
(1993) 03 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal (Jail) Appeal No. 194 of 1985

Smt. Shyamu

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302

Citation : (1993) WLN 132

Hon'ble Judges : N.K. Jain, J;B.R. Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—This appeal is directed against the judgment dated May 31, 1985, passed by the Sessions Judge, Udaipur, by which the learned Sessions Judge convicted and sentence the accused-appellant for the offence u/s 302 I.P.C.

2. The incident which led to the prosecution of the appellant Smt. Shyamu, took place on 17.3.1984, at about 12.30. a.m. in the house of Kachru situated in village Parsola. The First Information Report of the incident was lodged at Police Station, Parsola, on the same day at about 3.00 a.m. by one Heera Lal S/o Shri Ganpat - the brother of the deceased Kachru. The case of the prosecution, as unfolded in the F.I.R. by Heera Lal is that at about 2.00 a.m. on 17.3.84, Doongar Teli came to his house and informed him that his elder brother Kachru has been killed by someone, whereupon he alongwith Doongar Teli went to the house of his brother and saw the deadbody of his brother Kachru lying near the door and a stone was lying on his mouth. On enquiry, his sister-in-law Smt. Shyamu informed him that some notorious person, after killing Kachru, has ran away. Thereupon he went to the house of Amir Mohammed - the Ex-Sarpanch of the village - and narrated him the incident. He, thereafter, came to the house of Kachru and on enquiry, his sister-in-law Smt. Shyamu-the present accused appellant - informed him that some thieves came there, took away the she-

buffalo as well as the box, Tagari Kadai, Chhalni etc. The story given by the accused appellant did not satisfy them as she was not weeping and was standing out-side the house and was being scared. On being assured by them, she admitted her guilt and informed them that the deceased Kachru came to the house after taking liquor and was not providing meals to her and, therefore, she has killed her husband when he was in sleep and untied the she-buffalo and took away the box of the clothes and utensils etc. and placed them in the field.

3. There is no eye witness of the occurrence. The prosecution case rests mainly on the circumstantial evidence as well as the alleged extra-judicial confession made by the accused-appellant before PW 1 Heera Lal, PW2 Doongar Teli and PW 9 Amir Mohammed. The circumstances which have been relied upon by the trial Court against the accused-appellant are that she was found in the house and she had an opportunity to kill her husband as she had a motive with her. The motive which has been believed by the learned trial Court is that the deceased used to take liquor and after taking the liquor he used to give beating to the accused and was also, not providing her food and clothes and on account of all these, she had killed her husband by giving blows with a stone weighting 15 Kg. The learned trial Court, also, placed reliance over the recovery of Odni of the accused made at her instance which was found stained with blood by the F.S.L. examination. The learned trial Court, also, believed the extra-judicial confession alleged to be made by the accused.

4. Before considering the circumstances whether they are sufficient to connect the accused with the crime, we could like first to see the nature of the evidence produced by the prosecution. PW1 Heera Lal the brother of the deceased Kachru, who lodged the F.I.R. - has stated that on the night of Holi, Doongar Teli (PW2) came to his house and informed him that his sister-in-law Smt. Shyamu came to his house and asked him to call you as her husband Kachru has been killed by the thieves; whereupon he alongwith Doongar Teli went to the house of Kachru his brother. His brother Kachru was lying inside the house and a stone weighting 15-20 kg. was lying on his head. The stone Was smeared with blood. The earth, Shirt and Pillow were, also, smeared with the blood. Smt. Shyamu was standing in the court-yard and was being scared. On enquiry that how that happened, she did not reply. Thereafter he went to Amir Mohammed, who was the Ex-Sarpanch of the village and called him. Thereafter he and Amir Mohammed after accruing the accused-appellant, made enquiry from her about the incident, whereupon she informed them that the deceased used to take liquor daily and used to quarrel with her and, therefore, when he was in the sleep, she killed him by a stone. When this confession was made by her, Doongar Teli was, also, present there. The accused thereafter created the circumstances like theft and untied the she-buffalo, took out the utensils from the house and placed them in the field. He, thereafter, reported the matter to the police. This witness was cross-examined by the counsel for the accused and when he was confronted with the portion of the statement given by him before the police u/s 161 Cr.P.C. he denied to have given such statement. This witness has tried to ask certain

improvements from the statement made by him u/s 161 CrPC and when confronted with his statement given u/s 161 CrPC, he replied that he did not give such statement. He has, also, admitted that he has taken away the she-buffalo of the deceased and the children of the deceased Kachru are living with him.

