

Lal Singh vs The State on 6 September, 1955

Equivalent citations: AIR1956ALL731, 1956CRILJ1385

JUDGMENT

Mukerji, J.

1. This is an appeal by Lal Singh, who has been convicted by the learned Additional Sessions Judge of Mainpuri under Section 302 and Section 201 read with Section 611, Penal Code. The appellant has been awarded a sentence of death under Section 302, while under Section 201/ 511 I. P.C. he has been sentenced to three years' rigorous imprisonment. Along with the appeal there is also a reference by the learned Judge for the confirmation of the sentence of death passed on appellant Lal Singh.

2. The facts of this case fall within a narrow ambit and may be succinctly stated as follows:

3. Lal Singh, the appellant, was married to Shanti Devi about eight years ago. Shanti Devi was the daughter of Mathura Singh, who lived in an adjoining village, six miles away, from hamlet Khiria, where Lal Singh, and his wife resided. Some two or three years back relations between Lal Singh and his wife became strained and Lal Singh started ill-treating her. The reason, which was suggested on behalf of the prosecution for this ill-treatment of Shanti Devi by Lal Singh, was that Lal Singh had contracted an illicit intimacy with a young widow named Raj Kumari.

The relationship of Raj Kumari and Lal Singh became so intimate and so open that Lal Singh is alleged to have started living in the house of Raj Kumari and having his meals also with her. Raj Kumari's house was situated close to the house of Lal Singh for only one other house intervened between these two houses, According to the prosecution case, the house of Lal Singh, only had in it as an occupant Shanti Devi, This house was a small one having a kothri, a court-yard and a dehliz. Even while Lal Singh was carrying on his illicit intimacy with Raj Kumari, he appears to have had some sort of marital relationship with Shanti Devi, for, according to the prosecution case, a son was born to Shanti Devi on 15-1-1955, at 4 o'clock in the afternoon.

The confinement of Shanti Devi took place in the house in which she resided. On the prosecution case there is no suggestion as to who, if any one, assisted Shanti Devi at the time of her confinement. There is also no suggestion on behalf of the prosecution that there was any help available to Shanti Devi at the time of her confinement. On the morning of 16-1-1955, Lal Singh is alleged to have called out some people and told them that his Wife had suddenly stopped speaking & that he wanted them to go and see what the matter was with her. At this call some witnesses went in & found Lal Singh's wife, Shanti Devi, dead.

At the time when they entered the room in which Shanti Devi lay, they discovered that in that room were present Lal Singh and his mistress Raj Kumari, and they also found the newly born infant by the side of Shanti Devi. Information thereafter was conveyed to the father of Shanti Devi, Mathura Singh, of the fact that Shanti had died and Mathura Singh, on receipt of the information, hurried to hamlet Khiria to be by the side of his dead daughter. By 9 or 10 a.m. the body of Shanti Devi was removed from the house for cremation to the cremation ground.

According to the prosecution, some of the Villagers objected to Lal Singh cremating Shanti before Shanti's father had arrived, but Lal Singh did not pay any heed to it and took the body to the cremation ground and started the preliminaries for the cremation. Shanti Devi was, according to the prosecution case, actually laid on the funeral pyre when Mathura Singh arrived somewhere near the cremation ground, for he went there on receipt of the information that the body had been taken to the cremation ground.

According to the prosecution case Mathura Singh shouted to Lal Singh not to set fire to the pyre and yet Lal Singh did not desist but ignited the funeral pyre. Mathura Singh thereupon rushed up with some men and dragged out the body of Shanti from the funeral pyre, even though it had been set on fire. Fortunately, the body did not sustain any burns.

