

Ram Das

Vs.

State of Maharashtra

Criminal Appeal No. 243 of 1976

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

14.02.1977

JUDGMENT

FAZAL ALI, J. –

1. This is an appeal under the Supreme Court (Enlargement of Criminal Appellate jurisdiction) Act, 1970. The appellant Ram Das was tried on a charge of murdering his wife Mst. Shantabai on September 12, 1972, by forcible administration of poison to her. The learned Sessions Judge, after considering entire evidence on the record, acquitted the appellant on the ground that the evidence led by the prosecution was not sufficient to bring home the charge against the accused. Thereupon the State of Maharashtra filed an appeal before the High Court of Bombay. The High Court reversed the order of acquittal passed by the learned Sessions Judge in favour of the appellant and has convicted the appellant under Section 302 I.P.C. and sentenced him to imprisonment for life. Hence this appeal before us.

2. This is rather an unfortunate case where shortly after the marriage of the deceased Shantabai with the appellant Ram Das certain unforeseen circumstances came into existence which led the appellant to suspect the fidelity of his wife culminating in her death by poison. The sole question to be determined by us in the present appeal is whether the accused had caused the death of his wife by administering her poison or the wife had herself, due to complete frustration, taken the poison and thus committed suicide. Had the husband not come across some letters written by his wife to one Chhotelal, perhaps the happy married life of the deceased and Ram Das would not have been marred by this tragedy.

3. Put briefly, the prosecution case is as follows. Shantabai used to live with her father Vishwanath Pardhe at Delhi and stayed there for about 1 1/2 years before her marriage. It is alleged by the prosecution that during her stay at Delhi she had picked up some sort of intimacy with one Chhotelal with whom she was some times in correspondence. She, however, did not prosecute her studies in her school and was, therefore, sent to her uncle Mahadeo Pardhe at Pimpalkhota where she stayed with her uncle until her marriage. She was married to the appellant some time in May 1972 and after the marriage she came back to her uncle's place and was later again taken by her husband, to his house in Achalpur according to the family custom. It appears that soon after her return to her husband's house the appellant discovered some letters which suggested that the deceased has some intimacy with Chhotelal and that she had asked him not to disturb her after her marriage. Ram Das, therefore, started suspecting the fidelity of his wife and he accordingly wrote several letters to Mahadeo Pardhe meant for his father-in-law Vishwanath Pardhe asking him to take away his wife, otherwise he would seek a divorce. The letters showed that the appellant was rather anxious that his wife should leave the house and go to her uncle and thereafter the marriage may be

dissolved either by agreement or through the Court. Mahadeo Pardhe on receiving the letters came to Achalpur and met Ram Das when the appellant again insisted that Shantabai should be taken away by him. In the course of the evidence Mahadeo Pardhe alleged that the appellant went to the extent of giving a threat that if he did not take Shantabai, then the accused was going to murder her. Mahadeo Pardhe, however, did not think it advisable to take Shantabai without the consent of her father and he returned to his village Pimpalkhota and wrote a detailed letter to his brother Vishwanath Pardhe at Delhi. On September 12, 1972, there appears to have been some sort of a domestic dispute between the appellant and the deceased as a result of which the appellant beat her up with a stick. On the same day the deceased became seriously ill and had vomited near about 2.00 p.m. The appellant at once took her to the Civil Hospital at Achalpur where the Doctor gave the deceased full treatment but unfortunately she could not survive and died in the afternoon. The Doctor then informed the police station and the Investigating Officer arrived at the hospital and registered a case of death by accident. The Investigating Officer visited the house of the accused at Achalpur on the same day, but did not find anything incriminating. The body of the deceased was sent for post-mortem and thereafter it was handed over to the appellant who got her cremated in due course. The father of the deceased Shantabai came to know of the death after she had been cremated. It was further alleged by the prosecution that as Mahadeo Pardhe refused to take away Shantabai with him, the appellant decided to kill her and for that purpose he secured rat poison, namely, parathion, from one of his co-villagers Ramdas Lakhode and forcibly administered the said poison to his wife which ultimately resulted in her death. During the course of investigation the appellant is said to have produced a bottle of poison as also the Godadi (matress) which contained vomit matter and vomit stains of the deceased which on being sent to the Chemical Analyser were found to contain parathion poison. It was further alleged that near about the time of occurrence the appellant and Shantabai were alone in the house and no one else other than the accused could have caused the death of Shantabai. The medical evidence clearly shows that Shantabai had died of asphyxia due to administration of poison and had excluded the possibility of death by strangulation. The defence of the accused was that he was completely innocent and that he had been falsely implicated on pure suspicion.

