

Govind Lal

Vs

State of Uttar Pradesh

Criminal Appeal No. 4 of 1970

(I.D. Dua, K.K. Mathew JJ)

23.04.1973

JUDGMENT

MATHEW, J. -

1. This appeal, by special leave, is directed against the judgment of the High Court of Allahabad confirming the judgment of the Sessions Judge, Lucknow, convicting the appellant of an offence under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life.

2. The prosecution case was as follows. Lala Brij Behari Lal married Smt. Tribeni Devi after the death of his first wife. he had no issues by her. He had two sons by his first wife Naunit Lal (P.W. 16) and Govind Lal (appellant) and a daughter by name Kamini Devi. Brij Behari Lal suffered from acute kidney trouble. He left for England for treatment on March 30, 1962, in the company of Tribeni Devi and one Dr. Ved Prakash. The treatment was not effective and he died in England on May 16, 1962. Tribeni Devi returned in the company of Dr. Ved Prakash and began to live with her two step sons in the residential house, a three storeyed building situate in mohalla Subhash Marg in the city of Lucknow, owned by Brij Behari Lal. Brij Behari Lal owned another house in the city of Lucknow, a house plot in Mohalla Bagh Sher Jang and half share in the Kerana firm of M/s. Babu Lal Damodar Das. He was also having extensive money lending business. In November, 1961, he had divided his properties into four shares, each valued at Rs. 96,384 and gave one share to each of his sons, one to Smt. Tribeni devi and retained one for himself. Tribeni Devi got the residential house at Subhash Marg of the value of Rs. 30,000/- and the interest in his insurance policies to the tune of Rs. 47,097/-. In order to make up the deficiency in her share, Naunit Lal was to pay her Rs. 7,858/- and Govind Lal Rs. 11,429/-. Tribeni Devi was not given any share in the Kerana firm which was divided between the two sons and the father. The other house which was valued at Rs. 30,000/- was given to the two brothers in equal share while the house plot valued at Rs. 18,000/- was kept by the father himself. In spite of this division of properties, the two step sons continued to live with their step mother at the residential house at Subhash Marg. While Brij Behari Lal was alive, Naunit Lal had filed a civil suit (No. 17/62) against his father, brother and step mother for a declaration that he was the exclusive owner in possession of his share. In the plaint the residential house was described as the property of the plaintiff and Govind Lal and the other house as the property of the step mother. A compromise giving a correct division of the property was filed by the parties on March 27, 1962, but the suit was dismissed on April 4, 1962. Lala Brij Behari Lal, before he left for England, had executed a will on March 29, 1962. By the will, he bequeathed his share in the Kerana firm to his sons. It would appear that after the death of Brij Behari Lal, Tribeni Devi claimed a share in the house plot and money lending business while the two sons wanted her to give up all claims to the properties and be content with a maintenance allowance only. The two sons filed Civil Suit No. 42 of 1962 in the Court of the Civil Judge against their sister Kamini Devi and

Tribeni Devi for a declaration that they were solely entitled to the house plot and to their father's share in the Kerana business.

3. On September 5, 1962, Tribeni Devi was arranging her ornaments in her room at about 5 p.m. The appellant came into the room, whereupon she showed some anxiety to hide them. The appellant asked Tribeni Devi to make the desired statement at the next hearing of the suit as otherwise it would not be good for her and that her death was near. Tribeni Devi said that she would do whatever she thought proper and would give her share in the property to anyone she liked.

4. As already stated, the residential house of the family at Subhash Marg consisted of three-storeys. The members of the family lived on the first floor, the ground floor was occupied by the servants and the second floor was used as kitchen. There were three part-time servants. None of them stayed in the house during night. Besides the part-time servants, there were two full-time servants, namely, Puranmashi and Ram Vinod. Puranmashi had gone home on leave for some days prior to September 5, 1962, and had not returned after leave. Naunit Lal, the brother of the appellant, who lived with his family in the house had gone out of Lucknow in the forenoon of September 5, 1962, by car and returned only on the next day. His wife, along with her children, had also left the house and went to her parent's house in Mohalla Asharfabad. They also did not return till the next day. Ram Vinod, the other full-time servant, had gone out at about 8.30 p.m. to witness a Nautanki play and did not return to the house till the morning. Thus on the night of September 5, 1962, the only inhabitants of the building were Tribeni devi and the appellant. On the morning of September 6, 1962, Tribeni Devi was found dead in her room and her body was covered with numerous abrasions.