5. PW 2 Doongar Teli has stated that at about 12.00 hours/1.00 a.m. in the night of Holi, accused Smt. Shyamu came to him and asked him to call Heera Lal as her husband has been killed by somebody. He went to the house of Heera Lal and called him. When he alongwith Heera Lal came to the house of Kachru, he saw Kachru lying dead near the door and a stone weighing 15-20 kg. was, also, lying on his head and one another stone weighing about 15 Kg. was, also, lying by the side and the accused was sitting in the court-yard. On enquiry by Heera Lal, Smt. Shyamu informed him that some thieves have killed her husband. He remained standing near the deadbody of Kachru and Heera Lal went to the Ex-Sarpanch for calling him. When the Sarpanch made enquiry from the accused Smt. Shyamu, she informed him that some thieves have killed her husband. On being accused by the Sarpanch Amir Mohammed, she informed him that Kachru used to quarrel with him and used to take liquor and was not supplying food to her and, therefore, she has killed her husband by inflicting injuries with a stone. She, also, informed them that the thieves have untied the she buffalo and took away the utensils etc. The she-buffalo was standing outside the house.

6. PW 3 Sattar has stated that the deceased Kachru was working with him on a monthly salary of Rs. 150/-. He died in the night of Holi. On the relevant day, he worked with him and informed him that as he had a quarrel with his wife therefore he would not go to take meals. PW 4 Dr. Arjun Singh Shekhawat conducted the post-mortem on the deadbody of Kachru and found four lacerated wound, four contusions and eleven abrasions on the deadbody of deceased Kachru and all these injuries were ante-mortem in nature. He further opined that the injuries were received by the deceased 12 to 14 hours before the time of post-mortem examination. He has, also, stated that the head injury received by the deceased was sufficient in the ordinary course of nature to cause death and could have caused instantaneous death. He, also, found semi-digested food in the stomach of the deceased. In the cross-examination, he admitted that the left side of the face of the deceased was on upper side, over which the stone was lying but this left portion had no injury and the injuries were found only on the right side of the cheek. He has, also, admitted in the cross-examination that after receiving the injuries on the head, the deceased would have died instantaneously and was not in a position to cry and struggle and the other injuries like contusions and abrasions could not have been caused to him. PW 5 Kanta has stated that the deceased used to take liquor and used to quarrel and give beatings to the accused Smt. Shyamu. As Smt. Shyamu has kept her silver bangles with her parents which Kachru was demanding, therefore, he used to give beating to her. PW 6 Poona Shankar has stated that on the fateful night, he was sleeping in the field and he neither heard any voice from the house of Kachru nor he saw any person going or coming to or from the house of Kachru.

PW 9 Amir Mohammed is the Ex-Sarpanch of village Parsola, who has stated that on 17.3.84, Heera Lal came to his house and informed him that-somebody has killed his brother Kachru. He thereupon went to the house of Kachru with Heera Lal and saw a stone weighing about 15 kg. on the head of the deceased. Accused Smt. Shyamu was standing by the side of the deadbody of Kachru and informed them that in the night, thieves came and kill her husband. Kachru was bleeding and the stone was lying on his head. On assurance being given to her, she admitted her guilt and informed them that Kachru used to take liquor and used to give beating to her. He was, also, not supplying meals and clothes to her. She further informed that on that day, also, he came after taking the liquor and she got an opportunity and killed him by inflicting injuries with the stone. Initially she gave this version to them that the thieves came there, took-away the she-buffalo, the box of the clothes and she utensils etc. but later on, on being assured, she admitted her guilt. He further stated that from the place of the incident, the police recovered one Odani and a shirt. He is, also, a witness to the recovery of the blood-smeared soil the handkerchief and Odni of the deceased.

