
(1995) 01 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 182 of 1989

Rattnu

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 06-01-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 300, 302, 304(1), 304(2)

Citation : (1995) 2 ILR HP 775

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Anup Chitkara and Vice, for the Appellant; R.M. Bisht, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—This appeal is directed against the judgment of Additional Sessions Judge, Bilaspur, in Sessions Trial No. 11 of 1988, dated 15.6.1989, convicting the accused u/s 304 Part-I of the Indian Penal Code and sentencing him to rigorous imprisonment for seven years and to pay a fine of Rs. 500/-, in default of payment of fine to undergo further rigorous imprisonment for a period of two months.

2. Deceased Giano Devi (hereafter deceased) was married to the accused. They were living together in village Behal. Bir Devi (PW-9) is the elder sister of the deceased, married to Balak Ram, elder brother of the accused. Balak Ram was residing in the same village in a house adjacent to the house of the accused. Mehar Chand (PW-10) used to reside in the house of Ram Dass in the same village. This house is located near the house of the accused. Ram Dass is the maternal father of Mehar Chand and is related to accused by collateral relationship. The house of Amar Chand (PW-11) and his father Jiwanu is also situated near the house of the accused. The prosecution alleges that the accused was suspecting the character of the deceased. This fact was disclosed by the

deceased to Bir Devi about 15 days before the occurrence.

3. On 25.1.1988, the deceased was sleeping with the accused. At about 11 PM, Bir Devi heard the cries of the deceased seeking help. She rushed to the room of the deceased. It was closed from inside, but the bolt gave way when Bir Devi pushed the door forcibly. On entering the room, Bir Devi found that the accused was standing with an axe (Ex.P.1) in his hand on the side of the head of the cot. The deceased was lying dead on the cot in a pool of blood with injuries on her face and neck. Bir Devi shouted for help and tried to take the axe from the accused, who did not release it. In the meantime, Amar Chand, Jiwanu, Mehar Chand and Ram Dass also came there. Amar Chand took the axe from the accused. Mehar Chand and Amar Chand also found the deceased lying dead on the cot in a pool of blood with injuries. The accused asked Ram Dass, Mehar Chand, Jiwanu and Amar Chand as to why they had intervened in the matter since he had killed his own wife. The accused also threatened to kill Bir Devi. He ran away from the place with axe (Ex.P.1). Pradhan Hari Krishan (PW 6) was informed at about 12.30 AM. He was told by Ram Dass and Kalu Ram that the accused had run away after killing his wife, therefore, he should reach at the spot. Hari Krishan did not go to spot since some Kirtan was going on in his house. However, he informed police station, Kot-Kehloor about the occurrence telephonically at about 5.30 or 6 AM. This information was received by MHC Devi Dass (PW 8), who recorded it in his daily Rojnamcha (Ex.PE), recording that the accused had cut his wife with an axe and it was not certain if the woman was dead or alive.

4. On receiving this report (Ex.PE), SHO Laxmi Chand (PW 16) of police station, Kot, went to village Behal at 7 AM. He recorded the statement of Bir Devi u/s 154 of the Code of Criminal Procedure (Ex.PF) and it was sent by him to police station, Kot, with endorsement for the registration of a case. Accordingly, first Information Report (Ex.PF/1) was recorded at police station, Kot, at 2.05 PM on 26.1.1988 by MHC DeviSingh. Spot inspection was carried by SHO Laxmi Chand, deadbody of the deceased, lying in the room with various injuries on the neck and face, was found, inquest proceedings (Ex.PL) were carried out, witnessed by Ram Lok and Ram Dass, present there. The deadbody of the deceased was sent to district hospital, Bilaspur, for postmortem examination alongwith application (Ex.PA) through Head Constable Krishan Singh (PW 15) and Constable Balak Ram. Before doing so, deadbody of the deceased was got photographed through Prem Chand (PW 3). The photographs are Ex.P.-7 to Ex.P.-11 and their negatives are Ex.P.-2 to Ex.P.-6. Blood stained earth and blood soaked hairs were taken into possession by SHO Laxmi Chand from the place where the deadbody of the deceased was lying. The bedding, consisting of blood stained khandola (Ex.P.14), Shawl (Ex.P.15), quilt (Ex.P.16), Khesi (Ex.P.17) and Nawal (Ex.P.18), was taken into possession from the scene of crime. These articles were sealed in a cloth Parcel and deposited with MHC Devi Dass, who later sent the same to Chemical Examiner, Patiala, through Constable Darshan Singh (PW 4). Postmortem examination was done by Dr. J. Goswami (PW 1) of district hospital,

Bi1aspur, on 27.1.1988. The following injuries were found on the deadbody of the deceased:

