

(1968) 10 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 267 of 1968

Smt. Shugni

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 17-10-1968

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (1968) 10 P&H CK 0032

Hon'ble Judges : S.S. Sandhawalia, J

Bench : Single Bench

Advocate : D.S. Kang, for the Appellant; C.B. Kaushik, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sandhawalia, J.—This criminal appeal raises a question of law as to the right of the husband qua the person of the wife, Smt. Shugni, appellant, was brought to trial on a charge of a murderous assault on her husband P. W. Ram Dhari before the Court of Session at Karnal. She stands convicted u/s 307, Indian Penal Code, and sentenced to rigorous imprisonment for A 1/2 years and a fine of Rs. 50/- or in default thereof a further rigorous imprisonment for two months by the Judgment of the learned Additional Sessions Judge, Karnal which is now under appeal.

2. The marriage of the appellant with her husband P. W. Ram Dhari took place about 9 or 10 years ago. By an archaic yet prevalent custom termed as watta satta the father's daughter of P. W. Ram Dhari named Mst. Phillo was to be married to Punna Ram, the brother of the appellant in exchange for her. However, before this marriage of Punna Ram could be consummated, he suffered an attack of paralysis and consequently the father of Smt. Phillo declined to marry his daughter to him. The parents of the appellant apparently reacted and retaliated by refusing to perform the muklawa ceremony of the appellant and P. W. Ram Dhari had to agree to a payment of Rs. 3000/ to them as further consideration for the same. Out of this amount, Rs. 1000/-still remains

outstanding. At the relevant time the husband of the appellant was serving in the armed forces, and on his yearly vacation he used to come and take the appellant from her parents' house to live with him. It appears that during these visits Hira, the brother of Smt. Phullo occasionally used to come to the house of P. W. Ram Dhari and because of the earlier snapping of the engagement between his sister and the appellant's brother she resented these visits. About three months prior to the present occurrence P. W. Ram Dhari secured his discharge from the military service and went twice to the house of his parents-in-law to bring the appellant but because of some tension betwixt them the appellant herself and her parents were reluctant to send her with Ram Dhari P. W. Nevertheless about 15 days prior to the incident P. W. Ram Dhari did bring the appellant to live with her in his house despite the fact that her father was lying ill. Hardly two days had elapsed when her father died and she returned to the parental home accompanied by her husband. Shortly after this Ram Dhari P. W. again wanted to take the appellant back to his house whilst the appellant and her brothers resented this and wished her to stay on in the parental home during the period of mourning and a quarrel regarding the same ensued. Nevertheless Ram Dhari P. W. persisted and brought the appellant to his home but whilst leaving the house the brothers of the appellant are said to have taunted Ram Dhari P. W. that if the appellant was their real sister she would return to them soon after for ever breaking with Ram Dhari P. W. This provides the background of the commission of the present offence.

3. The actual incident took place on the 11th of June, 1967, in the afternoon and the prosecution case is that Ram Dhari P. W. after taking his meals was dozing on a charpoy in his room with his face towards the wall and back towards the appellant, who was busy in house-hold work. The case for the prosecution is that Ram Dhari P. W. suddenly received a kulhara blow on his neck and as he turned his face he received another kulhara blow on his jaw below the ear. The appellant is said to have been wielding the kulhara and proceeded to give a few more blows to him with the weapon but nevertheless Ram Dhari P. W. got up and grappled with her. The door of the room which opens in the street was bolted from inside and the shrieks and the alarm of Ram Dhari P. W. attracted the attention of one Surta who forced open the door by unhinging the same and it was his intervention which rescued Ram Dhari P. W. from the appellant. Thereafter P. Ws. Siri Krishan, Bir Bhan and Ram Kishan also arrived and found the appellant sitting on a charpoy with her clothes stained with blood. Ram Dhari P. W. was carried to the hospital where Dr. Madan Mohan Sharma medically examined him and also recorded his statement Exhibit P. C. as his condition appeared to be serious and the same was attested by the P. Ws. The injured was forthwith removed in an Ambulance Car to Civil Hospital, Karnal, whilst on the basis of Exhibit P. C. a formal first information report was registered. The Investigating Officer then proceeded to complete the details of the investigation and during the course of the same, the appellant is said to have made a disclosure statement pursuant to which kulhara P. 1. was also recovered and

found to be bloodstained.

