

(1991) 05 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Criminal App. No. 334 of 1990

Lal Chand alias Lal and Another	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 31-05-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1992) CriLJ 1946 : (1992) 1 ShimLC 1

Hon'ble Judges : V.P. Bhatnagar, J; Bhawani Singh, J

Bench : Division Bench

Advocate : K.D. Batish, for the Appellant; M.L. Chauhan, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—This appeal arises out of the judgment of Sessions Judge, Chamba, in Sessions Case No. 12 of 1989 by which the accused before us have been convicted u/s 302 read with Section 34 of the IPC and sentenced to rigorous imprisonment for life.

2. The prosecution case may briefly be stated thus. The accused are residents of village Ludhera. The deceased, Mahesh Dass, was the husband of accused Vidya Devi. The deceased had four children, namely, Roshan Lal (P.W. 1), Raj Kumari, Kumari Rekha (P.W. 6) and Narain Dass. Raj Kumari has also been joined as accused in this case. However, she being a child, her trial is pending before the children Court at Una.

3. According to the prosecution, the deceased and accused Vidya Devi were not having good relations and for about a year before the incident, she had been living at her parents house along with Narain Dass, Rekha and Raj Kumari. However, Raj Kumari, Rekha and Narain Dass were brought back to the house of the deceased by Roshan Lal, who himself was studying in D.A.V. College, Kangra. Other allegations are that accused Vidya Devi was having illicit relations with

Sansar Chand, uncle of accused Lal Chand, while her daughter Raj Kumari had illicit relations with accused Lal Chand. The deceased used to object their relationship and this was the cause of the disaffection between the parties. Moreover, accused Vidya Devi had filed a petition u/s 125 of the Code of Criminal Procedure against the deceased in the Court at Dalhousie for seeking maintenance and the same was pending on the date of occurrence.

4. Accused Vidya Devi and Lal Chand came to the house of the deceased in village Ludhera on 28-1-1989 at about 9 PM where, in furtherance of their common intention, they, including Raj Kumari, caused the death of the deceased at about 10 p.m. The deceased was tied with the cot with the help of rope (Ex. P2) and was strangled to death with dupatta (Ex.P. 1). After doing so, Vidya Devi and Lal Chand left the house the same night.

5. Raj Kumari gave a call on which Gorkhu (P.W. 5) and Karam Chand alias Karmu came to their house at about 11 p.m. They found the deceased dead. At this time, Raj Kumari, Rekha and Narain Dass did not disclose to these persons as to how the death had taken place. Gorkhu went to the Pradhan and Up-Pradhan on the morning of 29-1-1989, but both of them could not be informed about the death of the deceased since they were not available. Accordingly, he associated Lambardar and Gidru (P.W. 4) and went to police post Bakloh to lodge the report which, as a matter of fact, has been recorded in the Daily Diary at Serial No. 5 on 29-1-1989 at about 10-15 a.m. at the instance of Gidru. In it, it has been stated that Mahesh Dass was lying dead suddenly in his bed in his house and his two daughters and one son were present in the house. The wife of the deceased had gone to her parents house and his elder son was studying in D.A.V. College, Kangra. He had come to lodge the report and legal action may be taken. This information was conveyed telephonically to Kishan Chand, ASI (P.W. 9) at Police Station, Dalhousie, who proceeded to the spot where inquest proceedings, in the presence of Gidru and Bhagat Ram (PWs. 4 and 2) were conducted (Ex. PA). The deadbody was photographed by Sushil Kumar (P.W. 13). The photographs are Ex. P.W. 13/1 to Ex.P.W. 13/5, which have been prepared out of negatives Ex. P.W. 13/6 to Ex.P.W. 13/10. It has also been subjected to postmortem examination at Civil Hospital Dalhousie, by Dr. K.A.S. Dadhwal. (P.W. 14) on 36-1-1989 at about 3 p.m. The doctor notice three abrasions on the right forearm, left side of chest and left leg below the knee. A cut injury on the left eyebrow of 1/2" x 1/2" was also detected in addition to extravasation of blood into the subcutaneous tissue and into adjacent muscles. Laceration of sheath of cardio arteries on the left side was also there besides cornu of hyoid bone fracture on the right side. In the opinion of the doctor, the cause of death was asphyxia, cerebral congestion and shock due to strangulation and the injuries were antimortem in nature and sufficient to cause death in normal course. The probable time that elapsed between injury and death was a few minutes (Ex.PM). The viscera was sent to Chemical Examiner, Karnal, and the report therefrom has given negative test for common poison (Ex.PN).

