

Smt. Bhagwan kaur

Vs

Shri Maharaj Krishan Sharma and Others

Criminal Appeal No. 205 of 1969

(H. R. Khanna, Y. V. Chandrachud JJ)

25.10.1972

JUDGMENT

KHANNA, J. -

Maharaj Krishan Sharma (34) and his mother Shanti Devi (55) were convicted by the Additional Sessions Judge, Delhi, under Section 302, read with Section 34, Indian Penal Code on the allegation that they caused the death of Shanti Devi alias Prem Lata (25), wife of Maharaj Krishan accused, by forcibly pouring sulphuric acid in her mouth, and were sentenced to undergo imprisonment for life. On appeal the Delhi High Court acquitted the two accused by giving them the benefit of doubt. The present appeal was thereafter filed by Bhagwan Kaur, mother of Shanti Devi deceased, by special leave against the acquittal of the two accused respondents.

2. The prosecution case is that Shanti Devi deceased was the daughter of P.W. 5 Dayal Das, Sub-Inspector C.I.D. of Delhi. The deceased was married to Maharaj Krishan accused, who is a science teacher in a Delhi school, on February 20, 1963. The accused, it is stated, did not feel happy with the dowry brought by the deceased. The relations of the deceased with her husband became strained and the deceased complained of ill-treatment by the two accused. On account of the strained relations the deceased on occasions would go to her father's house and stay there for some time, but as it was she would again come back to the house of the accused. A report was also once lodged with the police by the deceased against the accused for ill-treatment. In May, 1964, Maharaj Krishan accused obtained a writing from the deceased in which she stated that she wanted divorce.

3. Maharaj Krishan accused also ran a private college known as N.C. College at his residence in C/96, New Rajinder Nagar, New Delhi. On January 13, 1965, Hanuman Singh peon of that college purchased for the college from the shop of Lajpat Rai (P.W. 10) one quart of sulphuric acid with a concentration of 98.9 per cent. in a bottle.

4. Towards the end of June, Maharaj Krishan accused sent a message through the deceased to his father-in-law that he wanted some money for going to the United Kingdom as he had obtained an employment voucher from the United Kingdom. Maharaj Krishan was, however, told by his mother-in-law Bhagwan Kaur (P.W. 1) that his demand for money could not be met. On July 21, 1965, it is stated, Shanti Devi deceased sent a telephonic message to her mother Bhagwan Kaur from the house of the accused that she was being beaten by her husband. Bhagwan Kaur then went to the house of the accused. Dayal Das also reached there. Shanti Devi then told her parents while weeping that she had been beaten by her husband as he wanted money for going abroad. Maharaj Krishan accused admonished the deceased and again made a demand for money for going to the United Kingdom. Maharaj Krishan was, however, told by the parents of the deceased that they could not pay him

anything.

5. The present occurrence took place on July 23, 1965. On that day near about noon time, according to the prosecution case, Shanti Devi accused went to the house of Sushila Devi (P.W. 9). The house of Sushila Devi is opposite to that of the accused. Shanti Devi accused then asked Sushila Devi to accompany her to the house of the accused. Sushila Devi went to that house after a few minutes and found the deceased lying on a carpet in the room. The deceased was crying and screaming at that time. Sushila Devi felt burning sensation below her feet when she approached near the deceased. She also felt burning sensation when she sat on the sofa. Shanti Devi accused then abused the deceased. Sushila Devi noticed forth coming out of the mouth of the deceased. The deceased uttered twice the word "Radhaswami", which was the name of her Guru and thereafter she became unconscious. Maharaj Krishan accused was also present in the house at that time and was busy in making telephonic call to a Doctor and asking him to come immediately to see his wife.

