

PETITIONER:
TEJ PARKASH

Vs.

RESPONDENT:
THE STATE OF HARYANA

DATE OF JUDGMENT 13/10/1995

BENCH:
KIRPAL B.N. (J)
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KIRPAL B.N. (J)
MUKHERJEE M.K. (J)

CITATION:
1996 SCC (7) 322 JT 1995 (7) 561
1995 SCALE (5) 734

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

KIRPAL.J.

This appeal by special leave is directed against the judgment of the Punjab & Haryana High Court which has upheld the conviction of the appellant who had been held guilty under Section 302 I.P.C. of murdering his wife Geeta Devi and had been awarded life imprisonment. He was also convicted under Section 201 I.P.C. and awarded imprisonment for two years.

The case of the prosecution was that the appellant, who is an advocate by profession, was married to Geeta Devi on 30.1.1982 at Alwar. During the marriage ceremony, the in-laws of the appellant stopped the photographer accompanying the marriage party to take the photographs of the ladies. This was not liked by the appellant who over-reacted and took off his 'sehra' and threatened to walk-out of the 'mandap' prior to the performing of the wedding ceremonies. Ramjilal, his father-in-law, however persuaded him to resume his seat. After the marriage, Geeta Devi had been complaining to her mother that her in-laws were not happy with the dowry brought by her. On 14.11.1982, Geeta Devi gave birth to a son. As was customary, Geeta's two brothers brought some gifts which were not to the liking of the appellant and his mother. Geeta tried to shield her brothers but the appellant slapped her and the said brothers informed the parents about this incidence.

The appellant and Geeta were residing along with appellant's parents in the house at Mohalla Farash Khana, Narnaul. On 5.1.1983, the parents of the appellant had gone to Delhi to meet their other son. The appellant was alone with his wife Geeta and their infant son at the house in Narnaul. At about 5 P.M., Mehar Chand P.W. 7 went to the house of the accused to have some professional advice regarding some house tax matter. He found appellant and his wife quarreling. The appellant told Mehar Chand, P.W. 7 that

he would see his after sometime as at that time, he was upset. Geeta was not seen alive thereafter. On 7.1.1983, the appellant went to police station, Narnaul at about 5.30 p.m. and lodged a missing report regarding his wife. On 8.1.1983, the appellant sent a telegram to his father-in-law at Alwar that Geeta was missing and he enquired whether she had reached Alwar.

On 8.1.1983 at about 9.15 p.m. one Mala Ram Lambardar informed ASI Inder Singh P.W. 21 who was on patrol duty that a dead body of a female who was suspected to be the missing wife of the appellant was floating in a well in the dharamshala of Kishan Sahai. Mala Ram's statement was recorded by ASI Inder Singh who forwarded the same along with his endorsement to the police station on the basis of which Daily Diary Report No. 31 (Ex. PY/2) was entered at the police station, Narnaul. A.S.I. Inder Singh then proceeded to the said well so that the arrangements could be made for taking out the dead body that night. Some identified person telephoned Ramesh Chand Soni P.W. 11 at 9/10 P.M. on 8.1.1983 informing him that the dead body of Geeta had been recovered from the well. Ramesh Chand Soni requested the caller not to cremate the dead body till the relations of Geeta reached Narnaul. Ramesh Chand Soni then went to Ramjilal, father of Geeta and delivered him the aforesaid message whereupon Ramjilal along with Ramesh Chand Soni and Durga Parshad left for Narnaul by car and reached there in the morning where they found the police present at the house of the appellant. The dead body was then taken out from the well in their presence by Garsi Lal P.W. 6 and Phool Singh. The dead body was photographed before being taken out of well as well as after it had been taken out. The eye balls as well as the tongue of the deceased were protruding out and there were also some other marks of injuries. The said body was identified by the father and the cousin of the deceased. ASI Inder Singh then recorded the statement of Ramjilal P.W. 15 and sent the same to P.S. Narnaul for the purpose of registration of case under Section 306 I.P.C. ASI Inder Singh also prepared a inquest report and sent the dead body for post-mortem examination. After the result was received by the investigating agency, the case was converted from one 306 I.P.C. to one under Section 302 I.P.C. A search was made for the appellant but he was not available.

