

Supreme Court of India

Rattni (Smt) vs State Of H.P. on 4 February, 1993

Equivalent citations: 1993 CriLJ 1811, 1993 (1) Crimes 639 SC, JT 1993 (2) SC 100, 1993 (1) SCALE 259, 1993 Supp (4) SCC 669

Bench: K J Reddy, N Singh

JUDGMENT

1. These two appeals arise out of a common judgment passed by the High Court of Himachal Pradesh. Both the appellants were tried and convicted under Section 302 read with Section 34 I.P.C. by the Sessions Judge, Solan and sentenced to undergo imprisonment for life. Both of them preferred separate appeals and the High Court agreeing with the findings of the trial court dismissed the appeals. The prosecution case is as follows.

2. One Khushal Singh, the deceased, both the accused and the material witnesses belong to Village Palli in Solan District. The deceased was the husband of Smt. Rattni who is the appellant before us in Criminal Appeal No. 306/81. Smt. Rattni alongwith her minor daughter and a son was living at Village Palli while the deceased, her husband was employed as Junior Engineer in H.P.P.W.D. and was posted at Hamirpur. Vinod Kumar, P.W. 2 the major son of Smt. Rattni used to visit Village palli occasionally. Smt. Rattni is alleged to have developed illicit relations with Sattanjeet, the other appellant before us in Criminal Appeal No. 26/81. The deceased came to know about the illicit relations and there used to be altercations and quarrels between the husband and the wife. The deceased Khushal Singh was keen to take Smt. Ratni, his minor daughter and son to Hamirpur where he was posted. He came to the Village on 15.9.78 for that purpose. It is alleged that the two appellants in view of their illicit relations did not like to separate from each other. Therefore they conspired and wanted to put an end to the life of the deceased. The deceased who reached the Village on 15.9.78 was hale and healthy but the next day he started vomiting. According to the prosecution Sattanjeet purchased white arsenic and gave it to Smt. Rattni who administered the same to her husband by mixing it with kheer. The deceased who became sick is alleged to have told his major son Vinod Kumar that Smt. Rattni has administered the poison to him. The deceased ultimately died on 21.9.78. P.W. 5 Shankar Singh who was working as a Constable at Bilaspur was a brother of the deceased. He was informed by phone by another constable that his brother was dead. He reached Village Palli and he was told by Vinod Kumar, the major son of the deceased that the deceased took some kheer and started vomiting and was passing motions. P.W. 5 went to the police station the same night and lodged a report. P.W. 18 the Head Constable who received the report immediately went to Village Palli and found the dead body. He prepared the inquest and sent the dead body for post-mortem. The Doctor, P.W. I conducted the post-mortem. He found bluish grey region in the temporal region and the skin was greenish. On internal examination he found that the walls of abdomen were also greenish. He opined that that body was in a purified condition. He could not give any definite opinion as to the cause of death at that stage. He collected the viscera and sent the same for chemical analysis whose report showed that 35.38 milligrams per hundred grams of arsenic was found in the liver, spleen and kidney and on the basis of that report, the Doctor opined that the deceased died due to arsenic poisoning. Both the accused were arrested and P.W. 19 Prithi Singh, A.S.I. of Police interrogated Smt. Rattni and it is alleged that at her instance a packet containing poison was recovered. Thereafter Sattanjeet was interrogated and he is alleged to have

stated that he could point out the place and person from whom he purchased the poison. According to the prosecution on 30.9.78 the accused and police went to Ropar and P.W. 22 and one Ravinder Kumar also joined them who later figured as panch witnesses. It is alleged that all of them went to the shop of Bakhtawar Mal and sons who had a licence for selling poisons. P.W. 11 told the police that on 18.9.78 Sattanjeet came to his shop and purchased 5 gms. of white arsenic and to that effect an entry was made in the sales register which was also signed by Sattanjeet. The Sales Register Ex. P-5 was seized and the relevant entry market in the register is Ex. PH.P.W. 19 ASI also took 10 grams of white arsenic from the shop and sealed the same. Specimen signatures of Sattanjeet were obtained for the purpose of comparing the signature in Ex.P-5 and both were sent to the expert He opined that the signature in Ex.P-5 is that of Sattanjeet appellant only. After completion of the investigation, the charge-sheet was laid. When examined under Section 313 Cr.P.C. the accused denied the offence and stated that they were falsely implicated. Sattanjeet further stated that he was beaten by the police and under threats and coercion his signatures were obtained in the register Ex.P-5. He also examined a Doctor, D.W. 1 in support of his plea that he was beaten by the police, who found some injuries on the accused while he was in the custody.

3. The prosecution mainly relied on the circumstantial evidence particularly the entries in Ex.P-5 spoken to by P.W. 11 under which the, arsenic is said to have been procured by Sattanjeet, accused and which he is alleged to have given to Smt. Rattni. The trial court accepted the entire prosecution case and convicted the appellants and the High Court confirmed the same.

4. In these appeal, the learned Counsel for the appellants submitted that there is no direct evidence about administering of the poison and that the police have fabricated the case against Sattanjeet and that the cause of death is not fully established. The circumstances relied upon by both the courts below are set out as follows in the respective judgments:

(i) The illicit intimacy had development between the appellants.