7. PW 7 Ramjan Mohammed, PW 3 Madan Singh and PW 10 Sewa Ram are the three police witnesses. PW 7 Ramjan Mohammed was the Police Constable posted at the Police Station, Parsola, who took the sealed articles fro F.S.L. examination to the State Forensic Science Laboratory, Jaipur, and her stated that the articles remained property sealed throughout the period they remained with him PW 8 Madan Singh is the Assistant Sub-Inspector Police, posted at the Office of the Superintendent of Police, Udaipur, who received five sealed packets from Ramjan Khan and placed them in the wooden box and handed them to Ramjan Khan for handing them over to the State Forensic Science Laboratory, Jaipur, for F.S.L. examination. PW 10 Sewa Ram was the Station House Officer, Police Station, Parsola, who registered the F.I.R., conducted the investigation, arrested the accused, made certain recoveries and presented the challan.

8. The prosecution case rests mainly on the circumstantial evidence and the extra-judicial confession alleged to have been made by the accused-appellant. The first circumstance which has been relied upon by the prosecution is the presence of the accused in the house at the relevant time and her having a motive to commit the murder of her husband Kachru and the chance of her committing the crime and accused-appellant. So far as the presence of the accused in the house is concerned, she is the wife of the deceased and the lady of the house and her presence at the house is most natural. The motive which has been assigned to the accused for committing the crime is the deceased used to take liquor and in the state of intoxication, he used to give beatings to the accused and that the deceased was, also, not supplying food and clothes to the accused. By killing her husband, the accused could not have got the food and clothes, of course, she could have get rid of her husband; but from the evidence produced by the prosecution, it has not been conclusively proved that the deceased used to take liquor every day. The prosecution though has tried to state that the accused used to take liquor and in this respect the prosecution has

produced PW 1 Heera Lal, PW 3 Sattar, PW 5 Kanta and PW 9 Amir Mohammed. PW 9 Amir Mohammed has gone to this extent even that on the fateful night, as per the statement of the accused, the deceased came in a drunken state and she got an opportunity to kill him and therefore she killed her husband, but the post-mortem report does not disclose the presence of liquor in the stomach of the deceased and the stomach was found containing semi-digested food. It appears that this story of taking the liquor by the deceased and giving beating to the accused appears to have been fabricated by PW 1 Heera Lal with the aid of the other witnesses. Heera Lal appears to be an interested party to get the accused involved in this crime and to swallow the property of his deceased brother. The medical evidence negatives the get on cidion order regarding taking liquor by the deceased and the other evidence produced by the prosecution on this point, does no inspire confidence. No lady would like to kill her husband and make her life miserable merely on this small pretext. So far as the conduct of the accused that she was not present in the room and was standing in the court-yard, is concerned, suffice it to say that a lady whose husband has been murdered and the deadbody was lying in the house, naturally she will be frightened as nobody was there in the house to help her; PW 1 Heera Lal and PW 2 Doongar Teli though have stated that she was standing in the court-yard when they reached there, but so far as Amir Mohammed (PW 9) is concerned, he has stated that the accused was standing in the room near the deadbody of her husband when they reached there. Even so far as the standing of the accused in the court-yard is concerned, the accused herself went to the house of PW 2 Doongar and asked him to call her brother-in-law Heera Lal and if she was waiting for them and was standing in the court-yard then this conduct of the accused cannot be said to be, in any way, abnormal. There is no evidence on record from which it could be gathered that the accused herself planted a story of theft. The circumstances of the case do show the happening of the theft in the house. One blank of the second door of the room was removed and there was a way of about one foot in width in that door, through which one person could have passed. That, also, shows that an attempt to theft in the house was made by someone else. Even the prosecution story does not find support from the medical evidence. According to the prosecution, the accused herself inflicted injury to the deceased by one stone weighing about 15-20 kg. and due to which the deceased died. But so far as the injuries are concerned, they are not on that portion of the face on which the stone was lying and apart from the injury on the face, which was said to be caused by the accused-appellant, there were other injuries found on the person of the deceased which are more than twelve in number. Thus, all these circumstances, which have been relied upon by the prosecution, do not connect the accused with the crime.