The prosecution alleged that the appellant had gone to Bhagirath P.W. 16 on 10.1.1983 and he made an extrajudicial confession before him and one Hardayal. He is further stated to have been requested them to intercede with his father-in-law and get a compromise effected. They accompanied the appellant to Narnaul where the appellant was produced before the police and he was put under arrest. On completion of investigation, the police presented the charge-sheet for offences under Sections 302 and 201 I.P.C. against the appellant.

During the course of trial, Durga Prashad, Ram phal and S.I. Ram Kishore were given up by the prosecution as unnecessary and Nathi Ram as having been won over. Ram Phal was nevertheless examined as a court witness as C.W.1 at the request of the counsel for the appellant. The prosecution relied upon the evidence of the relations of the deceased including Ramjilal P.W. 15 about the conduct of the appellant at the time of his marriage, the greed exhibited by him and his parents when they asserted that Geeta deceased had brought insufficient dowry and gifts given to her at the time of her child birth which were regarded by them as insufficient. Mehar Chand P.W. 7 was produced to

show that the appellant was last seen in the company of the deceased at his house on 5.1.1983 at about 5 p.m. Bhagirath P.W. 16 was relied upon to prove the extrajudicial confession by the appellant before him. The appellant admitted his marriage with Geeta Devi deceased. He admitted his signatures on the report dated 7.1.1983 lodged with the police station, Narnaul but stated that the report was dictated by some of his companions as he was too puzzled to utter even a word. He also admitted having sent telegram to his father-in-law at Alwar on 8.1.1983. He denied the other circumstances appearing against him as incorrect. The appellant then stated that his relations with his wife were normal; there was no dispute either on the question of gifts on the child birth nor any mal-treatment meted out to her from his side. On 5.1.1983 he left for the court and returned in the evening. He learnt from members of the family including his sisters that Geeta Devi had gone to see a friend and to deliver a letter. Geeta Devi, however, failed to return which made him and other members of the family anxious and a search was started for her in the houses of friends and relations. Some persons were sent out to trace out Geeta Devi. A large number of his colleagues and friends visited his house to enquire about his missing wife. The enquiry included questions regarding dress, ornaments, habits, condition, health, relations with in-laws and all other things which could help in tracing her out. The information was readily given. He was advised by his friends to wait for a day before reporting the matter to the police. However, when Geeta Devi failed to turn up even on 7th January, 1983, appellant felt completely puzzled and mentally broken. Some of his friends took him to police station for lodging a missing report. The report was actually dictated by some of his companions which was signed by him. On 8.1.1983, he learnt that the dead body of his wife had been discovered in the well. He along with other relations was present when the dead body was taken out. The dead body was cremated by him and he lit the funeral pyre. From there, he was taken away by the police for interrogation though on papers, his arrest was delayed.

The medical evidence was relied upon to show the cause of death. The post-mortem was conducted by a board of three doctors consisting of Dr. K.C. Jain P.W. 1, Dr. J.L. Bhutani P.W. 9 and Dr. O.P. Poddar P.W. 4. It was, inter alia, noted in the report that the dead body was of a female who was identified as Geeta Devi wife of Tej Parkash aged about 23 years. The length of the body was 5 feet 2 inches. There was a reddish contusion 4 1/2 inches in width in front of the upper part of the chest and lower part of the neck extending from the right of the left shoulder. On the back, there was reddish contusion of 3" width near the shoulder in continuation of contusion in front. The under-lined sub cutaneous tissues were ecchymosed, hyoid bone was fractured. The body was of a young, moderately built female wearing one cream coloured sweater, one blouse, brassiere, petticoat, red underwear and some jewellery. The face was congested and swollen. Tongue and eye balls were protruding. Bloody discharge was coming out of the nostril. Rigor mortis was absent. Post-mortem lividity was present on the dependant parts. There was greenish discolouration present on the abdomen and medical aspect of things and nails could be peeled off. Scalp and skull were healthy. Membranes were congested. Brain was liquified. Chest was healthy. Pleurae was healthy. Larynx and trachea were healthy and right and left lungs were healthy and congested. Pericardium was healthy. She was also having the below noted injuries:-

1. Contusion as already described.
2. Reddish contusion 7 c.m. x 3 c.m. on the side of the face.
3. Reddish contusion 6 c.m. x 4 c.m. on the right side of chest.
4. Reddish contusion extending from the middle of medial aspect of leg to the middle of thigh varying in depth 2 1/2" x 3".
5. 2 c.m. x 3 c.m. contusion on front of middle of chest.