1. 2-1/2 inches long half inch wide and half inch deep incised wound obliquely placed over the frontal region of scalp involving bone, bleeding 2 plus.
2. 3 inches long 1 inch wide and 1 inch deep incised wound extending from one inch lateral to the left nosil of the half inch medial to left ear throat exposed bleeding to plus.
3. 4-1/2 inches long 1-1/2 inches wide and 1-1/2 inches deep incised wound left angle of jaw, throat exposed bleeding two plus.
4. 1-1/2 inches long 1/2 inch wide 1/2 inch deep incised wound left Parietal region extending upto bleeding two plus.
5. 3 inches long 1 inch wide 1-1/2 inches deep incised wound over left scapula region bleeding too plus, bone exposed.
6. 8 inches long 1-1/2 inches wide 3 inches deep incised wound over the base of the neck involving bone. Bleeding two plus.
7. 3 inches long 1-1/2 inches wide 2 inches deep incised wound 1/2 inch above the previous wound. Bleeding two plus.

4-A. Dr. Goswami also sent the viscera of the deceased,consisting of kidney, liver, lung, stomach and intestine in 3 separate bottles, for chemical examination. After receipt of the report of the Chemical Examiner (Ex.PS), Dr. Goswami opined that the death of the deceased was caused by multiple injuries with sharp edged weapon leading to haemorrhage and shock. According to him, death of the deceased was caused 41 hours prior to postmortem examination and it was instantaneous on receipt of the injuries, which were sufficient to cause death in the ordinary course of nature. The injuries could be caused with axe (Ex.P.1). The postmortem report is Ex.PB.

5. Wearing apparels of the deceased, namely Salwar, Kameej and Vest, found on her body, were also removed by the doctor at the time of postmortem examination and these clothes were sent to Chemical Examiner, Patiala, in a sealed Parcel by MHC Devi Dass through Constable Darshan Singh. These were found stained with blood by the Chemical Examiner vice his report (Ex.PQ). The garments were stained with human blood as per the report of the Assistant Serologist, Government of India. (Ex.PR).

6. The SHO tried to arrest the accused on 26.1.1988, but he was not available. However, he was arrested on 27.1.1988. Vest (Ex.P.12) and underwear (Ex.P.13) were found on his person. They were seized through memo (Ex.PJ). They were sent to Chemical Examiner, Patiala, and later to Assistant Serologist, Government of India, in a sealed Parcel. The vest and the underwear were stained with human blood as per the reports of the Chemical Examiner and Assistant Serologist (Ex.PS and Ex.PR). While in police custody, the accused disclosed on

30.1.1988 to SHO Laxmi Chand in the presence of Sudershan Kumar (PW 7) and Mangat Ram, that he had thrown the axe in a well in village Dabora and could get the same recovered. This statement was recorded through memo (Ex.PD), which was thumb marked by the accused and signed by Sudershan Kumar and Mangat Ram. After making the statement, the accused took SHO Laxmi Chand to a nallah near village Dabora and pointed cut towards the well as the place where he had thrown the axe. The axe (Ex.P.1) was taken out from the well by Data Ram (PW 14) and Radha Krishan (PW 13). The axe was identified by Bir Devi as the weapon of offence. It was seized through memo (Ex.PK) and later sent to Chemical Examiner who found it to be stained with human blood. Origin of the blood found on the axe could not be determined by the Assistant Serologist because of disintegration. Investigation was completed and the accused was challaned before the trial Court for an offence u/s 302 of the Indian Penal Code for committing murder of the deceased on 25.1.1988. He pleaded not guilty to the charge and claimed to be tried. Accordingly, the prosecution examined six witnesses in support of its case.

7. In his statement u/s 313 of the Code of Criminal Procedure, the accused has denied all the incriminating circumstances put to him from the prosecution evidence. He has stated that on 25.1.1988, he returned to his house after doing manual work. He found the door of his house closed from inside. It opened when he pushed it. There was darkness inside the room. He switched on the light and found the deceased on the cot in a compromising position with Mehar Chand. He lost control on himself after seeing his wife and he did not know as to what had happened thereafter. He saw the villagers sitting in his house when he came to senses and told them that Mehar Chand was found in a compromising position with the deceased. Same fact was disclosed by him in the next morning. He denied that he ran away from the scene of occurrence, rather he had joined the police and he was taken by it alongwith Mehar Chand and Ram Dass in the evening of 26.1.1988. He has also stated that Ram Dass and Mehar Chand were allowed to go by the police next day, whereas he was kept in the custody and he later came to know that he was booked for the murder of the deceased. He also stated that his wife had a good character and he had never suspected her for character. In defence, Ram Lok, Balak Ram and Bachna Ram were summoned, but were not actually examined.

