

Chandmal and Another

Vs

State of Rajasthan

Criminal Appeal No. 156 of 1971

(P. K. Goswami, R. S. Sarkaria JJ)

07.11.1975

JUDGMENT

SARKARIA, J. -

1. This appeal is directed against a judgment of the High Court of Rajasthan.
2. The appellant Chandmal and Ranglal were tried by the Sessions Judge, Pratapgarh in respect of offences under Sections 302, 201 and 411, Penal Code. The judge convicted Chandmal under Section 302, Penal Code for committing the murder of Smt. Nazar Bai and sentenced him to imprisonment for life. He further convicted him under Section 411, Penal Code as a dishonest receiver of stolen property of the deceased and sentenced him to one year's rigorous imprisonment. He was convicted under Section 301, Penal Code, also, but no separate sentence was passed on that count. Ranglal was acquitted of the charges under Sections 302 and 201, Penal Code but was convicted for an offence under Section 411, Penal Code and sentenced to one year's rigorous imprisonment. The High Court dismissed the appeal of the convicts. Hence this appeal by special leave.
3. The prosecution story, as it emerges from the record, was as follows :
 - 3A. Smt. Nazar Bai, an old widow was residing alone and separately from her son, Shankar Lal, PW 11, in the town of Chittor. On Karwa Chauth day October 24, 1964, at about 4.30 p.m., her cousin, Ram Chandra, PW 23, who was also residing in Chittor, sent his daughter, aged about 10 years, to the house of Smt. Nazar Bai, to extend an invitation that she should on that auspicious night dine at his house. Accordingly, Ram Chandra's daughter went to Smt. Nazar Bai and communicated the message. Smt. Nazar Bai gave two paisas as a token of affection to the girl saying that she would be pleased to dine at her house. Chandmal appellant who was present there, as usual, to do knitting work, remarked that two paisas were valueless. Thereupon, Nazar Bai gave some makhana (sweets) to the girl. This happened in the presence of Smt. Naini Bai, PW 9, and Smt. Madan Bai, PW 2 who often used to do knitting and embroider work at the house of Nazar Bai. Sometime thereafter, at 5 or 6 p.m., Smt. Nazar Bai locked her house and went away. Appellant Chandmal followed her. Nazar Bai had not been seen alive thereafter.
4. On October 31, 1964 at 10.30 p.m., Shankar Lal lodged a report (Ex. P-1) at police station, Chittor that his mother was last seen on Karwa Chauth proceeding from her house for the house of her maternal cousin, Ram Chandra, and had not been seen thereafter. From enquiries made, the informant, learnt that she had not reached the house of Ram Chandra.