In the opinion of the Doctors all injuries were antemortem in nature. Abdominal wall was distended and greenish discolouration was present. Uterus was protruding out slightly. In the opinion of the Doctors, death was due to asphyxia on account of strangulation which was sufficient to cause death in the ordinary course of nature. Duration between injury and death was between few minutes and between death and post-mortem examination, it was between 2 to 4 days. Dr. K.C. Jain P.W. 1 clarified that injury No. 1 namely, fracture of the hyoid bone was sufficient by itself to cause death in the ordinary course of nature. Dr. O.P. Poddar P.W. 4 was tendered for cross-examination. Dr. J.L. Bhutani P.W. 9 proved the post-mortem examination report and stated that the fracture mentioned in injury No. 1 in the post-mortem examination report was sufficient in the ordinary course of nature to cause death and the said injury was ante-mortem in nature.

Before the Trial Court, efforts were made to show that the fracture of the hyoid bone could have occurred when the dead body was taken out of the well. In this connection, reference was made to the statement of Giarsi Lal P.W. 6 who along with one Phool Singh was engaged as a labourer to take out the dead body from the well. In his examination-in-chief, Giarsi Lal P.W. 6 stated that he tried to lift the dead body by holding the side of the head which slipped three times and it was only in the third attempt that he succeeded in holding the dead body from the side of the head and it was brought out. On his being declared hostile, he was brought out. On his being declared hostile, he was allowed to be cross-examined by the Police Prosecutor. The Trial Court came to the conclusion that Giarsi Lal had gone out of the way to toe the line of the accused and his statement that he tried to take out the dead body by holding it from the head was a clear attempt to help the accused and the same could not be believed.

Reference was also made to the statement of Dr. J.L. Bhutani P.W. 9 who had stated about the possibility of hyoid bone fracturing in the process of the dead body being taken out with the help of neck either by pulling it with a rope or with hands could not be ruled out. He, however, stated that the associated injury could help in determining whether the fracture was ante-mortem or post-mortem in nature. The Trial Court found on the basis of evidence that both Dr. K.C. Jain and Dr. J.L. Bhutani had admitted that no injury was found on the seat of fracture of hyoid bone. In his cross-examination, Dr. K.C. Jain P.W. 1 had stated that it was not necessary that application of force on the neck resulting in fracture of hyoid bone must leave ecchymosis. He explained that direct force can result in fracture of hyoid bone firstly by applying force on chest upwards and secondly, by placing a cloth padding between the force and the neck. It was put to him that ecchymosis at the seat of fracture of the hyoid bone could also occur if the person were to fall from height on surface of water to which Dr. Jain replied in the negative. From the cross-examination of the doctors, therefore, hyoid bone could be fractured by

indirect application of force, i.e. on the chest upwards and absence of finger marks on the neck could also be explained if a cloth padding was used between the hands and the neck.

The Trial Court came to the conclusion that death in this case was due to strangulation with ante-mortem injuries including fracture of hyoid bone and that the death had taken place two to four days between death and post-mortem and this corroborated the prosecution case that the deceased was murdered on the evening of 5.1.1983 and the post-mortem report was carried out on 9.1.1983. The Trial Court, therefore, concluded that the theory of suicide stood negated firstly by the presence of injuries which were ante-mortem in nature; secondly, there was no material on record indicating any suicidal tendency on the part of the deceased and thirdly, it was well known that ladies are very much attached to their children and Geeta Devi and a son who was only about seven weeks old. In the absence of a compelling reason, therefore, she would normally like to live if for nothing else for the sake of her child.

On the perusal of evidence on record, the Trial Court further came to the conclusion that the parents of the appellant were not present when the offence was committed and, secondly, the conduct of the accused was not such as may be consistent with his innocence and thirdly, he made efforts to create evidence that the deceased was missing with a view to suggest that she had gone away to commit suicide. He made efforts to try to create piece of evidence which would ultimately support his innocence and the theory that his wife was mentally ill and has committed suicide but the same was false to his knowledge. The Trial Court also accepted and relied upon the extra-judicial confession stated to have been made to Bhagirath P.W. 16 on 10.1.1983. It may here be mentioned that the Trial Court did not think it sufficient to base a conviction on the testimony of Mehar Chand P.W. 7 to whom also extra-judicial confession was allegedly made. On the basis of the evidence of the parents of the deceased, the Trial Court came to the conclusion that the prosecution had clearly established the motive against the accused. The other factors which were taken into consideration by the Trial Court were that the accused according to his own admission in the report dated 7.1.1983 made to the police was last seen with the deceased and thereafter the dead body of the deceased was recovered from the well. There was also proximity of the said well to the house of the appellant at Narnaul, the distance between the well and the house only being less than 100 feet. The shawl and sandals of the deceased were also recovered at the instance of the accused and this, the Trial Court held also corroborated the prosecution case.

