
(2000) 08 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 405 of 1998

Smt. Jagriti Devi	Vs	APPELLANT
State of H.P.		RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 173, 233, 313
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2000) 3 ShimLC 321

Hon'ble Judges : M.R. Verma, J; Lokeshwar Singh Pantia, J

Bench : Division Bench

Advocate : Jagdish Vats, for the Appellant; J.K. Verma, Asstt. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar Singh Pantia, J.—This appeal is directed against the judgment and order dated 2.11.1998 of the learned Sessions Judge, Shimla passed in Sessions Trial No. 22-S/7 of 1997 convicting Smt. Jagriti Devi, Appellant herein, for the offence of murder of Smt. Shama Devi, second wife of her husband Mohinder Singh and sentencing her to suffer imprisonment for life and to pay fine of Rs. 2,000. In default of payment of fine, the Appellant shall undergo simple imprisonment for a period of one year.

2. The prosecution case is as follows:

The Appellant is a legally wedded wife of Mohinder Singh resident of village Chirgaon, Tehsil Rohru, District Shimla. After the marriage, the Appellant gave birth to five children, four daughters and one son. About 2-3 months before the occurrence which took place on 2.6.1996, Mohinder Singh brought Smt. Shama Devi as his second wife. The Appellant never tolerated Smt. Shama Devi as her co-wife and often quarreled with her. It is the prosecution case that the Appellant waited for an opportunity to do away the life of Smt. Shama Devi and ultimately, she got the opportunity on 2.6.1996 when her husband Mohinder Singh had gone

to Rohru on the previous day and did not return. The Appellant made Smt. Shama Devi to sleep in the verandah of her house on the night intervening 1/2.6.1996. On 2.6.1996, around 6 a.m., when Smt. Shama Devi was still asleep in the verandah, the Appellant assaulted her with a "Khukri". She dealt a number of blows on her head and one blow on the neck. The blows were so forceful that Smt. Shama Devi not only suffered cut injuries on the head and the neck, but her brain was also lacerated. The muscles of her neck got cut and within a few hours of the infliction of the injuries, she breathed her last. After committing the crime, the Appellant fled-away from the scene of occurrence with the weapon of offence. Before doing so, she washed her hands and face at the water tap in front of her house. Her own daughter Divya (PW 16), then aged about 12 years, and two small sons of her husband's brother, namely, Vikram (PW-18) and Vijay Singh (PW-19), saw the Appellant committing the ghastly crime. They narrated the incident to their grand-father Devi Saran (PW-2), who was sleeping in the adjoining verandah. A boy named Rajesh went to inform Naresh Kumar (PW-1) brother of the deceased, who lived in village Maktot, situated not very far off from the village of the Appellant's husband. PW-Naresh Kumar came to the spot and saw his sister lying unconscious, with number of bleeding injuries on her head and neck. He went to the Police Post, Chirgaon and lodged the report. The report was entered in the Rojnamcha (Ex. PN) and a copy of the said report was sent to the Police Station, Rohru, on the basis of which formal First Information Report (FIR Ex. PV) came to be registered on the same day at 11. a.m. Sub-Inspector Dhanpat Rai (PW-20) then posted as Additional Station House Officer at Police Station, Rohru immediately rushed to the spot. He found Smt. Shama Devi dead and conducted the inquest report Ex. PA. He also got the scene photographed and thereafter despatched the dead body to the Civil Hospital, for post-mortem examination. He took into possession blood soaked "Dhathu" (a piece of cloth put on by a lady on her head) of the deceased which was lying on the spot. He also took into possession quilt, a pillow cover and a bed sheet of the deceased. All these articles were also soaked in blood. A blood stained tuft hair of the deceased was also lying on the spot which was also taken into possession.

