

Smt. Basanti W/O Prabhu vs State Of Himachal Pradesh on 28 April, 1987

Equivalent citations: AIR1987SC1572, 1987(35)BLJR833, 1987CRILJ1869, JT1987(2)SC281, 1987(1)SCALE1175, (1987)3SCC227, AIR 1987 SUPREME COURT 1572, 1987 (3) SCC 227, 1987 (1) IJR (SC) 711, 1987 SCC(CRI) 483, 1987 (2) JT 281, (1987) 1 SUPREME 542, (1987) ALLCRIC 442

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Bench: A.P. Sen, B.C. Ray

JUDGMENT

A.P. Sen, J.

These two appeals by special leave are directed against the judgment and order passed by the High Court of Himachal Pradesh dated December 7, 1976. First of these is filed by Smt. Basanti against the judgment of the High Court upholding the judgment and sentence passed by the Sessions Judge, Solan convicting her under Sections 302 and 201 both read with Section 34 of the Indian Penal Code, 1860 for having committed the murder of her husband Prabhu Ram in furtherance of the common intention of both i.e. herself and the co-accused Assoo @ Aso Ram, her paramour. The second of these is preferred by the State Government against the judgment of the High Court acquitting the co-accused Assoo @ Aso Ram of both these charges. This is a case of strange infatuation. According to the prosecution case the deceased Prabhu Ram, aged about 40 years, was married to the appellant Smt. Basanti. a woman aged 47 years. It is alleged that the co-accused Assoo @ Aso Ram, aged about 70 years, who was a servant of the deceased, was her paramour and having an affair with her. The prosecution has led evidence showing that the deceased Prabhu Ram intended to take a second wife and therefore both the accused conspired to commit his murder by striking a blow on the neck while he was asleep in furtherance of their common intention and caused disappearance of the dead body by concealing it in a maize field behind the cattle shed of the house of the deceased.

2. After hearing learned Counsel for the parties, we are satisfied that the judgment of the High Court does not call for any interference. The High Court was right in coming to the conclusion that there was no reliable and admissible evidence to convict the respondent Assoo @ Aso Ram of the charge under Section 302 read with Section 34 of having committed the murder of the deceased Prabhu Ram in furtherance of the common intention with the accused, or of the charge under Section 201 read with Section 34 of having caused the disappearance of the evidence. There is no direct evidence. The prosecution rests on circumstantial evidence. It relied upon two circumstances,

namely, (1) the extra-judicial confession of the appellant Smt. Basanti and (2) the statement (Exh. PX/3) made by her under Section 27 of the Evidence Act, 1872 leading to the recovery of a pair of blood-stained shoes, dupatta etc. The High Court rightly observes that the extra-judicial confession of the co-accused Smt. Basanti could not be used against the respondent Assoo (c) Aso Ram. It was also right in observing that the alleged discovery by him a pair of shoes and a dupatta under Section 27 of the Evidence Act was inconclusive as they were in no way connected with the commission of the alleged offences. There is nothing to show that the incriminating articles belonged to the deceased. Learned counsel for the State Government is unable to explain how the pair of shoes could be stained with human blood, the prosecution case being that the deceased was murdered while he was asleep in bed. He is also unable to explain how the recovery of the dupatta is an incriminating circumstance. We must observe that there is strong suspicion that the respondent Assoo @ Aso Ram might have participated in the commission of the alleged offences, but suspicion cannot take the place of proof. According to the prosecution, the appellant Smt. Basanti and the co-accused Assoo @ Aso Ram entered into a criminal conspiracy to commit the murder of the deceased Prabhu Ram as he wanted to take another wife. In view of the fact that there is no evidence to connect the respondent Assoo @ Aso Ram with the commission of the alleged offences, the State appeal against his acquittal must therefore fail and is dismissed.

3. As to the appeal preferred by the appellant Smt. Basanti, we have no doubt that no interference with the judgment is warranted. It has been established by the prosecution witnesses beyond all reasonable doubt that the deceased Prabhu Ram was murdered in his bedroom by a blow with an axe (Exh. PW 17/K) on the neck while he was asleep, as a result of which the head was decapitated from the body. Although the co-accused Assoo @ Aso Ram cannot be convicted under Sections 302 and 201 for want of evidence, it cannot be doubted that the appellant Smt. Basanti was guilty of the commission of the offence of murder of her husband in furtherance of the common intention with a person known or unknown. There was no one else in the house except Smt. Basanti and she alone could have an access to the bedroom. If there were no other circumstances, perhaps it could be said that one could not exclude the possibility of the murder of the deceased being committed by the co-accused Assoo @ Aso Ram but there are other circumstances as well. There is evidence that Smt. Basanti put the villagers including her brother-in-law Maloo, PW 27 on a false track by telling them that deceased Prabhu Ram had gone away from the village and had not returned. That conduct of hers was clearly admissible under Section 8 of the Evidence Act as part of *res gestae* as a evidence of conduct immediately after the occurrence. Apart from this, the appellant Smt Basanti made an extra-judicial confession to PWs 16, 17, 18, 22 and 28 which was self-inculpatory. She admitted that she along with the co-accused Assoo @ Aso Ram had conspired to kill the deceased and had committed the murder and that she along with the co-accused had carried the decapitated body of her deceased husband along with the severed head to the maize field behind the cattle shed of the house of the deceased from where the dead body was ultimately recovered when it started emanating foul smell. There is also the other circumstance that the appellant Smt. Basanti made a statement leading to the discovery of the axe. The Serologist stated that the axe was stained with human blood. Although there is no direct evidence, the circumstances proved by the prosecution evidence lead to no other inference except that of guilt of the appellant Smt. Basanti and excludes every other hypothesis of her : innocence. We therefore agree with the High Court and the learned Sessions Judge that the charge under Section 302 read with Section 34 of the Indian Penal Code

against the appellant Smt. Basanti of having committed the murder of her husband Prabhu Ram in furtherance of the common intention with some person known or unknown and also that under Section 201 read with Section 34 of having caused disappearance of evidence by concealing the dead body of of her husband in the maize field is prove beyond doubt. In the result, the appeal filed by the appellant Smt. Basanti fails and is dismissed.