5. There was no mention of the appellant in this report. On the basis of this report, the Station House officer on December 2, 1964, registered a case under Section 364, Penal Code, that Nazar Bai was suspected to have been abducted with the intention to cause her death, and to deprive her of ornaments and valuables.
6. Lal Singh, S.H.O. (PW 32) visited the house of the deceased on December 3, 1964, for investigation. There, Shankar Lal produced before him the lock (Ex. 41), which was seized vide memo Ex. P-3. The Investigating Officer checked the valuables in the house. One of the boxes in the house was found to contain Rs. 700 in cash and gold ornaments, weighing 10 tolas. No report about the theft or disappearance of any gold ornaments or other movable property from the house of the 'deceased' was ever made by Shankar Lal PW, or anybody else. Nor did the Investigating Officer register any case of theft on the basis of facts found during investigation.
7. On October 7, 1966, about two years after the disappearance of the deceased, Police Sub-Inspector Bansi Lal (PW 34) saw a man, dressed like a female going to Chittor Fort. On suspicion, the Sub-Inspector arrested the man under Sections 55/109 Criminal Procedure Code. He was Chandmal appellant. From a search of Chandmal's person, the Sub-Inspector seized a bunch of keys (Ex. 42) and prepared the seizure memo Ex. P. 26. The Sub-Inspector then proceeded to search the house of Chandmal. At about 11.30 a.m., when the search was in progress, Mahendra Singh (PW 33) the Permanent Station Officer also arrived there.
8. On October 8, 1966, Chandmal's house which was originally the property of Ranglal appellant, was searched by the police. Thereupon some articles including a churi, were recovered. PW 34 seized the same vide memo Ex. P-29.
9. On October 11, 1966, Chandmal appellant, whilst in police custody, after making the disclosure statement (Ex. P. 30), led Sub-Inspector Mahendra Singh, in the presence of Abdulla Khan (PW 16) and Chand (PW 18) to the house which originally belonged to Ranglal. The Sub-Inspector gave a bunch of keys to Chandmal and asked him to unlock the central door. Chandmal unlocked the door. The entire party entered the house. The appellant led into the northern room, the entrance door of which was lying shut and chained from outside. At the instance of Chandmal the cases lying there were got removed. From the ground thus cleared, Chandmal lifted a patti (slab) underneath which was a pit. A skeleton which had on it torn pieces of ghagra, kanchil and odhni and some silver ornaments, was found in that pit. The skeleton was taken out. Shankar Lal PW who was with the police, identified the ornaments, pair of karas EX. 30, kara Ex. 32, ring Ex. 33 and churi, Ex. 34, and the clothes as belonging to this mother. The skeleton was carried in a stretcher to the police station, where in respect of this, discovery memo, Ex P-5, was prepared. On the following day, in the police station, the ornaments and clothes were removed from the skeleton in the presence of PW 22 and others and taken into possession. The seizure memo, Ex. P-18, was prepared in this connection. The skeleton was later on sent to the Medical Officer, Dr. Ganpat Lal, PW 27, for examination. In the opinion of the doctor, the skeleton was of an elderly female of about 4' 6" in height. The doctor was unable to express any opinion as to the cause and time of her death.
10. Several ornaments and other articles were also recovered at the instance of Chandmal from the possession of others. These ornaments were, according to the prosecution, the property of Nazar Bai.
11. Ranglal appellant was arrested on October 13, 1966. At his instance, 29 articles were recovered. The recovered articles and ornaments were sent to Mr. Dwivedi (PW 25) Additional District

Magistrate for holding a test identification. Before the magistrate, Shankar Lal's son Satya Narain (PW 10) and Kanta Bai, daughter of learned counsel, identified most of the items and articles as belonging to the deceased. Smt. Sakina identified the silver bangari which she has pledged with Smt. Nazar Bai. After completing the investigation, the appellants were sent up for trial with the aforesaid result.

12. We would now take up the case of Chandmal appellant.

13. The first charge against him was of committing the murder of Smt. Nazar Bai. Regarding this charge, the prosecution relied wholly on circumstantial evidence which may be listed as below :

(i) Ram Chandra's daughter had extended the invitation to Smt. Nazar Bai on October 24, 1964, in the presence of Chandmal. When she thereafter, locked her house and proceeded towards the house of Ram Chandra, Chandmal appellant was seen following her.

(ii) Certain ornaments and valuables, which belonged to the 'deceased' were recovered either from the possession of Chandmal or at his instance from various persons.

(iii) A human skeleton of an elderly female, which had on it some ornaments and torn clothes belonging to Smt. Nazar Bai, was discovered on October 11, 1966, pursuant to the information given by Chandmal, from a pit in the house belonging to Rangal, but in the occupation of Chandmal.

14. It is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Secondly, these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis save that of the accused's guilt.

15. Let us see whether these conditions were fulfilled in this case. The circumstance that when Smt. Nazar Bai was last seen departing from her house, she was being followed by Chandmal appellant, had not been clearly established.

