

Darshan Lal

Vs

State of Jammu and Kashmir

Criminal Appeal No. 56 of 1971

(A. Alagiriswami, N. L. Untwalia JJ)

12.03.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. The appellant, a constable in the Border Security force posted in Jammu, has been convicted by the Sessions Judge of Jammu and sentenced to death for the murder of his wife. On appeal the High Court of Jammu & Kashmir has upheld the conviction but commuted the sentence to one of life imprisonment.

2. In June 1968 the appellant had gone to the village in Ferozepur district of Punjab where his wife was living in her parents' house and took her with him to Jammu and reached there at 7.30 p.m. on June 21, 1968. The next morning the body of an unidentified woman was found in the river Tawi. In November 1968 the uncle of the appellant's wife as well as his son came to Jammu and met the Inspector and the Commandant of the company to which the appellant was attached. The appellant thereafter made an extra-judicial confession to all these four persons about his having murdered his wife. The photograph of the unidentified woman referred to earlier was recognized by the wife's uncle and cousin as that of the appellant's wife. The appellant was later prosecuted with the result mentioned above.

3. The appellant's father-in-law, Nathu Ram PW 2, gave evidence that the appellant took his wife to Jammu. PW 3 testified that the appellant took his wife along with him and that he saw her off at the time of departure. The wife's cousin, Wadhuram, as PW 4 spoke to the accused having come to his village and taken his wife with him. PW 5 also gave evidence that the appellant's wife on her way to the railway station along with the appellant had a talk with him and that the appellant told him that he was taking his wife to Jammu, his place of service. PW 10 gave evidence about the appellant coming back to Jammu at 7.30 p.m. on June 21, 1968 after going on leave on June 10, 1968.

4. The photograph of the body found in the river Tawi on June 22, 1968 was identified by the appellant's wife's uncle and cousin. Though the father of the wife had some difficulty about identifying the body from the photograph the accused himself when examined under the provisions of Section 342 of the Code of Criminal Procedure did not seriously dispute that it was that of his wife. On these materials the courts below have come to the conclusion that the appellant took his wife from her village to Jammu and reached there at 7.30 p.m. on the twenty-first and that her dead body was found in the river Tawi on the twenty-second. We see no reason to differ from the concurrent finding of the Sessions Judge and the High Court.

5. The only evidence to connect the accuse with the death of his wife are his extra-judicial

confessions. The High Court has very properly left out of consideration the confession made by the appellant to his commanding officer and the Inspector but it has relied upon the confession made by the appellant to his wife's uncle and cousin. The wife's uncle has stated that he told the appellant that what had happened had happened and he should tell the truth about his wife and that on this accused told him that he had killed his wife with a knife and thereafter thrown her body in the river. To the same effect is the statement of his son. We agree with the High Court that these two persons cannot be said to be persons in authority and the confession made by the appellant does not suffer from any legal infirmity. If that confession is reliable the conviction of the appellant has to be upheld. We are of opinion that this confession is reliable.

6. The appellant brought his wife to Jammu on the evening of June 21, 1968. The next day her dead body was found in the river Tawi. About a month later he seems to have written to his father-in-law that his wife had run away taking with her some 700 and odd rupees. They replied that she had not come to them. They then received a second letter from the appellant. They also wrote a letter to the Commanding Officer of the appellant and received a letter from him saying that the appellant said that he did not take his wife anywhere as he had sent her to her parents in October 1967 and that he was not interested in having any correspondence with his parents-in-law. It is obvious that the two letters written by him to his father-in-law were merely an attempt to misdirect him. Having brought his wife on June 21, one would have expected him to make some efforts to trace her and find her whereabouts if he did not know what had happened to her and especially when he alleged that she had also gone away with 700/800 rupees as he wrote in his letter to his father-in-law. His uncle-in-law and cousin-in-law who came to Jammu to find out about his wife could not have known about the finding of the dead body of his wife in the river Tawi. Indeed they saw the photograph only on December 2, 1968 after the appellant had made his confession to them. There is no reason why they should try to falsely implicate the appellant in the murder of his wife. The circumstances leave no room for doubt that it was the accused that was responsible for the death of his wife and his confession made to his wife's uncle and cousin is genuine and reliable. We see no reason to differ from the concurrent finding of the Sessions Judge and the High Court that the circumstantial evidence against the accused was conclusive so as to admit of no other conclusion except that the accused is guilty of the murder of his wife. The appeal is, therefore, dismissed.

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