
(1991) 09 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 287 of 1990

Surinder Kumar	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 17-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (1992) 2 ShimLC 265

Hon'ble Judges : V.P. Bhatnagar, J; L.S. Patna, J

Bench : Division Bench

Advocate : J.K. Verma, for the Appellant; M.L. Chauha, Asstt. A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.P. Bhatnagar, J.—This appeal is directed against the judgment dated 1-6-1990 of the learned Sessions Judge, Mandi. Kullu and Lahaul Spiti districts at Mandi convicting Appellant Surinder Kumar for having murdered his wife Sheetla Devi u/s 302, I.P.C. and sentencing him to undergo life imprisonment and to pay a fine of Rs. 500. In default of payment of fine it was ordered that the Appellant would undergo rigorous imprisonment for a further period of two years.

2. Appellant Surinder Kumar was married to Sheetla Devi about three years before the incident. Surinder Kumar looked after her properly for about a year after the marriage but thereafter started harassing and torturing her. Both of them visited the residence of Sheetla Devi's parents in the month of Phagun in the year 1989 but did not stay there. After 2-3 days, Sheetla Devi went to her parents' house alone and informed her mother Swaru Devi (PW 8) that Surinder Kumar had obtained her signatures on certain papers purporting to be divorce deed by practising fraud. Sheetla Devi's father then took her to Mandi and after consulting a lawyer Sheetla Devi filed a petition Ex. PZZ for maintenance u/s 125

of the Code of Criminal Procedure That case was taken up by Judicial Magistrate Mandi on 13-3-1989. Accused Surinder Kumar went to the house of his in-laws in village Chari on the following day viz. 14-3-1989 where Sheetla Devi was staying with her parents. The time was around 3:30 p.m. Sheetla Devi's niece PW 7 Chura Vati, aged about 13 years, and her nephew PW 6 Rajinder Kumar, aged about 6 years, and two other smaller kids were present in the room where Sheetla Devi was spinning wool by a spindle. Surinder Kumar asked the children to leave the room and after they had gone out he put one of his hands on Sheetla Devi's mouth and repeatedly stabbed her with knife Ex. P-1 with the other. Chura Vati (PW 7) and Rajinder Kumar (PW 6) saw the accused stabbing Sheetla Devi with knife. They ran into the court-yard and cried for help on hearing which Sheetla Devi's mother Swaru Devi (PW 8) and her uncles Lobhi Ram (PW 9) and Chet Ram (who has not been examined) came running to the place of occurrence. They saw the accused jumping down the retaining wall of the court-yard. They learnt about the incident from the children and saw Sheetla Devi lying in a pool of blood and struggling for life She breathed her last within half an hour. Rewati Devi (PW 6 Rajinder Kumar's mother and Sheetla Devi's sister-in-law) learnt about the incident from her son Her husband Parma Nand (Sheetla Devi's brother) had gone to Rewalsar where he was employed as a labourer. She immediately went to Rewalsar and informed Parma Nand about what had happened. Parma Nand then lodged report Ex PW 2/A at Police Post Rewalsar which was recorded by L.H.C. Kesar Singh (PW 12). This report was sent to Police Station Balh and on its basis F.I.R. Ex PW 2/B was registered A.S.I. Madan Lal (PW 13) investigated the case He reached the spot on the day of occurrence itself at about 7 p.m. and prepared the Inquest Report Ex PW 13/A. The dead body was sent to Civil Hospital Mandi for post-mortem examination which was performed by Dr. G.S. Verma (PW 1), Medical Officer, District Hospital, Mandi. He has given his Medico Legal Report which is at Ex. PW 1/A. He found the following injuries on the dead body:

1. Incised wound 2" ? 1" mandibular region right side face.
2. Incised/stab wound 1" ? 1" deep below lower lip right side.
3. Incised/stab wound 1/2" ? 1/2" deep, right side lower lip.
4. Incised/stab wound 1" ? 1/2", left wrist, posterior side.
5. Incised/stab wound 1" ? 1/2", left arm, upper 1/3rd anterior medial side.
6. Incised/stab wound 1" ? 1/2", left arm, upper 1/3rd posterior side.
7. Incised/stab wound 1" ? 1/2", left mid-arm, anterior lateral side.
8. Incised/stab wound 1" ? 1/2" deep, right side neck (right carotid artery ruptured).
9. Incised/stab wound 1" ? 1/2", left side back neck.
10. Incised wound 1" ? 1", right side chest.