6. The police inquired into the matter to find out the cause of death and during this time, Bhagat Ram (P. W. 2), after giving some allurements to Narain Dass, got the information from him that the deceased was killed by the accused on the bed during the previous night. On this Bhagat Ram made a statement (Ex. PB) to ASI Kishan Chand on 30-1-1989 which formed the basis of First Information Report (Ex. PE) at Police Station, Dalhousie, on 30-1-1989 at about 5-15 p.m., recorded by Head Constable Daya Sagar (P.W. 3). The investigation was then carried by S.H.O. Jaisi Ram, who visited the spot on 30-1-1989 where Kumari Rekha (P.W. 6) disclosed on 31-1-1989 that the deceased had been killed by the accused by throttling with the help of a rope and handkerchief. After the arrest of the accused and while in custody, Vidya Devi made disclosure statement to S.H.O. Jaisi Ram, in the presence of Bhagat Ram (P.W. 2) and Chanda Singh, that she had kept concealed one rope and a dupatta in her house behind the box which she could get recovered. It was recorded and in pursuance of this statement, she took the police party to the upper storey of her house and produced dupatta and rope before the police after taking out the same from behind a box. Both these items were sealed and taken into possession vide memo. Ex. PD.

7. As soon as the investigation was complete, the accused were challenged to face trial for offence u/s 302 read with Section 34 of the Indian IPC for having caused the death of deceased Mahesh Dass by strangulation in furtherance of their common intention. As said above, the third accused, Raj Kumari, is facing a separate trial before the Children Court at Una.

8. During the trial, the prosecution examined 14 witnesses and left some others. Narain Dass was also found not to be a competent witness by the Court on account of tender age, so he was also left on this account.

9. The defence of the accused is ascertainable from the tenor and manner of their questions to the prosecution witnesses and their explanation u/s 313 of the Code of Criminal Procedure. They have, inter-alia, denied the prosecution case that they came to the house of the deceased in the evening of 28-1-1989 and caused his death by strangulation. They have also denied the allegation of illicit relationship. However, Vidya Devi has admitted that she had strained relations with the deceased and so they were living apart for the last about one year before the occurrence and that she has a pending maintenance petition against the deceased.

10. The trial ended in the aforesaid conviction and sentence of the accused, hence this appeal by the accused.

11. Before us, Shri K.D. Batish, learned counsel for the accused, has assailed vehemently the conviction of the accused on the solitary statement of Kumari Rekha (P.W. 6), though with respect to other findings, the submission was that these could be legitimately and reasonably drawn in the light of the nature of the evidence produced by the prosecution. We have considered the matter carefully

with reference to the evidence and the submissions made by the learned counsel for the parties.

12. There is no doubt about the homicidal death of the deceased at his house in his bed in the evening of 28-1-1989. For this, we can safely refer to the medical evidence of doctor K.A.S. Dadhwal (P.W. 14) essentials of which, including his opinion, have already been extracted above. Further, none of the accused have said that the death of the deceased was not homicidal. It can, thus, be concluded that the deceased was done to death and the cause of his death was asphyxia, cerebral congestion and shock due to strangulation. The deficiency in this report, in our opinion, pertains to the fact that this witness has not given any opinion as to the state of food by examining the relevant stomach contents from which the time of the death of the deceased could be ascertained to some extent to test the version of the prosecution as to the alleged visit of the accused at the house of the deceased. Further, there is no opinion and explanation how the injuries noticed on other parts of the body of the deceased were caused and by what means. We will advert to the result of these lacunae in the prosecution case in the subsequent part of this judgment.

