
(2009) 02 DEL CK 0276
In the Delhi High Court
Case No : Criminal Appeal 833 of 2007

Shyam Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2009) 02 DEL CK 0276

Hon'ble Judges : Pradeep Nandrajog, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Rakhi Dubey, for the Appellant; Richa Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The appellant has been convicted for the offence of murdering his wife.

2. Learned Trial Judge has believed the testimony of Acharaya Rahul Dev PW-9 and Rajnish PW-10 to sustain a finding of guilt against the appellant. Learned Trial Judge has found that the statement Ex.PW-15/A recorded before Sh. Bishan Chand SDM, Pahar Ganj, in which the appellant gave an account of the circumstance under which his wife died was found to be unbelievable and inconsistent with the medical evidence of the cause of the death of the wife of the appellant.

3. We begin our decision with respect to the facts admitted by the appellant in his statement u/s 313 Cr.P.C.

4. The answers given to question No. 23 to 25 are as under:

Q. 23 It is in evidence against you through the statement of PW-9 that on 16.1.2005 you alongwith your wife came to Atithishala and stayed in room No. 1 for one day and you extended your stay for one more day. What you have to say?

A. It is correct.

Q. 24 It is in evidence against you through the statement of PW-9 Rahul Dev that on 18.1.2005 he was sleeping in his room when at about 4:20 AM someone knocked his door and on opening the room he found you and you informed that your wife died due to electric shock. What you have to say?

A. It is correct.

Q. 25 It is in evidence against you through the statement of PW-9 that he alongwith you and Sewadar Rajesh went to your room where dead body of your wife was lying on the floor and the chappal of the deceased and broken Garland was there and some blood stains were also lying in the room. What you have to say?

A. It is correct.

5. The appellant has also admitted the facts put to him in question No. 32 to 34. The question and answers read as under:

Q. 32 It is in evidence against you through the statement of PW10 that he was called by Acharya Rahul and he came to know that your wife has expired and PW10 alongwith Acharya Rahul Dev came to your room where your wife was found dead in Room No. 1 where you were staying with her. What you have to say?

A. It is correct.

Q. 33 It is in evidence against you through the statement of PW-10 that you informed that your wife has expired due to electric shock but on having seen the dead body it was found that the blood was coming out of the nose of the dead body. What you have to say?

A. It is correct.

Q. 34 It is in evidence against you through the statement of PW-10 that one ladies sandle was found near the dead body and blood stains was present on the bottom of the sandle and one broken necklace of pearls and broken bangles were also lying in the room. What you have to say?

A. It is correct.

6. To the last question whether appellant had anything to say, he responded:

Q. 94 Anything else you want to say?

A. On the night of the incident I had gone for toilet outside the room. My wife was there in the room. When I returned after about 15-20 minutes I found her dead. I shouted for help but on one heard as I was the native of other State. This is a false case. I am innocent and falsely implicated in this case.

7. On 18.1.2005 at about 4:40 AM an information was received at PS Karol Bagh recorded vide DD No. 8A that a death had occurred at a Dharamshala attached

to a temple at Arya Samaj Road. SI Yashwant reached Arya Samaj Mandir and saw the dead body of a lady was lying on the floor in room No. 1. Blood was oozing from the nostrils of the dead body. The sole of the chappal was stained with blood.

8. As admitted by the appellant he along with his wife had checked in at the Dharamshala on 16.1.2005 and were allotted room No. 1 and on 18.1.2005 at around 4:20 AM he was in the room along with his wife.

9. A statement Ex.PW-15/A made by the appellant was recorded before the Sub-Divisional Magistrate. The scribe thereof is PW-16 ASI Vijay Kumar. The statement reads as

Statement of Shri Shyam Singh S/o Shri Raghubir Singh, aged 26 years R/o Village Poorva Rai Singh, Post Devrao, District Etawah (U.P.):

I reside at the aforesaid address and I have been doing the work of making sweets in M/s Shyam Sweets, Delhi Road, Gurgaon, Haryana for last about 3 years. On 15.1.2005 I, after taking my wife namely Vinita with whom I got married about two and a half years ago, along with me had left for Gurgaon on 16.01.2005 at about 07/7:30 o'clock. I along with my wife got down from the train at Old Delhi Railway Station and wherefrom we boarded on a bus bound for Anand Parvat and alighted at Faiz Road in the night at about 8:30 p.m. as I and my wife were to go to Gurgaon. Since, my wife was suffering from fever and she had vomited also on the way so my wife suggested me to stay there itself rather to go to Gurgaon that night whereupon, I inquired from somebody near Hanuman Temple for a Dharamshala. On this I came to know that there was a Dharamshala of Arya Samaj Mandir situated there. After that, I and my wife reached the said Dharamshala of Arya Samaj Mandir. After reaching there, I paid a sum of Rs. 120/- in Dharamshala and took a room there and in the night of 16.01.2005 we both slept there. On the next day i.e. 17.01.2005 (Sunday) when my wife complained about some pain in her head, I went to a chemist and brought a tablet of Disprin and gave the same to my wife. As we were to go to Gurgaon on Sunday but we could not go there because of the ill health of my wife. On 17.01.2005 at about 10:00 p.m in the night we both had slept after switching off the light. At about 4:15 a.m when, on hearing the moaning of my wife I woke up, I saw that the light of the room was on and my wife was writhing in pain while lying on the floor on a side whereupon I also hit my wife's body at two parts with her chappal as a result whereof I found that she had become motionless whereupon, I awoke Panditji of Dharamshala and disclosed him that my wife was not moving and then I took Panditji to my room of Dharamshala who later on telephoned the police. I apprehend that my wife has sustained an electric shock because the socket of electric-board was open.