3. The post-mortem was conducted by Dr. Rajesh Sakkar (PW-14), who noticed the following ante mortem external injuries on the dead body of Smt. Shama Devi:

- (i) Multiple wounds on the scalp;
- (ii) A single lacerated wound extending from right ear to neck;
- (iii) A deep incised wound on the right upper limb (lower end) 2" x 1/2" extending deep into the muscle, exposing ulnar bone;
- (iv) A deep incised wound from right ear (cutting lower end of lower lobule) to lower down neck 4" x 1/2" extending deep into the bone;

On opening the scalp, following wounds were noticed on the right parietal region extending upto occipital region:

- (i) 6" x 1-1/2" exposing scalp and extending into bone and brain matter (right parietal region);
- (ii) 4 x 1/2" extending into bone and brain matter (right parietal region);
- (iii) Clean lacerated wound 3" x 1" right parietal region extending to occipital region;
- (iv) Deep lacerated wound 4" x 1/2" long in occipital region extending into bone and brain matter;
- (v) Depressed comminuted fracture involving right parietal and occipital region.

4. The aforesaid injuries were opined to have been caused with some sharp edged heavy weapon like "Khukri" and were stated to be sufficient in the ordinary course of nature to cause death. The probable time that elapsed between injuries and the death was stated to be six hours.

5. The post-mortem report (Ex. PK) has been placed on record. The investigating officer then started looking for the Appellant, who was arrested in Chirgaon Bazaar when going towards her parents village in the company of her brother. On being interrogated, she told the police that she had kept hidden the "Khukri" in a hollow in one of the edges of a field and could get the same recovered. Pursuant to that statement, "Khukri" was recovered and it was sealed in a parcel. The clothes of the Appellant i.e. Shirt, Salwar and a Sweater appeared to be stained with blood were also taken into possession. The blood stained clothes of the Appellant and the deceased and the bedding items etc., were sent to chemical examiner, who submitted his report Ex. PAA. According to the opinion of the chemical examiner, shirt and salwar of the Appellant, shirt and salwar of deceased Smt. Shama Devi and the tuft of hair were stained with human blood. The chemical examiner further opined that the blood stained hair tallied with the sample hair, removed from the dead body of Smt. Shama Devi.

6. The investigating officer recorded the statements of the daughter of the Appellant, two children of her husband's brother u/s 161 Code of Criminal Procedure The police got their statements also recorded u/s 164 of the Code of Criminal Procedure from Sh. Rakesh Kainthla (PW-17) who at the relevant time was posted as Additional Chief Judicial Magistrate at Rohru. On completion of the investigation, the police prepared a report u/s 173 Code of Criminal Procedure and presented the chart-sheet against the Appellant in the Court of Additional Chief Judicial Magistrate, Rohru, who committed the case to the learned Sessions Judge for trial.

7. The learned Sessions Judge found prima facie case of murder against the Appellant and she was charge-sheeted accordingly. The Appellant pleaded not guilty to the charge and claimed to be tried.

8. The prosecution examined as many as 21 witnesses and number of documents were placed on record to bring home the charge to the Appellant. In her

statement recorded u/s 313 Code of Criminal Procedure, the Appellant has not denied having caused fatal injuries to deceased Smt. Shama Devi but her plea was that she killed the deceased in exercise of right of private defence of her person. She has filed written statement purported to be u/s 233 of the Code of Criminal Procedure, in which it was stated that on the fateful day, there had been some altercation between her and the deceased, upon which the deceased took out the "Khukri", which she had kept under the pillow of her bedding and tried to attack her with the same, but luckily, she did not suffer any serious injury, except that the handle of the "Khukri" caused swelling wound on the back side of her head. She has also stated that she became apprehensive that the deceased would kill her and so she grappled with Smt. Shama Devi and successfully snatched "Khukri" from her hand. She further stated that she felt that in case she remained defensive, the deceased, who was young and robust could disarm her and kill her with the "Khukri" and so she gave a few blows of "Khukri" to Smt. Shama Devi.

9. The learned Sessions Judge meticulously considered the evidence and the arguments and found the Appellant guilty of the offence u/s 302 IPC and after conviction sentenced her. The Appellant has filed the present appeal challenging her conviction and sentence.

10. We have heard Mr. Jagdish Vats, learned Counsel for the Appellant and Mr. J.K. Verma, learned Assistant Advocate General.