5. The news of her death reached P.W. 3, the Sub-Inspector Ram Prasad Singh who was posted at the Police Station Chowk and he came to the house at about 9.30 a.m. The appellant, who had gone out to the police station, arrived at the house within a few minutes accompanied by his cousin, a lawyer. The appellant tried to prevent the Sub-Inspector from seeing the dead body. But when the Sub-Inspector insisted, he was allowed to see the dead body. P.W. 3 thereafter held the inquest on the dead body and sent it for autopsy.

6. The post-mortem examination revealed that the death was due to asphyxia produced by smothering and strangulation. The medical evidence was specific that it was not a case of suicide and that the injuries found on the body must have been caused when the deceased struggled to save herself from the assailant.

7. On receipt of the post-mortem report, it was suspected to be a case of murder. Accordingly, a case was registered. And, after completing the investigation, the appellant was challaned.

8. The appellant's case at the trial was that he left the house at about 8.30 p.m. on that day for witnessing the second show of cinema and that he returned to the house only at about 4 a.m. in the morning as he also went after the cinema to witness the Nautanki play and that when he reached the house, he found Ram Vinod and Puranmashi in his house and the door open, that he went straight to his room and slept there till 7.30 a.m. and when he woke, he found that his step-mother was lying dead in her room. The appellant also said that when he saw the dead body, he found that the ornaments which she used to put on herself were missing and suggested that it was a case of theft coupled with murder. He also denied having told anybody that the lady had committed suicide or made a report to the police to that effect.

9. The trial Court, after discussing the evidence, came to the conclusions that the appellant had a

motive to take away the life of his step mother in that he and his brother wanted to get the property which was allotted to her under the partition before she parted with the same in favour of her relations. The Court also found that on the night of the date of the occurrence Naunit Lal and his family were away and that Ram vinod, the servant, had gone out to witness the Nautanki performance and that the appellant was alone in the house with Tribeni Devi and had the exclusive opportunity to commit the offence and that the subsequent conduct of the appellant could only point to his guilt. The Court, therefore, came to the conclusion that it was the appellant who caused the death of Tribeni Devi by strangling her.

10. The findings of the Trial court were confirmed in the appeal by the High Court.

11. It is established by unimpeachable evidence that Tribeni Devi owned the residential house exclusively and was to get certain money from the appellant and his brother under the partition. The appellant and his brother had instituted a suit against the deceased and their sister for a declaration that the house property and the Kerana business belonged exclusively to them and the appellant wanted the deceased to relinquish the rights in her properties and be content with a maintenance allowance. Kamala Devi (P.W. 6), the sister of the deceased, came to the house of the deceased on September 5, 1962, at about 5 p.m. At that time the deceased was arranging her ornaments. Immediately, the appellant came to the room and the deceased tried to hide the ornaments. The evidence of Kamala Devi is that the appellant threatened the deceased saying that unless she gave a statement in Court relinquishing her rights in the properties her death was near. Both the Trial Court and the High Court believed the evidence of Kamala Devi, and they came to the conclusion that the appellant had the motive to commit the offence.

12. Counsel for the appellant said that Kamala Devi could not have been believed when she said that the deceased was arranging her ornaments at the time when she visited her at 5 p.m. on that day as it was most unnatural that Tribeni Devi should have displayed her ornaments with the doors of her room open. Counsel also argued that Ram Vinod, the servants, had specifically stated in his evidence that Kamala Devi did not come to the house at 5 p.m. on that day and that the High Court did not even refer to the evidence of Ram Vinod on this point.

13. The Trial Court definitely found that Ram Vinod was not speaking the truth when he said that Kamala Devi did not come to the house at 5 p.m. The mere fact that the High Court did not advert to this part of the evidence of Ram Vinod would not show that Kamala Devi was not speaking the truth when she said that she went to the house of the deceased at 5 p.m. on that day and that the appellant came there and threatened the deceased.

