

Udaipal Singh

Vs

The State of U. P.

Criminal Appeal No. 255 of 1968

(J.M. Shelat, I.D. Dua, S.C. Roy JJ)

07.09.1971

JUDGMENT

DUA, J. -

1. The facts giving rise to this appeal by special leave may briefly be stated.
2. Udaipal Singh, appellant, was admittedly married to Savitri Devi, deceased, in 1958 and since March, 1964 till her death which occurred on the night between April 18 and 19, 1964 she was staying in her husband's house in village Mundgaon in which her husband Udaipal Singh, appellant, her father-in-law Harnath Singh and her mother-in-law Bari Beti all lived together. She died an unnatural death in her bedroom which was also the bedroom of her husband on the night between April 18 and 19, 1964. Information about her death was lodged by her father-in-law Harnath Singh at the police station Mohammadabad, four miles away from Mundgaon at about 10.30 a.m. on April 19, 1964. That report deserves to be reproduced in extenso as recorded in the general diary. It reads :

"Time 10.30 a.m. Mohammadabad.

At this time Shri Harnath Singh son of Mahuker Singh Thakur of village Mandgaon which is at a distance of four miles from this police station and to its east came to the police station and informed that his son Udaipal Singh was clerk of Sri Babu Sigh Vakil of Fatehgarh. He used to go to Fatehgarh daily every morning. On the previous day when he was going there he found that his wife who belonged to Parbatpur, had not prepared his meals. The son abused his wife and left for Fatehgarh without taking any meals. He did not return to his house that evening. At about 8 or 9 p.m. his daughter-in-law informed his wife that she had some headache. She went to her room to lie on a cot and when she did not get up early that morning his wife went to her room and found that she was lying dead on her cot. She conveyed that information to him. He also went there and saw everything himself. In all probability the daughter-in-law in any mood has eaten something (poison) with the result that she is now dead.

An inquest would be held because it is reported to be a case of suicide."

Ganga Prasad Tripathi (P.W. 3) who was at that time Sub-Inspector (II) at the police station Mohammadabad there upon left for village Mundgaon and arrived at the appellant's house at about 12 noon. There he found Harnath Singh, father of the appellant, present at the door. The Sub-

Inspector then collected the panchas and found the dead body of Savitri Devi lying on a cot inside a room close to the courtyard. The dead body was covered with a chaddar. Smt. Bari Beti, mother of the appellant, was present in the house. She was asked by the Sub-Inspector to remove the chaddar so that the necessary investigation into the apparent cause of death could be held. But Bari Beti declined to comply with this request. After some time, however, she was persuaded by the Sub-Inspector and the panchas to do so. She then went inside the room whether the dead body was lying and removed the chaddar but not completely. She kept the face of the dead body covered. When the Sub-Inspector insisted on seeing the face for the purpose of preparing his report Harnath Singh, the father of the appellant, Jagdeep Singh, brother of Harnath Singh and others present objected to it saying that it was a question of family honour and prestige and that the face of the deceased could not be uncovered. When every effort made by the Sub-Inspector to persuade the people to comply with his request failed, he himself removed the chaddar from the face of the dead body and saw an incised wound on her face. One corner of her sari was also besmeared with blood. Harnath Singh and Bari Beti then moved away towards the courtyard. On enquiry by the Sub-Inspector as to what they had to say about the injuries on the face of the deceased Harnath Singh and Bari Beti kept quiet and gave no reply. The atmosphere seems to have become tense and the Sub-Inspector found it to be very difficult to continue the examination of the injuries on the body of the deceased. Harnath Singh and Bari Beti as also others present, started pleading with the Sub-Inspector not to send the body for post-mortem. Ultimately the panchas recorded their separate opinion on the report prepared by the Sub-Inspector. This opinion reads :

"Smt. Savitri Devi died as a result of her having taken some poison."

3. The Sub-Inspector disagreed with this opinion and prepared his report (Ex. Ka-9). The dead body was then sent to the mortuary for post-mortem examination. The Sub-Inspector also took the following other precautions. Some water in a small katori (bowl) and phial which were kept beneath the cot of the deceased were duly sealed in the presence of the witness. Some stains on the ground indicating that somebody had vomitted there were also found by the Sub-Inspector. A sample of that earth was also taken and duly sealed. The doctor who was to perform the post-mortem examination was directed to preserve the viscera. All these articles, namely, the blood-stained clothes of the deceased, the viscera, the earth having dirty stains, the water and the phial were sent to the chemical examiner for analysis and report. No chemical poison was detected in any of the aforesaid articles. The clothes of the deceased were, however, found to be stained with human blood.

4. The post-mortem examination disclosed the following external antemortem injuries on the person of the deceased :

- "1. Incised wound 5 1/2"x 3" bone extending from left cheek to right cheek. The whole of lower lip, left 1/3 of upper lip and the sort tissues up to chin had been cut off and were missing. This wound was caused by some sharp edged weapon.
2. Contusion 6 1/2" x 4 1/2" on the right side of face and right temple with econhymosis of upper and lower side of right eye.
3. 1st degree burn 1 1/2" x 1" on the right side of perinium.
4. 1st degree burn 3" x 1 1/2" on the right side of labrum majora.
5. 1st degree burn 1 1/2" x 1" on the left side of perinium adjacent to vaginal orifice.

4. 1st degree burn 4"x 1 1/2" on the left labrum majora and adjacent parts."