On examination they found a mark on the neck of Shanti Devi's body which aroused their suspicion and, therefore, the Chowkidar of the village, Niranjan, was despatched to police station Kuraoli to lodge a report, for the villagers now formed an opinion that Shanti Devi had not met her death due to natural causes but had died of violence. Naranjan's report was recorded at the police station at 4 o'clock on the afternoon of 16-1-1955. In this report Niranjan stated this;

"In the afternoon Gulla Lodhi of village Khiria came running to me and said that Lal Singh Thakur of Khiria had killed his wife who had given birth to a child only yesterday in the evening. Lal Singh, and his associates, Suraj Singh Thakur of Khiria, Nathu Singh & Jamadar Singh Thakur of Tisauli took the dead body stealthily to the burning ghat, put it on the funeral pyre and were about to set it on fire that Mathura Singh, the father of the girl, Tek Singh of Billor, Ram Sarup Brahman of Nanamau, Jor Singh Thakur and Sone Pal and Mukar Singh Lodha, Ram Prasad Bania of Khiria, and also other persons of the village reached there and took out the dead body of Shanti Devi from the funeral pyre (Chita) which had not yet burnt. Lal Singh and his companions ran away. I went running there and saw that the dead body had been placed near the pyre and other persons also met me there. I myself and other persons also saw the dead body and found that there were injuries on the throat. It is said that Lal Singh has an illicit connection with the wife of Munshi Singh who is a widow. For these reasons Lal Singh used to give much trouble to his wife and they continued quarrelling with each other. The village people say that for these reasons he (Lal Singh) had killed her (his wife)....."

4. On receipt of this report, which was lodged in, the presence of Akhtar All Khan, the Station Officer, the Station Officer went to the scene of occurrence. He found the corpse on the smashan in

the custody of Mathura Singh, father of Shanti Devi. An inquest report was prepared in regard to the corpse and other things.

The Investigating Officer took into his custody the wood, portions of which were burnt, and that construction (tattar) on which the dead body was transported to the cremation ground. The dead body of Shanti Devi was sent for post-mortem examination also in a properly locked coffin. Rr. R. C. Pandey, the then Civil Surgeon of Mainpuri, performed a post-mortem on Shanti's body on 17-1-1955, at 4 p.m.

5. In this case there is no direct testimony of any witness in regard to the actual commission of the offence. The case entirely rests on, what may be called, circumstantial evidence. As a result of investigation, Lal Singh and Raj Kumari were charged with the murder of Shanti Devi and they were also charged with having committed an offence punishable under Section 201/511, Penal Code along with Suraj Singh, Nathu Singh and Jamadar Singh, who were charged only with having committed an offence punishable under Section 201/511, 1 P. C.

6. The defence of all the accused was a denial. On behalf of Lal Singh it was stoutly asserted that Shanti Devi died a natural death, that her cremation was arranged by Lal Singh in the natural course of things, and that he did nothing from which it could legitimately be inferred that Shanti Devi had died as a result of violence.

7. The learned trial Judge acquitted Raj Kumari as also Suraj Singh, Nathu Singh and Jamadar Singh of the offences with which they were charged.

8. The first question that arises in this case is whether Shanti Devi died as a result of violence or died due to natural causes. On this question the medical testimony which has been given in this case is the most valuable piece of evidence on which the prosecution could rely to make out a case of death by violence.

. As a result of examination, Dr. Pandey found, what he calls, a contusion mark over an area of 9" x 3 1/2". He found both the lungs congested; he found both the sides of the heart full; and he found the liver congested. The contusion mark, according to him, was on the whole front area of the neck, there being no mark on the back of the neck. The doctor described this as follows:

Contusion marks in an area of 9" x 3 1/2" on the right side, front and left side of neck. There is no mark on the back of the neck. On the right side of the neck, the contused area is 3 1/2" wide, on the front it is 1 3/4" wide and on the left side it is 3/4" wide. The upper limit of contusion is just below the mandible:

The doctor did not find any ecchymosis of the subcutaneous tissues under the contused area of the neck. He found recent signs of child birth, which clearly indicated that Shanti Devi had given birth to a child on the after-noon of 15-1-1955, According to the doctor, death was due to asphyxia. This opinion of the doctor has been strenuously challenged on behalf of the defence. The doctor was examined as P.