11. Incised wound 1" ? 1/2", left side chest.
12. Incised wound 1" ? 1". right shoulder anterior side.
13. Incised/stab wound, 1" ? 2" deep, epigastric region, abdomen, piercing abdomen wall and stomach.
- 14 Incised wound, 2" ? 1/2", left occipital region back.
15. Incised wound, 2" ? 1/2", left side scapular region.
16. Incised wound, 2" ? 1", mid-scapular region back.
17. Incised wound, 1" ? 1/2", right mid-scapular region back.
18. Incised wound, 1" ? 1" right inter-scapular region back.

He also gave his opinion that the aforesaid injuries particularly the injury to the right carotid artery in the neck and the injury to the stomach led to excessive bleeding causing circulatory failure, shock and consequently Sheetla Devi's death. The injuries, as per his opinion, could be caused by means of knife Ex. P-1 SHO Kulwant Singh (PW 5), Police Station Balh prepared the challan after the investigations had been completed and presented it to the Court.

3. Accused Surinder Kumar, in his statement recorded under the provisions of Section 313 of the Code of Criminal Procedure, resorted to the defence of denial simpliciter. However, he had this to say when asked towards the close of his examination if he had anything more to say:

I am innocent. I have been falsely implicated. My wife wanted to live with me but my father-in-law, my brother-in-law and husband of my wife's sister Ram Singh did not want her to live with me. My wife often visited the above named husband of her sister, but I objected to that. Therefore, said Ram Singh was inimical towards me Therefore, he has with the help of my father-in-law and brother-in-law falsely implicated me in this case. My father-in-law has two wives. My wife was the only daughter of her mother. Her mother had expressed her intention to get her share in the property of her husband separated and to donate the same to me. Ram Singh who is the husband of step sister of my deceased wife was opposed to this idea. My brother-in-law who is also step brother of my deceased wife was also against this idea. Therefore both of them conspired to falsely implicate me in this case.

The learned Sessions Judge has believed the eye-witnesses account as unfolded during the trial by Chura Vati (PW 7), Rajinder Kumar (PW 6), Swaru Devi (PW 8) and Lobhi Ram (PW 9) He found strong corroboration from the medical evidence and also due to the presence of a motive which further supported the prosecution case. Cumulatively, he was of the opinion that the prosecution had fully established its case against the accused. We have no reason whatsoever to differ.

4. Chura Vati (PW 7) is one of the main prosecution witnesses. It would,

therefore, be in the fitness of things to advert to her testimony in the first instance.

5. Chura Vati was 13 years old and a student of 5th class when the incident took place. She was questioned by the learned trial Court at length after which the Court was of the opinion that she was capable of understanding the questions put to her in spite of her tender age and was able to answer in a rational manner. She was held to be a competent witness and oath was administered to her. In her statement she has deposed that she and Rajinder Kumar, Dimple and Sonu were sitting with her Massi (aunt) Sheetla Devi on 14-3-1989 in a room where she was spinning wool. Her Massar Surinder Kumar accused then came inside the room and asked her to go to the other room. That other room was locked and Surinder Kumar took the key from her, opened its lock and made us sit inside. She then heard Sheetla Devi's cries and rushed towards her room. Near the entrance door of that room she saw the accused having gagged Sheetla Devi with one hand and inflicting knife blows to her with the other. She as also the other children started crying at loud pitch on hearing which Chet Ram, Lobhi Ram and Swaru Devi came running to the spot. Swaru Devi had a bucket in her hand which she placed in the court-yard. The accused came out of the door, jumped over the bucket and fled towards Rewalsar from the retaining wall side. According to her, her maternal grand-father and grand-mother saw the accused coming from inside the room and making his escape good. They went inside the room where Sheetla Devi (her Massi) was lying seriously injured and was bleeding profusely. Lobhi Ram tried to follow the accused but could not catch hold of him and came back.

6. Rajinder Kumar (PW 6), aged about 6 years, was also questioned by the learned trial Court before arriving at a conclusion that he was in a position to understand the questions put to him and give rational answers thereto. He was unable to understand the sanctity of oath. His statement, therefore, was recorded without administering any oath to him. Now Rajinder Kumar has corroborated the statement of Charu Vati in all material particulars. Both these child witnesses have withstood the test of cross-examination very well and we are in complete agreement with the learned Sessions Judge that the testimony of these two witnesses, even after it is scrutinised with due care and caution as the evidence of the child witnesses should be, is trustworthy and inspires confidence.

7. PW Swaru Devi and PW Lobhi Ram are closely related to the deceased. They are natural witnesses. Both of them have stated on oath that they came running to the place of occurrence on hearing noise raised by the children and that they saw the accused jumping down the retaining wall and running away and Sheetla Devi lying grievously injured and heavily bleeding inside the room. Lobhi Ram even tried to chase the accused but failed to apprehend him. There is a ring of truth with respect to the evidence given by these two witnesses as well. They have withstood the test of cross-examination. We have not a single good reason to disbelieve the truthfulness of these witnesses.