Keeping in mind the well settled principle that a conviction could be based in a case of circumstantial evidence only if the circumstances proved were of a clinching nature, the Trial Court came to the conclusion that the prosecution clearly established circumstances which taken together constituted a complete chain and the prosecution had clearly established the charge against the accused. The conclusion which was arrived at by the Trial Court was that the appellant caused the death of his wife Geeta Devi by strangulation and it must have been the appellant and none else who threw her dead body in the well to screen himself from legal punishment.

The appellant filed an appeal against the award of life imprisonment on his conviction under Section 302 I.P.C. by the Trial Court and the award of two years rigorous imprisonment under Section 201 I.P.C. It was contended

before the High Court that Geeta Devi had committed suicide by jumping into the well. In order to explain the fracture of hyoid bone, reference was made by the appellant's counsel to the statement of Giansi Lal P.W. 6 in an effort to show that the fracture took place at the time when the dead body was being pulled out from the well. The High Court, however, came to the conclusion that the medical evidence unmistakably pointed out to the fact that the deceased had been strangled to death and she had not committed suicide by jumping into the well. As far as Giansi Lal P.W. 6 is concerned, the High Court concluded that the said witness had probably been won over by the appellant. After taking the entire evidence into consideration and examining the contentions raised on behalf of the appellant, the High Court observed as follows:

"To sum up there is unmistakable evidence on the record that --

i) The appellant and his parents were dissatisfied with the dowry brought by the deceased.

ii) They also complained about the insufficiency of the gifts brought by the brothers of the deceased at the time of the chhuchhak ceremony.

iii) The appellant was an ill-tempered man. Not only that, he also used to censor the letters of the deceased so that she may not convey written information to her parents about the ill-treatment meted out to her at the residence of her in-laws.

iv) The deceased was strangled to death and the appellant lodged a false report with the police that the deceased was missing. He did this in order to cover up his own committed criminal acts.

v) After the commission of the crime, the appellant became panicky and took steps to have the matter settled with his father-in-law and when he failed to do so he made an extra-judicial confession before Bhagirath P.W. 16.

This evidence conclusively establishes the guilt of the appellant.

While deciding the appeal, the High Court took into consideration that the appellant was an educated man who belonged to the legal profession and Ramjilal P.W. 15 had spent considerable sum of money at the time of the marriage of the deceased and also when the ceremony took place on the birth of the child. The appellant was, accordingly, also ordered to pay a fine of Rs. 1,00,000/- so that Ramjilal P.W. 15 could be compensated to some extent.

Mr. Ganesh, learned counsel for the appellant contended that this is a case of circumstantial evidence and all the links in the chain are not established. He tried to point out that there was a contradiction in the testimonies of two doctors namely, Dr. K.C. Jain and Dr. J.L. Bhutani. He also submitted that the third member of the Board who conducted the post-mortem namely, Dr. O.P. Poddar should have been examined. The further contention was that when prosecution has cited a witness and if he is subsequently given up as having been won over, then this causes serious prejudice to the defence and amounts to violation of the principle of natural justice.