W. 17 in this case. He stated that in his opinion death was "due to throttling".

A close examination of Dr. Pandey's testimony indicates that he gave his opinion that death was due to asphyxia mainly because, according to his view, the contusion mark in the area of 9" x 3 1/2" on the neck was an ante-mortem injury due to external violence applied by some agency to the neck of the deceased. Dr. Pandey does not in his testimony say that in his opinion the data, which he found on the internal examination of the body, were sufficient to warrant the conclusion that death was due to asphyxia.

It is important at this stage to notice that no external signs, which normally appear in cases of death by strangulation or throttling, were present in this case. The face was not swollen; the tongue was not protruding; there was no frothy matter coming out either from the nostrils or from the mouth; the lips did not wear that particular hue which lips of persons dying of asphyxia wear; the finger-nails were not blue; and the eyes were not open. The data furnished by internal examination on which reliance appears to have been placed by the doctor were the following:--

Congestion of the conjunctivea; congestion of the larynx, trachea and the bronchi and that of the lungs; also there was congestion of the brain. The doctor stated this in answer to a Court question:--

"The presence of the contusion mark, over the front of the neck along with signs of asphyxia in the body leads me to the conclusion that the probable cause was some pressure put on the front of the neck resulting in death".

He further added that-

"By interposing some cloth between the hands and neck at the time of throttling, contused mark would, be left on the neck but no finger marks would be left".

As we have already noticed the doctor was of the opinion that this mark on the neck was ante-mortem, but even so, in his cross-examination he had to admit that a contusion mark, such as was found on the neck of Shanti Devi, "could have been caused just after death". On the medical testimony, therefore, the possibility of the mark having been a post-mortem mark was not altogether excluded.

Learned counsel for the defence has placed before us all the available books on medical jurisprudence and he has relied on the opinions expressed by Taylor, Lyon, Glaister and Modi to contend that the contusion mark found on the neck of Shanti Devi could have been due to either post-mortem staining or a post-mortem injury, it was pointed out that the doctor in his post-mortem report had specifically noted that there was no ecchymosis of the subcutaneous tissues under the contused area, which, according to learned counsel, made the contusion mark nearer to post-mortem

staining than to be a contusion due to external violence on the body before death.

It was argued by the defence that in order to strangle a person to death a sufficient quantity of external pressure was necessary and in almost all cases such external pressure does bring about a rupture in the subcutaneous tissues. Undoubtedly some medical authorities have noticed in their experience that death due to strangulation or similar violence was brought about without there being any contused marks.

9. Taylor in his book 'Principles and Practice of Medical Jurisprudence', Vol. I, Edn. 10, at page 563, says this:

"..A person may be strangled, and yet the ligature, in consequence of its being soft and of a yielding nature, may not cause a perceptible depression or ecchymosis -- scarcely anything more than a slight depression of the skin. If we except cases of suicide, such a condition must be rare, because assailants usually produce a much more violent constriction of the neck than is necessary to ensure the death of a person". Taylor has, however, also said "In manual strangulation the marks of bruising and ecchymosis will be in the front of the neck, chiefly about the larynx and below it".

10. Lyon in his book on 'Medical Jurisprudence', Edn. 10, at page 360, says this:--

"A ligature mark on the neck, corresponding in appearance to a strangulation mark, cannot by itself be taken as evidence of death by strangulation. Such a mark may be the result of the application of a ligature to the neck after death or have been accidentally produced by the pressure of a tight fitting article of dress, or be the result of putrefactive swelling against a string tied loosely round the neck. Hence, even when a ligature mark is found on the neck, corresponding in appearance to a strangulation mark, to establish the fact that death was due to strangulation requires proof that the pressure of such ligature was the cause of death. Such proof may be afforded by the presence of the general post-mortem appearances or death by strangulation. It must, however, be recollected that in hanging, as well as in strangulation by a ligature death is due to the pressure of a ligature on the neck."

