three days after the death of Kamla Devi, Dhan Bahadur called her on telephone. It was attended by her. When she asked him from where he was calling, he told that he was thrown in a ditch near Pathankot. Then he asked her to let him speak to his mother-in-law and children. She called mother-in-law of the accused. After some time, accused rang up and then his mother-in-law and

his son Munish talked to him. In his cross-examination, she deposed that the accused had enquired about his wife and children. She admitted that the accused had told that he was not having any money to come back. She denied that accused used to maltreat his wife. She also admitted that telephone was installed at the house of in laws of the accused but the same was out of order on that day.

14. PW-8 is a formal witness.

15. PW-9 HHC Gian Chand deposed that accused has made custodial statement that he could identify the place where wooden bat was hidden. Disclosure statement was recorded vide Ext. PW-9/A. It was signed by the accused person. Accused led the police to the room at Kherian Luhnnoo. He identified the room where he slept with his wife on 7.6.2009.

16. PW-10 Sushil Kumar Gautam deposed that they are three brothers. They were living jointly in the two rooms at Luhnno. On 7.6.2009, entire family of accused was present in the house. On 8.6.2009, accused did not come to fetch water in the morning. Both used to fetch water from the tap. When accused person did not come to fetch water as usual, upon this his brother Naresh Kumar called him and also knocked at the door but there was no response. Door of the house was closed but it was not bolted. Thereafter, his brother Naresh kumar called Kamal Dev and Ram Pal. They also joined them and called accused. There was no response. Upon this Kamal Dev peeped inside through the door. He found Kamla Devi lying on the Charpai upside down. Police was informed. Police visited the spot with the accused on 22.6.2009. Identification memo Ext. PW-10/A was prepared. He admitted in his cross-examination that they did not hear any cries during night on 7.6.2009.

17. PW-11 LHC Pal Kumar, PW-12 Sunil Kumar, PW-13 LC Satya Devi and PW-14 C. Ashish Dhiman, are formal witnesses.

18. PW-14A Dr. Supriya Atwwal has conducted post mortem on the dead body of Kamla Devi. She issued MLC Ext. PW14/A-B. According to her, probable time that elapsed between injury and death was a few minutes to a few hours, and the probable time that elapsed between death and post mortem was 12-14 hours. According to her, injuries No. 1 and 2 mentioned in Ext. PW-14/A-B were sufficient, in the ordinary course, to cause death of the deceased.

19. PW-15 SI Megh Singh is a formal witness.

20. PW-16 Amit Chauhan has supplied call details of mobile numbers 9278863102 and 011-69442218. According to him, as per call details on 12.6.2009, an outgoing call was made from mobile No. 92788-63102 to phone number 1978-317084 and at that time, location of the mobile phone was Adarsh Nagar or Azad Nagar in Delhi.

21. PW-17 HC Ramsharan deposed that SI Chaman Lal deposited two parcels containing three seals each of impression "T" alongwith specimen of seal with him in the Malkhana. One parcel contained the bed sheet and other contained

wooden bat. On 18.6.2009, SI Chaman Lal had deposited one sealed parcel containing the inner which was sealed with 3 seals bearing impression "T". On 19.6.2009, LC Satya Devi had deposited viscera of Kamla Devi alongwith clothes and other parcels which were sealed with the seal of RH Bilaspur. Entire case property was entered in the Malkhana register. Property was sent to FSL Junga.

22. PW-18 SI Chaman Lal was the investigating officer. He received a call at 7.50 am on 8.6.2009 from Naresh Kumar Gautam. The information was recorded. He reached the spot. He recorded statement of Naresh Kumar vide Ext. PW-1/A under Section 154 of the Criminal Procedure Code. He conducted inquest over the dead body of Kamla Devi and prepared inquest report. He got post mortem of Kamla Devi conducted. A wooden bat was taken into possession. Voter card of the accused was also recovered. Accused was arrested from his in-laws" house at Jamothi on 18.6.2009. He obtained call details also. In his cross-examination, he deposed that when they reached the spot at 8.15 am, door was closed but the same was not bolted from outside. Both the sons of accused, Vishal and Munish were present outside the room. Parwati and Rakesh had reached the spot after they reached there. He also admitted in his cross-examination that no neighbour had stated about the quarrel between accused and his wife. He has not verified from Delhi whether the accused person had in fact made phone call to his in-laws from that number on 12.6.2009. Finger prints were not lifted from the wooden bat.

23. PW-19 Constable Hans Raj deposed that on 20.6.2009, MHC Ram Saran had handed over case property of the case to be taken to FSL Junga. He carried the same to FSL. The case property was not tampered with during the time it remained with him.

24. PW-20 A.S.I. Bhanu Partap Singh deposed that he had sought information from Nodal Officer Tata Tele Services Mohali qua mobile No. 92788-63102 and phone No. 01169442218 with effect from 9.6.2009 to 14.6.2009.