6. Dr. Tilak Raj Chadha (P.W. 30), homeopathic physician, is the old family Doctor of the accused. According to this Doctor, at about 2 p.m. on that day he received a telephonic message from Maharaj Krishan accused that there as a serious case and that the Doctor must reach his (Maharaj Krishan's) house at once. Dr. Chadha was having his lunch and told Krishan that he would come after finishing the lunch. Maharaj Krishan, however, requested Dr. Chadha not to finish the lunch but to come at once as the case was very serious. Dr. Chadha, who resides at a distance of only a furlong from the house of the accused, immediately went to the house of the accused. Maharaj Krishan, who was standing at the entrance of the house, then told Dr. Chadha that the deceased had taken something and that Maharaj Krishan had just come from the school. Dr. Chadha went inside and saw that the deceased was lying on the carpet and some saliva was coming out from her mouth. Acid was found on the carpet near the head of the deceased. Dr. Chadha then told the accused to place the deceased on a cot and remove her to the hospital as the case was beyond his control. Dr. Chadha also informed the police telephonically from the house of the accused that there was a case of acid poisoning and Police should reach at once. The deceased was semi-conscious at that time and crying. Her tongue was charred and she could not speak. A taxi was then brought and the deceased was put in that taxi and taken to the Willingdon Hospital. Head Constable Sita Ram (P.W. 29) arrived at the house of the accused when the deceased was being taken in the taxi to the Willingdon Hospital. Head Constable Sita Ram also went in the taxi along with Dr. Chadha, Maharaj Krishan accused and the deceased to the Willingdon Hospital.

7. On arrival in the hospital, Head Constable Sita Ram made an application to the doctor for recording the statement of the deceased, but the doctor said that she was unfit to make a statement. A.S.I. Hem Raj (P.W. 30), on coming to know of the telephonic message, first went to the house of the accused and, on being told that the deceased had been removed to the Willingdon Hospital, went there. The Assistant Sub-Inspector met Maharaj Krishan accused in the hospital and found him to be very much upset.

7-A. At about 4.30 p.m. on that day Dayal Das (P.W. 5) received a telephone message from Rajinder Nagar Police Station that his daughter had been admitted in the Willingdon Hospital in a serious condition. Dayal Das, accompanied by his wife Bhagwan Kaur, then went to the hospital and found the deceased lying in the casualty Department with serious burns over her face and chest. Maharaj Krishan accused was also present at that time outside the hospital. Keshava Nand, who is cousin of Bhagwan Kaur, and his wife Kamla (P.W. 2) also reached the hospital. At about 11 p.m. on that night Shanti Devi deceased was removed to the female ward. Bhagwan Kaur went with the deceased to the ward. Kamla sat in the verandah of that ward.

8. At about mid-night hour, it is alleged, Shanti Devi deceased regained consciousness and opened her eyes. Bhagwan Kaur asked the deceased as to what had happened, but the deceased could not speak and made a gesture indicating that she would like to write something Bhagwan Kaur then went to the Doctor's room and found nobody present there. Bhagwan Kaur picked up a Piece of paper which was lying on the floor of that room. She also picked up pan lying on the table. Bhagwan Kaur on return supported the deceased by sitting by her side and the deceased started writing on the paper. Bhagwan Kaur put a spit-pan upside down under the paper with a view to support it. After writing something the deceased shook the pen indicating that there was no more ink in it. Bhagwan Kaur then brought another pen from the table in the Doctor's room and with the pen, the deceased wrote something more. After the deceased had completed the writing, Bhagwan Kaur took the pen back to the doctor's room and placed it on the table. The writing of the deceased is P.W. 1/A and is in Hindi. It was signed in Hindi by the deceased as Shanti Devi. The deceased also appended her signature on it in English. The writing was to the following effect :

"I am in senses now. A quarrel took place at my house yesterday and my husband asked me that he had no connections with me and that I should go to my parents. I did not go. Thereupon my (husband) caught hold of my hands forcibly and my mother-in-law put some drug in my mouth forcibly with her hands, some of which got into (my mouth) and some scattered at the ground.

