

Shanti Devi W/O Shanker Lal vs State Of Rajasthan on 5 October, 2012

Equivalent citations: 2012 AIR SCW 5828, 2012 (12) SCC 158, 2013 (1) AJR 167, AIR 2012 SC (SUPP) 737, (2013) 2 RECCRIR 102, (2013) 1 CRILR(RAJ) 291, (2013) 4 ALLCRILR 967, (2013) 2 ALLCRIR 1646, (2013) 1 CHANDCRIC 15, 2013 CRILR(SC MAH GUJ) 291, (2012) 4 CRILR(RAJ) 959, (2012) 53 OCR 1183, (2012) 10 SCALE 128, 2013 CRILR(SC&MP) 291

Bench: Fakkir Mohamed Ibrahim Kalifulla, B.S. Chauhan

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 954 OF 2005

Shanti Devi

...Appellant

VERSUS

State of Rajasthan

...Respondent

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. The first accused is the appellant. The challenge is to the judgment of the Division Bench of the High Court of Rajasthan at Jodhpur dated 16.02.2005 passed in Criminal Appeal No.517 of 2002. Altogether four accused were involved in the crime. The Trial Court convicted the appellant for offences under Sections 302 and 201 of IPC while the other three accused were found guilty for offence under Section 201 of IPC alone. The appellant was imposed with the punishment of sentence for life for the offence under Section 302 of IPC apart from a fine of Rs.100/- and in default for further one month rigorous imprisonment, for the offence under Section 201 of IPC appellant was imposed with the rigorous imprisonment for five years along with the fine of Rs.100/- and in default of the payment of fine to undergo one more month rigorous imprisonment. The other three accused were awarded rigorous imprisonment for five years each and a fine of Rs.100/- and in default of the payment of fine to undergo further period of rigorous imprisonment for one month. The sentences awarded against the appellants were directed to run concurrently. The Division Bench while

upholding the conviction and sentence imposed on the appellant for the offence under Section 302 of IPC modified the punishment so far as it related to be one under Section 201 of IPC to the effect that the period already undergone would be sufficient in the interest of justice. Similarly, in respect of other three accused also while confirming the conviction against them under Section 201 of IPC, the substantive sentence was modified to be one which was already undergone by them. Aggrieved against the same appellant preferred this appeal.

2. Shorn of unnecessary details, the case of the prosecution as projected before the Sessions Trial was that the father of P.W.2 went to the house of the appellant on 22.08.1997, that he had a sum of Rs.300/- with him on that day, that he frequently used to visit the house of the appellant and that appellant used to call him as her brother. According to P.W.2, after his father, the deceased Om Prakash went to the house of the appellant on 22.08.1997 he did not return back. P.W.2 went to the house of the appellant thrice and the appellant informed him that his father, the deceased, was entangled in a case of Charas and that she is taking every effort to get him released. Subsequently, on 01.09.1997 the Postman delivered a letter in his house which was purportedly in the hand-writing of Accused No.3 (A-3), the son of the appellant, and that on that very day appellant visited the residence of P.W.2 and asked for a sum of Rs.5000/- stating that money was required in order to enable her to get his father released from the criminal complaint. Believing her words P.W.2 stated to have borrowed a sum of Rs.5000/- from P.W.13 Tersem Ram and gave it to her.

3. In the above stated background P.W.2 lodged a complaint with Gharsana Police Station which was registered as F.I.R. No.535/1997 under Exhibit P-2. P.W.20, Investigating Officer, arrested the appellant and three accused persons, namely, Maniram, Shankar Lal and Jagdish. Based on the admissible portion of the said statement of the appellant the body of the deceased Om Prakash was recovered from a place near her house. The body was found buried in that place. Postmortem was conducted on the dead body. Two photographs were also seized during the course of investigation. The hand- writing of A-3 Jagdish was compared. Based on the final report, charges were framed against the appellant and other accused for offences under Sections 302 of IPC read with Section 302/120-B, 364, 364/120-B and 201 of IPC. The accused having denied the charges, case went into trial and 24 witnesses were examined on the side of the prosecution apart from 50 documents marked and 14 articles were produced. On the side of the defence one witness was examined and eight documents were marked.

4. The Trial Court after detailed consideration of both oral and documentary evidence as well as after noting the chain of circumstances alleged against the appellant and other accused, held that the offences under Sections 302 read with Section 201 of IPC as against the appellant and the offence under Section 201 of IPC as against the rest of the accused were conclusively proved. Consequently, the sentences as described in the earlier part of the judgment were imposed. The appellants preferred an appeal before the High Court of Rajasthan at Jodhpur in which the impugned judgment came to be delivered as against which the appellant has come forward with this appeal.