Glaister, in his book on 'Medical Jurisprudent and Toxicology', Edn. 9, at page 193, points out that-

"In some cases, there may be practically no evidence of bruising on the surface of the neck, although fairly extensive bruising of the deeper tissues may be found, together with feature of the hyoid bone".

This shows that the bruising of the tissues is rarely absent in a case where death has been brought about by strangulation or a similar operation. Learned counsel for the State was unable to draw our attention to a single case where a medical practitioner of some repute had noticed that death by throttling had taken place without there being any injury to the subcutaneous tissues.

11. We may emphasise the fact that there were no external signs found on the body of Shani Devi which could in any manner indicate that death was due to strangulation which caused asphyxia. Lyon in his book at page 346 has stated that "a very constant appearance in asphyxia is blueness of the finger-nails". In this particular case even this blue-ness of the finger-nails was absent.

According to Lyon, in certain cases of asphyxial death asphyxia is not always the only cause of death. It may not even have contributed to death; for example in hanging or in drowning death may be due to syncope. In such cases, Lyon points out that the typical post-mortem appearances of asphyxia will not be present. The instant case is not one alleged to have been caused by hanging or drowning; so that the absence of typical post-mortem appearance of asphyxial death is not to be lightly brushed aside.

12. The internal symptoms on which reliance was placed to show that death in the instant case was due to asphyxia, as we have already noticed, were these;

Conjunctiva congested; congestion of larynx, trachea and bronchi; congestion of the lungs and particularly that of the brain.

While considering these internal pieces of evidence supplied by the state of the organs, we must bear in mind the fact that Shanti Devi had given birth to a child a day earlier. Shanti Devi was not, during her confinement, aided by any one, at any rate, there is no certain evidence to indicate that she had such aid. The month in which delivery took place was the month of January, in a part of the country where in January the cold is bitter. So that, the defence suggestion that Shanti Devi contracted pneumonia may have some substance.

At any rate, the suggestion cannot, in our opinion, be lightly brushed aside. Pneumonia does bring about congestion of the lungs and even of the larynx and trachea. We know that in pneumonia death is due to asphyxia, so that almost all the symptoms of asphyxial death -- the internal symptoms -- would be found on a post-mortem examination of the body. We feel that we cannot, therefore, hold definitely that death in this case was due to strangulation or throttling.

13. In regard to the area of contusion on the neck, the defence suggestion has been that it was 'due to post-mortem staining or a post-mortem injury. It may be pointed out here that the doctor in his post-mortem report has not indicated what the colour of the contusion mark over the area of 9" x 34" on the neck, was; so that we have not before us any material on which we could definitely say that the suggestion of the defence that the apparent contused mark was a post-mortem staining.

A post-mortem stain is possible on a body due to the obstruction caused to the flow of blood by gravitation either by there being a tight-fitting garment or a piece of jewellery or some such obstruction. The only way, in which one can be certain as to whether or not the mark is due to postmortem stain, or violence or ante-mortem, can be as pointed out by Modi in his book on 'Medical Jurisprudence and Toxicology' Edn. 11, at page 123, where he says:

"Post-mortem staining, on being cut does not show any effusion of coagulated or liquid blood into the subcutaneous tissues, but may show minute drops of blood exuding from the divided ends of the distended capillaries and small veins; a bruise, on the other hand, shows infiltration of the tissues either with coagulated or liquid blood".

Modi later in his book points out that bruises or contusions are accompanied by a painful swelling and crushing or tearing of the subcutaneous tissues without solution or continuity of the skin. According to Modi-

"Ecchymosis makes its appearance over the seat of injury in one or two hours after the injury"

though in some cases it may even appear in lesser time. "The extent of the ecchymosis", it is pointed out by Modi, "depends, in ordinary circumstances, upon the nature and severity of the force used, vascularity of the part struck, looseness of the underlying cellular tissues of the contusion of the assaulted victim." "Thus", he says, "ecchymosis will be extensive in lax and vascular tissues, such as the eye-lids, scrotum and vulva and very little in tough and less vascular tissues, such as the scalp, palm of the hand or sole of the foot".