4. The learned Sessions Judge came to a finding that although the deceased died of poison, yet the prosecution had not been able to establish which particular poison caused her death or that the said poison was present in the house of the accused or was administered by him. The learned Sessions Judge further held that the motive alleged by the prosecution was not strong enough to raise an inference of murder against the accused. Finally, from the circumstances relied upon by the prosecution, the Sessions Judge held that the circumstances were not absolutely incompatible with the innocence of the accused. The High Court has disagreed with the findings of the Sessions Judge and found that the deceased died of poison known as parathion which appears to have been administered by the accused himself after having secured the same a week or ten days before the occurrence. The High Court further held that the circumstances proved by the prosecution conclusively establish the charge of murder against the accused and the Sessions Judge was, therefore, wrong in acquitting the accused.

5. We have heard counsel for the parties, gone through the judgments of the courts below and have been taken through the entire evidence. We are constrained to observe that the High Court has not made a correct approach to this case. It has violated the rule of circumstantial evidence that where circumstances are susceptible of two equally possible inferences, the Courts should accept that inference which favours the accused rather than an inference which goes in favour of the prosecution. Secondly, the High Court does not appear to have kept in view the rule of appreciation of circumstantial evidence that the circumstances must be of a conclusive nature and tendency so as

to be totally inconsistent with his innocence and are not explainable on any other hypothesis except the guilt of the accused.

6. We shall now take the circumstances relied upon by the prosecution in order to support the inference of guilt against the appellant. To begin with, there is the question of motive. According to the prosecution some time in August, 1972 the letters Articles 8 and 9 fell into the hands of the accused which led him to suspect the fidelity of his wife. As a result thereof the appellant wrote two post cards Ext. 14 dated August 12, 1972 and Ext. 15 dated August 2, 1972 to Mahadeo Pardhe and another letter Ext. 16 dated August 24, 1972 sent by the father of the accused to Mahadeo Pardhe through Mahadeo Patil who was working as a teacher at Achalpur. These letters, according to the prosecution, clearly show that the accused wanted to get rid of his wife after having suspected her character. We have perused the letters Exts. 14, 15 and 16 and we find that although the appellant had requested the uncle of Shantabai and his father-in-law to come to Achalpur and take away his wife, he had categorically indicated that in case they failed to do so he was going to take proceedings for divorce. The letters, however, do not go beyond this. There is nothing to show that he had in any way given any threat in the letters of causing any physical harm to his wife. The stress in these letters is on the consequences which may follow and which have been clearly described as proceedings for divorce either in Court or through notice of a lawyer. In these circumstances, therefore, we find ourselves in agreement with the finding of the learned Sessions Judge that the motive as spelt out from the letters does not go to the extent of showing that the accused wanted to murder his wife.

7. The High Court further relied on the fact that when Mahadeo Pardhe after receiving the letters went to the house of the accused at Achalpur and the appellant insisted that Mahadeo Pardhe should take away Shantabai, the appellant also gave a clear threat that if Mahadeo Pardhe did not take away Shantabai the accused is going to murder her. The factum of threat has been deposed to by Mahadeo Pardhe PW 3 for the first time in the Court, and from his deposition it appears that he himself did not take the threat seriously and thought that it was merely because of anger that the accused had given the threat, his real intention being to send his wife away. Moreover, the definite case of the witness Mahadeo Pardhe is that he had sent a letter to his brother Vishwanath Pardhe at Delhi and had expressly mentioned therein regarding the threat given by the accused to him. Vishwanath Pardhe PW 2 has categorically stated that the letter which he had received from Mahadeo Pardhe contained the threat alleged to have been given by the appellant and yet he did not mention this fact in his statement before the police. In other words, the witness admits that when examined by the police he did not mention the fact that the letter which he had received from his brother contained any threat said to have been given by Ram Das to murder Shantabai. This statement is to be found at p. 44 of Paper Book No. II. Furthermore, the witness further admits that he had shown the letter which he had received from his brother Mahadeo Pardhe to the police who took away that letter. When he deposed to this effect, the Advocate for the defence requested the Court to direct the prosecution to produce the letter and in spite of this fact the letter was not produced at all. The letter, if produced, would have unmistakably shown if the story of threat as proved by PW 3 Mahadeo Pardhe was correct or not. The letter was in the possession and power of the police and yet they did not choose to produce the same. From this fact, the only reasonable inference that could be drawn would be that the letter did not contain any threat and if the letter had been produced it would have falsified Mahadeo Pardhe to that extent. In these circumstances, therefore, the High Court was wrong in giving any credence to the story of threat adumbrated by the witness Mahadeo Pardhe for the first time in the Court and which appears to us to be a pure afterthought and an embellishment introduced to give credence to the prosecution case. In these circumstances, therefore, we are unable to agree with the High Court that the motive alleged by the prosecution was sufficient to indicate