5. We have heard Mr. Ravindra Bana, learned counsel for the appellant and Dr. Manish Singhvi, learned Additional Advocate General for the respondent-State. Mr. Bana in his submissions

contended that there was inordinate delay of 52 days in the registration of FIR and, therefore, the story of the prosecution was unbelievable. Learned counsel then contended that the postmortem report has not mentioned the cause of death and, therefore, death cannot be held to be one of murder. By referring to the alleged extra-judicial confession stated to have been made by the appellant, learned counsel contended that the appellant stated to have used a kassi but the postmortem report did not reveal any injury on the body of the deceased and that no blood was also found on the kassi. It was also contended that the body of the deceased was exhumed only from a nearby place and not from the house of the appellant. The learned counsel, therefore, contended that in a case of circumstantial evidence, having regard to the above infirmities existing in the case of the prosecution, the conviction and sentence imposed on the appellant should be set-aside.

6. As against the above submissions, Dr. Singhvi, learned Additional Advocate General by referring to Sections 24, 30 and 133 of the Evidence Act contended that so far as the extra-judicial confession is concerned, so long as the said piece of material was corroborated with material evidence and it was voluntary and truthful it can be relied upon. As far as the corroboration was concerned, learned Additional Advocate General referred to the recovery of the dead body based on the disclosure statement of the appellant which is fully governed by Section 27 of the Evidence Act. He also contended that the version of P.W.24, S.D.M was that she was present throughout the process of exhuming the body of the deceased along with two independent witnesses, namely, P.Ws.6 and 11 and also that the body was exhumed from a place adjacent to the house of the appellant which piece of evidence was clinching as against the accused.

7. The learned Additional Advocate General also pointed out that on the body of the deceased the articles which were worn by him such as wrist watch, shoes etc., were recovered and those articles were identified by P.W.2, the son of the deceased. He also contended that though no blood was found on the kassi, the injury no.2 to a great extent would confirm the use of kassi in the performance of the crime by the appellant. Apart from the above, learned counsel contended that the conduct of the appellant after 01.09.1997 and her dealing with P.W.2 as well as the letter written by P.W.7 were all corroborative piece of evidence strongly supporting the chain of circumstances in establishing the offence alleged against the appellant. Though the extra-judicial confession made by the appellant was relied upon by the Courts below, learned Additional Advocate General, however, submitted that the said part of the evidence was referred to only to confirm the motive which was twofold, namely, the demand for repayment of Rs.15000/- paid by the deceased apart from the alleged illicit relationship of the appellant with the fourth accused. Learned counsel relied upon *Ratan Gond Vs. The State of Bihar* – AIR 1959 SC 18 and *Wakil Nayak Vs. State of Bihar* - 1971 (3) SCC 778 in support of his submissions.

8. Having heard learned counsel for the respective parties and having bestowed our serious consideration to the judgment impugned before us and other material papers, as it is a case of circumstantial evidence, we wish to quote the well settled principles laid down by this Court in various decisions which are to be applied in order to examine the conclusions arrived at by the Courts below while convicting the accused based on circumstantial evidence. The principles laid down in those decisions can be mentioned before finding out whether or not the conviction and sentence on the appellant can be held to have been established as stated in the judgment of the High

Court as well as that of the learned Trial Court. The principles can be set out as under:

- (i) The circumstances from which an interference of guilt is sought to be proved must be conjointly or firmly established.
- ii) The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.
- iii) The circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that with an all human probability, the crime was committed by the accused or none else.
- iv) The circumstances should be incapable of explanation on any reasonable hypothesis, same that of the guilt of the accused.

9. Keeping the above tests in mind when the circumstances enumerated in the case on hand as against the appellant are examined, we find the following circumstances existing as against the appellant:

- . The deceased Om Prakash went to the house of the appellant on 22.08.1997 when he was last seen.
- . The deceased did not return back to his house even after a week's time.
- . When the son of the deceased, namely, P.W.2 approached the appellant to find out his father's whereabouts he was told by the appellant that his father was involved in the case of Charas and that she is taking efforts to get him released.
- . On 01.09.1997 the appellant herself approached P.W.2 and asked for a sum of Rs.5000/- in order to enable her to get his father released from the criminal case.
- . P.W.13 Tersem Ram deposed that the said sum of Rs.5000/- was borrowed from him by P.W.2 which was paid to the appellant.
- . On 01.09.1997 Exhibit P-19 letter was delivered in the house of the deceased purportedly to have been written by the deceased himself mentioning that he was entangled in the case of Charas and was lodged in Bikaner Police Station. In the said letter it was also mentioned that the said information should not be revealed to his own brothers and that he was likely to get released very soon.
- . The address on Exhibit P-19 was found to be in the hand-writing of A-3 which was also established by legal evidence. The Trial Court also found as a matter of fact that the letter was got written by the appellant while the address was written by co-accused, namely, A-3.

