

(2008) 03 RAJ CK 0059
In the Rajasthan High Court

Jagdish Prasad, Kurda Ram and Nemi Chand

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 174, 313
Penal Code, 1860 (IPC) — Section 302, 34, 394, 436, 460

Citation : (2008) 3 RLW 2156 : (2009) 7 SLR 793

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—Durga Devi, an old lady of 60 years, was found murdered in her Khuddi (small hut) where she used to reside all alone. The three appellants herein were indicted for having committed murder of Durga Devi before the learned Additional Sessions Judge (Fast Track) No. 1 Jhunjhunu, who vide judgment dated May 28, 2003 convicted and sentenced them as under:

Under Section 302/34 IPC:

Each to suffer imprisonment for life and fine of Rs. 2000/-, in default to further suffer simple imprisonment for two months.

Under Section 394/34 IPC:

Each to suffer imprisonment for life and fine of Rs. 2000/-, in default to further suffer simple imprisonment for two months.

Under Section 460/34 IPC:

Each to suffer imprisonment for life and fine of Rs. 2000/-, in default to further suffer simple imprisonment for two months.

Under Section 436/34 IPC:

Each to suffer imprisonment for life and fine of Rs. 2000/-, in default to further suffer simple imprisonment for two months. The substantive sentences were

ordered to run concurrently.

2. The prosecution case is woven like this:

Three reports were submitted by informant Suresh Kumar (Pw. 4), son of deceased Durga Devi at Police Station Sadar Jhunjhunu in regard to the incident occurred on July 6, 2000 at 11.30 PM. First report (Ex.P-14) was handed over at 2 AM on July 7, 2000. Second report (Ex.P-11) was submitted on July 11, 2000 and third report (Ex.P-13) was lodged on July 16, 2000. In the first report (Ex.P-14) it was stated that on seeing the fire and flames at the hut of Durga Devi, women folks of the neighbourhood raised hue and cry. When the villagers reached there, they found dead body of Durga Devi. On that report police initiated proceedings u/s 174 CrPC. In the second report it was stated that Ladu Ram and Laxman had seen one Nemi Chand Meena running from the hut of Durga Devi. Ladu Ram then called Suresh Kumar, who rushed to the hut and found Durga Devi lying dead in naked condition. It was further stated that there were two pitchers full of jewellery and ornaments which had been dug out. Even her nose-pin and ear tops had been plucked out. It was also stated that since he was shocked by the incident he could not name Nemi Chand in the first report. The police registered a case under Sections 302 and 436 IPC and investigation commenced. Statements of alleged eye witnesses viz. Ladu Ram and Laxmi Narayan u/s 161 CrPC were recorded on July 12, 2000. In the third report graphic description of the incident was given. It was inter alia stated by Suresh Kumar that his mother Durga Devi used to reside in the hut alone. On July 6, 2000 around 11 PM while she was sleeping Nemi Chand, Kurda Ram and Jagdish entered the hut in a drunken state and started searching ornaments. Durga Devi awoke and raised hue and cry. Kurda Ram then inflicted lathi blow on her head. Nemi Chand gave blows with legs and fists, whereas Jagdish squeezed her neck as a result of which Durga Devi died on the cot. The three accused then pulled her down from the cot and stripped her naked. Nemi Chand plucked out ear-rings and nose-pin. Kurda Ram removed her silver anklets, whereas Jagdish took out her silver locket. Nemi Chand then set ablaze thus hut and ran away. But Ladu Ram and Laxmi Narayan had seen him running. Kurda Ram and Jagdish however escaped in the darkness. Police Station Sadar Jhunjhunu tagged all the three reports together. Further investigation proceeded. Statements of witnesses u/s 161 CrPC were recorded, necessary memos were drawn, the accused were arrested and on completion of investigation charge sheet was filed and in due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 1 Jhunjhunu. Charges under Sections 302/34, 460, 394 and 436 IPC were framed. The accused denied the charges and claimed trial. The prosecution in support of its case examined as many as 13 witnesses and got exhibited 36 documents. In the explanation u/s 313 CrPC, the accused claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the accused as indicated herein above.

3. We have heard learned Counsel for the appellants and learned public

prosecutor and with their assistance scrutinised the material on record.

4. Death of Durga Devi was undeniably homicidal in nature. As per Postmortem Report(Ex.P- 30) following ante mortem injuries were found on the dead body:

1. Lacerated wound 3.5cm x 1/2cm on Lt. side of forehead just above eye brow going upward and back ward on exploration fracture, hematoma about 4cm x 3cm present on Lt. side over the dura matter brain congested.