that the accused wanted to murder his wife.

8. The next circumstances relied upon by the prosecution is that the accused had secured portion poison from Ram Das Lakhode for the avowed purpose of giving the same to his wife whenever an opportunity arose. It is true that the evidence of Ram Das Lakhode does show that the accused wanted the rat poison from him and that the Witness PW 10 first refused to give the poison but on great insistence from the accused he gave one tea spoonful of the poison to the appellante. This fact does not appear to us to be wholly inconsistent with the innocence of the accused. PW 11 Narayanrao one of the search witnesses clearly deposed in his cross-examination that there was menance of rats in every house in Namdarganj. Namdarganj is a Mohalla in Achalpur where the house of the appellante is situated. As rats had become a nuisance in the house of the accused there was nothing wrong in the appellante trying to secure rat poison from Ram Das Lakhode for killing the rats. The High Court has laid great stress on the fact that as the Investigating Officer did not find any hole in the house, therefore the trouble of rats was a myth. In view of the categorical and positive evidence of one of the villagers PW 11 Narayanrao that the trouble of rats was very much present in every house in the Mohalla where the house of the accused was situated, the necessity of securing poison to kill the rats was both real and genuine and could not be dismissed as a mere excuse for securing poison to kill the deceased. Similarly the Sessions Judge was right in not accepting the evidence of Ram Das Lakhode insofar as he had made out the story that he was most unwilling to give the poison but did so on the persistent requests of the accused. Furthermore, the mere fact that there were no holes in the house could not exclude the possibility of the rats being there. For these reason, therefore, this circumstances does not either singly or cumulatively raise an inference of guilt against the accused. It merely shows that the appellante had secured parathion poison which is meant for killing rats and which was present in the house at the time when the deceased died. This is the only inference that can be drawn from this part of the evidence and it is not possible to go further than that.

9. The next circumstances on which great reliance was placed by the High Court was the fact that the accused immediately took the deceased to the Civil Hospital which, according to the High Court, was meant merely to cloak his guilt. We are indeed surprised that the High Court should have taken such a perverse view of the matter. If the accused had himself administered the poison to Shantabai he would be the last person to take her to the Hospital and thereby take the chance of the deceased being cured or of regaining consciousness, in which case the deceased would have implicated the appellante. The conduct of the accused in rushing her to the hospital is more consistent with his innocence rather than with his guilt. The High Court instead of taking the circumstances as proving the good faith and bona fids of the accused drew the opposite inference. Furthermore, assuming that the High Court was right and that the accused went to the Hospital merely to cloak his guilt this may be one inference possible, but the other inference which is equally reasonable was that the accused having found that his wife had taken poison and attempted to commit suicide took her to the hospital immediately so that she could be given proper medical aid and her life may be saved. In this state of the evidence, the High Court violated the rule of appreciation of circumstantial evidence in accepting only that inference which went against the accused and not entertaining the inference which proved his innocence and which, in our opinion, was more probable than the other.

10. It was suggested by the High Court that the accused gave no information to the father of the deceased. In view of the short time at the disposal of the appellante, there was hardly any opportunity to inform the parents. Moreover, as the appellante made no secret of the fact that his wife had died and the body was in fact handed over to the Doctor for post-mortem and then cremated, it cannot be

said that the appellant maintained any secrecy in the matter.