16. In the F.I.R., lodged by Smt. Nazar Bai's son, Shankar Lal, about seven days after her disappearance and after making inquiries, among others, from Madan Bai (PW 2) wife of Mohan Singh, there is no mention of Chandmal at all. Madan Bai was examined as PW 2. She was living as a tenant in an apartment of the house of Nazar Bai. In court she, no doubt, stated that Chandmal was present when Ram Chandra's daughter came and extended the invitation to Smt. Nazar Bai for dinner. But she did not state that Chandmal was seen following Nazar Bai when she, after locking her house, was proceeding towards Ram Chandra's house. Her statement in court on this point is quite the opposite of what she had said before the police. During investigation she stated that Chandmal was not present when Ram Chandra's daughter came and invited Nazar Bai. She was confronted with the portion marked 'A' to 'B' of her previous statement, Ex. D-1, wherein she had said that Chandmal was then absent. Instead of giving an explanation for this contradiction she

disowned her police statement altogether. She was a witness who had spoken with different voices at different times. Obviously, she had not informed even Shankar Lal when he made enquiries from her regarding the whereabouts of his mother, before reporting the matter to the police. Her evidence therefore did not inspire confidence.

17. The second witness who was examined by the prosecution to substantiate the first circumstance, is Smt. Naini Bai (PW 9). She was also of tenant of Nazar Bai. At the trial this witness, however did depose to Smt. Nazar Bai's departure from her house and to the fact that Chandmal was following her.

18. F.I.R. Ex. P-7, was submitted by Shankar Lal after making enquiries from neighbours. The witness was residing in an apartment of the same building. In all probability, Shankar Lal must have made enquiries from her, also. No explanation is coming forth as to why Chandmal's presence at the relevant time, in the house of Smt. Nazar Bai and his following the latter does not find mention in the F.I.R. The possibility of this aspect of the story being a subsequent improvement, therefore, could not be ruled out.

19. Be that as it may, the mere fact that Chandmal was present at the house of Smt. Nazar Bai when Ram Chandra's daughter came and extended the invitation and that she proceeded from her house soon after her, was not a circumstance of determinative character. It is in evidence that PWs Madan Bai, Naini Bai, Chandmal appellant and Smt. Nazar Bai - all the four - use to do knitting and embroidery work together at the house of Nazar Bai. Indeed, they were coworkers in the same trade. Thus, neither Chandmal's presence in Nazar Bai's house, nor his simultaneous departure from the house on that day after it had been locked by Nazar Bai was anything unusual. There is no evidence that the appellant and the deceased were last seen together near or at the house from which her alleged skeleton is said to have been discovered. By itself, therefore, this circumstance was not of a definite tendency and had little evidentiary value.

20. This takes us to the second circumstance viz., discovery of the ornaments belonging to Smt. Nazar Bai. The prosecution case was that from a search of Chandmal's house, certain articles and ornaments (Exs. 2, 7, 10, 12, 13, 14, 15, 17, 26 and 27) were recovered by S. I. Mahendra Singh PW 33 on October 7, 1966 in the presence of Kishandas, PW 28, and others. On October 8, 1966, the "churi", Ex. 29, was discovered from a search of the other house, belonging to Ranglal. On the information supplied by Chandmal appellant, it was discovered that some ornaments were sold by him to Bhagchand, PW 19, and some to one Madanlal. The prosecution examined this Bhagchand to prove the sale of these ornaments to him by the appellant.

21. The prosecution case is that these ornaments and other articles recovered either from house search or from third persons at the instance of the appellant, belonged to Smt. Nazar Bai. The defence is that these articles belonged to Chandmal and not to Nazar Bai. The prosecution witness Ratanbai, the daughter-in-law of the 'deceased', and some other PWs testified that these ornaments belonged to the 'deceased'.