13. The crucial question to be seen is whether the deceased was killed by the accused, as alleged by the prosecution. In order to prove its case, the prosecution has relied upon the statements of a few witnesses who, according to the learned counsel for the State, complete the chain of circumstantial evidence against the accused that they were responsible for the strangulation of the deceased in furtherance of their common intention. In this connection, the story of illicit relationship of Smt. Vidya Devi with Sansar Chand, uncle of the accused, Lal Chand, and Raj Kumari, daughter of the deceased, with accused Lal Chand, has been set-up. It was submitted that this kind of behaviour on the part of the accused was intolerable to the deceased and was responsible for the decayed relationship between the parties. Simultaneously, it was because of this inimical inter se relationship of the parties that the accused ultimately killed the deceased. Now, the question is whether this kind of relationship has been established, particularly when the same has been denied by the accused. After glancing through the record of the case minutely, we see great force in the submission of Shri K.D. Batish that this allegation of the prosecution developed cursorily and casually during the course of the trial proceedings, that too, from the statement of Roshan Lal (P.W. 1). No other witness of the prosecution has said anything on this aspect of the matter. Even Roshan Lal (P.W. 1) has not disclosed the source of his knowledge nor has he given any instances. This appears to be just an improvement in his statement since it was not given by him to the police at any time before. He says, "I did not disclose about illicit relations of my sister to the police. Volunteered, the police asked me to tell only the relevant facts". The trial court has, in our view, rightly rejected the evidence of the prosecution on this aspect of the case.

14. On the motive aspect of the case, it is also intended to be proved that on

account of strained relations, the accused had motive to kill the deceased. Vidya Devi has also admitted that her relations with the deceased were not cordial and that she was living in her parents house for the last about one year before the occurrence and that she had moved the Court for the grant of maintenance u/s 125 of the Code of Criminal Procedure. These allegations, to impute motive to Vidya Devi to kill the deceased, are woefully insufficient to give her cause to kill the deceased, that too, after a year and especially when she was seeking maintenance from her husband in a pending application. Such a conduct on the part of the accused is hardly attributable. Similarly, there is no substance in the recovery of dupatta (Ex.P. 1) and rope (Ex. P. 2) at her instance. Firstly, they were recovered after a long lapse of time. Secondly, it is not established that these two articles were used for the commission of offence since no one saw the accused using them. Thirdly, it is not understood as to why Vidya Devi should have kept back and concealed these articles in the house which she had left a year back. Fourthly, the room was accessible by anyone and the place from where they were stated to have been recovered cannot be considered to be a place only known to Vidya Devi and none else. Vidya Devi has also denied having made any disclosure statement. The only witness examined on this aspect is Bhagat Ram (P.W. 2). Although, it has been stated that he is related to Smt. Vidya Devi, however, we have serious doubt as to the credibility of this witness not only on this point but also on other aspects of this case. Though it has also been submitted against him that he was interested to purchase the land of the deceased which he could do only if Vidya Devi remains out of the village. We disagree with the conclusion of the trial Judge, who has accepted the recovery of dupatta (Ex.P. 1) and rope (Ex. P. 2) at the instance of Vidya Devi but confirm his findings with respect to the fact that there is lack of evidence to say that these articles were used to strangle the deceased since they are commonly available and the evidence of Kumari Rekha (P.W. 6) has been rejected on the ground that she did not see the incident happening nor she could have identified these articles from outside the room in the absence of electricity in the village at that time and that the door of the house was closed when the deceased was killed. The evidence of Kumari Rekha (P.W. 6) as an eye witness to the case has been rightly rejected. Now, the prosecution case rests purely on circumstantial evidence only. It is well settled that the circumstantial evidence, in order to sustain conviction, must satisfy three cardinal principles. (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused and (3) the circumstances, taken cumulatively, should 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, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused. In Hanumant Vs. The State of Madhya Pradesh, the apex court cautioned thus (at pages 345 & 346 of AIR) :

In dealing with circumstantial evidence there is always the danger that conjecture or suspicion may take the place of legal proof. It is, therefore, right to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

15. In *Dharm Das Wadhvani Vs. The State of Uttar Pradesh*, it was held that, "...unlike direct evidence the indirect light circumstances may throw may vary from suspicion to certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction." Therefore, in cases depending mainly on circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. Suspicion however strong cannot be allowed to take place of proof. The Court has to be careful to ensure that the various circumstances in the chain of evidence placed before it in the case should be established clearly and that the completed chain must be such which rules out a reasonable likelihood of the innocence of the accused.