4. The medical testimony consists of Dr. Madan Mohan Sharma who on the 11th of June, 1967, at 2.45 P. M. medico-legally examined Ram Dhari P. W. and found 7 incised wounds on his person. He also deposed to the recording of Exhibit P. C, the dying declaration of Ram Dhari at about 330 P. M. and the attestation of the same by Bir Bhan, Ram Kishan, Siri Kishan, Ram Sarup and Surta. This witness had also on the next day examined the appellant and found the following injuries on her person:

1. Contused wound on the palmer surface of right middle finger in its middle portion. Shape was oval. Size was 1 1/2"x 2/8". Skin was over hanging. Clotted blood was present over the wound, No pus formation was seen;

2. Contused wound on the palmer surface. It was 1/2" below injury No. 1. Size 1"x2/8" Edges were irregular. Blood clot covered the surface of the wound. No pus formation;

3. and 4. Two linear abrasions on the back of the proximal phalynx of the right middle finger, situated parallel to each other. Size was 3/8" X1/8" in both cases;

5. Linear abrasion on the back of the middle finger of right hand. Size was 3/8". All of three abrasions were covered with dark coloured scab;

6. Contused wound on the back of the middle phalynx of right hand index finger. Size was 5/8". It was covered by clotted blood. No pus formation was seen;

7. Abrasion on the back of the middle phalynx near injury No. 6. Size was 1/2"x1/8".

5. It was covered with dark coloured scab. He also opined that the injuries suffered by the appellant could be caused by a lathi.

6. The ocular-testimony consists only that of P. W. 7 Ram Dhari on whose evidence the prosecution case primarily rests. Surta who is said to have reached the spot immediately and rescued Ram Dhari did not support the prosecution case and was not produced. P. W. 1 Siri Kishan P. W. 3 Bir Bhan and P. W. 4 Ram Kishan have deposed to their reaching the place of the incident after the assault and noticing the presence of the appellant with bloodstained clothes and finding Ram Dhari P. W. lying there with injuries. They also deposed to having attested the statement Exhibit P. C. recorded by the doctor. P.W. 2 Lal Singh has deposed only regarding the recovery of the kulhara and the bloodstained clothes from the room at the instance of the appellant. P. W. 5 Kapur Chand, Draftsman prepared the site plan, Exhibit P. W. 5/1, whilst the Investigating Officer is P. W. 8 Gulbachan Singh and P. W. 6 Shri Gurdas Singh has merely deposed regarding the production of the statement Exhibit P. C. before him by Dr. Madan Mohan Sharma.

7. A positive plea was entered by the appellant in the following terms in her statement u/s 342, Criminal Procedure Code, in reply to question No. 29:

I had gone to my parents about 15 days before the occurrence as my father was lying ill. After a few days he (Ram Dhari) again came to take me. My mother and brother asked him to leave me there for about 10 days more as my father was unwell. He did not agree and my parents in order to avoid unpleasantness sent me with him. After two/three days of my arrival at my husband's house my father died and I again went to my parents. Ram Dhari was with me at that time. He remained there for two-three days. After that he again insisted to bring me but my mother and brother asked him not to take me as we were in grief on account of the death of my father. When he insisted I was again sent with him. We reached village Kaul at about sunset. After taking my meals I was lying on the charpoy. Ram Dhari wanted to have sexual intercourse with me. I declined on account of my grief over the death of my father. I also told him not to touch my body. He abused me and beat me and then he slept on the charpoy. Next day we took our meals at noon time. I was sitting on my charpoy. Ram Dhari bolted the door opening in the street from inside. He started giving beating to me saying that he would see how I refuse to sleep with him and that he would finish me. Then Ram Dhari bite my finger of right hand. He again wanted to have sexual intercourse with me forcibly. When he told that he would not spare me, in order to save myself I picked up P. 1 and gave blows with it to him.