8. The trial Court, after hearing the parties and examining the matter, held him guilty u/s 304 Part-I of the Indian Penal Code and sentenced him as already stated in the preceding part of this judgment. The accused has filed this appeal assailing the judgment.

9. It is not disputed by the parties that the deceased died a homicidal death. She was lying dead on her cot in a pool of blood when Bir Devi came there after hearing her cries. She notices injuries on the face and neck of the deceased. Mehar Chand and Amar Chand also came to the spot when they heard the cries of the deceased. They also notice the deceased lying dead in a pool of blood with

injuries on her face and neck. These injuries were also noticed by SHO Laxmi Chand who reached the spot on the morning of 26.1.1988. Dr. Goswami, who conducted the postmortem examination on the body of the deceased also notices 7 incised wounds of different dimensions on scalp, face, throat, parietal region, neck etc. According to him, these injuries could be caused with an axe and they were sufficient in the ordinary course of nature to cause death. Death of the deceased, according to the doctor, was instantaneous. The time of death of the deceased fixed by the doctor on the basis of probable duration which had lapsed between death and postmortem examination also shows that the deceased was killed on 25.1.1988. Evidence, therefore, clearly demonstrates that the deceased was killed by the accused with axe. This conclusion is also fortified by the explanation of the accused u/s 313 of the Code of Criminal Procedure. Bir Devi has stated that she had gone to the room of the deceased at about 11 PM on the day of occurrence after hearing the cries of the deceased. The door was closed and it was opened after use of force. She saw the deceased lying dead on the cot in a pool of blood when she entered the room. The accused was standing on the head side of the cot with axe in his hand. She tried to snatch the axe from him, but it was not released. The accused also threatened to kill her. She also states that Amar Chand, Jiwanu, Mehar Chand and Ram Dass also came there. Mehar Chand has stated that he woke up at about 11 PM on 25.1.1988 after hearing the cries of Bir Devi and rushed to the house of the deceased. Amar Chand and Jiwanu had already reached there. He also saw the deceased lying dead in a pool of blood with injuries on her face and neck. The accused was caught hold by Amar Chand and Jiwanu, but he got himself freed. The accused ran away with the axe (Ex.P.1). He also states that he tries to catch the accused, but the accused told him not to come near. The accused stated that he had done whatever he had wanted and killed his wife. This version is supported by Amar Chand(PW-11), who had also visited the spot on hearing the cries of the deceased. He saw the deceased lying dead on the cot and the accused was having axe in his hand and Bir Devi was snatching it from one end and the accused retaining the other end. The contention that the prosecution witnesses, more particularly Bir Devi, have made number of improvements in this case, therefore, the evidence deserves to be rejected, is not at all tenable. Minor discrepancies, coming here and there in the statements of the Prosecution witnesses, do not affect the basic case of the prosecution. Some discrepancies are likely to occur when, there is some time gap in the recording of the statements of the witnesses by the police and the Court during the trial. Discrepancies may also indicate that the witnesses were not subjected to tutoring by the police before recording of their statements in the Court. In the statements of truthful witnesses, minor discrepancies are bound to occur.

10. The main emphasis was laid on the question whether the offence falls u/s 304 Part-I or 304 Part-II of the Indian Penal Code. In support of this contention, strong reliance was placed on AIR 1964 SC 1263, *Afrahim Seikh and Ors. v. State of West Bengal* AIR 1979 SC 577, *Mohinder Pal Jolly v. State of Punjab*, and

AIR 1988 SC 2122, Kartar Singh v. State of Punjab. Looking to the explanation of the accused, it appears that he was deprived of the power of self control by grave and sudden provocation when he noticed the deceased in a compromising position with Mehar Chand and killed the deceased with axe. In these circumstances, the case would fall under Exception-I of Section 300 of the Indian Penal Code, as has rightly been held by the trial Court (See In Re: Vadivel Padayachi, In re Vadivel Padavachi and 1974 C.L.R. 47 Ramdham v. State of Haryana).

11. No other point was urged by any of the learned Counsel for the parties.

12. Now, the question arises about the sentence part of the case. It was contended that the accused is the first offender. He has old mother and two younger brothers to be looked after. The offence was committed in usual circumstances without premeditation. Looking to all the facts and circumstances of the case, I am of the opinion that interest of justice would not suffer in case the sentence is reduced by two years. Accordingly, the appeal is dismissed except as to the reduction of sentence by two years only. The accused is on bail. His personal and surety bonds are hereby terminated. He would surrender to the authorities to serve the sentence.