The contused area in the instant case was a large one. Therefore, in our view, if this was due to an external pressure or blow, then there should have been a rupture in the subcutaneous tissues as well. Dr. Section N. Chatterji, the Civil Surgeon, whom we examined on the persistent request of the learned Assistant Government Advocate to throw light on the post-mortem report in the case, stated before us that the absence of ecchymosis of the subcutaneous tissues under the contused area indicated that the injury may have been a postmortem injury. Dr. Chatterji further stated that he had not come across a case in which there was an external 'bruise' without there being ecchymosis of the subcutaneous tissues.

14. On a careful examination of all this material, we are unable to say, as the medical witness in this case was unable to say, for certain that the mark found on the neck was as a result of external pressure brought about by throttling. The law entitles the accused to have the benefit of this dubiousness in regard to the cause of the death of Shanti Devi. We, therefore, hold that the prosecution has failed to establish to our satisfaction that death in this case was brought about by Violence.

15. In view of our finding that Shanti Devi did not meet her death due to violence, we are unable to uphold the conviction of the appellant either under Section 302 or under Section 201/511, Penal Code.

16. We may also point that the circumstantial evidence on which the prosecution relied in order to being home the charge of guilt to the accused was not sufficient in the sense that it did not fully exclude all possibility of the innocence of the appellant.

17. For the reasons given above, we allow this appeal, set aside the convictions and the sentences of the appellant and direct that he be set at liberty forthwith unless wanted for some other offence. The reference by the learned Additional Sessions Judge for the confirmation of the sentence Of death passed on the appellant is rejected.

18. On behalf of the State Mr. J. R. Bhatt has prayed for a certificate of fitness for appeal to the Supreme Court. Mr. Bhatt was unable to give any grounds on which we could justly certify this case as a fit one for appeal. The fact that this Court has disagreed with the trial Court, is, in our opinion, no ground at all either for the State or for the accused to ask for a certificate of fitness. A certificate of fitness can only be granted, in our view, when there is either some question of law of some importance arising between the parties to the case or some question of general importance, or there is some question of difficulty which needed further careful investigation by a higher Court.

This case, in our opinion, raises no such questions. The fact that we have come to a different conclusion from that arrived at by the Court below on the medical testimony is, in our view again, no ground for a certificate. We have had the advantage of carefully examining all the medical authorities which threw any light on the question in controversy.

We have further had the advantage of having before us a Civil Surgeon of repute to assist us in interpreting the post-mortem report. We called the Civil Surgeon of Allahabad at the insistence of the counsel appearing on behalf of the State and now that we have examined him we are more confirmed in our view that in this case no Court could for certainty hold that the deceased was a victim of strangulation.

19. Counsel appearing on behalf of the accused has drawn our attention to a decision of the Supreme Court in *State Government, Madhya Pradesh v. Ramkrishna Ganpatrao*, AIR 1954 SC 20 (A) where their Lordships held "that Article 134 of the Constitution does not provide for an appeal from a judgment, final order or sentence in a criminal proceeding of a High Court (in the territory of India) if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal. In other words, there is no provision in the Constitution corresponding to Section 417, Criminal P. C., and such an order is final, subject, however, to the overriding powers vested in this Court by Article 136 of the "Constitution".

Their Lordships further pointed out that they themselves were not prepared to exercise their extraordinary jurisdiction vested in them by Article 133 unless their interference was justifiable for special and exceptional circumstances shown in a particular case and in order to correct grave injustice.

20. For the reasons give above, we do not consider this to be a fit case in which to grant a certificate of fitness under Article 134 of the Constitution.