11. The case of the prosecution rests both on direct as well as circumstantial evidence. The injuries suffered by deceased Shama Devi and resulting in her death are not in dispute as the Appellant has admitted having caused fatal injuries to the deceased. According to the prosecution, the occurrence was witnessed by PW-Divya, daughter of the Appellant, PWs-Vikram and Vijay Singh, both sons of the brother of the Appellant's husband. Both Divya and Vikram have resiled from their earlier statements, when they were examined in the Court. However, in her examination-in-chief, PW-Divya first deposed that on the fateful day around 7 a.m. when her "Bari Amma" (She called her mother Appellant) asked "Chhoti Amma" (called the deceased) to go to the fields to fetch grass, the latter not only refused to oblige the former but retorted that as the milk was required for her own children, it was her job to arrange fodder for the cattle. She further deposed that after hearing this answer of "Chhoti Amma" the Appellant slapped her on face and in retaliation her "Chhoti Amma" also slapped the Appellant and thereafter her "Chhoti Amma" took out a "Khukri", which she had kept under her pillow and tried to attack the Appellant. It was also stated by this witness that the Appellant turned on one side and escaped the blow and thereafter the Appellant grappled with her "Chhoti Amma" to snatch the "Khukri" from her hand and that when they were grappling she (Divya) left the scene to call her father's brother to intervene but when she returned after about 15-20 minutes, she saw "Chhoti Amma" lying with bleeding injuries on the floor of the verandah when the Appellant was missing. The witness has been

cross-examined by the learned Public Prosecutor and then she categorically admitted that the Appellant and her stepmother (deceased) used to quarrel with each other because the Appellant found it difficult to tolerate the deceased as co-wife. However, when the witness was confronted with her earlier statement Ex. PS, made by her before the Judicial Magistrate u/s 164 Code of Criminal Procedure, she emphatically denied having made such statement. In her cross-examination conducted on behalf of the Appellant, the witness has admitted that when her stepmother picked up the "Khukri" from underneath a pillow, the Appellant threatened that she would not spare the deceased and kill her.

12. The second witness of the occurrence is PW-Vikram, who also stated that he did not see the Appellant while inflicting "Khukri" blows on the person of the deceased and when he got up in the morning and went out to urinate, he saw the dead body of his Chhoti Amma (Shama Devi) lying in the verandah. In his cross-examination on behalf of the prosecution, he has admitted that he went to the Magistrate at Rohru and made a statement Ex. PU before him. He admitted having made the statement that he saw the Appellant dealing blows of "Khukri" on the person of deceased Shama Devi. He again corrected that he made such statement because his younger brother Vijay Singh had witnessed this fact and told him that he (Vijay Singh) had seen the Appellant dealing blows of "Khukri" to the deceased. In his cross-examination on behalf of the Appellant, he has admitted that he saw the "Khukri" lying near the dead body of Smt. Shama Devi. PW Vijay Singh is a child witness and his statement has been recorded by the learned Sessions Judge without administering oath. In his statement, the witness has said that the Appellant is his "Bari Amma" (elder mother) and Smt. Shama Devi was "Chhoti Amma" (younger mother). He stated that on the fateful day, when he went out for passing urine he saw his "Bari Amma" hitting deceased Smt. Shama Devi (Chhoti Amma) with a "Khukri" in the verandah of the house and thereafter his "Chhoti Amma" was found dead. He has admitted that he disclosed this fact to his brother PW Vijay Singh who was sleeping with him in the same room. Thereafter, he informed his grand-father that "Bari Amma" had cut "Chhoti Amma" with a "Khukri" and "Bari Amma" had fled away from the scene of occurrence. He also stated that "Khukri" Ex. P-8 is the same with which "Bari Amma" cut "Chhoti Amma" and this weapon of offence belongs to Bari Amma. In his cross-examination, he could not say as to why the deceased and Appellant used to quarrel with each other. However, he admitted that "Khukri" Ex. P-8 was used to be kept by the deceased under her pillow. He has further stated that PW-Divya was also in the verandah when the incident took place. The statement of the witness that Divya and Vikram also saw the incident when they both were present when the incident took place would go to show that Divya and Vikram have tried to wriggle out from their earlier statements recorded by the Judicial Magistrate u/s 164 Code of Criminal Procedure However, PW-Vikram has corroborated the testimony of his brother PW-Vijay Singh to the extent that the latter informed him that he had seen the Appellant inflicting injuries to the deceased with "Khukri".