Written by : Shani Sharma (Shanti Sharma Maharaj) Shanti Devi Sharma c/o Maharaj Krishna Sharma (Husband Name).###

9. Bhagwan Kaur, according to the prosecution case, is illiterate and could not read what had been written by Shanti Devi deceased. When Bhagwan Kaur insisted upon the deceased speaking something, the deceased told Bhagwan Kaur that the two accused had put acid on her tongue. Bhagwan Kaur then started weeping whereupon Kamla came inside. Kamla too was told by Shanti Devi deceased that she had been forcibly given something in her mouth and that she had given a writing to her mother. Soon thereafter Bhagwan Kaur became unconscious and regained consciousness at 5 a.m.

10. The condition of Shanti Devi deceased deteriorated in the morning, and she died at about 10.45 a.m.

11. A.S.I. Hem Raj first prepared inquest report (P.W. 5/J) in the presence of the two accused. In the aforesaid inquest report, the Assistant Sub-Inspector recorded the statements of the two accused. Maharaj Krishan accused, in the course of his statement in the inquest report, stated that there use to take placed petty quarrels between him and his wife, who had not given birth to any child, but the matter used to be patched up. On July 23, 1965, according to Maharaj Krishan, he told the deceased at the time he was taking meals about his proposed visit to England. Shanti Devi accused was also present at that time. The deceased then tried to dissuade Maharaj Krishan from going to England but he advised her to complete her studies and pass B.A.B.T. examination during the period he remained abroad. Shanti Devi accused then went out. Maharaj Krishan also went towards the kitchen to leave the utensils there. Maharaj Krishan then heard cries of the deceased. Both he and his mother rushed to the spot where the deceased was present. The deceased then pointed towards a bottle containing acid lying in the almirah and told the accused that she had taken acid out of that. Maharaj Krishan also noticed some stains of acid scattered in the room. Maharaj Krishan immediately rang up Dr. Chadha. The Doctor sent a report to the police station with the consent of the Maharaj Krishan. The deceased was then taken to Willingdon Hospital. To similar effect was the statement of Shanti Devi

accused.

12. According to A.S.I. Hem Raj, at about 2.45 p.m. Bhagwan Kaur made a statement (P.W. 1/B) to him. In the course of that statement Bhagwan Kaur referred to the previous strained relations of the accused with the deceased. Bhagwan Kaur also made reference to the writing to dying declaration (P.W. 1/A) by the deceased during the night as well as to the oral statement of the deceased to Bhagwan Kaur. Bhagwan Kaur at the same time handed over dying declaration (P.W. 1/A) to A.S.I. Hem Raj. The Assistant Sub-Inspector then prepared another inquest report (P.W. 5/D) in which he recorded the statement of Bhagwan Kaur and Dayal Das. A case was registered on the basis of the statement (P.W. 1/B) of Bhagwan Kaur at Police Station Rajinder Nagar at 3.25 p.m.

13. Post-mortem examination on the body of Shanti Devi deceased was performed by Dr. B. L. Handa at 2.30 p.m. on July 25, 1965. The Doctor expressed the opinion that the death of the deceased was due to the corrosive poisoning probably by acid. He also expressed the view that the acid of that much quantity could not be forced into the stomach by somebody else. The case was thereafter investigated by A.S.I. Hem Raj (P.W. 33) and Inspector Jagdish Kumar (P.W. 35). Writing (P.W. 1/A) was sent to Dr. S. K. Sharma Government Examiner of the questioned Documents. Dr. Sharma expressed the opinion that there was similarity in writing (P.W. 1/A) and other documents containing the admitted writing of Shanti Devi deceased.

14. On February 17, 1966 the police submitted a report to the magistrate that the case should be cancelled as the evidence indicated that the death of the deceased was the result of suicide. Shri Jagmohan Magistrate then passed an order in accordance with that report. On July 1, 1966 Bhagwan Kaur filed a complaint against the accused under Section 302 read with section 34, Indian Penal Code on the above allegations.