2. Lacerated wound on Lt. ear lobule 1/2 cm x whole thickness of lobule. Injury is postmortem in nature.

3. Abrasion 4cm x 1.5cm on chin & Lt. Side of jaw.

4. Contusion all around Rt. eye and upto 2cm below it.

5. Contusion 4cm x 3cm on Rt. side of mandible.

6. Contusion 15cm x 5cm on Lt. side of chest just lateral to sternum.

7. Abrasion 2.5cm x 0.5cm on Lt. side of abdomen in lumber area on lateral side.

8. Abrasion 15cm x 2cm on back lower part in middle.

9. Abrasion 3cm x 2cm on Rt. Glottal region.

10. Bruise 10cm x 4cm on Lt. arm

11. Abrasion 1cm x 1cm Lt. clavicular area.

12. Bruise 10cm x 8cm on Rt. iliac area In the opinion of Dr. S.K. Bhargava (Pw. 9) the cause of death was coma due to compression of brain caused by injury No. 1 which was sufficient to cause death in the ordinary course of nature.

5. There is no direct evidence in this case and it is based on circumstantial evidence. The law regarding circumstantial evidence is well settled. When a case rests on upon the circumstantial evidence, such evidence must satisfy three tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) the circumstances, taken cumulatively, form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence, in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. Keeping this legal position in mind, we have to examine whether the circumstantial evidence in the instant case satisfies the requirements of law.

6. The circumstantial evidence in the instant case may be broadly classified into two parts:

(i) Oral evidence to prove that the accused were seen coming out of the hut of the deceased at or near about the time of incident.

(ii) The various recoveries at the instance of the accused.

7. Informant Suresh Kumar (Pw. 4) in his deposition stated that on July 6, 2000 his mother ate food at 8.30 PM in his house and went to sleep in her hut. Around 11 PM Ladu Ram and Laxmi Narayan called him to inform that there was fire in the hut of his mother. He rushed there and found his mother lying dead in necked condition. Her nose and ears were cut. She used to wear golden nosepin, silver locket and silver anklets, but those ornaments were removed. Ear-rings and nose-pin were recovered vide memo Ex.P-5 at the instance of Nemi Chand from his house. Silver anklet was recovered at the instance of Kurda Ram vide memo Ex.P-6. Whereas silver locket was recovered at the instance of Jagdish vide memo Ex.P-7. He further deposed that Ladu Ram and Laxmi Narayan told him in village Panchayat that guilt was committed by Nemi Chand. Nemi Chand informed that Kurda Ram and Jagdish were with him.

8. Laxmi Nrarayan (Pw. 1) deposed that at the time of incident while he was sitting along with his brother Ladu Ram he saw fire on the hut of Durga Devi. When he reached near the hut he saw Nemi Chand running towards his house. Testimony of Laxmi Narayan gets corroboration from the statement of Ladu Ram (Pw. 2).

9. Vinod S/o Ladu Ram (Pw. 6) stated that around 11.30 PM he was reading 'Sunder Kand" in Balaji Temple he heard some noises coming from the hut of Durga Devi. He went to the hut where he found Durga Devi lying dead and her hut was on fire. He saw Jagdish and Kurda Ram running. Thereafter Nemi Chand was also seen running.

10. Coming to the evidence of Ran Singh IO (Pw. 13) we find that he arrested accused Nemi Chand on July 19, 2000 vide arrest memo Ex.P-33 and on the basis of his disclosure statement (Ex.P-34) ear rings and nose pin got recovered on July 19, 2000 vide memo Ex.P-5. Recovery was effected in the presence of motbirs Banarsi Lal (Pw. 5) and Raj Kumar (Pw. 8). These witnesses were also motbirs of recovery of silver anklets and one stick at the instance of accused Kurda Ram on July 20, 2000 vide memo Ex.P-6. Whereas silver locket got recovered at the instance of Jagdish on September 10, 2000 vide memo Ex.P-7. Recovery at the instance of Jagdish was effected in the presence of motbirs Raj Kumar (Pw. 8) and Om Prakash (Pw. 11).