16. The trial court has, after rejecting the evidence of Rekha as an eye witness, relied upon her testimony for invoking the principle of "last seen" that the accused were seen by her coming out of the room and leaving the place. The Court accepted her testimony on this aspect and proceeded to hold the accused responsible for the commission of the crime and they were convicted and sentenced accordingly. Learned counsel for the parties laid great emphasis on this aspect of the case. Learned counsel for the accused strongly canvassed to reject her testimony while the counsel for the State defended her version in this case. It was contended that Rekha is not a truthful witness and her statement is utterly false and she has given a tutored version to the Court. In support of this submission, reference to her statement was made and it was then contended that she was not an eye witness to the occurrence, still she came forward to assert that she saw the accused strangulating the deceased. This statement is false for the reason that she has not described the details of the occurrence nor she could do so in view of her statement that the door was closed and there was no electric light available there. When this part of her eye witness account has been rejected, the question is whether the latter part of her version is acceptable? It was contended by the learned counsel for the State that her version should not be rejected as a whole, rather an attempt should be made to find out the essence of it and that part exempted which is found unreliable. In support of this contention, assistance was sought from a Supreme Court case in *Sohrab and Another Vs. The State of Madhya Pradesh*, where in at p. 2024, the

Court said :

...This Court has held that *falsus in uno falsus in omnibus* is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed....

17. The next case, on which reliance was placed, is Appabhai and Another Vs. State of Gujarat, where the Court said (at p. 852 of Cri LJ) :

...The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.

18. There is no dispute with the principles laid down in these decisions. However, the question is whether the case before us calls for the application of the same. We have perused the evidence of Rekha carefully. Our view of the matter is that it is dangerous to accept her version of the case for number of reasons, namely, but it was night time and she has said that she was preparing chapatis in the kitchen, adjacent to the room where the occurrence took place. She has not said that she heard some kind of noise which could obviously be there if we look to the fact that the deceased was not an old man but he was physically fit and must have resisted before he could be overpowered. There must have been some struggle between him and the assailants in view of the injuries found on other parts of his body. When this witness could not notice all this, it is hardly possible to believe that she came to the room and saw the occurrence. Since her version as an eye-witness has been rejected by us, we, therefore, feel absolutely reluctant to accept that she could be standing outside the room till the accused came out and left the place. It was totally dark. She did not call Vidya Devi (mother) and Raj Kumari (sister) who remained behind in the house. Thereafter she kept mum when Raj Kumari pleaded ignorance to the cause of death of the deceased to Karam Chand. It was Raj Kumari at whose call Bhagat Ram (P.W. 2), Gorkhu (P.W. 5) and Karam Chand came to the scene of occurrence. Kumari Rekha failed to inform not only the villagers but also the police on 29-1-1989 and 30-1-1989 about the occurrence. In such a situation, it is not believable that she informed Roshan Lal (P.W. 1). . Further, she has also stated that she did not talk to Karmu or Gorkhu about the cause of her father's death, although they remained at the house of the deceased throughout the night. They inquired from

Raj Kumari who stated that the deceased had taken his meals but did not know how the deceased had expired and she remained mum. It is also her statement that she was given 1 or 2 slaps by the lady police when she said that she was ignorant about the death of the deceased. She was given beatings by the police. The Investigating Officer gave allurements to her brother Narain Dass that in case he disclose true facts, he would be given a pistol. She was threatened by the police that in case she did not state the version given by the police, she would be given beatings. On this kind of evidence, it is difficult for us to believe her version as a whole. No corroboration is forthcoming from any other prosecution witness. She is a child witness and keeping in view the nature of her evidence, it can be reasonably concluded that her evidence is tainted by embellishments and exaggerations and the responsibility therefore rests solely on the police. On the other hand, we have noticed that the allegation of illicit relationship has been denied by the accused and in view of lack of cogent and convincing evidence on this aspect, the resting of the prosecution case on this assertion fails like its other version that the inimical relations between the parties gave cause to the accused to kill the deceased. This is, again, thoroughly an unacceptable version. She has initiated maintenance proceedings u/s 125 of the Code of Criminal Procedure against the deceased which were pending on the date of occurrence. In these circumstances, she could not have killed the deceased. Then there is the most important evidence which points out that on coming to know the death of the deceased, she had come to the village on the next day of the occurrence and it was here that she was arrested by the police in connection with this case. No one saw the accused coming and going from the place of occurrence. In view of the available evidence, the death of the deceased cannot be attributed to any of the accused and the trial Judge has committed a grave error by invoking the theory of "last seen" and then holding that it stood proved by the evidence of Rekha. The assessment and appreciation of her evidence by the trial Court is grossly perverse and so are the reasonings and the conclusions.

19. From the aforesaid discussion of the matter, we are of the considered opinion that the prosecution case against the accused has remained completely unsubstantiated. The appeal is, therefore, allowed and they are acquitted of the charge against them. In case they are in jail, they be set free forthwith.