(ii) The deceased husband of Rattni appellant, as also her children were in the know of such intimacy between the appellants.

(iii) The deceased did not like the illicit relations between the appellants and on that account there used to be altercations between Rattni and the deceased.

(iv) The deceased had even previously tried to take Rattani appellant with him to Hamirpur in a car, but on the way Rattani got down from the car and came back to village Palli.

(v) Both the appellants did not like that the deceased may take Rattani appellant with him to Hamirpur. As such, they had a motive to murder him.

(vi) Soon after, the deceased reached village Palli, he made it known to Rattani and the children that they would be taken to Hamirpur. Since the minor children of the deceased were studying in a local school, the deceased, obtained their school leaving certificates so that they could be admitted to school at Hamirpur.

(vii) At the time the deceased reached village Palli, he was in his good health but soon thereafter he fell ill and started vomiting and passing motions.

(viii) Sattanjeet appellant purchased white arsenic from a shop at Ropar and also signed the relevant register showing the purchase of the same.

(ix) Sattanjeet appellant was also seen passing on something to Rattani appellant, wrapped in a piece of paper. The piece of paper used as a wrapper was got recovered by Rattani from her house and it was reported by the Chemical Examiner that white arsenic was sticking to the said wrapper.

(x) The deceased before his death disclosed to his major son Vinod Kumar that Rattani appellant had administered to him something by which he was having burning sensation.

(xi) Vinod Kumar, the major son, as also a minor son and daughter deposed against the appellant.

(xii) After Khushal Singh had died, Sattanjeet appellant asked the relations of the deceased as also the villagers that the dead body should be cremated quickly and that the matter be not reported to the police.

(xiii) The viscera, spleen and liver etc. of the deceased contained white arsenic.

It can be seen that circumstances Nos. 8, 9 and 13 are important. Before examining these circumstances it must be noted that there is no evidence to show that Smt. Rattni was seen mixing anything in any article of food. The circumstances No. 1 to 7 only speak about the alleged motive which no doubt is relevant in a case of circumstantial evidence but the other circumstances should be clinching so as to bring home the guilt to the accused. On a perusal of the record and the two judgments it becomes clear that the main thrust of the prosecution case was based on the recoveries. We shall examine them presently. The main circumstance connecting Sattanjeet with the crime is the alleged purchase of white arsenic from the shop of P.W. 11. Even according to the prosecution he is alleged to have purchased the same on 18.9.78 but the positive case of the prosecution is that even on 16.9.78 the deceased became sick and was vomiting. If that be so, his vomitings and motions on 16.9.78 was not due to the poison purchased on 18.9.78 by Sattanjeet. Be that as it may the very purchase is highly doubtful in view of the fact that we are satisfied that the entries in Ex.P-5 are clearly fabricated. We have seen the original register Ex.P-5 and we are satisfied that the relevant entry Ex. PH in Ex.P-5 is highly suspicious and clearly looks as though it was brought into existence subsequently. On page 1 of the register there are eight entries upto 9.9.78. Then 9th entry clearly appears to have been made on 30.9.78 but this was clearly altered and tempered to make it appear as though it was made on 13.9.78. Then in the second page, we find this suspicious entry Ex. PH as though it was made on 18.9.78. If entry No. 9 could have been dated 30.9.78 then the entry Ex. PH on the second page could not have existed. It is only to fabricate it the date of entry No. 9 has been clearly tempered as mentioned above. This is a highly suspicious feature in the investigation. No doubt the signature of the accused is found but the plea of the accused that he was beaten up and he was forcefully made to sign, appears to be probable particularly in view of the injuries found on him as per the medical examination done under the orders of the Magistrate while he was in custody.

P.W. 11 the shop-keep or in his cross-examination admitted that he opened a new stock register. When confronted with the entries he stated that his Munim was making the entries. However, having ourselves examined the entry Ex. PH we are satisfied that no reliance can be placed on this piece of evidence. If that circumstance goes then there is no other circumstance worth mentioning to incriminate Sattanjeet except the circumstances relied upon to show that there were some illicit relations. It may also be noted here that even in the FIR it was mentioned that on 16.9.78 itself the deceased became sick after eating something and had vomittings and motions. The alleged purchase which is based on this suspicious Ex. PH was on 18.9.78. This is also a serious infirmity in the prosecution case. So far as Smt. Rattni is concerned there again the prosecution strongly relied on the recovery of a piece of wrapper at her instance and it was reported by the chemical examiner that white arsenic was sticking to the said wrapper. In view of the highly suspicious type of investigation carried on this recovery also becomes highly unreliable particularly in view of the fact and admittedly that ASI procured 10 grams of white arsenic and it was with him. The plea of the accused that all these recoveries have been fabricated does not appear to be flase.

5. In the result we are constrained to give benefit of doubt to the two appellants and acquit them of all the charges. Both the appeals are accordingly allowed. If the appellants are on bail, their bail bonds shall stand cancelled.