No defence was however, adduced in support thereof.

8. In the present case Ram Dhari P.W. as well as the appellant have injuries on their persons. On the plea taken by the defence and the evidence led by the prosecution three questions fall for determination-firstly as to who initiated the use of violence between Ram Dhari P.W. and the appellant, secondly whether the husband had the right to use violence and cause injury in enforcing his supposed right of marital intercourse and lastly if he in fact did use force would the wife be entitled to the right of private defence.

9. Mr. D. S. Kang, the learned counsel for the defence has first assailed the evidence of Ram Dhari P.W. and the submission is that on the facts elicited from him in cross-examination the version of the defence is fully and completely borne out. Ram Dhari P.W. had to concede in cross-examination that the parents of Shugni appellant were refusing to perform the muklawa ceremony of the appellant and it was only when he undertook to pay Rs. 3000/- that the said ceremony was performed. He conceded that out of this consideration Rs. 1,000/- had still not been paid as yet. Again it was elicited from him that when he was discharged from military service he went to his parents-in-law and for two months they did not send the appellant with him. From the cross-examination it does appear that Ram Dhari P.W. had forcibly brought away the appellant from the house of her father when the latter was seriously ill and within two days of her arrival at his house the father of the appellant died and she returned to the parental home. This witness had to admit that the appellant was insisting to live with her parents and he brought her by force. He stated that two days prior to the occurrence he did have sexual intercourse with her but she was reluctant and

it was done against her will. The witness was confronted with his committing Court's statement where he had stated that he had bitten the appellant's finger before she caught hold of the Kulhara and gave blows to him which hit him on the neck. He further conceded that the first blows on the appellant's person might have been received by her at his hands. He was again confronted with his committing Court's statement where he had stated that he had caught hold of her and thrown her to the ground and also with his earlier statement that he had given slaps and fist blows to the appellant. This part of the witness's deposition elicited in cross-examination, thereof, gives the lie direct to the prosecution version that in fact Ram Dhari P.W. was surreptitiously assaulted whilst he was asleep. His earlier statements before the committing Court are thus utterly inconsistent with the version now pleaded and wholly consistent with the defence plea raised. This witness was again confronted with his earlier statement in the committing Court wherein he had deposed that he had given a beating on the previous night to the appellant also.

10. As already noticed the sole ocular testimony consists of Ram Dhari P.W. The infirmities noticed above completely belie the version of the prosecution of a sudden and pre-meditated assault on him whilst he was asleep. The only other witnesses who immediately reached the spot and did see some part of the occurrence, namely, Surta has not come forward to depose for the prosecution. The medical evidence in the present case also clearly points its finger toward the fact that the injuries to the appellant must have been caused before the injuries suffered by Ram Dhari P.W. The injured complainant had a number of serious incised wounds on the head and the neck. The case for the prosecution was that these injuries on the head and the neck, were inflicted first. The nature of the injuries makes it quite clear that had that been so, Ram Dhari would have been completely disabled from retaliating. The appellant had as many as 7 injuries and the opinion was that these could be caused with lathis and some of them by tooth bite. All these injuries, therefore, were obviously caused first to the appellant and it could only be thereafter that Ram Dhari P.W. suffered the grievous injuries on his head and face. This medical evidence read with the cross-examination of Ram Dhari P.W., therefore, tends to give the surest support to the defence plea. It is also noticeable that in view of the earlier relationship of the parties which is hardly contested the version given on her behalf is wholly plausible. Another factor which points to the same effect is that when the P. Ws. Siri Kishan. Bir Bhan and Ram Kishan went to the spot, they found the appellant sitting on a charpoy and there is not a hint of suggestion that she ever attempted to go away or escape from the spot. This fact also tends more to show her innocence in the matter. All the above pieces of evidence when considered together leave one in no manner of doubt that in fact it was Ram Dhari P.W. who had initiated the assault on the appellant and it was after suffering the seven injuries found on her person that she probably retaliated in self defence.