8. What has to be borne in mind is that all the above-named four witnesses are

closely related to the deceased. They cannot but be interested in ensuring that the real culprit is brought to book. In other words, implicit in foisting a false case against the accused is that the real culprit would go unpunished. It is difficult to comprehend why these witnesses should go to that extent and then resort to falsehood into the bargain.

9. A strong motive against the accused stands proven. An application u/s 125 of the Code of Criminal Procedure for grant of maintenance had been heard by the court of Judicial Magistrate Mandi on 13-3-1969, that is, one day prior to the occurrence. Thus there is every probability of the accused having taken grave offence to it and resorted to the crime.

10. The learned Sessions Judge has rightly declined to lay much store on the various recoveries made by the investigating officer as lending corroboration to the prosecution case. If the knife Ex. P-1 was found in the drum in the room where the incident took place it is difficult to believe that the police will fail to recover it on the very day of occurrence after having reached that place. Thus much weight cannot be attached to the knife having been recovered pursuant to the statement of the accused recorded u/s 27 of the Indian Evidence Act. This infirmity, however, does not weaken the prosecution case in order to prove which reliable incriminating evidence has been brought at the trial.

11. In all fairness to Mr. J.K. Verma who has assiduously tried to build up the case for the Appellant, the arguments advanced by him may now be noticed.

12. His first contention is that F.I.R. Ex. PW 2/A was lodged by Parma Nand (PW 10) who was not present at the place of occurrence. He was in fact informed by his wife Rewati Devi who had in turn learnt the incident from her son Rajinder Kumar (PW 6) and may be others. Thus much corroborative value, it is urged, cannot be attached to the F.I.R. lodged in the above circumstances. It cannot be disputed that Parma Nand did not witness the occurrence. Nor did his wife Rewati Devi, All the same the occurrence took place in the afternoon of 14-3-1989 and the F.I.R. was lodged on that very day. In fact the investigating officer arrived at the spot on that evening itself. A copy of this F.I.R. was received in the Court of Judicial Magistrate (II) Mandi on 15-3-1989 at 10.30 a.m. Now the contents of the F.I.R. broadly tally with the prosecution case and name the accused as also the eye-witnesses. On the whole, therefore there was no scope for introducing much improvements or embellishments in this document. Anyway, it would not detract from the innate strength of the prosecution case even if it were to be ignored.

13. Mr. J.K. Verma has then relied on the law laid down in Caetano Piedade Fernandes and Another Vs. Union Territory of Goa, Daman and Diu Panaji, Goa, pertaining to the appreciation of evidence given by child witnesses specially when some contradictions are found therein. It is well settled that evidence of the child witnesses has to be approached with great care and caution But, in the present, as discussed above, we do not find any material contradiction in their statements

which can be safely accepted.

14. Mr. Verma has then adverted to the testimony of Parma Nand (PW 10) to build up an argument that Cham Vati (PW 7) and Rajinder Kumar (PW 6) were in all probability at school at the time of occurrence and, therefore, could not have been witnesses of the Incident. No such conclusion flows from Parma Nand's statement. In any case, it was open to the defence to summon the school record to establish beyond reasonable doubt that these witnesses were attending the school when the occurrence took place. This having not been done, we find no force in this contention.

15. The child witnesses have no doubt deposed that their maternal grand-father and grand-mother, namely, Lobhi Ram (PW 9) and Swaru Devi (PW 8) had reached the place of occurrence and had seen the accused coming out of the room wherein Sheetla Devi had been inflicted fatal blows. Swaru Devi and Lobhi Ram, on the other hand, have contradicted them by confining what they saw to the accused only jumping down the retaining wall of the court-yard. This is a minor discrepancy. What the child witnesses have deposed about their grand-parents having witnessed is a matter of their perception. Moreover, the time gap could not be more than half a minute or even less than that. May be they were under a genuine feeling that their grand-parents must have seen the accused coming out of the room whereas actually they did not. In any case this discrepancy does not touch or adversely affect the substratum of the prosecution case.

16. Thus relying mainly on the eye-witnesses account of Charu Vati, Rajinder Kumar, Swaru Devi and Lobhi Ram in the back-ground of the medical evidence and a strong motive, we have no hesitation whatsoever in upholding the judgment convicting the accused-Appellant u/s 302, I.P.C. The sentence awarded is also in order. As a result this appeal fails and is hereby dismissed.