. Based on the information furnished by the appellant herself the body of the deceased was recovered from a place which was adjacent to her house.

. The body was identified by P.W.2 in the presence of P.W.24 S.D.M., Anoopgarh on which the personal articles worn by him such as shoe, watch, bag etc., were also found and recovered.

. The last of the circumstance was the extra-judicial confession of the appellant before the Members of the Panchayat, namely, P.W.8 and P.W.9.

10. When the above circumstances placed before the Trial Court are considered and the various tests relating to the circumstantial evidence were applied there can be no difficulty in holding that the chain of circumstances had every definite link, namely, from the date the deceased was stated to have gone to the residence of appellant and, thereafter, his death was discovered based on the information furnished by the appellant herself pursuant to which the body of the deceased was recovered from a place which was adjacent to her house. In between 22.08.1997 and the date of recovery of the body of the deceased, the appellant met P.W.2 once at her residence and, thereafter, the appellant herself approached P.W.2 asking for a sum of Rs.5000/- to enable her to get his father released from the criminal case. After 22.08.1997, having been known that the deceased had gone to the residence of appellant and since he did not return back for about seven days, P.W.2 in the natural course of events had gone to the residence of the appellant to find out his whereabouts. This particular fact was spoken to by P.W.1, the wife of the deceased and P.W.2, the son of the deceased. The Trial Court has noted that the said version of P.W.1 and P.W.2 was not in any manner dislodged at the instance of the appellant. P.W.2 was a minor, aged about 14 years. Therefore, when the appellant, who was known to his father who was frequently visiting her, informed him that his father was involved in a criminal case relating to charas, believing her words P.W.2 returned back with the fond hope that the appellant would take every effort to get his father released from the custody of the police. Not stopping with that the appellant herself approached P.W.2 on 01.09.1997 with a demand for payment of Rs.5000/- for the purpose of getting his father released from the criminal case. The sequence of events narrated by P.W.2 as from 22.08.1997 till the demand of Rs.5000/- was cogent and convincing. The further fact that P.W.2 in his anxiety to get his father released, succumbed to the demand of the appellant by raising funds for the payment of Rs.5000/- by borrowing the same from P.W.13 who supported the said fact by deposing before the Court. The Court has noted that his testimony was perfect in every respect and nothing could be brought out in the cross-examination to discredit his version. According to P.W.13, the sum of Rs.5000/- borrowed by P.W.2 from him was handed over to the appellant. When the said circumstance was found proved and since there was no other explanation other than what was demonstrated before the Court by the prosecution through P.W.2 and P.W.13, the said circumstance was in addition to the earlier set of circumstances which linked the involvement of the appellant in the crime alleged against her. The subsequent factum of recovery of the body of the deceased at the instance of the appellant was one other strong circumstance against the appellant in roping her involvement in the elimination of the deceased and thereby providing no scope for any other hypothesis other than her guilt in the killing of the deceased. The other recoveries made from the body of the deceased duly identified by P.W.2 was yet another relevant circumstance to show that the deceased was none other than the father of P.W.2 and husband of P.W.1. Therefore, the analysis of the above circumstances alleged and found

proved definitely formed a chain of circumstances having closely linked together without giving any scope for any other conclusion than a definite tendency unerringly pointing towards the guilt of the accused.