9. There is one more interesting point in the case. PW 9 Amir Mohammed has stated that one Odni and shirt were recovered from the place of the incident. He has, also, stated that another Odni was recovered at the instance of the accused, but the record shows the recovery of only one Odni. Which was that Odni:

whether it was recovered at the instance of the accused or the Odni was one which was recovered from the place of incident, is not shown. Thus, the circumstances relied upon by the prosecution neither connect the accused with the crime nor it completes the chain to hold the accused guilty.

10. The next evidence produced by the prosecution is regarding the extra-judicial confession alleged to have been made by the accused before PW 1 Heera Lal, PW2 Doongar Teli and PW 9 Amir Mohammed. It is, no doubt, true that though extra-judicial confession is a weak type of evidence but a conviction confession is a weak type of evidence but the conviction can be made on the basis of the extra-judicial confession made by the accused if it is voluntary and is true and trustworthy and in the light of the surrounding circumstances and the probability of the case appears to be a probable catalogue of events and fits with the rest of the evidence and the surrounding circumstances. Now, in the present case we have to see whether the appellant made any confession before these witnesses and whether it was voluntary, true and trustworthy and fits in the facts and circumstances of the case? Now so far as the accused appellant is concerned, she had no occasion to make such type of confession before these witnesses as they were neither the persons holding any influential office nor were they the persons who could have helped her in getting her excused/excluded. Moreover, PW 2 Doongar Teli, in his statement u/s 161 CrPC has now here stated that the appellant made any confession in his presence while in the statement before the Court he has stated that in his presence the accused made extra-judicial confession. When he was confronted with his statement u/s 161 CrPC, he admitted that he did not disclose this fact in his statement u/s 161 CrPC. This witness appears to have made improvement from the earlier version before the Court.

11. So far as the Confession made before PW 1 Heera Lal and PW 9 Amir Mohammed is concerned, suffice it to say that there was no occasion for the accused-appellant to have stated so before these witnesses. Moreover, the so-called extra-judicial confession alleged to have been made by the accused, does not fit in the circumstances of the case. As per the confession, the accused inflicted injuries by the stone over the head of the deceased and the deceased died. One stone was found on the face of the deceased while the another stone was found lying nearby and even the left part of the face, over which the stone was lying, had no injury and the injuries were found only on the right side of the case. Wherefrom the second stone came, has not been proved by the prosecution. Furthermore, the deceased had on his person four lacerated wounds, four contusions and eleven abrasions. Such number of injuries were not caused by the accused and so far as the abrasions are concerned, these injuries could not have been received by the stone. Even PW 4 Dr. Arjun Singh Shekhawat, in his statement before the Court, has specifically stated that after receiving the injury on the head, which was caused by the stone, the deceased would not have been in a position to speak or to move and, therefore, the presence of these other injuries on the person of the deceased conclusively

proves that the so-called confession made by the accused before these witnesses is neither voluntary nor true or trustworthy. We are even of the opinion that no such confession was made by the accused before these three witnesses and the prosecution has tried to fabricate this false evidence to implicate the accused in the crime. A poor lady, whose husband has been murdered, has been falsely implicated by her brother-in-law PW 1 Heera Lal in such a heinous crime. The false implication of the appellant in the crime by the prosecution after consultation, find support from the evidence of the prosecution itself. The first Information Report of the incident was lodged at Police Station, Parsola at about 3.00 a.m. on 17.3.84, and the appellant was named as the accused in that F.I.R. Admittedly she was present in the house when the police came there, but she was not arrested till 4.00 p.m. in the evening though the police arrived at the place of the occurrence in the early morning and even the post mortem was conducted at about 11.30 a.m. The F.I.R., therefore, appears to be even post-investigation and was not written immediately after the occurrence as has been mentioned in it. If the appellant's name would have been there in the F.I.R. and the F.I.R. would have been written at 3.00 a.m. then the accused-appellant would have been arrested immediately after the occurrence, i.e. early hours in the morning and not at 4.00 p.m. in the evening. The result of the above discussion is that the prosecution has failed to prove the case against the accused-appellant and she deserves acquittal.

12. In the result, the appeal, filed by the accused-appellant Smt. Shyamu is allowed and the accused-appellant Smt. Shyamu is acquitted of all charges levelled against her. She is in jail. She may be released forthwith if not required in any other case.