11. The crucial question, however, still remains for determination whether on the plea taken by the defence, the husband was entitled to use force and whether

the appellant did have the right of private defence. The learned trial Court was alive to this aspect of the case and in the penultimate paragraph of the judgment dealt with it as follows:

The learned defence counsel admitting that Ram Dhari being husband had full control over her body, argued that after receiving blows with lathi when she in return gave blows with kulhara, she at the most, exceeded her right of self defence and the case would fall u/s 308, Indian Penal Code. Ram Dhari injured has given motive for this occurrence. In criminal cases the alleging of motive or its evidence does not count much but at the same time I cannot hesitate in remarking that the above plea taken by the accused to make a case of self defence, is not worth the paper on which it is written." and again-

The learned defence counsel himself admitted that Ram Dhari had full control over her body and also admitted that she exceeded in her right of self defence. When he was master of her body the question of self-defence did not arise.

12. It was on the above view of the facts and the law that the learned trial Court rejected the plea of the appellant and convicted her. Though the learned Judge has expressed himself rather categorically he appears to be in error. The notion of the husband being the master of the body of his wife is reminiscent of slavery and the dark ages when the wife was considered as a chattel owned by the husband. Such an archaic concept has now no place in the modern criminal jurisprudence. Whilst it is true that the fact of marriage implies the consent of the wife to marital intercourse yet this is far removed from the proposition that the husband is entitled to use physical violence to enforce any supposed right to sexual intercourse against a reluctant wife, or that the wife would have no right of private defence in such a situation. An analogous though not identical point was considered in *Regina v. Clarence* (1881) (22 Q.B.D. 23. In that case the defendant was charged with unlawfully and maliciously inflicting grievous bodily harm on his wife and with an assault on her occasioning actual bodily harm. It appeared that at the time when the offence was committed, the husband was suffering from gonorrhoea, which he knew might cause her to be infected by it, and the allegation was she had been so infected. No fewer than 13 Judges composing the Court considered the matter and 9 Judges took one view and 4 had a different view. Field J. in delivering the judgment observed as follows-

There may, I think, be many cases in which a wife may lawfully refuse intercourse, and in which, if the husband imposed it by violence, he might be held guilty of a crime. Suppose a wife for reasons of health refused to consent to intercourse, and the husband induced a third person to assist him while he forcibly perpetrated the act, would any one say that the matrimonial consent would render this no crime ? And there is the great authority of Lord Stowell for saying that the husband has no right to the person of his wife if her health is endangered; *Popkin v. Popkin*.

Similar question also arose in *Rex v. Jackson* (1891) 1 Q.B. 671 where the

husband had obtained an order for restitution of conjugal rights against his wife. She did not return where upon the husband with the assistance of an articulated clerk, took possession of the person of the wife and took her to his house and detained her there. She was allowed the run of the house but was not allowed to leave the premises. The wife, or someone on her behalf, took out process for habeas corpus, and the Court of Appeal held that, although the husband had a right to his wife's society, and although he had a decree of the court for the restitution of conjugal rights, he was not entitled to use force for the purpose of enforcing his rights. Whilst dealing an identical question as to whether the husband could use force against the person of the wife Lords Halsbury observed as follows:-

In the same way, such quaint and absurd dicta as are to be found in the books as to the right of a husband over his wife in respect of personal chastisement are not, I think, now capable of being cited as authorities in a court of justice in this or any civilized country.