11. When we consider the submission of learned counsel for the appellant, according to learned counsel there was inordinate delay of 52 days in the registration of the FIR and, therefore, the story of the prosecution was unbelievable. It is true that between 22.08.1997 and the date of the registration of the crime, there was a considerable delay. However, after the deceased went to the house of the appellant i.e. on 22.08.1997 which happened to be his usual routine as spoken to by the prosecution witnesses in particular P.W.1 and P.W.2, no fault can be found in the conduct of P.W.1 and P.W.2 in having waited for a minimum period of a week for the deceased to return back. Thereafter, as rightly observed by the Courts below, it was the game plan of the appellant in having misdirected P.W.1 and P.W.2, whereby believing her words that the deceased was involved in a criminal case relating to charas they were waiting for his arrival, as informed to them by the appellant. It was quite natural that the wife of the deceased P.W.1 who was dependent on her minor son P.W.2, aged about 14 years was waiting in the fond hope that her husband would have been involved in the criminal case that too relating to charas, it would take sometime for him to get out of the clutches of the police. P.W.2 was also in a similar state of mind especially when the appellant was further reinforcing her misdirection by collecting a sum of Rs.5000/- in order to enable her to get the deceased released from the police. That apart, the appellant hatched a scheme of sending a letter by post as though the deceased himself was communicating to his wife and son to the effect that he got entangled in a criminal case relating to charas, that the same should not be revealed even to his own brothers and that he will be able to get himself released from the said case at the earliest possible time which was truthfully believed by P.Ws.1 and 2 whose innocence was fully encashed by the appellant. A cumulative effect of the above factors definitely influenced the minds of P.W.1 and P.W.2 which resulted in the reporting the fact of missing of the deceased to the police belatedly. At one point of time they also approached the panchayat members, namely, P.W.8 and P.W.9 and sought for their guidance as to how they can find out the whereabouts of the deceased. Therefore, when P.W.8 and P.W.9 intervened and directly approached the appellant herself the game plan of the appellant came to light and, thereafter, complaint was preferred by P.W.2 on 13.10.1997 which resulted in the registration of FIR Exhibit P-2. Having regard to the above factors, we find no substance in the submission made on behalf of the appellant based on the delay aspect.

12. The learned counsel for the appellant then contended that the postmortem report did not specify the cause of death and, therefore, it was not a case of murder. As far as the said contention is concerned, based on the information furnished by the appellant herself which was recorded under Exhibit P-36, the dead body of the deceased Om Prakash was exhumed under Exhibit P-30 in the presence of P.W.24 S.D.M as well as the appellant herself who identified the place where the dead body was buried. The said place was excavated and a bundle was taken out which contained the dead body over which a white shirt and payajama was found. The appellant herself confirmed that it was the body of the deceased Om Prakash. The watch worn by the deceased was found on the hand of the dead body which was in a decomposed condition as noted in Exhibit P-13.

13. P.W.6 Kishan Lal an independent eye-witness confirmed the digging and the excavation made from where the dead body was exhumed. Apart from the watch, a pair of shoes was also recovered under Exhibit P-

16. P.W.11, another independent eye-witness, also confirmed the above factum and recovery of the dead body at the instance of the appellant. Exhibit P-29 was the postmortem report prepared by P.W.16 Dr. Om Prakash Mahayach along with P.W.17 Dr. Sunil Kumar Kaushik and P.W.18 Dr. Chander Bhan Midha. The articles which were recovered along with dead body, namely, wrist watch, pair of shoes, shirt, payajama and empty bag were all identified by P.W.2, the son of the deceased. In the opinion of P.W.16, the postmortem doctor, the death could be a murder as well as natural. Therefore, it is not, as if based on the postmortem certificate and the version of P.W.16, the offence of murder can be ruled out. Since the dead body was recovered in a decomposed state, it was quite natural that the doctor could not specifically state as to the nature of injury on the body of the deceased.

14. Having regard to the clinching circumstances found proved against the appellant with the ultimate discovery of the body of the deceased at the instance of the appellant herself, who had the exclusive knowledge on that special factor, if the death of the deceased was due to any other cause the best person who could have explained could have been the appellant alone. In the circumstances, the conclusion was inescapable that the appellant was squarely responsible for the death of the deceased and the contention to the contrary made on behalf of the appellant cannot, therefore, be countenanced.

15. Learned counsel raised a contention that by the own version of P.W.8 and P.W.9, to whom the appellant stated to have made the extra-judicial confession, pressure was applied on her which forced her to make the said statement and, therefore, the same was hit by Section 24 of the Evidence Act. Though the said submission of the learned counsel has been satisfactorily dealt with by the Courts below in particular in the order impugned in this criminal appeal even by ignoring the said aspect for the present, as we have found that the chain of circumstances established in the case on hand sufficiently established the guilt of the appellant in the killing of the deceased, we do not find the said submission causing any dent in the case of the prosecution. For the very same reason the submission that no blood was found on the Kassi also does not merit acceptance.

16. The last submission made was that the body of the deceased was only recovered from an adjacent place not from the house of the appellant herself, we do not find any substance in the said submission in order to interfere with the judgment impugned. The very fact that the recovery of the dead body came to be made at the instance of the appellant and that too from an adjacent place to the residence of the appellant was sufficient enough to rope in the appellant in the murder of the deceased.

17. Having regard to our above conclusions, we do not find any merit in this appeal, the appeal fails and the same is dismissed.

18. The appellant is on bail. The bail bond stands cancelled and she shall be taken into custody forthwith to serve out the remaining part of sentence, if any.

.....J. [B.S. Chauhan]J. [Fakkir Mohamed Ibrahim Kalifulla] New Delhi;

October 05, 2012