

Khatri Hemraj Amulakh

Vs

The State of Gujarat

Civil Appeal No. 84 of 1969

(J. M. Shelat, H. R. Khanna JJ)

07.02.1972

JUDGMENT

KHANNA, J. -

1. Khatri Hemraj Amulakh (27) was tried in the court of Sessions Judge Palanpur on a charge under Section 302, Indian Penal Code for the murder of his wife Bai Thakari (20) and was acquitted. On appeal filed by the State, the High Court of Gujarat set aside the acquittal of the accused, convicted him under Section 302, Indian Penal Code and sentenced him to undergo imprisonment for life. The accused has now come up in appeal to this Court by special leave.

2. The prosecution case is that Bai Thakari deceased was the daughter of Lakhmanji (P.W. 7). She was married to the accused about two years prior to the present occurrence. After the marriage the accused was not on speaking terms with his father-in-law and did not allow Thakari deceased to visit her father's house. The deceased complained to her father that the accused maltreated her.

3. Till about twenty days before the present occurrence, the accused along with Thakari deceased as well as his younger brother Magan Lal (P.W. 3) and the latter's wife Bai Dahi (P.W. 4) used to live with his elder brother Daya Ram in Sindhi Colony in the town of Deesa. About twenty days before the occurrence the accused and Magan Lal separated from Daya Ram and along with their wives started living in a house in Mata-Sheri, another locality of that town. The accused and Magan Lal jointly ran a small shop at a short distance from their house.

4. On September 23, 1967, at about 10 a.m., it is stated, Dharamshi (P.W. 8), whose shop is situated near the house of the accused, saw the accused sitting on a stone opposite Dharamshi's shop. The accused appeared to be in a state of excitement at that time and did not speak to any one. After sitting there for about an hour, the accused met Shiv Lal, whose shop is also near Dharamshi's shop. Shortly thereafter, the accused went to his house. At about 12 noon on that day, the accused was seen running towards the police station by Natvar Lal (P.W. 5) who has a Paan-Biri shop in Gandhi Chowk, Deesa. The clothes of the accused were at that time stained with blood. The police station is at a distance of about a furlong from the house of the accused. Govind Lal (P.W. 2) also saw the accused on that day running with blood stains on his clothes towards Gandhi Chowk. The accused arrived at the police station Deesa at about 12.15 p.m. and made confessional statement Ex. 27 to Sub-Inspector Rojia. The Sub-Inspector prepared first information report Ex. 28 on the basis of statement Ex. 27. The Sub-Inspector also took into possession the blood-stained clothes of the accused and put them in a sealed parcel. The hands and legs of the accused were found stained with blood. No injuries were noticed on his person. The accused then took the Sub-Inspector to his house and pointed to the dead body of Thakari lying there. A knife was also lying near the dead body. The

Sub-Inspector prepared the inquest report and sent the dead body for post-mortem examination. Post-mortem examination was performed on the dead body by Dr. Hargovindbhai at 5 p.m. on that day. The clothes of the accused were sent to the chemical analyser whose report showed that they were stained with blood. According to the report of the Serologist, the blood in question was of human origin.

5. At the trial the accused in his statement under Section 342 of the Code of Criminal Procedure denied the prosecution allegations about his having murdered his wife or about his having before that maltreated her. The accused admitted that on the day of occurrence he was seen running towards the police station with stains of blood on his clothes and gave the following version :

"At that time I was going to police station. My clothes were stained with blood. At that time I had gone home from my shop and found the door of my house closed. So again I went to my shop, and then again I returned. At that time I thought that my wife might have gone to answer the call of nature and the door must have been closed. Then, I opened the door, and my wife appeared to have been murdered. Then in order to see whether she was alive or dead, I tried to lift her and at that time my clothes and persons were stained with blood. At that time her both the hands were bent. She had cuts on her neck. So I was going running to inform the police about this, and at that time Govind had seen me going to the police station. I informed the P.S.I. that someone has killed my wife. I told the P.S.I. that I did not know as to who has murdered by wife. Then P.S.I. abused me, slapped me, and told me that I was the murderer of my wife. Then I was arrested. Then, I was taken to the mamlatdar after about ten or twelve days. Mamlatdar had asked me as to what I was knowing about the offence ? I told him that I knew nothing and I was threatened to confess, but I did not confess. On that day old chappels were lying near my house."

6. The learned Sessions Judge on consideration of the evidence held that the first information report given by the accused as per statement Ex. 27 was not admissible in evidence. With regard to the blood stains on the clothes of the accused, the explanation given by him was found by the Sessions Judge to be plausible. It was also held that there was no sufficient evidence to show that the accused and his wife were alone in the house at or about the time of the occurrence. The prosecution allegation that the accused was found to be sitting in a state of excitement before the present occurrence was, in the opinion of the Sessions Judge, a flimsy circumstance which did not connect the accused with the crime. The case against the accused was held to have been not proved beyond reasonable doubt. He was accordingly acquitted.

7. On appeal the learned judge of the High Court found that the evidence about the maltreatment of Thakari deceased by the accused was not satisfactory. It was, however, found that the accused had not been allowing Thakari deceased to go to her father's house. The High Court referred to the evidence of Dharamshi (P.W. 8) and came to the conclusion that the accused had shortly before the occurrence gone inside his house. The accused, in the opinion of the High Court, was alone in the house along with the deceased at the time of the occurrence. The explanation furnished by the accused regarding the blood stains on his clothes was found to be false. His conduct after the occurrence, in the view of the High Court, pointed to his guilt. In the result, the acquittal of the accused was set aside and he was convicted for the offence under Section 302, Indian Penal Code.