13. PW-Devi Saran father-in-law of the Appellant and the deceased and grand-father of PWs Divya, Vikram and Vijay Singh also corroborated the testimony of PW-Vijay Singh. He deposed that on 2.6.1996 around 6 a.m. when he was sleeping in the verandah adjoining to the verandah where the deceased had slept on that fateful day, his grand-son Vijay Singh woke him up and told that "Bari Amma" had inflicted cut injuries on "Chhoti Amma". The witness in his cross-examination on behalf of the prosecution has admitted that on the night just preceding the day of incident, the Appellant and her three daughters slept in her room while the deceased slept in the verandah. According to his version, PWs Divya, Vijay Singh and Vikram used to call the Appellant as "Bari Amma" and the deceased "Chhoti Amma". The witness also stated that when he went towards verandah where the deceased was sleeping, he saw Smt. Shama Devi lying on the floor of verandah and the Appellant had already disappeared from the scene with "Khukri".

14. Dr. Rajesh Sarkar, who conducted the post-mortem on dead body of the deceased testified that the injuries which he noticed on her head and the neck could have been caused by means of "Khukri" Ex. P-8. The weapon of offence was recovered pursuant to a disclosure statement made by the Appellant in the presence of Kirpa Ram (PW-4), Pradhan of the Gram Panchayat and Tarsem Lal (PW-21), Investigating Officer of the case. It has come in the evidence of PW-Tarsem Lal that while in police custody, the Appellant made a disclosure statement Ex. PY that she had kept hidden a "Khukri" under a stone in a field called Piano-Ka-Dokhra and could get the same recovered and pursuant to the said disclosure, he recovered the Khukri Ex. P-8. PW-Kirpa Ram has corroborated the testimony of PW-Tarsem Lal in its entirety. He has also stated that the Appellant took the police to the fields and from a hollow got recovered the Khukri, the weapon of offence.

15. The police took into possession the clothes of the Appellant which she was wearing at the time of commission of the offence. Her salwar Ex. P-9 was taken into possession in the presence of Bahadur Singh (PW-7) who deposed that salwar was produced by the Appellant at the police station, which was blood stained. Salwar Ex. P-9, Shirt Ex. P-10 and Sweater Ex. P-11 were sent to the Chemical Examiner, who found human blood on these clothes of Group "A", vide report Ex. PAA. There is no reason to disbelieve the testimony of PW-Bahadur Singh that salwar which was taken into possession by the police did not stain with blood as nothing surfaced in the cross-examination, suggesting that he has any axe to grind by making a false statement nor the defence could shatter his testimony. It has come in the evidence of Dhanpat Rai (PW-20) Additional Station House Officer of Police Station, Rohru, who partially investigated the case that Salwar Ex. P-9, Shirt Ext. P-10 and Sweater Ex. P-11 of the Appellant were produced by father of the Appellant at the police station and he took them into possession vide memo Ex. RX. He deposed that these clothes were stained with blood and his testimony to that extent has been left unchallenged and the same has been rightly accepted by the learned Sessions Judge.

16. From the evidence and other materials on record, the case of the prosecution was that Smt. Shama Devi (deceased) had been brought as second wife by Mohinder Singh husband of the Appellant and, therefore, the Appellant was zealous of her and wanted to kill her. Admittedly, the deceased married Mohinder Singh about three months prior to the incident and this version has been made by Naresh Kumar (PW-1) brother of the deceased. The Appellant in her statement recorded u/s 313 Code of Criminal Procedure and written statement filed by her has also not denied the relationship of Mohinder Singh and the deceased. The Appellant has only stated that Appellant used to be kept by her husband at Rohru. The Appellant has not explained that when the deceased was allegedly kept at Rohru by her husband how she happened to be present at the house of her husband on the fateful day. The Appellant herself has admitted in her statement recorded u/s 313 Code of Criminal Procedure and written statement that she had inflicted "Khukri" blows on the deceased and that she succumbed to the injuries caused by her. Her own statements prove that the Appellant used "Khukri" Ex. P-8 to inflict the injuries on the person of the deceased.