Sd/-

Shyam Singh (in Hindi)

18.1.2005

10. The body of the deceased was seized and sent to Maulana Azad Medical College for post-mortem. Dr. Sunil PW-1 conducted the post-mortem on 20.1.2005 and recorded the following external injuries:

1. Abrasion, 8 x 3 cm, reddish in colour placed obliquely over the upper font of right side of neck.

2. Multiple abrasions, in an area of 9 x 2 cm,

reddish in colour over the outer aspect and left side of neck up to chest below the left ear.

11. Internal injuries were recorded as under:

1. Effusion of blood present underneath injury No. 1 and 2 on reflecting the neck.

2. Effusion of blood present over posterior pharyngeal wall had placed.

12. He noted that both lungs were congested and the left lung was adhering to chest wall. He opined that death was due to asphyxia as a result of manual compress and blunt force impact to the neck vide injury No. 1 and 2 and that both injuries were sufficient to cause death in the ordinary course of nature.

13. Acharaya Rahul Dev PW-9 the incharge of the Dharamshala deposed that on 16.1.2005 the appellant along with his wife had checked in at the Dharamshala and were allotted room No. 1. Entry thereof had been made in the register at page No. 6830, Ex.PW-9/B which was seized by the police vide seizure memo Ex.PW-9/A. He deposed that Rs. 120/- were charged from the appellant and receipt No. 11628 was issued the copy whereof was Ex.PW-9/C. He deposed that on 18.1.2005 at around 4:20 AM, while he was sleeping in his room, somebody knocked at the door. He opened door and found the appellant standing outside. The appellant informed him that his wife had died due to an electric shock. He i.e. Acharaya Rahul Dev accompanied by a Sewadar Rajesh went to the room and saw the dead body of the wife of the appellant lying on the floor. He saw blood stains on the floor. He informed one Kirti Sharma to contact the police as he was suspicious of the circumstance under which the wife of the appellant died. He deposed about handing over the register in which arrivals were entered to the police and that at page No. 6830 an entry pertaining to the appellant was made therein.

14. The witness was cross examined. The only worthwhile thing which has emerged in the cross examination is his admission that he did not tell the police that the appellant had told him that his wife had died due to an electric shock.

15. Rajesh PW-10 deposed that he was working as a Sewadar at the Dharamshala and that on 16.1.2005 the appellant and his wife had checked in at the Dharamshala at 8:30 PM and that he had made an entry to that effect in the register and after receiving Rs. 120/- had issued the receipt in question to the

appellant. That PW-9 had summoned him on learning that the wife of the appellant had expired and that he went to the room of the appellant. That the appellant told that his wife had expired due to an electric shock and that he saw blood oozing from the nose of the deceased. He saw a blood stained ladies sandle. He saw a broken necklace of pearls. That the police came and seized the pair of sandles.

16. The witness was cross examined. Indeed, nothing of substance has been brought out in the cross examination.

17. A pair of earrings, broken glass bangles, one necklace of pearls which was seized vide recovery memo Ex.PW-11/A were proved as duly seized from the spot by Const. Lalit Pradhan PW-11 who also proved the seizure of the chappals as per seizure memo Ex.PW-11/B.

18. Bishan Chand PW-15 deposed that the statement Ex.PW-15/A was recorded by SI Yashwant Singh PW-14 in his presence and that he endorsed the same.

19. We note that the father of deceased Vinita, Shriram PW-2 deposed that the appellant was having extra-marital affair. Mohan Singh PW-3 also deposed to said facts. Prem Narain PW-4 a cousin of deceased Vinita also deposed similar facts.

20. Indeed, learned Counsel for the appellant cannot dispute the fact that the appellant was with his wife in room No. 1 in the Dharamshala when the wife of the appellant died. The only submission made by the Counsel is that the appellant never made the statement Ex.PW-15/A and never told that his wife had died due to an electric shock. Learned Counsel urges that the truth was, as disclosed by the appellant to question No. 94 that he went to the toilet outside the room. His wife was in the room. When he returned after about 15-20 minutes he found his wife dead. He shouted. Nobody heard his shouts and that he was falsely implicated.

21. We need not bother about any other evidence and least about the statement Ex.PW-15/A, for the reason PW-9 has categorically deposed that on 18.1.2005 when he was sleeping in his room at about 4:20 AM, somebody knocked his door and on opening the door he saw the appellant outside who informed him that his wife had died due to electric shock.

22. As noted above, said circumstance was put to the appellant vide question No. 24. He admitted the same.

23. Similarly, the incriminating circumstance of PW-10 deposing that when he went to the room of the appellant he was told by the appellant that his wife had died due to electric shock was put to the appellant vide question No. 33. He admitted the same.

24. Thus, the theory of the appellant that he never told anybody that his wife died due to an electric shock cannot be urged by him as he has admitted said incriminating circumstance against him when questioned u/s 313 Cr.P.C.

25. We note that while cross examining PW-9 and PW-10 no suggestion has been given to either witness that the appellant told them that he found his wife dead on returning to the room after making a visit to the toilet.

26. The testimony of the close family relations of the deceased establish the motive for the crime.

27. Indeed, the deceased has died due to strangulation. The theory of the appellant that his wife died due to an electric shock is belied from the post-mortem report. The stand taken in appeal that the appellant did not tell PW-9 and PW-10 that his wife died due to an electric shock cannot be taken by him in view of his admissions as noted hereinabove. Presence of the appellant in the room with his wife is admitted.

28. We find no merit in the appeal.

29. Dismissed.