15. At the trial the two accused, while not denying the strained relations with the deceased, stated that the deceased had died because she had herself swallowed sulphuric acid. According to the accused, the sulphuric acid was not administered to her. No evidence was produced in defence.

16. Learned Additional Sessions Judge held that the death of Shanti Devi deceased was caused by the accused in the manner stated by her in dying declaration (P.W. 1/A). Evidence about the oral dying declaration of Shanti Devi deceased to Bhagwan Kaur and Kamla was not accepted.

17. On appeal the learned Judges of the High Court referred to the different circumstances of the case and found that those circumstances pointed to the conclusion that the deceased had died as a result of suicide. As regards the dying declaration (P.W. 1/A), the learned Judges took the view that there was inherent weakness and improbabilities which furnished intrinsic evidence against the acceptances of the dying declaration. Those weaknesses were enumerated as under :

"(1) It starts with the words 'At this time I am in senses.' It is rather unusual that a person in that condition would extend that type of the assurance or declaration which appears to be an effort to lend a colour of genuineness.

(2) The details about her husband having asked her to go to her parents also brings in an element of doubt because normally a person in that condition will avoid details.

(3) The letter contains the word "Lekhak" which means "the writer". The Signature in Hindi are not complete as it is only signed as "Shanti Sharma". Against the Hindi

signatures there is bracket and then she is alleged to have signed in English "Shanti Sharma Maharaj". Again at the back of the letter she has signed in English as "Shanti Devi Sharma c/o Maharaj Krishan Sharma (Husband Name). The last of the abovementioned writing shown the meticulous care with which the identity of the husband is sought to be established. I find it difficult to accept that the patient in that agency would add the words such as 'the writer', repeat her signatures in English and the word 'Maharaj' also which is not found in any of her admitted letters such as Exhibits (P.W. 5/G), P.M. and (P.W. 5/F), and write what is written at the back of the paper.

(4) The writing in the letter is in a firm hand which is inconsistent with the writing of a person in Shanti Devi's condition.

(5) The incomplete signatures as 'Shanti Sharma' cast a doubt in my mind because a person who could write so much would not have normally made a mistake in putting down complete Hindi signatures."

18. We have heard in this Court, Mr. Ghurcharan Singh on behalf of the appellant and Mr. Noordin on behalf of the respondents and are of the opinion that the present appeal is devoid of any merit.

19. It is the common case of the parties and is provided by the evidence of Dr. Handa that Shanti Devi deceased died due to corrosive acid poisoning. Dr. Handa, who arrived at this conclusion, found at the time of post-mortem examination that both the lips of the deceased showed acid burns. Two streaks of acid, each 2" long and 1/3" broad, were found present on either side of the chin. Small acid burns were present on the forehead, left cheek and chest. On internal examination, the doctor found that the inner aspect of the lips, the lining of the oral cavity and tongue were corroded. The teeth were chalky white. Food pipe showed corrosion of mucus. Stomach was charred black and corroded. It had three perforations and the acid was found to have gone to the peritoneal cavity, leaving burns on the surface of the liver and adjacent structures. Stomach wall was friable and was empty. Duodenum was also partly corroded. Reaction of the burns was strongly acidic. The quantity of acid poured into the mouth, in the opinion of the doctor, might be between half an ounce to one ounce.

20. According to the prosecution case, it were the accused who forcibly poured acid into the mouth of the deceased. As against that, the defence version was to the effect that the deceased committed suicide by drinking acid. The High Court on appreciation of the evidence came to the conclusion that the various circumstances of the case pointed to the inference that the death of the deceased was the result of suicide. This court in an appeal under the Article 136 of the Constitution does not normally reappraise evidence unless it finds some glaring infirmity in the judgment of the High Court as might have resulted in miscarriage of justice. No such infirmity has been brought to our notice. On the contrary, we find that the High Court has properly appraised the evidence and has arrived at its conclusion in a well-reasoned judgment.

