

(1980) 05 DEL CK 0031

In the Delhi High Court

Case No : Criminal Appeal No. 288 of 1979

Randhir Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-05-1980

Acts Referred:

Citation : (1980) CriLJ 1379 : (1980) 18 DLT 172

Hon'ble Judges : Prithvi Raj, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : B.G. Singh, S.K. Sharma and D.R. Sethi, for the Appellant;

Judgement

Prithvi Raj, J.

(1) This is an appeal by Randhir Singh, aged 40 years, an agriculturist of Village Poolh Kalan, Delhi. He has been convicted by Shri R. P. Gupta, Additional Sessions Judge, Delhi, by his judgment passed on October 25, 1979, u/s 302 of the Indian Penal Code for the murder of his wife Shrimati Bhagwani, and sentenced to undergo rigorous imprisonment for life and a fine of Rs. 20LO.00 , in default of payment of fine to undergo further rigorous imprisonment for one year. The appellant has also been convicted for an offence u/s 201 of the Indian Penal Code for destroying the evidence of crime by burning the dead body of Smt. Bhagwani, and sentenced to rigorous imprisonment for five years and a fine of Rs. 500.00 . in default of payment of fine to undergo further rigorous imprisonment for six months.

(2) The facts leading to the registration of the case are as follows. On December 23, 1978, at about 11 p.m. an anonymous telephonic call was received at Police Station Nangloi that Randhir Singh Pehlwan (hereinafter referred to as the appellant) had killed his wife at village Pooth Kalan and had taken her dead body to the cremation ground for burning it. This message (Exhibit P. W. 4/A) was recorded by the Duty Officer in the daily diary at N o. 22-A of the same date. Sub-Inspector Niader Singh of that police-station, who was deputed by him to

investigate the matter accompanied by Head Constable Dhara Singh and Constables Bhagwan Lal and Babu Lal reached the cremation ground of that village. He found the appellant standing near a burning pyre. On noticing the police he tried to slip away but was secured. On interrogation, apart from staling his name and address, he disclosed that the body burning on the pyre, was that of his wife Bhagwani. The fire was got extinguished and the half burnt body, face of which had been completely destroyed, was kept under guard on the pyre itself. The report containing the result of his investigation was endorsed by Sub-Inspector Niader Singh on a copy of the daily diary report No. 22-A and was dispatched by him at 12.45 hrs. to the Police-Station Nangloi for registration of a case u/s 302, read with Section 201 of the Indian Penal Code. The formal First Information Report Exhibit P. W. 23/A was thus recorded at 1.17 a. m. on December 14, 1978.

(3) Before dealing with the prosecution evidence and the circumstances appearing against the appellant, it would be proper to settle the question whether the telephonic message Exhibit P. W. 4/A recorded in the police-station in the daily diary at 11 p.m. on December 23, 1977, can be held to be the First Information Report within the meaning of Section 154 of the Code. Elaborate arguments have been advanced by Bawa Gurcharan Singh, learned counsel for the appellant, that the telephonic message is to be constituted the First Information regarding the commission of murder of Smt. Bhagwani, and, Therefore, the admission by the appellant to Sub-Inspector Niader Singh that the dead body was that of his wife Smt. Bhagwani, having been made during the course of investigation, was hit by Section 162 of the Code. Mr. O. P. Soni, the learned counsel appearing for the complainant, who addressed us with permission of the State Counsel contended that Sub-Inspector Niader Singh had been deputed to village Pooth Kalan only to ascertain the veracity of the facts contained in the telephonic message and not to investigate any offence. The submission is that the information relating to the commission of cognizable offence is not only to be given to officer-in-charge of a police-station but is to be signed by the informant. The duty officer, who deputed Niader Singh) was not officer-in-charge of the police-station. On his direction investigation could not commence. It is the endorsement by Niader Singh which constitutes the "information" within the purview of Section 154 of the Code and not the telephonic call. The investigation commenced only after 1.17 a. m. on December 24, 1978, after recording of the First Information Report. Therefore, the admission made by the appellant to Sub-Inspector Niader Singh not having been made during the course of investigation, was admissible against him.

