
(2001) 05 RAJ CK 0040
In the Rajasthan High Court
Case No : Criminal Appeal No. 122 of 1998

Rajendra Kumar and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 120, 34

Citation : (2002) 1 RLW 442 : (2001) 3 WLC 361 : (2002) 1 WLN 410

Hon'ble Judges : N.N. Mathur, J; Jagat Singh, J

Bench : Division Bench

Advocate : K.K. Shan, for the Appellant; I.S. Pareek, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

Mathur, J.—Appellants Kailash, Naresh, Rajendra Kumar alias Shunty were put to trial on the charge of conspiracy, robbery & murder of one Mst. Vimla. The learned Additional Sessions Judge No.2, Sri Ganganagar, by his judgment dated 12.12.1997 convicted all the three appellants for the offence u/s 302/34 IPC and sentenced each of them to undergo imprisonment for life and to pay a fine of Rs. 1000/-, in default of payment of fine, to further undergo three months" rigorous imprisonment. They have also been convicted for the offence u/s 392/397 IPC and sentenced to seven years" rigorous imprisonment & to pay a fine of Rs. 5000/- & in default of payment of fine, to further undergo two months" rigorous imprisonment. The appellants have also been convicted for the offence u/s 120-B and sentenced to seven years" rigorous imprisonment. One Mst. Indu has also been convicted for the offence u/s 414 IPC and sentenced to three years" rigorous imprisonment & to pay a fine of Rs. 100/- & in default of payment of fine, to further undergo fifteen days" simple imprisonment. She has not challenged the conviction and sentence awarded to her.

2. The prosecution case as set out during trial is as follows:

First appellant Kailash, a washerman by profession, was residing in a house alongwith fourth appellant Indira alias Indu. It is alleged that Indu is the cousin sister of first appellant but they were living as husband & wife. They were residing near the house of deceased Vimla wife of P.W. 12 Ram Niwas. Deceased Vimla had developed illicit relations with appellant Kailash. Co- accused Indira alias Indu developed friendship with deceased Vimla and she often used to visit her house. This was not liked by P.W. 12 Ram Niwas, the husband of deceased Mst. Vimla. This led to an oral altercation between P.W. 12 Ram Niwas and first appellant Kailash. P.W. 12 Ram Niwas thrashed Kailash. Inspite of the fact that Kailash was already living in a rented premises, on 15.12.1994 he approached to P.W. 3 Hari Om for taking a room on rent. P.W. 3 Hari Om agreed to rent out a room on a monthly rent of Rs. 3507-. It was agreed that appellant will pay a sum of Rs. 1007- in advance. Appellant Kailash, who was accompanied by accused Rajendra Kumar alias Shunty, put lock on the room. P.W. 3 Hari Om also wanted guarantee from a respectable person. Appellant Kailash assured him to arrange Surety of Ram Narayan on whose shop Rajendra Kumar alias Shunty was employed. On the next day, appellants Kailash and Rajendra Kumar visited the room and put certain articles therein. On 17.12.94, both the accused persons again visited the room. On the same day in the evening, deceased Vimla was seen with the appellant Kailash in the said room. After some time, when he returned from the market, he found accused Rajendra Kumar alias Shunty and Naresh sitting in the room. When he enquired about the identity of the lady in the room, she was introduced as their Bhabhi being wife of appellant Kailash. On 18.12.94, he found the room locked. On 19.12.94 in the afternoon, he found appellants Kaiash, Rajendra and Naresh in the room, cleaning utensils. On 20.12.94, he found a lock on the room. He enquired from Ramnarayan about Kailash, Rajendra etc. He was told that Rajendra was never in his employment. He returned to the house & broke open the door of the room and found the dead body of a lady. He informed the police on telephone. The police reached on the spot and inspected the site. The first informalion report was submitted on the spot on the basis of which police registered a case for the offence u/s 302 IPC. The police prepared the inquest and sent the dead body for post mortem. During investigation, it revealed that on 19th evening, appellant Kailash & Indira alias Indu left the town in hush. It also revealed that deceased Vimla with her husband P.W. 12 Ram Niwas had gone to attend a marriage in another village Kesrisinghpur. They returned on 17.12.94. Deceased Vimla was wearing six golden bangles, one ring and ear rings in both the ears. She visited some of her relatives including P.W. 1 Ashok Kumar and distributed sweets brought from village Kesrisinghpur. She visited P.W. 2 Rajbala at about 4.30 PM on 19.12.95. At that time, she was wearing six golden bangles and ear rings. Appellants Kailash and Indu were arrested on 12.3.1995 from Vaishali Nagar, Jaipur vide Ex.P.39. In pursuance of the information given by Kailash four golden bangles were recovered. Rajendra alias Shunty was arrested on 11.3.1995 at Sri Ganganagar. In pursuance of the information given by him, two golden bangles were recovered from the Arun Jewellers, Daulatpura, Gajiabad. Third appellant