21. No eye-witness of the occurrence has been produced by the prosecution because, according to it, no one else was present at the time the acid was forcibly poured into the mouth the deceased. To bring the charge home to the accused, the prosecution has, however, relied upon the dying declaration (P.W. 1/A) alleged to have been written by the deceased at about mid-night hour in the female ward of Willingdon Hospital after the deceased had regained consciousness. The prosecution has further relied upon the oral dying declaration said to have been made by the deceased at first to

her mother Bhagwan Kaur (P.W.) and the thereafter of the Kamla (P.W.) in the female ward of the hospital during the night. The evidence about the oral dying declaration was rejected by both the trial court as well as the High Court. Regarding the written dying declaration, the trial court accepted the prosecution evidence, but the High Court found the same to be full of infirmities and improbabilities, Which have already been enumerated earlier. Nothing cogent has been brought to our notice to take a view different from the High Court.

22. Apart from the infirmities and improbabilities pointed out by the High Court, we find that the salient features of the evidence all point to the conclusion that the death of the deceased was the result of suicide and was not homicidal. We may now refer to those features.

23. According to Dr. Handa, who performed post-mortem examination on the body of the deceased, the quantity of acid which was found in the stomach of the deceased was so much that it could not be poured by someone else. The Doctor added that the cases of homicidal administration of sulphuric acid by force were very rare. If the victim, according to Dr. Handa, is overpowered forcibly and a third person pours acid mechanically by pulling the tongue out to the acid can reach the stomach but not the extent so as to reach the stomach and beyond, as was the case with the deceased. The acid poured into the mouth of the deceased was not to less than half an ounce. The doctor also did not find any marks of injuries on the body of the deceases other than the burns. If the deceases had been held forcibly by one of the accused and the other accused had poured acid into her mouth, the deceased, in our opinion, must have offered some resistance. In such an event, some injuries in the nature of abrasions or scratches must have been found on the body of the deceased. The evidence of Dr. Handa shows that no such injuries were found on the body. The material on the record also indicates that no such injuries were found on the person of the accused. The medical evidence thus belies the prosecution version of the occurrence.

24. The opinion of Dr. Handa that it was a case of suicide and not homicide is in consonance with the views expressed in standard books on medical jurisprudence. The Taylor's Principles and Practice of the Medical Jurisprudence, Twelfth Edition, at page 235 it is said that sulphuric acid is used for suicidal purposes and accidents occur as a result of it having been mistaken for some other liquid. According to Modi's Medical Jurisprudence and Toxicology, Fifteenth Edition, Page 481, acid may be taken for suicidal purposes. It is further stated :

"Owing to its acid taste and physical changes brought about it the food it is not possible to use it for homicidal purposes, unless the victim happens to be child or an adult who is drunk or helpless."

According to observations on Page 709 of Gonzales Legal Medicine Pathology and Toxicology, Second Edition, "Sulphuric acid, due to it severe corrosive action, has rarely been given by mouth for the homicidal purposes except to children. It is sometimes thrown on a person to disfigures the face, and it may cause death from the severe burns inflicted on the skin. Most of the cases are suicidal, due to the ingestion of the acid. Some cases are accidental, the acid having been ingested in mistake for a medicine, or mixed with food, or poured into the ear, or injected into the rectum by error instead of a therapeutic drug, or injected into the vagina for the purpose of causing abortion".

25. The Conduct of the accused immediately after the occurrence is consistent with the hypothesis of their innocence rather than with that of the their guilt. It is inconceivable that Shanti Devi accused would have called her neighbour Sushila Devi (P.W.) to her house if Shanti Devi accused along with the other accused shortly before that had forcibly poured acid into the mouth of the

deceased. It is also most unlikely that Maharaj Krishan accused would have made frantic telephonic calls to Dr. Chadha to immediately rush to his house if Maharaj Krishan along with his mother had poured acid into the mouth of the deceased. It is further extremely improbable in that event that Maharaj Krishan would have allowed Dr. Chadha to use Maharaj Krishan's telephone to call the police. Maharaj Krishan would also in that the event have not taken the deceased to the hospital. On the contrary, Maharaj Krishan would have, if he and his mother had been the real culprits, waited for the time till the deceased died rather than take the risk of the deceased regaining the consciousness in the hospital and making a dying declaration regarding their complicity.