Lord Esher M. R. in the course of his judgment observed as follows: -

A series of propositions have been quoted which, if true, make an English wife the slave, the object slave, of her husband. One proposition that has been referred to is that a husband has a right to beat his wife. I do not believe this ever was the law."and again-

It was said that by the law of England the husband has the custody of his wife. What must be meant by "custody" in that proposition so used to us ? It must mean the same sort of custody as a gaoler has of a prisoner. I protest that there is no such law in England. Cochrane's case was cited as deciding that the husband has a right to the custody, such custody, of his wife. I have read it carefully, and I think that it does so decide. The judgment, if I may respectfully say so, is not very exactly worded, and use different expressions in many places where it means the same thing; but that seems to me to be the result of it. It appears to me, if I am right in attributing to it the meaning I have mentioned, that the decision in that case was wrong as to the law enunciated in it, and that it ought to be overruled. Sitting here, in the Court of Appeal, we are entitled to overrule it. I do not believe that an English husband has by law any such rights over his wife's person, as have been suggested.

A case more directly to the point is that of *Rex v. Miller* (1954) 2 A.E.L.R. 529. In this case a husband was charged with rape and in assault occasioning actual bodily harm for having used force against his wife for the purpose of sexual intercourse. *Lynskey J.* after a consideration of the authorities held as follows:

It seems to me, on the reasoning of that case, that, although the husband has a right to marital intercourse and the wife cannot refuse her consent, and although, if he does have intercourse against her actual will, it is not rape, nevertheless he is not entitled to use force or violence for the purpose of exercising that right. If he does so, he may make himself liable to the criminal

law, not for the offence of rape, but for whatever other offence the facts of the particular case warrant. If he should wound her, he might be charged with wounding or causing actual bodily harm, or he may be liable to be convicted of common assault.

In *Queen Empress v. Hurree Mohun Mythee* 18 Cal. 49, a husband was charged with causing the death of his wife of tender age who had not yet attained puberty by forcibly committing sexual intercourse with her. Wilson J. in his charge to the jury observed as follows:

Under no system of law with which Courts have had to do in this country, whether Hindu or Mohommadan, or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her, as for instance, if the circumstances be such that it is certain death to her, or that it is probably dangerous to her life. * * * * But as I have said the criminal law is applicable between husband and wife wherever the facts are such as to bring the case within the terms of the Penal Code.

13. From the consideration of the authorities noticed above it is thus clear that a husband has no right to use force or violence against the wife in enforcing any supposed right to sexual intercourse. In this context *Ram Dhari P. W.* when he caused injuries to the appellant clearly fell within the ambit of the criminal law and was guilty of an offence against the human body which would forthwith entitle the appellant to a right of private self-defence. In *Mt. Sakhu v. The Crown* AIR 1951 Nag. 349, the facts were that the husband attempted to take away his wife by force from her father's house. When he had forcibly entered in the house, the wife rushed at him and inflicted two or three injuries with a knife on his neck resulting in his death. The question that arise for determination was whether the wife did have a right of private defence and whether she had exceeded it. Madholkar J. whilst holding in favour of the wife observed as follows:

That accounts for her inflicting more than any injury on the neck of Gunpat. It is true that neck is a vital organ but when a lone woman has got to fight by herself for preserving her personal liberty, I think she has a right even to cause an injury (or injuries) on such vital part of the body.

For these reasons, I am of the opinion that the appellant did not exceed her right of self-defence and that consequently she is entitled to acquittal.

In *Vishwanath v. The State of Uttar Pradesh* AIR 1960 S.C. 67, the appellant's sister was being abducted from her father's house by her husband, and she was being compelled by force to go away from her father's place. The appellant in the right of private defence of the body of his sister stabbed the husband and caused his death thereby. The learned Judges of the Supreme Court upheld the appellant's right of private defence even to the extent of causing death. It would thus appear that the appellant was clearly within her right to retaliate and had the right of private defence which she lawfully exercised against the use of

violence to her person. The conviction, therefore, cannot be sustained,

14. This appeal is allowed and the appellant is acquitted of the charge, and sentence imposed on her is hereby set aside.