17. The contention of the learned Counsel for the Appellant that the genesis of the occurrence was different from what the prosecution has projected and that the true facts of the case were that the deceased picked a quarrel with the Appellant and then tried to assault her with a "Khukri" which was kept by the deceased under her pillow but the Appellant snatched the "Khukri" from the hands of the deceased Smt. Shama Devi and killed her in self defence. The learned Counsel contended that the defence of the Appellant has been proved by PW-Divya whose testimony has been discarded by the learned Sessions Judge for no cogent reason. The contention cannot be accepted in the teeth of the overwhelming evidence adduced on record by the prosecution. The statement of PW Divya recorded u/s 164 Code of Criminal Procedure has been proved on record by Shri Rakesh Kainthla the judicial Magistrate and she was confronted with her said statement Ext. PS. It appears that PW Divya the daughter is inclined to defend her mother to save her from punishment and therefore, has resiled from her statement made before the Judicial Magistrate. The statement of PW-Divya with respect to the cause of the alleged quarrel is contrary to what the Appellant herself has stated in her statement u/s 313 Code of Criminal Procedure According to the testimony of PW-Divya, the quarrel started when the Appellant asked the deceased to go to fields to fetch grass when the latter not only refused to oblige her mother but retorted that as the milk was required for her own children, it was her job to arrange fodder for the cattle and upon this, the Appellant slapped the deceased and the latter repeated in the same manner. But the Appellant in her statement u/s 313 Code of Criminal Procedure has given different story. According to her version, on the fateful day, the Appellant got up early in the morning and started going towards the fields and she asked the deceased to prepare meal for her children upon which the deceased retorted that she was not her father's servant and that the language used by the deceased

enraged the Appellant and she in retaliation slapped on the face of the deceased. The Appellant then stated that the deceased took out a "Khukri" which she kept under her pillow and aimed a blow on her (Appellant) but the Appellant escaped unhurt. The two different and contradictory versions given by PW-Divya daughter of the Appellant and the Appellant herself u/s 313 Code of Criminal Procedure are absolutely contrary to the testimony of PW-Vijay Singh whose testimony has been rightly accepted by the learned Sessions Judge and who is a truthful witness. According to the version of PW-Vijay Singh no quarrel took place between the Appellant and the deceased before the former assaulted the latter with a "Khukri" and inflicted number of blows on the person of the deceased. The testimony of Vijay Singh is corroborated in material particulars by the testimony of his grandfather PW-Devi Saran and his brother PW-Vikram and both these witnesses nowhere have stated that any altercation had taken place between the Appellant and the deceased before the former gave "Khukri" blows to the latter. Vijay Singh was specifically cross-examined by the defence with respect to the altercation when it was suggested to him that if he heard any noise or voice before he came out of the room and saw the incident taking place and the witness in clear words has denied having heard any noise. That means the story projected by the defence regarding altercation having ensued between the Appellant and the deceased appears to be afterthought.

18. The plea of the Appellant that Khukri used to be with the deceased and she has taken it out from underneath of her bedding has not been accepted by the learned Sessions Judge and the reasons are given in para 21 of the judgment, which read as under:

Vijay Singh PW-19 has categorically stated in the examination-in-chief that Khukri belongs to Bari Amma (the accused) meaning thereby that it used to be with her. No doubt in the cross-examination by the defence, he admitted, as correct, a suggestion that Khukri, Ex. P-8, used to be kept by the deceased under her pillow, but it appears that the witness, who is a child, had been tutored to make such a statement before hand. It may not be out of place to mention here that the witness is a nephew of the husband of the accused. He addresses the accused as his Bari Amma. Therefore, he is supposed to be under the influence of the accused and her husband. The husband of the accused has also stepped into the witness box as DW-1 to prove her defence, though his evidence is not acceptable being hearsay. Now when the husband of the accused has appeared in the witness-box, to give inadmissible evidence, the possibility of his having tutored PW-19 Vijay Singh, who is just a child witness in reply to questions, put in the cross-examination in "yes" or "no" form especially when the child witness happens to be a relative of the accused, cannot outweigh the categorical statement, made by such a child witness, in narrative form. The witness stated in the examination-in-chief, quite categorically, that the Khukri belonged to her Bari Amma, meaning thereby that it used to remain in her exclusive custody.