(4) In support of their rival contention, the learned counsel have relied on a number of reported decisions. In *Tapinder Singh Vs. State of Punjab and Another*, an. anonymous telephonic message was received at police-station stating that firing had taken place at the taxi stand, Ludhiana. The person conveying the information did not disclose his identity nor did he give any other particulars. It was held by the Supreme Court that telephonic message did not

constitute the First Information Report. The message Exhibit P. W. 4/A, according to Mr. Soni, is similar to that referred to in Topinder Singh's case (supra) and, Therefore, the learned trial Court was right in not holding it to be the First Information as per the provisions of Section 154 of the Code. Mr. Bawa, however, also relies on the law laid down in the said case. He submits that this case is an authority for the proposition that whether or not a particular document constituted a First Information Report, is to be determined on the relevant facts and circumstances of each case. He contends that the telephonic message in Tapinder Singh's case (supra) did not disclose the names of the accused or the deceased, nor did it disclose the commission of a cognizable offence. In the present case information contained in the telephonic message disclosed the commission of a cognizable offence by the appellant, that information having been reduced into writing) the requirements of Section 154 of the Code were thus fully met.

(5) The learned trial Court has held that the telephonic message, Exhibit P. W. 4/A, was not the First Information Report. It has relied on a Division Bench authority of Punjab High Court reported in Saroop Singh and another v. The State, A. i. R. 1964 P&h 508. In the said case the telephonic message was as follows :

"RAM Sarup Sharma, resident of No. 2239, Gurdwara Road, Karol Bagh, Delhi, gave an information on telephone that two men had run away after injuring Lala Hukarn Ghand with a sword, near Sethi Tent House, Gurdwara Road in front of the Oriental Bank and that police may be sent immediately. Hence on receipt of the telephone a report was entered in the roznamcha."

It was held that as the informant was not an eye-witness to the occurrence but had been asked by an eye-witness to report the matter, and the names of the assailants had also not been given, the cryptic message could not be considered First Information Report within the meaning of Section 154 of the Code. Mr. Bawa. however, has cited a Division Bench decision of this Court reported in Kanhnya Singh & others v. The State (1974) C L. T. 465 (Criminal Appeal No. 173 of 1972 and Murder Reference No. 4 of 1972, decided on January 23, 1972), wherein a report made by an eye-witness that somebody had shot dead his master in house No. 313/92, Tulsi Nagar, was held to be the First Information Report within the ambit of Section 154 of the Code. The report, which was not got signed by the police from the informant ,it was further held, did not change its character as First Information.

(6) In the present case, it is admitted by P. W. 23 Head Constable Ram Phal that on December 23, 1978, the officer-in-charge of the police- station Inspector Vidya Prakash had left to supervise the arrangements of Kisan rally in the morning and arrived back at the police-station at 1 1.25 p. m. The telephonic message (Exhibit P. W. 4/A) was received in his absence. Sub-Inspector Niader Singh, who was next in rank to the Station House Officer, was present in the police-station. As envisaged in Section 2(0) of the Code of Criminal Procedure,

he was, for the time being, - officer-in-charge of the said police-station. He was thus competent to decide to conduct the investigation of the case on receipt of the telephonic message which had already been recorded in the daily diary. As noticed above, the telephonic message not only disclosed the commission of a cognizable offence but had also disclosed the name of the appellant for having committed that offence. The name of the deceased as well as the place of occurrence namely, cremation ground of village Pooth Kalan were known. Sub-Inspector Niader Singh was, Therefore, duty bound to proceed to the said cremation ground. His endorsement on copy of Exhibit P. W. 4/A reveals that he had not proceeded to the spot to hold an informal or preliminary inquiry. On arrival at the spot when he found that the appellant was trying to slip away, he apprehended him, who, on interrogation, admitted that the dead body on the pyre was that of his wife Smt. Bhagwani. In my view, the proceedings conducted by Sub-Inspector Niader Singh at the cremation ground are part of the "investigation" as envisaged in Section 2(h) of the Code.

(7) 7. Applying the law laid down by the Supreme Court in Tapinder Singh's case (supra) to the facts and circumstances of the present case) and following the rule laid down by this Court in Kanhaya Singh & Other's case (supra), I hold that the telephonic message (Exhibit P. W. 4/A) constitutes the First Information Report, within the contemplation of Section 154 of the Code. The admission made by the appellant to Sub-Inspector Niader Singh (P. W. 4) is thus hit by the provisions of Section 162 of the Code as it was made during the investigation of this case. It cannot, Therefore, be read against him.