Naresh was arrested vide Ex.P.48 on 11.3.1995 at Sri Ganganagar. After usual investigation, police laid chargesheet against four accused persons viz; Kailash, Naresh and Rajendra alias Shunty for the offence under Sections 120-B, 302/34 and 392/397 IPC and Indira alias Indu for the offence u/s 414 IPC. All the accused persons denied charges levelled against them and claimed trial. The prosecution in support of the case, examined 21 witnesses and produced number of documents. In their statements u/s 313 of the Code of Criminal Procedure, the appellants denied the correctness of the prosecution evidence appearing against them. The Trial Court convicted and sentenced the appellants in the manner noticed above.

3. The learned trial Court found the following piece of circumstances incriminating against the appellants:

- i. The room, in which the dead body of Smt. Vimla was found, was taken on rent by appellant Kailash on false pretext and the deceased was seen alive in the company of accused persons in the said room. Appellant Rajendra falsely introduced Mst. Vimla as wife of Kailash;
- ii. Appellant Kailash had developed illicit relation with deceased Vimla and her husband P.W. 12 Ram Niwas had thrashed him. Still, he was trying to contact her;
- iii. The golden bangles, worn by deceased Vimla till 4.30 P.M. on 19th. were missing from the dead body;
- iv. Appellant Kailash and Indira alias Indu left Sri Ganganagar in hush on 19th and could be apprehended in Vaishali Nagar, Jaipur after three months;

The recovery of the missing bangles belonging to deceased Vimla in pursuance of the information given by the appellants Kailash and Rajendra.

4. Before we deal with each circumstance, we consider if appropriate to indicate the evidence produced by the prosecution. P.W. 1 Ashok Kumar is the cousin brother of P.W. 12 Ram Niwas, the husband of deceased Vimla. He runs a shop alongwith his wife P.W. 2 Rajbala in 38 "B" Block, Sri Ganganagar. He stated that about eleven months back at about 4.30 P.M., deceased Vimla visited their shop and delivered the sweets. P.W. 2 Rajbala w/o P.W. 1 Ashok Kumar has given her statement almost in the same line. She also stated that at that lime, deceased Vimla was wearing six golden bangles and ear rings.

5. P.W. 3 Hari Om Khanna is the person in whose house the dead body of Smt. Vimla was found. He stated that on 15.12.1994, he agreed to rent out a room to appellant Kailash on a monthly rent of Rs. 350/-. It was agreed that he will pay Rs. 100/-in advance. He put lock on the room. The appellant Kailash was accompanied by second appellant Rajendra Kumar alias Shunty. He also assured that he will arrange guarantee of Ram Narayan on whose shop, Rajendra alias Shunty was working. Kailash also told him that in the rented room, Shunly shall be staying with one more boy. They put a lock on the room. On 17.12.1994, both the accused persons were seen in the room. In the evening, Kailash came to the

room alongwith a lady, whose dead body was later-on found in the said room. In the evening, when he returned from the market, he found appellants Kailash and Naresh sitting in the room. He enquired about the identity of the lady on which Rajendra disclosed that she was their Bhabhi, being wife of appellant Kailash. He, therefore, demanded the rent on which they said that the same will be paid on the next day by their brother Kailash. On 18th, he mostly remained out of the house. On 19th, he found Kailash, Rajendra and Naresh in the room. They were cleaning utensils. On demand of rent, they assured to pay the same on the next day. On 20.12.94, he found the lock on the room. At about 4.00, he went to the shop of Ram Narayan and enquired about Kailash and Rajendra. He (Ram Narayan) pleaded ignorance about them. He returned to the house, broke open the lock and found the dead body lying in the room. He immediately informed the police on telephone. He submitted a report Ex.P.1 before the police. The witness has been cross-examined at length but nothing has been elicited to discredit his testimony.