14. When the two Courts, after having discussed the evidence of Kamala Devi, came to the conclusion that she could be believed, we do not see how we can, in an appeal under Article 136, assess her credibility afresh and find that her evidence should not have been accepted.

15. And as regards the exclusive opportunity of the appellant to commit the crime, the evidence is clear that Naunit Lal (P.W. 16), the brother of the appellant, had gone out from the house on September 5, 1962, at about 8.30 a.m. and returned only on September 6, 1962. His wife had gone with the children to the house of her parents and returned only on the next day. Of the two full-servants employed, Puranmashi had gone on leave prior to the date of the occurrence and was certainly not in the house on that day. Ram Vinod (P.W. 2) who is a young man of about 19 years has stated in his evidence that he was permitted by the appellant, who came to the house at 8.30 p.m. to go out for witnessing the Nautanki play and that the appellant bolted the door from inside

the house when he went out for the show. This part of the evidence of the witness was believed by the Trial Court as well as the High Court. There is also the evidence of Sunder Lal (P.W. 11) to the effect that Ram Vinod had come for the Nautanki show and returned from the show only in the morning next day.

16. The appellant's case was that after taking dinner he left the house at about 8.30 p.m. leaving his step-mother and the two servants, namely Puranmashi and Ram Vinod, in the house. He said that he went for the second show of a cinema and thereafter was witnessing the Nautanki show and came to the house only at 4 a.m. in the morning next day and when he came, he found the door open and Ram Vinod and Puranmashi in the house, that he went straight to his room and slept till 7.30 a.m. and it was when he got up in the morning that he knew that his step mother was dead. The trial Court as well as the High Court found that the story of his having gone to witness the cinema and the Nautanki show was invented by him to show that his presence in the night in the house was impossible. The evidence on behalf of the appellant that he went out for the second show of cinema and after the cinema he went and witnessed the Nautanki show and returned to house only by 4 a.m. the next day was disbelieved by the Trial Court as well as by the High Court. Therefore, the conclusion arrived at by the High Court that the only inhabitants in the residential house on that night were the appellant and Tribeni Devi appears to us to be unassailable.

17. The Sub-Inspector Ram Prasad Singh (P.W. 3) said that the appellant tried to prevent him from inspecting the dead body. In the inquest report it is stated that the appellant gave information to the police that Tribeni Devi committed suicide. Kamala Devi who came in the morning to the house also said that the appellant told her that her sister committed suicide. Viswanath (P.W. 4) a relation of the deceased, deposed that when he arrived at the house, the appellant said that his step mother had committed suicide. Head Constable Vishwanath Singh (P.W. 9) said that on September 6, 1962, the appellant came to the police station at 9.30 a.m. and reported that his mother committed suicide during the night. The witness asked him to give it in writing. The appellant handed over a written report and then he made entry in the general diary (Exhibit Ka-20). P.W. 17, V. B. Dixit said that the appellant had met him at the police station and had admitted making a report to the head constable that Tribeni Devi committed suicide. P.W. 15, R. N. Saxena, Assistant Public Prosecutor deposed that he saw the report when the case diary along with the charge sheet was sent to him. In the inquest report it is clearly stated that the appellant gave the information that Tribeni Devi committed suicide. The appellant's case that since the report was not forthcoming at the trial, the evidence of these witnesses cannot be believed was not accepted by the High Court.

18. As already stated, at the trial the case of the appellant was that Tribeni Devi had been robbed of her ornaments and that the murder must have been committed for the purpose of robbery. He denied then that he had given out the version that Tribeni Devi committed suicide and tried to make out in the cross-examination of the aforesaid witnesses that he had not given out the version.

19. According to the High Court as well as the Trial Court, the combined effect of all the circumstances proved was that it was the appellant who had committed the murder. We do not think that the High Court was wronging thinking that the facts proved pointed only to the conclusion that it was the appellant who committed the offence.

20. In an appeal under Article 136, we do not think that we can appraise the evidence afresh. But we have adverted to the evidence only to show that the appreciation of the evidence by the Trial Court and the High Court does not suffer from any infirmity and cannot, by any stretch of imagination, be characterized as perverse.

21. The appeal has to be dismissed and we do so.

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