25. PW-21 A.S.I. Prem Pal has received the call details Ext. PW-16/A, 16/B and 16/C.

26. What emerges from the facts enumerated herein above is that accused was living with his wife and two children in the rented accommodation of PW-1 Naresh Kumar. PW-1 Naresh Kumar on 8.6.2009 at 7.00 AM had gone to fetch water from the tap. Accused did not come to fetch water. When accused did not come to fetch water, he went near his room. He called him but there was no response. Thereafter Kamal Sharma and Ram Pal came on the spot. Then they pushed the door and found blood marks near the door. Police was informed. PW-4 Munish has deposed that door of their room was open. Outer door was bolted from inside. It opens towards the courtyard of the room where his mother was sleeping, which was bolted from inside. They were taken out by the landlord. PW-5 Kamal Dev deposed that the door of the house of accused was slightly open. They peeped inside and found that Kamla Devi was lying upside down and

blood was scattered all around.

27. We have gone through the site plan Ext. PW-18/A. According to PW-1 Naresh Kumar, door was slightly open. PW-5 Kamal Dev also deposed that the door of the house of accused was slightly open. However, as per statement of PW-4 Munish Kumar, room was bolted from inside where his mother was sleeping. In case the door was bolted from inside neither PW-1 Naresh Kumar nor PW-5 Kamal Dev could peep inside the room. According to PW-1 Naresh Kumar, children were sleeping in the other room. PW-4 Munish Kumar deposed that they were taken out by the landlord. PW-5 Kamal Dev deposed that before the police awakened the children, they were sleeping. PW-18 SI Chaman Lal in his cross examination has categorically testified that when they reached the spot, door was closed but the same was not bolted from outside. Sons of the accused, Vishal and Munish were present outside the room. There is major contradiction in the statements of PW-1, Naresh Kumar, PW-4 Munish Kumar and PW-18 SI Chaman Lal that whether the children were sleeping inside the room or they were standing outside the room before the arrival of the police.

28. According to the prosecution case, accused was doubting the character of his wife and for this reason, he has killed his wife. There is no eye-witness of the incident. Case is entirely based on circumstantial evidence. Motive is very important when case is based on circumstantial evidence prosecution has to complete the entire chain of events. PW-1 Naresh Kumar has deposed specifically in his cross-examination that he had seen accused and his wife living peacefully and in his presence no quarrel had taken place. He is landlord of the deceased. He was living in upper storey. According to PW-2 Rakesh Kumar accused married to his sister 12 years prior to the incident. Uptil 2-3 months prior to death of the deceased, she was living peacefully with the accused and he has also admitted that his sister visited with accused person 3-4 days prior to her death to see her ailing mother. PW-3 Parwati Devi has admitted that accused came to see her with her daughter. In her cross-examination she has admitted that uptil 3 months prior to the death of her daughter, she lived peacefully with the accused person. PW-10 Sushil Kumar has also admitted in his cross-examination that the accused remained their tenant and no quarrel has taken place between him and his wife. He also admitted that children of the accused have not told him anything about any quarrel between their parents. It is evident from the statement of PW-1 Naresh Kumar, PW-2 Rakesh Kumar, PW-3 Parwati Devi and PW-10 Sushil Kumar that the accused was living with his wife for about 12 years peacefully. They have never quarreled.

29. According to PW-4 Munish his father quarreled with his mother. His father slept with his brother and him in one room and mother was sleeping in the adjoining room. Father got up and went towards the room where his mother was sleeping. According to PW-14A, Dr. Supriya Atwal, deceased had died as a result of head injury leading to Haemorrhagic and vasovagal shock. Probable time that elapsed between the injury and death was a few minutes to a few

hours. Probable time that elapsed between death and post mortem was 12 to 14 hours. PW-1 Naresh Kumar has deposed that they heard no cries from the house of the accused. PW-10 Sushil Kumar, brother of PW-1 has also denied that they have heard any cries from the house on the intervening night of 7.6.2009 and 8.6.2009. PW-4 Munish Kumar was sleeping in the adjoining room. He was 10 years old at that time. His elder brother was also in the room. PW-1 Naresh Kumar, PW-4 Munish and PW-10 Sushil Kumar were bound to hear cries if the accused had killed the deceased in the room. According to PW-14A, time that elapsed between injury and death was a few minutes to a few hours. There would have definitely been cries and same would have been heard by PW-1 Naresh Kumar, PW-4 Munish or PW-10 Sushil Kumar.

30. PW-4 Munish has also admitted that he has not earlier disclosed about the quarrel between his parents. According to PW-7 Jamna Devi, accused had called her and told her that he was calling from Pathankot. PW-16 Amit Chauhan has deposed that an outgoing call was made from phone No. 9278863102 to phone No. 1978-317084 on 12.6.2009. At that time location of the mobile phone was at Adarsh Nagar or Azad Nagar in Delhi. Version of PW-7 Jamna Devi does not inspire any confidence. PW-7 in her statement herself admitted that telephone was installed at the house of in laws of the accused. If telephone was installed in the house of in laws of accused, there was no need for him to call PW-7 Jamna Devi.

31. Thus the prosecution theory that the accused killed the deceased since he was doubting her character, can not be believed. Prosecution has not completed the chain of events. Prosecution has failed to prove its case against the accused beyond reasonable doubt.

32. In view of discussion and analysis made hereinabove, the appeal is allowed. Accused is acquitted of the offence under Section 302 of the Indian Penal Code by giving him benefit of doubt. He be released forthwith, if not required in any other case by the Police. Registry is directed to prepare release warrant of the accused and send the same to the Superintendent Jail concerned.