11. Another circumstances relied upon by the High Court was that the accused produced a stick on September 12, 1972 when the Investigating Officer searched the house of the appellant. The stick did not contain any blood-stains, but the simple injury sustained by the deceased could have been caused by the stick and in all probability we think that the appellant must have beaten his wife. The High Court seems to have inferred without any evidence that the beating administered to the deceased culminated in the forcible administration of poison to her by the appellant. There was, however, no such evidence on the record. A fair possibility that the beating may have been the result of a domestic dispute quite different from the act of poisoning could not be ruled out. On the other hand in view of the fact that the husband wanted to send Shantabai away to her uncle's house and that he suspected her fidelity and had publicised this fact of her intimacy with Chhotelal to her relations and had also beaten her up would be sufficient to lead to such a great frustration in the mind of the deceased so as to provide a clear motive for committing suicide and end her life as she may have thought that after all she had lost her husband, her only hope, and that she had no face to show to her relations and so on. This circumstances, therefore, in our opinion, is as consistent with suicide as with homicide and since two inferences are reasonably possible and the Sessions Judge accepted the theory of suicide, the High Court ought not to have reversed the decision of the Sessions Judge on this point.

12. Another circumstance that the High Court relied upon was the fact that the accused produced Godadi (matress) containing vomit stains. This circumstances is not in any way incompatible with the innocence of the accused. According to the prosecution the Godadi was produced on September 21, 1972 from the house. There is nothing to show that it was concealed by the accused. On the other hand if the deceased had committed suicide and the accused knew that Godadi contained vomit stains he would be perfectly justified in producing the same before the police in order to show that the deceased had committed suicide and had committed as a result of the poison.

13. Moreover, one of the most important features which the High Court has overlooked is that there is no evidence at all to show that the poison was administered by the appellant forcibly or that the act of administration of poison and the act of beating were one continuous process. In fact it would appear that if the appellant would have tried to administer poison the deceased must have fought for her life and put up stiff resistance as a result of which the small bottle containing the poison would have been thrown on the ground or some other symptom of resistance must have been found. There is nothing to show that the deceased tried to cry or shriek or call attention of her neighbours who were undoubtedly present near the house. This would have been so, if the accused wanted to forcibly administer parathion poison to her. Her complete silence, therefore, clearly supports the theory of suicide rather than homicide.

14. The High Court observed that there was nothing to show that parathion poison taken by the appellant from Ram Das Lakhode had been used in killing the rats and, therefore, it must be presumed that it was used in administering the same to the deceased. This observation is based on pure speculation. No evidence has been led by the prosecution about the exact quantity which Ram Das Lakhode gave to the appellant, apart from the fact that it was a tea spoonful. There was also nothing to show as to how much quantity of the tea spoonful was given by Ram Das Lakhode to the accused, how much was left and how much was used. In order to kill rats a heavy quantity of poison is not at all necessary, and according to the medical evidence to kill a man even 100 mg. was sufficient and so far a rat is concerned only 10 mg. would be enough. In these circumstances, therefore, the High Court was in error in indulging in pure surmises and speculation on this point.

15. The last and the most important circumstances on which reliance was placed by the High Court and which undoubtedly needs explanation was the fact that the accused produced the bottle of poison which had been concealed inside a pit which had been dug in the compound of the house. This bottle was recovered at the instance of the appellant on September 20, 1972 almost a week after the death of the deceased. It is true that while this circumstances may raise an inference of guilt against the accused, it may also be explainable on the ground that after the Investigating Officer visited the house on September 12, 1972 and after the deceased had died and the post-mortem revealed that she had died of a poison, the accused may have got frightened that as he was alone with the deceased he might be accused of having administered the poison to his wife himself. Thus out of fear of being arrested on a charge of murder he may have concealed the bottle in the pit from where it was recovered. This circumstances, therefore, leads to two equally possible inferences and as one inference goes in favour of the accused, the Court in acting on circumstantial evidence was in law bound to accept that inference. We, however, disagree with the finding of the Session Judge that the prosecution had not proved that it was parathion poison which had caused the death of the deceased which has been established beyond reasonable doubt, particularly from the fact that the Godadi having vomit stains of the deceased was found to contain parathion poison which clearly shows whether the deceased was murdered by the accused or committed suicide it must have been through parathion poison.

16. This is all the evidence that has been produced by the prosecution in support of its case. On a consideration of the evidence and the circumstances referred to above, we are satisfied that this is a case in which the circumstantial evidence did not prove the case against the accused conclusively and unerringly, and at any rate two reasonable views were possible. The Sessions Judge having taken one view, in the circumstances it was not proper for the High Court to take the other view which also may have been possible, for the purpose of reversing the order of acquittal passed by the Sessions Judge.

17. For these reasons, therefore, we allow this appeal, set aside the judgment of the High Court as also the conviction and sentence passed on the appellant and acquit the appellant of the charges framed against him.

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