22. It is noteworthy that in the F.I.R., Ex. P-1 which as already noticed, was lodged by Shankar Lal about 7 days later after making enquiries, there is no mention about the disappearance or theft of any ornaments or valuables from the house of Nazar Bai. Rather, it is in evidence that the Investigating Officer went to the house of Nazar Bai and checked her belongings in the presence of Shankar Lal on December 3, 1964. Rs. 700 in cash and gold ornaments weighing 10 tolas were found intact in a box inside the house. Even on that date or thereafter, Shankar Lal or anybody else

did not complain or report of any theft of valuables belonging to Nazar Bai. On the other hand, Shankar Lal admitted, in cross-examination that he had himself sold gold ornaments, weighing 125 or 150 tolas, belonging to his mother during her lifetime. Shankar Lal further admitted that he had ransacked his house, and his mother was unable to extend any monetary help for redemption of the ransack. It is further in evidence (vide Shankarlal) that Nazar Bai had become a widow about 42 years before her disappearance; she was earning her livelihood by doing embroidery and knitting work. It is therefore difficult to believe that she was a woman of wealth and was in possession of ornaments of substantial value. There was absolutely no evidence to show that these ornaments were in her ownership and possession immediately before her disappearance, or had been stolen from her possession or house, PW Naini bai, in cross-examination, disclosed that on October 31, 1964, the house of Nazar Bai was not lying locked. This means that Shankar Lal had occupied the house even before the Sub-Inspector started investigation at the spot. Shankar Lal did not give any list of missing articles to the Sub-Inspector when he came to the house of the deceased to check her belongings on December 3.

23. In this state of the evidence, the conclusion was inescapable that the prosecution miserably failed to prove that these ornaments and other articles belonged to Smt. Nazar Bai or had been stolen from her house.

24. It is elementary that there can be no offence of dishonestly receiving stolen property unless the property which is alleged to be the subject of such receiving, answers the description of "stolen property" given in Section 410, Penal Code. Only such property possession whereof has been transferred by theft, or extortion or criminal appropriation or other offences allied to them mentioned in Section 410, falls within the definition of "stolen property". In the instant case, it had not been established that the possession of these ornaments and valuable in question had been transferred by theft, etc., from Smt. Nazar Bai.

25. Even so, these recoveries are alleged to have taken place more than two years after the disappearance of Nazar Bai. This was another formidable obstacle in the way of drawing any presumption that Chandmal was either the thief or a dishonest receiver of stolen property.

26. Having seen that the prosecution had failed to substantiate the second circumstance we now pass on to circumstance (iii), relating to the discovery of the skeleton.

27. The first question to be considered in this connection was whether the prosecution had established beyond doubt that this skeleton was of Smt. Nazar Bai. In other words was the death of Smt. Nazar Bai indubitably established ?

28. To substantiate this point, the prosecution relied on the identification of the rotten clothes, and the ornaments found on the skeleton. The prosecution case is that at the very time and place of the discovery of the skeleton Shankar Lal had identified those clothes and ornaments as of his mother, and these were subsequently identified by other PWs. In the F.I.R. Shankar Lal mentioned that his mother at the time of her disappearance, was wearing a printed ghagra and a chadar over kanchil. He did not mention that she had any ornaments whatever on her person, or that she used to wear, as a habit any ornaments.

29. In the recovery memo Ex. P-5, prepared by the Investigating Officer, it is mentioned that the skeleton had

a covering cloth of kirmchi colour, silver bangle (kara) in the hand, a silver ring in the ring fingers of the left hand, and four rubber bangles, plated with brass, two in either hand.

It is also mentioned that silver karas were found on the bones of both the legs. A ghagra cloth in a torn condition was found on the lower portion of the skeleton.

30. So far as the clothes found on the skeleton are concerned, both the courts below have held that they were not in an identifiable condition. But the courts have believed the evidence of Shankar Lal that these ornaments, Exs. 30, 31, 32, 33, 34 found on the skeleton belonged to Smt. Nazar Bai. There was also the evidence Ratanbai (PW 13) wife of Shankar Lal. Her evidence was to the effect that in the morning of the day of Nazar Bai's disappearance, the witness saw these ornaments on her person. The courts below have believed her testimony, also.