8. In appeal Mr. Chari, on behalf of the appellant, has argued that there is no cogent evidence on the record to show that the accused was present with the deceased at the time of the present occurrence.

As regards the blood stains on his clothes, the learned counsel has submitted that satisfactory explanation was furnished by the accused. The above stand has been controverted by Mr. Dholakia on behalf of the State. After having been taken through the material on record, we find considerable force in the submissions made by Mr. Chari.

9. It cannot be disputed that Thakari deceased died as a result of murderous assault. Dr. Hargovindbhai, who performed the post mortem examination of the dead body of Thakari deceased, found seven incised wounds on her neck. The injuries, according to the doctor, were sufficient to cause death and resulted in her instantaneous death. The case of the prosecution is that it was the accused who had caused the injuries to the deceased as a result of which she died. The accused, however, has denied this allegation. In order to prove its case against the accused, the prosecution has not produced any ocular evidence but has relied upon the circumstance that the accused was alone with the deceased at the time of the occurrence. The only evidence adduced by the prosecution in this connection consists of the statement of Dharamshi (P.W. 8).

10. According to the statement of Dharamshi recorded in Gujrati, his tailoring shop is near the hose of the accused. On the day of occurrence at about 10 a.m. Dharamshi saw the accused sitting on a stone opposite his (Dharamshi's) shop. The accused appeared to be in a state of excitement. He was looking to the ground and was not speaking with any one. After sitting like that for about an hour; the accused met Shiv Lal whose shop is also nearby. Thereafter, the accused went inside his house. Dharamshi later on that day learnt of the murder of Thakari deceased. According, however, to the English record of the statement of Dharamshi, the accused after sitting on the stone for about an hour in a state of excitement met Shiv Lal. The accused and Shiv Lal then went together to the house of the accused. The learned judges of the High Court relied upon the Gujrati version of the statement of Dharamshi and accepting that to be correct, came to the conclusion that the accused was alone with Thakari deceased at the time of the present occurrence. In this connection, we find that though Dharamshi has deposed in court that the accused was in a state of excitement, Dharamshi made no mention of the accused being in the state of excitement in his statement recorded by the police. It would thus appear that Dharamshi has tried to improve upon his police statement. Shiv Lal, with whom the accused was closetted, according to the Gujrati version of Dharamshi's statement, and who also went along with the accused inside the house, according to the English version, has not been examined as a witness in the case and there is nothing on the material before us to indicate as to why Shiv Lal was not examined by the prosecution. The non-examination of Shiv Lal who was a very material witness would give rise, in our opinion, to an inference that, if examined, he would not have supported the prosecution evidence. We thus find that a very important piece of evidence which could have shown as to whether the accused went inside his house shortly before the occurrence is missing in this case. In any case we do not find it safe to act upon the uncorroborated statement of Dharamshi.

11. Another difficulty in relying upon the Gujrati version of the statement of Dharamshi is that the question which was put to the accused when he was examined under Section 342 of the Code of Criminal Procedure related to his going inside his house along with Shiv Lal. No question was put to the accused in the course of that statement that he alone had gone inside house. It would thus appear that the most crucial piece of incriminating evidence upon which the conviction of the accused is sought to be founded was not put to the accused and he was not called upon to explain that circumstance. On the contrary, what was put to the accused was that he had gone inside his house along with Shiv Lal. This fact, assuming it to be correct, would not warrant the conclusion that the accused was alone with the deceased at the time of present occurrence.

12. As regards the prosecution evidence that the accused after the occurrence was seen running towards the police station with blood stains on his clothes, we are of the opinion that the accused has furnished a plausible explanation. According to the accused, when he came to his house and found his wife with a number of injuries on her neck, he tried to make her sit in order to find out whether she was alive or not. We find nothing unnatural or improbable in the above conduct of the accused. It is obvious from the Gujrati version of statement of the accused, to which a reference has been made by the High Court, that the accused wanted to make sure at that time as to whether the deceased was alive or not. There was, in our opinion, no element of improbability in the above conduct of the accused or his subsequent conduct in running with the blood-stained clothes to the police station to immediately inform the police about the murder of his wife.

13. Coming now to the question of motive, we find that the evidence consists of the statement of Lakhmanji (P.W. 7) who has deposed that Thakari deceased used to complain to him that the accused was maltreating her. Lakhmanji, however, admits that he never stated before the police that the deceased had complained to him regarding maltreatment by the accused. In view of that, the statement in court of Lakhmanji about the complaint made by the deceased regarding maltreatment would smack of after-thought and not carry much weight. As regards the evidence of Lakhmanji that the accused was not on speaking terms with the witness and did not allow Thakari deceased to go to Lakhmanji's house, we find that this circumstance, even if true, would not show estrangement between the accused and the deceased. On the contrary, this circumstance would point to the strained relations between the accused and Lakhmanji (P.W. 7). No motive on the part of the accused to murder the deceased can consequently be held to have been proved.

14. The confessional statement, Ex. 27, which was made by the accused to Sub-Inspector Rojia and which form the basis of the first information report was not admissible in evidence as the same was hit by Section 25 of the Indian Evidence Act. We may in this connection refer to the case of Aghnoo Nagesia v. State of Bihar, ((1966) 1 SCR 134 : AIR 1966 SC 119 : 1966 Cri LJ 100) wherein this Court held that no part of a first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of the confessional statement. The statement could, however, be admitted to identify the accused as the maker of the report. The part of the information as related distinctly to the fact discovered in consequence of the information could also be admitted into evidence under Section 27 of the Indian Evidence Act if the other conditions of that section were satisfied.

15. We, therefore, accept the appeal, set aside the judgment of the High Court and restore that of the Trial Court. The accused-appellant is consequently acquitted.

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