(8) It is the prosecution case that the murder took place on the night of December 22, 1978, and the half burnt body, which was found on the pyre in the cremation ground by the Sub-Inspector Niader Singh, was that of Smt. Bhagwani. The fact that the body was that of grown up female, is proved by Dr. L. T. Ramani (P. W. 21) who conducted the post-mortem at the cremation ground. He was, however, unable to give the cause of the death. Mr. Soni, learned counsel for the complainant, submits that the report of the doctor that "two pieces of long bones badly charred and beyond recognition were found lying besides the body", shows that, in fact, the legs of the dead body had been chopped off and had been placed along side the body before it was burnt. Chopping off the legs, according to Mr. Soni, was necessitated as the body, after having been kept for over 24 hours, had become very stiff. It could not be bent for being put in the sack to be carried to the cremation ground. In any case, this fact shows that the person concerned met with an unnatural death.

(9) There is no basis for this contention, it is entirely misplaced. According to Dr. Ramani (P.W 21), he was unable to give any opinion whether the burns on the dead body were ante-mortem or post-mortem. Soft structure of scalp, face and neck had been completely burnt exposing the skull and cervical vertebrae which were also charred. The opinion regarding the age of the accused, cause of death and time since death, could not be given by him as at the time of post-mortem

examination the body was completely beyond recognition. It was only because of the presence of the uterus that the doctor was able to opine that the body was that of a grown-up female. No specific question was asked by the learned Public Prosecutor from this witness to bring out the fact which is being urged. The probability is that after the burning of the soft tissues, the bones, after getting charred, got disintegrated. It may be noticed that the relations and parents of Smt. Bhagwani were unable to recognize the body as that of Bhagwani. They had even refused to take possession of the half burnt skeleton. The linked argument, however, is that the appellant having admitted that Smt. Bhagwani had died a natural death, it was for him to prove that the dead body was not that of his wife Smt. Bhagwani. The admission is contained in an application seeking bail moved by him before the Sessions Judge wherein it has been stated that his wife Bhagwani had died a natural death and that he had been falsely implicated. According to the prosecution, the appellant's presence in the cremation ground near the pyre at the dead of the night, a very unusual time for cremation, read with his admission, conclusively proves that the dead body, which was burning, was that of his wife Smt. Bhagwani. It is, however, significant to note that the application has not been signed by the appellant, it appears to have been signed by his counsel, Mr. S. K. Sharma, who was defending him in the trial Court. This admission had also not been put to the appellant in his statement u/s 313 of the Code of Criminal Procedure. The submission of Mr. Soni is that the appellant is bound by the pleadings and it was not at all necessary that the admission made in the application be put to him, as the application moved by him was not a circumstance appearing in evidence against him. In support of this submission Mr. Soni has relied on a decision reported in *Satya Vir Vs. State*, . It is not very clear from perusal of that decision whether the bail application in the said case had been signed by the accused. In the present case, as noticed above, the application has been signed by his counsel whose power of attorney is not on the record. In Delhi, the practice in the trial Courts is to permit counsel in criminal cases to appear on behalf of the accused without filing any power of attorney. It would, Therefore, not be safe to read that statement contained in the application as an admission by the appellant. In the present case, the said admission is being used by the prosecution in corroboration of the allegation that the dead body was that of his wife Smt. Bhagwani. Therefore, according to the prosecution, it is an incriminating circumstance. It is well-settled that any incriminating circumstance must be put to the accused. Such an incriminating circumstance, which has not been put to the accused to enable him to explain it, cannot be permitted to be used against him. In *Kaur Sain Vs. The State of Punjab*, , a statement made by the accused at the police-station containing an unqualified admission on his part that he had concealed a tin of opium in his house, was being relied upon by the prosecution. However, in his examination u/s 342 of the Code of Criminal Procedure, the accused had not been asked by the Magistrate to offer any Explanation regarding that statement. Chandrachud, J. (as his Lordship then was), rejected that particular circumstance and observed that: "If the State relies in this Court on any particular circumstance as being

sufficient to sustain the conviction it would be open to the accused to plead in answer that the particular circumstances was not put to him in his examination u/s 342." The statement of the appellant made on his behalf by his learned counsel in the bail application dated March 13, 1978, cannot, Therefore, be read as his admission. No reliance can thus be placed by the prosecution on the said statement.

(10) The prosecution has Therefore, not proved that the dead body was that of his wife Smt. Bhagwani.