31. Ordinarily, as a matter of practice, this Court does not go behind a concurrent finding of fact unless such finding is clearly unreasonable or manifestly erroneous, or illegal. In the present case, the courts below have overlooked some patent features which throw a grave doubt on the authenticity of the "discovery" of this skeleton and the articles on it at the instance of Chandmal. Firstly, the house from which the skeleton is alleged to have been discovered, according to the finding of the trial Court itself belongs to Ranglal. Secondly, the bunch of the keys with which the locks of the house were opened was seized from Chandmal on October 7, 1966. There is no evidence that from October 7, 1966 to October 11, 1966, this bunch of keys was lying sealed and was not available to the investigating officer for unlocking this house. The keys for these four or five days were admittedly with the investigating officer and were supplied by him to the appellant for unlocking the door of the house on October 11, 1966.

32. Thirdly, in the F.I.R., as already mentioned, Shankar Lal did not say that his mother was wearing any ornaments at the time of her disappearance. She was an elderly widow. Hindu widows generally do not wear ornaments.

33. Fourthly, the skeleton or the ornaments allegedly found on it were not sealed into a parcel or parcels on October 11, 1966. In the memo Ex. P-5, which is said to have been prepared on October 11, 1966, in the police station at 4 p.m., there is no mention of any such sealing. According to Abdhulla, PW 16, at the time of the discovery, "only a rough note was prepared", and Ex. P-5 was not prepared on that day. The witness was called to the thana on October 12, 1966. He went there and saw the skeleton together with the clothes and ornaments lying there in the verandah of the police station. It was then at about 4 p.m. that the witness signed the memo Ex. P-5 in the thana. It is curious that another memorandum (Ex. P-18) was prepared on October 12, 1966 in the police station. This memorandum is captioned :

Sheet pertaining to seizure of ornaments and clothes which were found on the dead body of Nazar Bai on October 12, 1966.

Gyan Chand and Bhanwar Lal Sonar are mentioned as the witnesses in whose presence these ornaments and clothes were taken into possession by the police. Gyan Chand was examined as PW 21. Bhanwar Lal Sonar was not examined.

34. Fifthly no explanation has been given as to why the skeleton and the articles found on it were not sealed into parcels at the time of their 'discovery' and why the memorandum Ex. P-5 was not prepared on October 11, 1966 there and then.

35. Sixthly, it is in the evidence of the investigating officer, PW 33, that on October 10, 1966, also Chandmal had got a skeleton recovered which on medical examination, was found to be of a male and not of a female.

36. In view of these suspicious features the contention of Mr. R K. Garg, that the discovery of the skeleton was 'stage-managed' after implanting the ornaments on it to fix its identity, cannot be said to be groundless.

37. Not only the identity of the skeleton was doubtful, the cause of the death had not been established. It had not been shown that the death of the person whose skeleton it was, was due to culpable homicide or unlawful violence.

38. Thus, the circumstances in which the conviction of Chandmal rests, were not fully and indubitably established. All the charges against Chandmal therefore fail.

39. Now remains the case of Ranglal. The case against this appellant is that a large number of ornaments including Ex. 18, Ex. 19, Ex. 22, Ex. 23, Ex. 28, belonging to Smt. Nazar Bai have been recovered either from his possession or from the possession of other persons, including, PW 1, Shrilal, Fateh Mohammad, PW 3, Ghishulal, PW 8, Jadgish Chandra PW 16, to whom he had transferred them by way of pledge or otherwise.

40. Here again, there is no evidence on record that the possession of these ornaments had been acquired or transferred by theft or extortion etc. In short it had not been established that these ornaments were 'stole property' as defined in Section 410, Penal Code. Thus the sine qua non for a charge under Section 411, Penal Code was non-existence in this case.

41. For all the reasons aforesaid, we allow the appeal of Chandmal and Ranglal, set aside their convictions and acquit them. They be set at liberty forthwith, if not otherwise required.

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