19. After considering the entire evidence on record, we are of the view that it is not very material as to whether weapon of offence, i.e. "Khukri", belongs to the Appellant or deceased as it is admitted case of the Appellant that the injuries received by both the women on their person were caused due to the said weapon. The plea of the Appellant that she inflicted injuries on the person of the deceased in self-defence has been rightly rejected by the learned Sessions Judge. Dr. Sunil Sharma (PW-9) has medically examined the Appellant immediately after her arrest and noticed one injury on her head and another on left lobule. The learned Counsel for the Appellant contended that the injuries found on the person of the Appellant by Dr. Sharma lent more than sufficient corroboration that she was assaulted by the deceased with a "Khukri" and in her self-defence, she inflicted injuries on the person of the deceased. In his deposition, Dr. Sharma stated that both the injuries mentioned in the medico legal certificate Ex. PJ were in the nature of swelling and tenderness on the occipital region and tenderness of left lobule, and they were simple in nature. He has admitted in his cross-examination, that the injuries found on the person of the Appellant and the injuries noticed on the dead body of Smt. Shama Devi by Dr. Sakkar could have been caused in the same transaction. He has also admitted that if a person wielding "Khukri" assaults on another and the person sought to be assaulted ducks and the lowermost end of the "Khukri" hits the occipital region, tenderness and swelling of the type noticed on the person of the Appellant can take place. The Appellant in her statement u/s 313 Code of Criminal Procedure specifically admitted that she turned to one side to escape the impact of the blow of "Khukri" aimed at her by the deceased and that the blow was warded off by her and in that process "Khukri" came into contact with her head and caused injury. Thus, the Appellant cannot derive any benefit from her own defence that there was imminent danger to her life from the deceased and in her self defence she inflicted the fatal blows on the person of the deceased. As regards one injury found on the person of Appellant, Dr. Sharma has emphatically found that it could have been caused by means of the lower most part of the handle of Khukri Ex. P-8. Had the deceased assaulted the Appellant in the manner claimed by her, there would have been some serious injuries on her body. Moreover, when the Appellant claims that she had snatched the "Khukri", which is a sharp-edged weapon, from the hand of the deceased, it was but natural that some cut injuries were bound to appear on the hand of the Appellant which were not there. It is a specific case of the Appellant in answer to Question No. 29 of her statement recorded u/s 313 Code of Criminal Procedure that the deceased had aimed a blow on her (Appellant) head but she moved on one side to escape the blow and the blow landed on the shutter of the door and thereafter she grappled with the deceased and left the same and went to her brother's place in village Bakholi. In view of this statement of the Appellant as well, her defence stands falsified. In any event, the viciousness and extent of the injuries inflicted on the victim compared with the injuries suffered by the Appellant belies the plea of self-defence. Further more, the plea of self defence was taken for the first time by the Appellant in her statement recorded u/s 313

of the Code of Criminal Procedure. Finally, no such plea of self-defence was put in, in cross-examination to any of the prosecution witnesses. The learned Sessions Judge, in the circumstances, rightly rejected the plea of self-defence as an afterthought.

20. In the facts and circumstances of the case, we are not obliged to accept the plea of self-defence of the Appellant which cannot be said probable and plausible. The ratio of the judgment relied upon by the learned Counsel for the Nabia Bai Vs. State of Madhya Pradesh, has been duly considered by us and it is of no help or assistance to the Appellant in the facts and circumstances of the case on hand. In that case, the deceased had gone to the place of incident and inflicted knife injuries on the accused. The accused managing to have caught hold of knife held by the deceased and inflicted injuries on the deceased in order to save herself from armed intruder which resulted in his death. In the peculiar facts and circumstances of the case their Lordships held that the accused must be considered to have acted in exercise of her right of self-defence.

21. The last contention of the learned Counsel for the Appellant that even if the evidence of the prosecution is accepted, the offence if at all committed by the Appellant is covered u/s 304 IPC and not u/s 302 IPC is devoid of merits and we hold that in the teeth of overwhelming evidence discussed hereinabove, it is a clear case of murder of innocent woman by her co-wife.

22. No other point has been urged by the learned Counsel on either side.

23. For all the reasons hereinabove, we do not find any good or valid ground to disturb or interfere with the conviction and sentence of the Appellant recorded by the learned Sessions Judge. Hence, the conviction and sentence of the Appellant are confirmed. Consequently, the appeal is dismissed.