The effort of Mr. Ganesh obviously was to try to persuade this Court to re-appraise the evidence and come to a different conclusion. We find that the Trial Court as well as the High Court were conscious of the fact that this was a case of circumstantial evidence. Keeping in view the well established principles in mind the concurrent finding arrived at by both the courts below was that the appellant was guilty of murdering his wife. We have also carefully examined the record and we do not find that the concurrent findings call for re-appraisal of the evidence. This is more so when we find that the post-mortem report coupled with the medical evidence reached only to one conclusion namely, that homicide and not suicide had resulted in the death of the appellant's wife. It was contended that the evidence of Dr. Bhutani P.W. 9 did not support the prosecution inasmuch as it was deposed by Dr. Bhutani that the possibility of hyoid bone fracturing in the process of the dead-body being taken out with the help of neck, either by pulling it with rope or with hand could not be ruled out. In this context, Mr. Ganesh referred to the evidence of Garsi Lal P.W. 6 who had stated that when he tried to lift the dead body while taking it out of the well, the head slipped thrice. Both the courts below have not found the witness Garsi Lal P.W. 6 as reliable and his testimony has been rejected. As far as the evidence of Dr. Bhutani P.W. 9 is concerned, we do not find that the same is in any way in conflict or at variance with the post-mortem report. In the post-mortem report, it has been stated that the injuries on the body of the deceased were ante-mortem in nature. There was a fracture of the hyoid bone and both Dr. K.C. Jain and Dr. J.L. Bhutani stated that the said injury by itself was sufficient to cause death in the ordinary course of nature. In two specific questions, Dr. Bhutani P.W. 9 stated that "in this case, it is possible to rule out the possibility of death by drowning because of the presence of injuries on the person of the deceased as described. If the injuries as described on the deceased were absent, there was a rare possibility that it might not have been impossible to determine whether death was on account of drowning". In view of this categorical statement, an observation made by the witness that possibility of hyoid bone fracturing in the process of dead body being taken out does not in any way weaken the prosecution case. This was only his subjective opinion and does not run counter to the objective part of the post-mortem report namely, that the death was caused due to fracture of hyoid bone and the said injury was ante-mortem in nature. None of the symptoms which attached to death by drowning e.g. water in the lungs or in the stomach were present and Dr. J.L. Bhutani P.W. 9 in his examination-in-chief had categorically stated that the fracture of the hyoid bone was ante-mortem in nature and this corroborates the evidence of Dr. K.C. Jain P.W. 1 as well as the post-mortem.

As far as Dr. O.P. Poddar is concerned, he was only tendered for cross-examination without his being examination-in-chief. Though, Dr. O.P. Poddar was not examined-in-chief, this procedure of tendering a witness for cross-examination is not warranted by law. This Court in *Sukhwant Singh Vs. State of Punjab*, 1995(2) Scale 482 held that permitting the prosecution to tender a witness for cross-examination only would be wrong and "the effect of their being tendered only for cross-examination amounts to the failure of the prosecution to examine them at the trial". In the present case, however, non-examination of Dr. O.P. Poddar is not very material because the post-mortem

report coupled with the testimonies of Dr. K.C. Jain P.W. 1 and Dr. J.L. Bhutani P.W. 9 was sufficient to enable the courts to come to the conclusion about the cause of death.

In support of his contention that serious prejudice was caused to the appellant by non-examination of Phool Singh who had been cited by the prosecution as one of the witness, Mr. Ganesh relied upon *Stephen Senivaratne Vs. The King*, A.I.R. 1936 P.C. 289, *Habeeb Mohammad Vs. The State of Hyderabad*, 1954 (5) S.C.R. 475 and *State of U.P. and another Vs. Jaggo Alias Jagdish and others*, 971(2) S.C.C. 42. The aforesaid decisions can be of little assistance to the appellant in the present case. What was held by the Privy Council and this Court was that witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution and that failure to examine such a witness might affect a fair trial. It was also observed that all the witnesses of the prosecution need not be called. In the present case, the witnesses who were essential to the unfolding of the narrative had been examined. One of the facts which had to be established was that the body of the deceased was found in the well and the same was taken out by two labourers, namely, Giarsi Lal P.W. 6 and Phool Singh. The fact that this body was recovered from the well was proved by Giarsi Lal P.W. 6, among other witnesses, and Phool Singh who had apparently been cited as a witness for the same purpose was not examined. His non-examination cannot be regarded as causing any prejudice to the appellant. Our attention was also drawn to the decision of the Allahabad High Court in the case of *Sahabjan and another Vs. State of U.P.*, 1990 CrL. L.J. 980 where it was observed that the mere allegation that some witnesses were not prepared to support the prosecution case and had been won over by the accused would not be sufficient and that opportunity should be given to the court to assess their evidence and to come to such a conclusion. In that case the witnesses given up had been named as being the eye witness to the incidence and it is in that context the Court made the aforesaid observation. Non-examination of a witness who had been cited by the prosecution would of course result in an adverse inference being drawn in view of Illustration (g) of Section 114 of the Evidence Act and may in some cases even caused prejudice to the defence, but in the present case, Phool Singh who merely recovered the body from the well along with Giarsi Lal P.W. 6 was not such an important witness whose non-examination could be said to have caused any prejudice to the appellant.

In our opinion, the judgment of the High Court warrants no interference. Accordingly, the appeal is dismissed. The appellant will surrender to his bail-bonds and serve out his sentence in accordance with law.