5. The internal examination revealed that both the lungs, larynx, trachea and bronchi were congested. In the opinion of the doctor death was due to shock and haemorrhage caused by the injuries and these injuries were sufficient in the ordinary course of nature to result in death.

6. After receipt of the report of post-mortem examination the police became certain that it was a case of murder with the result that on April 27, 1964 a case of murder was registered and after investigation Harnath Singh, his wife Bari Beti and their two sons Udaipal Singh and Muneshwar Singh were persuaded against. The committing Magistrate discharged Muneshwar Singh but committed the other three to stand their trial under Section 302 read with Section 34, I.P.C.

7. The learned Sessions Judge found all the three guilty of the offence charged and on conviction sentenced each of them to imprisonment for life. The trial court relied on -

(1) motive;

(2) place and time of the murder of the deceased;

(3) presence of the three accused persons near the house at the time of the occurrence;

(4) conduct of the three accused in keeping quiet throughout the night and the conduct of Harnath Singh, accused, in giving wrong information to the police and the conduct of both Harnath Singh, accused, his wife in not helping the investigating authorities and also in setting up his alibi; and

(5) Nature of the injuries found upon the person of the deceased.

8. On appeal the High court held Udaipal Singh guilty of the murder of his wife for the following reasons;

(1) He had very strong motive to get rid of his wife Smt. Savitri with whom his relations were very much strained for the four years preceding the murder.

(2) He was present in village Mundgaon and must have been in his own house when the occurrence took place. He had, therefore, the opportunity to commit the murder.

(3) The place of occurrence was his own room.

(4) His conduct after the occurrence had taken place and the false explanation furnished by him. It was his duty to have given proper explanation as to how and in what circumstances Smt. Savitri met her death. However, he came forward with a false explanation and a false plea of alibi.

(5) In the very first report which Harnath Singh made to the police an attempt was made to create an alibi for Udaipal Singh, That also clearly indicated that Udaipal Singh was the murderer and had to be saved.

He was accordingly held guilty under Section 302, I.P.C. or in the alternative under Section 302, read with Section 34, I.P.C. The other two accused persons namely his parents were held not to have as strong a motive as the present appellant had in getting rid of the deceased. Though in the opinion of the High Court there were grave suspicions against the parents as well they were given benefit of

doubt and acquitted of the charge of murder. Harnath Singh was held guilty of an offence under section 201, I.P.C. and sentenced to rigorous imprisonment for three years. Bari Beti was given benefit of doubt for this offence as well.

9. Special leave application on behalf of both Harnath Singh and Udaipal Singh was filed in this Court on September 17, 1968. On November 6, 1968 an application was filed on behalf of the petitioners praying for permission to take an additional ground of appeal objecting to the admissibility of evidence of the letters said to have been written by the deceased to her father. On November 7, 1968 this Court declined special leave to Harnath Singh but granted the same to Udaipal Singh, appellant and also permitted him to file the additional grounds of appeal.

10. In this Court, Shri Yogeshwar Prasad strongly contended that the appellant's case was distinguished by the High Court from that of his father and mother on the ground only of his having stronger motive for getting rid of the deceased. Letters written by the deceased to her father on which alone the evidence of motive is founded were contended to be inadmissible in evidence because they do not fall under section 32(1) of the Indian Evidence Act. He further contended that the circumstantial evidence did not conclusively establish the appellant's guilt beyond reasonable doubt because it did not exclude reasonable possibility of his innocence.

11. Now, from the very nature of things apart from the inmates of the house there could be no eye-witness of the occurrence of this case and the prosecution had, therefore, necessarily to rely on circumstantial evidence only. In cases where only circumstantial evidence is available at the outset one normally starts looking for the motive and the opportunity to commit the crime. If the evidence shows that the accused having a strong enough motive had the opportunity of committing the crime and the established circumstances on the record considered along with the explanation - if any - of the accused, exclude the reasonable possibility of anyone else being the real culprit then the chain of evidence can be considered to be so complete as to show that within all human probability the crime must have been committed by the accused. He may, in that event, safely be held guilty on such circumstantial evidence. On behalf of the appellant this proposition was not disputed. According to him the letters written by the deceased to her father alone distinguish the appellant's case from that of his parents and if those letters are excluded from consideration, being inadmissible in evidence then he would also be entitled to acquittal like his parents. In our opinion, even excluding the letters written by the deceased to her father there is ample evidence showing the strong motive on the part of the appellant to get rid of his wife. The letter written by the appellant to his mistress (Ex. Ka-8) quite clearly brings out the feeling of disgust which he cherished towards the deceased. The admissibility of this letter has not been questioned on behalf of the appellant before us, and in our opinion, rightly so. When confronted with this letter the appellant came out with the explanation that he had written it in order merely to tease his wife. This explanation did not appeal to the Court below, and in our opinion, quite rightly. The trial Court considered this explanation to be absurd and an afterthought. In the opinion of the High court this explanation had only to be stated to be rejected. This letter, according to that Court, indicated that the appellant wanted to get rid of his wife. The circumstances which induced the High Court to uphold the appellant's conviction have already been reproduced earlier. These circumstances were, in our opinion, rightly held by the High Court to be inconsistent with the innocence of the appellant and incapable of any other hypothesis than that of the appellant's guilt. Whether or not his parents were also guilty along with him need not be considered because they have been acquitted of the charge of murder and there is not appeal against their acquittal. The appellant's culpability on the facts and circumstances of this case is unaffected by the acquittal of his parents. This appeal fails and is accordingly dismissed.

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