6. P.W. 6 Bhimsen is a witness with respect to pledging of ear rings by Indu. P.W. 7 Kamla is a maid servant, employed for cleaning the utensils at the house of deceased Vimla. She has stated that accused Indu often used to visit deceased Vimla. She also stated that Kailash used to run a tea stall in front of house of deceased Vimla. She also stated that appellant Kailash met her near Sheetla Valika and asked her to send Vimla in the park. She refused to oblige him.

7. P.W. 8 Herbir Singh runs a jewellery shop in Rukmani market, Modi Nagar, State of Uttar Pradesh. His evidence is with respect to purchase of golden bangles from accused Kailash and Indu.

8. P.W. 9 Jivit Kumar is a photographer. P.W. 10 Het Ram, P.W. 14 Atma Nand, P.W. 16 Amilal, P.W. 17 Veer Pal Singh and P.W. 18 Lal Singh are the formal police witnesses.

9. P.W. 11 Smt. Vidhya Devi is also a witness with respect to pleading of ear rings by Indira alias Indu.

10. P.W. 12 Ram Niwas is the husband of deceased Vimla. He stated on 12.12.94, he alongwith his wife deceased Vimla, sons Sumit Kumar & Amit Kumar had gone to Kesrisinghpur for attending the marriage of his cousin brother. They had brought sweets from there. On 18.12.94, his wife Vimla was uncomfortable and, as such, he arranged medicines from Dr. Ajeet Kochar. On 19.12.94, he left the house for shop. At that time, his wife & both children were at home. On that day, his wife Vimla was wearing six golden bangles, a golden chain, a ring & ear rings. At about 7.00, when he returned, he found lock on the house. Both children were at the house of his cousin brother Roshan Lal. The key of the house was with his son Amit. He was told by his sons that his wife Vimla had gone to distribute sweets. When his wife did not return, he alongwith Ashok Kumar & Roshan Lal went in her search. He also went to the house of Kailash & Indu to enquire about the whereabouts of her wife. He was told that Indu and Kailash left the house on

19.12.94. He also came to know that ear rings of Vimla have been pleaded to Mst. Santosh through Vidhya Devi for a sum of Rs. 2000/-. On 20.12.94 at about 5.30, he came to know that the dead body of a lady has been found in the room. He went to the house of Hari Om. He found the dead body of his wife lying in the room. She was tied by rope. A cloth was put in her mouth. In the cross-examination, he admitted that Indu often used to visit his house. He did not like the visit of Smt. Indu. This led to quarrel between him and Kailash. He gave beating to Kailash. There is nothing substantial in the cross-examination to discredit the testimony of this witnesses.

11. P.W. 13 Subhash Chandra is also a witness with regard to pleading of ear rings. P.W. 15 Rajeshwar Singh is a Judicial Magistrate, First Class, Pitibanga. The identification parade for appellants Kailash, Rajendra and Naresh was conducted in his presence. P.W. 20 Mahendra Kumar is the investigating officer. He has given all details of investigation. The doctor has not been examined to prove the homicidal death as the post mortem report Ex.P.30 has been admitted by the learned counsel for the appellants.

Now we may deal with each piece of circumstances as follows:

CIRCUMSTANCE NO. (i)

12. It is stated by P.W. 5 Smt. Manohari Devi that the appellant Kailash was residing alongwith Smt. Indu in the rented premises of her house. Thus, there was no need for him to take another room on rent. However, P.W. 3 Hari Om Khanna has stated that on 15.12.94, appellant Kailash approached him with a view to take a room on rent. He agreed to give a room on monthly rent of Rs. 350/-. Appellant Kailash was accompanied by Rajendra alias Shunty. He also stated that appellant Kailash told him that in the said room, alongwith Shunty, one more boy will stay. On the next day i.e. 17.12.94, both Shunty and Naresh were in the room. In the evening, Kailash visited the room alongwith one lady. The witness also stated that the lady was the same, whose dead body was later-on found in the room. He also stated that on enquiry, Shunty & Naresh introduced the said lady as wife of Kailash. He also identified Kailash, Rajendra alias Shunty and Naresh in the court preceded by identification parade. He has admitted in the cross-examination that he had seen the accused persons at the Police Station. This admission makes the identification parade farce. However, he has also stated that he knew Kailash and Rajendra alias Shunty prior to the incident. Infact, as he was knowing Kailash and Rajendra alias Shunty earlier, it was not necessary to arrange the identification parade. As regards Naresh, in absence of satisfactory identification, evidence regarding his presence becomes doubtful. This single circumstance positively points towards the guilt of Kailash & Rajendra alias Shunty because there is no explanation as to what was the occasion for them to take a room on rent. It is significant that in the same room, the dead body of Vimla was found. Thus, the first circumstances has been established by the prosecution by cogent evidence, which is of conclusive nature.

