

Ramesh Kumar

Vs

State of Punjab

Criminal Appeal No. 105 of 1982

(K. Jayachandra Reddy, G. N. Ray JJ)

23.09.1992

JUDGMENT

1. Heard learned Counsel for the parties.

2. The sole appellant has been convicted u/S. 302. I.P.C. for the murder of his wife Smt. Kamlesh by administering Potassium Cyanide on 3-6-77 and sentenced to undergo imprisonment for life and to pay a fine of Rs. 2000/- and in default, of payment to undergo further Rigorous Imprisonment for one year. The appellant's mother Smt. Soma Wanti was also tried along with the appellant for the same offence. But she was acquitted. The appellant preferred an appeal. But the High Court dismissing the same confirmed the conviction and sentence awarded by the trial Court. However, the State did not challenge the acquittal of his mother, Smt. Soma Wanti.

3. The facts lie in a very narrow compass. The deceased was married to the appellant few months prior to the occurrence. Unfortunately, the relations between the deceased and the appellant became unhappy. About 10 days prior to the occurrence, the deceased went to her parent's house and stayed there for about 7 days. Thereafter the appellant brought her back to his house in the absence of his father-in-law (PW 3), who was away from his house. After his return, PW 3 and his wife went to see the deceased in the house of the accused to enquire about their welfare. It is alleged that they found the appellant and his mother and the deceased quarrelling with one another. It is also alleged that the appellant and his mother told them that they would kill the deceased in order to end the daily quarrel. PW-3 and his wife intervened and pacified them and on their intervention, the appellant and his mother assured that they would avoid quarrelling in future. On 3-6-77, the same day, at about 3.30 p.m. the deceased who was found to be unconscious was taken to the hospital by the mother of the appellant. The doctor (PW-1) informed the police and the deceased was found already dead by then. PW-3, the father-in-law of the accused was also informed about the death of the deceased. Since it was suspected that the death was due to poisoning a case was registered. The inquest was held and the dead body was sent for post-mortem. Dr. S. G. Garg, who examined the dead body on 4-6-77, did not find any external marks of injury. He found that the stomach was full of semi-digested food. He conducted the post-mortem and examined the viscera and the same was sent to Chemical Examiner. The Chemical Examiner found poison in the stomach of the deceased. It was held that the death was caused due to Cyanide poisoning. On 4-6-77, Gurbachan Singh (PW-4) along with Kewal Krishan P.W. went to the Civil Hospital, Ludhiana as the accused was admitted in the hospital. It is stated that the appellant was feeling giddy after having consumed some tablets. He was treated for the same. The further prosecution case is that the appellant/accused told the PW-4 that he had brought Potassium Cyanide from the factory in which he was working and administered

it to Kamlesh, the deceased. This was treated as an extra judicial confession in this case. On 4-6-77, S.I. Swarup Singh (PW-9) went to R. K. Machine Tools Factory. Ludhiana where the appellant was working. He examined the Chief Engineer (PW-5) of the factory and also took into possession of 2.850 miligram of Potassium Cyanide as a sample. The sample was also sent to the Chemical Examiner who examined and found that it contained Potassium Cyanide. After completion of the investigation, the charge-sheet was filed. When examined under Section 313, Cr. P. C., the appellant / accused denied the charge against him. He, however, admitted the stay of his wife with her parents for about seven days. He also stated that on 3-6-77, at about 9-9.30 a.m. he was asked by Kamlesh, the deceased, to bring some tea leaves from the market, and after his returning he found Kamlesh lying unconscious and came to know that the deceased died afterwards. He also said that he and his mother were falsely implicated in this case. The learned trial Judge, believed the prosecution case in its entirety against the appellant and convicted and sentenced him, as aforesaid, and acquitted Soma Wanti, mother of the appellant.

4. The High Court noticed that there was no direct evidence of the suspicion of administering poison by the appellant to the deceased and the case depends on the circumstantial evidence. The High Court, however, rejected the evidence of PW-4 who spoke about the alleged extra judicial confession and the High Court has given good reasons for rejecting this part of the prosecution case. The High Court proceeded to consider the other circumstances and reached the conclusion that the prosecution has established the guilt of the appellant. The circumstances relied upon by the High Court are as follows :-

(a) The relations between the accused and the deceased after the marriage were strained and there used to be quarrels between them.