26. So far as the dying declaration (P.W. 1/A) is concerned, we are of the opinion that the evidence about the writing of that document by the deceased is of most unconvincing character. The High Court has referred to a number of circumstances which militate against the acceptance of the evidence regarding the aforesaid dying declaration, and we find no cogent ground to take a different view. It is not doubt true that the prosecution led evidence of handwriting expert to show the similarity of handwriting between (P.W. 1/A) and other admitted writing of the deceased, but in this respect, we are of the opinion that in view of the main essential features of the case, not much value can be attached to the expert evidence. The evidence of a handwriting expert, unlike that of the fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. The courts should, therefore, be vary to give too much weight to the evidence of handwriting expert. In *Sri Sri Sri Kishore Chandra Singh Deo v. Babu Ganesh Prasad Bhagat and Others* (1954 SCR 919 : AIR 1954 SC 316 : 1954 SCJ 395), this Court observed that conclusions based upon mere comparison of handwriting must at best indecisive and yield to the positive evidence in the case.

27. According to Bhagwan Kaur, Shanti Devi deceased wrote the dying declaration soon after mid-night hour. Question then arises as to why Bhagwan Kaur did not immediately go out of the female ward and tell her husband Dayal Das that the deceased had been forcibly administered sulphuric acid by the accused. Bhagwan Kaur has tried to explain this omission by saying that she was illiterate and did not know about the contents of writing (P.W. 1/A). Bhagwan Kaur, however, admits that soon after the deceased had written dying declaration (P.W. 1/A), the deceased told Bhagwan Kaur that the two accused had forcibly poured sulphuric acid into her mouth. It cannot, therefore, be said that Bhagwan Kaur remained unaware after 1 or 2 a.m. on the night between the July 23 and 24 that it were the accused who had poured acid into the mouth of the deceased. The immediate reaction of Bhagwan Kaur, if the prosecution story were correct, would have been to go out and apprise her husband, who is a Police Sub-Inspector, so that the latter might inform the police regarding the complicity of the two accused. Bhagwan Kaur has tried to explain this omission by stating that she became unconscious. There is, however, no explanation as to why Kamla, who too professes to have been told by the deceased regarding the forcible administering of acid to the deceased, kept quiet and did not convey that information to Dayal Das. It is further admitted by Bhagwan Kaur that she regained her consciousness at 5 a.m. If Bhagwan Kaur had been handed over a dying declaration by the deceased and had also been told by the deceased regarding the forcible administering of acid to her by the accused, Bhagwan Kaur in that event could not have failed to convey that information to Dayal Das soon after the regaining consciousness. Dayal Das in that event would have immediately reported the matter to the police. The fact that no such intimation was given to the police till 2.45 p.m., as deposed by A.S.I. Hem Raj, creates considerable doubt regarding the authenticity of dying declaration (P.W. 1/A) as well as about the testimony of Bhagwan Kaur and Kamla regarding the oral dying declaration of Shanti Devi deceased.

28. Another significant circumstance which emerges from the evidence on record is that the Maharaj Krishan came out with the version of suicide at the earliest stage. According to Dr. Chadha, he was

told by Maharaj Krishan immediately on arrival of Dr. Chadha that the deceased had taken something. Maharaj Krishan and his mother also gave account of the suicide by the deceased in their statements recorded in the inquest report (P.W. 5/J). As against that, the evidence of A.S.I. Hem Raj shows that the Bhagwan Kaur came out with the story of dying declaration at a subsequent stage.

29. In our opinion, the various circumstances of the case irresistibly point to the conclusion that the deceased committed suicide by the taking sulphuric acid. The appeal consequently fails and is dismissed.

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