CIRCUMSTANCE NO. (ii)

13. P.W. 12 Ram Niwas, the husband of deceased Vimla, stated that he disliked the friendship of Indu with his wife, as such, he told Kailash that he will not permit Indu to visit his house. Appellant Kailash not only resisted the desire of Ram Niwas but asserted that she will continue to visit his house. This led to thrashing of Kailash at the hands of P.W. 12 Ram Niwas. In spite of that, appellant Kailash was trying to contact Smt. Vimla outside the house. P.W. 7 Mst. Kamla has stated that appellant Kailash met him near the Sheella Valika and asked her to carry a message for Vimla that she should see him in the part. Though, this circumstance is not of conclusive nature but it does indicate towards the conduct of the appellant. This circumstance can be used as a link to complete the chain of circumstances.

CIRCUMSTANCE NO. (iii):

14. P.W. 2 Rajbala stated that on 19.12.94 at about 4.30, deceased Vimla visited her house and delivered the envelope of sweets to her. At that time, she was wearing six golden bangles and ear rings. She expressed her surprise as to why she was wearing golden bangles instead of ordinary glass bangles. P.W. 12 Ram Niwas has also stated that he left the house for shop at 3 P.M. At that time, his wife deceased Vimla was wearing golden bangles, one chain, ring and ear rings. He returned to house at 7 P.M. It was reported to him that his wife had gone to distribute sweets. Thereafter, on 20th morning, the room was found locked. In the evening, the room was opened and the dead body of Vimla was found. P.W. 12 Ram Niwas stated that ornaments were missing from the dead body of his wife Vimla. He expressed his doubt that the miscreants committed the murder of his wife and took away the ornaments from her body. The ornaments have been recovered from the possession of the appellants. The robbery and murder has taken place in the same transaction. The prosecution has succeeded in establishing the third circumstance of conclusive nature.

CIRCUMSTANCE NO. (iv):

15. P.W. 5 Smt. Manohari Devi has stated that a part of premises of her house was rented out to appellant Kailash. He was residing in the said premises alongwith his wife Indu. About an year back, they left the house with a suit case and bedding. She demanded the rent on which Kailash stated that their other goods were lying in the house. Thereafter, neither they paid the rent nor returned to the house. She has not given the exact date as to when the appellant Kailash left the house but P.W. 12 Ram Niwas has stated that in search of Vimla, they went to the house of Kailash. There, he was told that Indu and Kailash left the house on 19.12.94. This clearly shows that Kailash and Indu left the house on 19.12.94 and then never returned. They had no time even to collect their belonging lying in the house. P.W. 16 Amilal has stated that on 12.3.95, he was posted as Sub Inspector, Police Station Kotwali Ganganagar. He arrested. Kailash and Indu vide Ex.P.39 and Ex. P.40 from Vaishali Nagar, Jaipur.

Appellant Rajendra alias Shunty also disappeared on 19.12.94. He was arrested on 11.3.95. Similarly, Naresh was also arrested on 11.3.95 vide Ex.P.48. Thus, the prosecution has succeeded in establishing the fourth circumstance by cogent evidence, which is of conclusive nature.

CIRCUMSTANCE NO. (v) :

16. The appellant Kailash was arrested vide Ex.P.39. He made a disclosure statement Ex.P.52 before P.W. 20 Mahendra Kumar to the effect that four bangles and one ring were sold by him to a jeweller in Ghajiabad, Modi Nagar, Uttar Pradesh, which he could get recovered. P.W. 18 Lal Singh, A.S.I., was deputed for recovery of articles. In pursuance of the information given by the accused vide Ex.P.32. appellant Kailash led police to the shop of P.W. 8 Herbir Singh in Modi Nagar, who admitted to have purchased four golden bangles from the appellant, he produced the four golden bangles each weighing 10 gms, in total 40 gms. On each of the bangles, mark ST 22-C was inscribed. The police prepared a recovery memo Ex.D.5. Similarly, appellant Rajendra alias Shunty was arrested vide Ex.P.49 and made a disclosure statement vide Ex.P.50 before P.W. 20 Mahendra Kumar to the effect that two golden bangles were sold by him to a jeweller in Modi Nagar, Ghajiabad (U.P.), which he could get recovered. P.W. 18 Lal Singh, A.S.I., was deputed for recovery of the bangles. In pursuance of the information given by the appellant, two bangles were recovered vide Ex.P.41. The bangles were sold to one Sanjay Kumar. He produced two golden bangles. On both the bangles, mark ST 22-C was inscribed. P.W. 8 Herbir Singh stated that a person with a lady visited his shop and expressed his desire to sell four golden bangles. He asked them to get a guarantee. They gave guarantee of one Madan Lal s/o Mam Chand of Jalalabad. He purchased the golden bangles and paid the sale price. He identified the four bangles in the court. In the cross-examination, he admitted that he purchased the golden bangles for a sum of Rs. 18,000/-. He also stated that police visited the shop two months after the date of purchase. The bangles have also been identified by P.W. 12 Ram Niwas. He has stated that all the six bangles belonged to his wife Vimla. P.W. 2 Rajbala also stated that deceased Vimla was wearing all the six golden bangles produced in the court, when she visited her on 19.12.94 at 4.30 P.M.