(b) The appellant was working in a factory known as R. K. Machine Tools and he had an easy access of Potassium Cyanide which is generally used for heat-treatment of steels.

(c) The appellant did not attend the factory on that day.

(d) The post-mortem report/certificate, coupled with the chemical examination, disclosed that Potassium Cyanide was found in the stomach of the deceased.

(e) The appellant had access to the poison and opportunity to administer it, and

(f) The conduct of the appellant in getting himself admitted in the hospital and having obtained leave.

5. Relying on these circumstances, the High Court held that these are sufficient to bring home the guilt of the appellant.

6. On a bare perusal of these circumstances there is no doubt, a strong suspicion arises. But the question is whether the chain is complete so that the appellant can be held guilty of administering poison and whether the case of suicide is ruled out. The prosecution mainly relied upon the circumstances that the appellant could have come into possession of Potassium Cyanide as much as he was working in the factory where Potassium Cyanide was used for heat-treatment of steel, as spoken by PW-5. In this context, it must be borne in mind that the original case of the prosecution was that both the appellant and his mother had administered the poison to Kamlesh, the deceased. Be that as it may, in a case of this nature, where a plea of suicide has been put forward, the courts

below should examine whether such a plea is altogether untenable and whether suicide is ruled out. We find from the judgment of the courts below that they have given importance to the fact that what was found in the stomach, as noticed, by the Chemical Examiner and post-mortem report was only Potassium Cyanide. This appears to be an obvious mistake. We have seen the Chemical Examiner report and the post-mortem report/certificate. It is clearly mentioned in the Chemical Examiner report that what was found was only 'Cyanide' and the sample collected from the factory contained 'Potassium Cyanide'. In the absence of a clear note that what was found in the stomach was only Potassium Cyanide, it cannot straightway be inferred that the appellant who could have come into possession of Potassium Cyanide have administered the same, particularly so when the plea of suicide is put forward. The deceased also might have consumed some other type of Cyanide. In Taylor's Principles and Practice of Medical Jurisprudence, we find that there are several kinds of cyanides — viz., Potassium Cyanide, Sodium Cyanide and Calcium Cyanide etc. The author also points out that Potassium Cyanide is sold as commercial Potassium and is used in a few chemical processes, in electro-plating, in photography etc. but for most purposes has been superseded by the cheaper Sodium and Calcium Cyanide. Therefore, this plea, as made out, that whether it is Potassium Cyanide alone, we have a doubt that the death is caused due to administration of Potassium Cyanide alone. That apart, the fact that the presence of the mother of the accused who was also prosecuted has created a doubt, as to whether it was the mother or the son who administered the poison to the deceased. No doubt, even in such a case the appellant would also be responsible, but unless the prosecution clearly establishes that the death was not due to suicide and it was only homicidal by administration of Potassium Cyanide, he cannot alone be held liable. From the circumstances which have been relied upon by the prosecution and the courts below, it would show that the entire reasoning proceeds on the footing that the accused could have come into possession of Potassium Cyanide, therefore, the inference is that the accused must have administered the same. In the absence of medical evidence establishing that the death caused was only due to Potassium Cyanide, such a hypothetical inference cannot be drawn, particularly so in a case of the circumstantial evidence. It is well settled that in cases of circumstantial evidence, every circumstance has to be established by clinching evidence and not by mere conjectures.

7. The learned Counsel for the State relied upon a judgment of this Court in *Bhupinder Singh v. State of Punjab*, AIR 1988 SC 1011 : (1988 Cri LJ 1097), wherein it was held that "the insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning.

8. We have carefully gone through the judgment. That was a case where the facts and circumstances of the case ruled out the possibility of suicide as there was external injuries. Then, having regard to the other circumstances, the Court reached the conclusion that the accused therein had a motive to administer the poison and particularly when the death was proved to be homicidal. When the case of a murder is made out, the circumstances would be different to establish his guilt. The facts therein are distinguishable. Though a strong suspicion is there against the appellant, but the same cannot take the place of proof. Therefore, we set aside the conviction and sentence awarded by the Courts below. The appeal is allowed accordingly.

Appeal allowed.

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