(11) To prove that Smt. Bhagwani) wife of the appellant, was alive at least up to the night of December 22, 1978, and was done to death sometimes thereafter, the prosecution is relying upon the testimony of two witnesses, namely, P. W. 3 Smt. Sarjoo and P. W. 11 Shri Lal. P. W. 3 Smt. Sarpo is a resident of Pooth Kalan and lives in the vicinity of the appellant's house. It may be mentioned that the appellant was convicted in the year 1961 for having murdered Man Singh, her (P. W. 3) husband's younger brother (Deevar), and had been sentenced to life imprisonment. She has stated that a day prior to Kissan rally (which admittedly was organized on December 23, 1978) she had taken her child to the street outside her house at about 8 or 9 p.m. to answer the call of nature and heard the shrieks of Smt. Bhagwani who was lamenting "Kilsa Kilsa Kar Kayon Marta Hai. Ek Bar Mein Hi Mar Do." (Why are you killing me by bits. Kill me straightway)". She further stated that she bent down to peep into the appellant's house and observed that the appellant was giving beating with a lathi to Smt. Bhagwani. Thereafter, she went back to her own house as, according to her, the matter was personal between the husband and wife, and as such did not require any interference on her part. In her cross-examination she stated that although the appellant had murdered her husband's younger brother, by passage of time she had got over the grief and continued to be on speaking terms with the appellant's wife. It was brought out in her cross-examination that her house was at a corner and not in the straight line with that of the appellant but after a bend in the street. "It is obvious, Therefore, that from outside her house she could not peep into the house of the appellant. She admitted that she had not informed of her family that she had seen the appellant giving lathi blows to his wife. She, however, asserted that she had stated so in her statement Exhibit P. W. 3/DA made before the police. When confronted, it was found that this fact was not so recorded in the earlier statement. She reaffirmed that she had stated in that statement that Smt. Bhagwani's screams were audible in the street. On confrontation, it was found that she had not stated so to the police. Thereafter, she admitted that she had not stated to the police that she had seen Randhir Singh giving beat ing to his wife. The learned trial Court while holding that this witness had made improvements in her earlier statement regarding having seen the appellant beating Sint. Bhagwani with a lathi outside his house in the street, discarded this portion of the testimony but found her reliable regarding the shrieks which she had heard. The reasoning of the learned trial Court is that as a bloodstained lathi (Exhibit P 2) had been recovered from the house of the

appellant and as bloodstains were discovered on the floor of that house, Smt. Bhagwani must have cried when hit with a lathi by the appellant. The wails attributed to her must, Therefore, have been heard by P. W. 3 Smt. Sarjoo. It has been brought on the record that in the said street there are a number of other houses, all of which are inhabited. The adjacent house is that of Muller who has not been produced. As noticed earlier, the house of this witness is situate after the bend in the street. It appears odd that shrieks of Smt. Bhagwani were not heard by others living in that street. However, in view of the fact that Smt. Sarjoo has definitely made an improvement in her earlier statement regarding her having seen the appellant giving the lathi blows to Smt. Bhagwani, probably because of enmity) implicit faith cannot be placed on her testimony. The said reasoning of the learned trial Court that Smt. Bhagwani must have wailed when being hit and as such the deposition by Smt. Sarjoo (P. W. 3) regarding hearing her shrieks cannot but be a true version, in my view is not at all sound. It is based on a conjecture and as such is rejected.

(12) Another witness, who was produced to prove that by the evening of December 23, 1978, Smt. Bhagwani was no longer alive, is P. W. 11 Shri Ram. He belongs to village Siraspur which is also the village of Smt. Bhagwani's parents. He wanted to purchase a buffalo and had arrived on that day at village Pooth Kalan to strike a bargain. At about 5.30 p. m. he went to the house of the appellant to pay the customary one rupee to Smt. Bhagwani, she being a girl belonging to his village. According to him, the custom prevalent in his community was that while on a visit to a village where a girl belonging to his native village was married, it was expected of him to enquire about her welfare and to pay her one rupee by way of affection. To do this he wanted to see Smt. Bhagwani but the appellant, who was sitting on a stool in the courtyard of his house, forbade him from meeting Smt. Bhagwani. When he insisted to see her, the appellant replied that Bhagwani was lying on the floor and in case he (P. W. 11) did not go away, he would also be killed. In his cross-examination it was brought out that his testimony regarding the appellant having told him that Smt. Bhagwani was lying on the floor, was an improvement on his earlier statement recorded u/s 161 of the Code. Certain other discrepancies were also brought out. He admitted that the police had implicated him in a false case. He, however, denied that he was falsely deposing at the instance of Ram Chander, father of Smt. Bhagwani, Lambardar of his village. He readily admitted that he had not informed any one in villlage Pooth Kalan about the threat which he had been given by the appellant although according to him, he stayed there for that night. This witness is also a witness to the disclosure statement Exhibit P. W. 2/A leading to the discovery of lathi, weapon of offence, which the appellant had made before the police an the morning of December 24, 1978. The learned trial Court has rightly rejected from its consideration the said disclosure statement. P. W. 11 Shri Ram is a chance witness. In view of the fact that he has materially improved upon his earlier statement only with the object of involving the appellant, I am of the view that the testimony of this witness ought to have been altogether rejected by the trial