17. The main criticism levelled against the recovery from appellant Kailash as well as Rajendra is that the identification of the ornaments in the court, is not preceded by tort identification proceedings. It is not in dispute that no identification proceedings of property was arranged by the police during trial. The normal rule is that identification of property or person should be preceded by identification parade. The Apex Court in Kanta Prasad vs. Delhi Administration (1), held that failure to hold test identification parade does not make inadmissible the evidence of identification in Court and that the weight to be attached to such identification is a matter for the Court of fact. In Budhsen vs. State of U.P. (2), the Court held that the identification parades belong to the investigation stage and generally held within the primary object of enabling the

witnesses to identify persons concerned in the offence, who were not previously known to them. It is true that both the cases are of identification of person but the same principle applies to identification of property as well. In *State of Karnataka vs. Deja K. Shetty* (3), which was the case of identification of property, on facts of the case, the Court found that there was no reason for the goldsmith to falsely implicate the accused and, as such, the Court committed wrong in not accepting the evidence with respect to identification of the property without preceded by identification parade.

18. In the instant case, the golden bangles have been recovered from the jeweller in Modi Nagar, Ghaziabad (U.P.) P.W. 8 Herbir Singh has stated that he had purchased the four golden bangles from the accused appellant. He also stated that he purchased them for a sum of Rs. 18,000/- P.W. 19 Subhash is a goldsmith. He identified the bangles stating that they were manufactured at his shop. He also stated that bangles were manufactured under the instructions of P.W. 12 Ram Niwas. He also stated that bangles carried mark SJ 22-C. The said mark is of their Shop. The appellant is admittedly not an affluent person. He could not possess the golden bangles of such high cost. Even otherwise, both the appellants have not claimed the bangles belonging to them. There is no reason for Herbir Singh to falsely implicate the accused persons. There is also no reason for the police to implant the golden bangles of such high price. All the six bangles carried the mark ST 22-C. In these peculiar facts and circumstances of the case, non-holding of identification proceedings of properly is not fatal. We are satisfied that the prosecution has succeeded in establishing by cogent evidence that the golden bangles, which deceased Vimla was wearing just before her murder, have been recovered at the instance of appellants Kailash and Rajendra alias Shunty. Thus, there is a presumption against the appellant Kailash and Rajendra alias Shunty that they committed murder of Mst. Vimla and robbed her.

19. Thus, the prosecution has succeeded in establishing the chain of circumstances leading to irresistible conclusion that it was the appellant Kailash and Rajendra alias Shunty, who committed the murder of Mst. Vimla. As far as appellant Naresh is concerned, there is no recovery from his possession. The evidence with respect to his presence on the spot is also doubtful. P.W. 12 Ram Niwas has admitted in the cross-examination that the accused were shows to him at the Police Station before identification parade. We have dealt with this contention and found that the said defect is not fatal as the appellants Rajendra alias Shunty and Kailash were known to the witness earlier to the date of incident. However, in case of accused Naresh, we have found the identification parade false as he was not known to P.W. 12 Ram Niwas earlier. Thus, the prosecution has failed to establish the case against appellant Naresh beyond reasonable doubt.

20. Consequently, we partly allow the appeal, set aside the conviction of appellant Naresh for the charges levelled against him. He is in jail. He shall be released forthwith, if not required in any other case. The conviction of appellants

Kailash and Rajendra alias Shunty is upheld on all counts. They are in jail. They shall undergo the remaining part of the sentence.