11. Having closely scanned the material on record we find that recovery of ornaments in the instant case does not assume importance. Ear rings, nose-pin, silver anklets and silver locket are the articles of common use and can be found in any house. Their Lordships of the Supreme Court in State of Rajasthan v. Teg

Bahadur and Ors. (2004) 13 SCC 300, indicated in para 22 thus:

The prosecution relied upon the recovery of earrings, hair clip, pieces of bangles belonging to the deceased from the well upon the disclosure statement made by the police. It may be stated that these articles of common use and can be found in any house. That apart, no family member of the deceased has identified these articles that the same belonged to the deceased and/ or she was wearing the same at the time of occurrence.

12. Even the recovered ornaments were not subjected to identification test. Suresh Kumar (Pw. 4), who was allegedly present at the time of recovery of ornaments identified them casually. We therefore find that not much could be made out of the so called identification of the ornaments. In *Ashish Batham Vs. State of Madhya Pradesh*, had occasion to consider that a chain said to have been worn by deceased alleged to have been recovered from the possession of accused. That chain, having an iron wire in place of hook, placed for identification test. That chain not said to have been mixed with similar chains having such iron wire in place of hook. It was held that not much could be made out of the so called identification.

13. Factual situation emerges from the statements of Suresh Kumar, Laxmi Narayan, Ladu Ram and Vinod, may be summarized thus: (i) Laxmi Narain and Ladu Ram saw only accused Nemi Chand running near the hut of deceased at the time of incident. (ii) Vinod did not name accused Kurda Ram and Jagdish in his police statement Ex.D-6. It is for the first time on February 11, 2003 i.e. after about two years and seven months, Vinod implicated Kurda Ram and Jagdish. (iii) According to Suresh Kumar accused Jagdish was in Military Service and posted outside for the last ten years. (iv) Recovery of ornaments allegedly removed from the person of the deceased was effected at the instance of accused persons but the ornaments were not subjected to identification in front of Magistrate.

14. On analysing the testimony of Suresh Kumar (Pw. 4) and Ran Singh IO (Pw. 13) we find that investigation in the instant case appears to be tainted and unfair. Recovery of silver anklets and silver locket at the instance of accused Kurda Ram and Jagdish has been effected in the suspicious circumstances. Vinod did not name Kurda Ram and Jagdish in his police statement Ex.D-6. It is after about two years and seven months i.e. on February 11, 2003 that Vinod implicated them, therefore his evidence qua accused Kurda Ram and Jagdish does not appear to us as creditworthy. We find it difficult to believe that accused Jagdish, who was serving in Military and posted outside the village, would conceal silver locket in an open place accessible to all. Why would he commit theft of such a cheap and insignificant ornament. Laxmi Narayan and Ladu Ram saw only accused Nemi Chand running near the hut of deceased at the time of incident. Nemi Chand was arrested on July 19, 2000, thereafter Kurda Ram and Jagdish were involved in the crime. This action appears to us as afterthought. The prosecution failed to explain as to why three reports were lodged at the

police station by informant Suresh Kumar. In the first report (Ex.P-14) lodged on July 7, 2000 nobody was named. However in the second report (Ex.P-11) lodged on July 11, 2000 only accused Nemi Chand was named with the explanation that because of the shock of the incident Suresh Kumar could not name Nemi Chand. It was in the third report (Ex.P-13) lodged on July 16, 2000 that accused Kurda Ram and Jagdish were implicated for the first time and graphic description was given by informant Suresh Kumar, as if he himself had seen the incident from his own eye. In these circumstances the possibility of over implication of accused Kurda Ram and Jagdish cannot be ruled out.

15. In our opinion the prosecution has cogently and firmly established that it was the accused Nemi Chand who committed the crime. The circumstances established against accused Nemi Chand have unerringly point towards the guilt of accused Nemi Chand and if the circumstances are taken cumulatively they form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused Nemi Chand and none else. The circumstantial evidence, in order to sustain conviction of accused Nemi Chand are complete and incapable of explanation of any other hypothesis than that of the guilt of the accused Nemi Chand and they are consistent with the guilt of the accused Nemi Chand and inconsistent with his innocence.

16. For these reasons we dispose of instant appeals in the following terms:

(i) We allow the appeals of appellants Kurda Ram and Jagdish and acquit them of the charges under Sections 302/34, 394/34, 460/34 and 436/34 IPC. Appellants Kurda Ram and Jagdish, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(ii) We find no merit in the appeal of appellant Nemi Chand and the same accordingly stands dismissed.

(iii) The impugned judgment of learned trial court stands modified as indicated above.