Court.

(13) Another circumstance, which has been found against the appellant to prove that Smt. Bhagwani had met with an unnatural death was that her clothes-salwar Exhibit P 3 and shirt Exhibit P 4, which were recovered from the house of the appellant during investigation, were blood- stained. According to P. W. 27 Shri Mehar Singh Rana, younger brother of Bhagwani, those clothes were given by his wife to his sister (Bhagwani) on Diwali occasion and as such he could identify the same. The said clothes, which were identified by this witness in Court when they were in an unsealed condition, as they had been exhibited earlier (as per the note of the trial Court on page 136 of the paper-book), are of ordinary printed cotton material. This witness has nowhere stated that he had actually seen his sister Bhagwani wearing those clothes. This witness's elder brother (P. W. 26 Ishwar Singh) was unable to identify those clothes as of Bhagwani. In view of the fact that the prosecution has not produced any witness for proving that Bhagwani was ever seen wearing those clothes, it cannot be said that Bhagwani ever wore those clothes or was wearing them on the night of December 22, 1978. From this circumstance it cannot be presumed that Bhagwani was done to death while wearing those clothes, physical presence in the village on that day has also not been proved. It cannot be held that Exs. P 3 and P 4 were clothes of Bhagwani or that she was wearing the same on December 22, 1978.

(14) It is no doubt true that blood was found in the house of the appellant for which he has given no Explanation. It is also true that salwar Exhibit P 8 and the quilt, gadda and pillow, which were also recovered from the house of the appellant, were stained with human group "B" blood, as mentioned in report Exhibit P. W. 28/C. However, on analysis the human bloodstains on the lathi Exhibit P 2, the lady's shirt Exhibit P 4 and blood on the cot were found inconclusive. The post-mortem blood, which had been taken out from the heart of the dead body, had completely disintegrated. The bloodstained earth had also disintegrated and, Therefore, no blood grouping could be ascertained. The prosecution has failed to prove that the blood group of the deceased was of group "B". As already noticed, it has not been proved that the salwar Exhibit P 3 and the kameez Exhibit P 4 were that of Smt. Bhagwani. It is, Therefore, not possible to hold that human blood found on the said article was that of Smt. Bhagwani.

(15) The motive for the crime has also not been proved. A feeble attempt was made by the prosecution to show that as Smt. Bhagwani was unable to persuade her parents to send an amount of Rs. 500.00 to the appellant, which he needed immediately, consequently in desperation he murdered her. The learned trial Court has rightly rejected from its consideration the alleged motive for the crime. The appellant had proved through D. W. I Vijinder Singh that he had received Rs. 4571.00 on July 23, 1977, as share of his compensation for the land which had been acquired by the Government. Therefore, it cannot be said that he was in grave financial stringency, as alleged by the prosecution.

(16) The analysis of the prosecution evidence establishes the following circumstances against the appellant :

(1) That he was standing at an unusual time, 11.30 p.m., on December, 23, 1978, near a burning pyre in the cremation ground of village Pooth Kalan.

(2) On noticing the police he tried to slip away, and

(3) Bloodstained clothes as also bloodstains were found in his house.

These circumstances have not at all been explained by the appellant. His version is that of complete denial. Although, on the established circumstances, a lurking suspicion does arise, yet in the complete absence of direct evidence against the appellant he cannot be held to be guilty of the offences for which he has been convicted and sentenced. Accordingly, he is entitled to the benefit of doubt. His appeal is allowed; his convictions and sentenced are set aside, and he is acquitted.