

Dukhmochan Pandey & Ors.

Vs

State of Bihar

(G. N. Ray, G. B. Pattanaik JJ)

26.09.1997

JUDGMENT

NANAVATI, J.

1. The State has filed this appeal against the acquittal of the three respondents who were convicted by the Sessions Court but acquitted by the High Court. The Respondents No.1, Hari Kishan was convicted under Sections 302 and 201 IPC and his two brothers, Baldev Kumar and Jagdev Kumar (Respondent Nos.2 and 3 respectively) were convicted under Section 201 IPC.

2. The prosecution case was that Jai Rani (since deceased) had married R-1 of village Jagatpur on 18th August, 1983. Soon after the marriage, the respondents started pressing her either to get Rs.20,000 from her parents or to secure an employment for R1. When Jai Rani returned to her parents' house after about 25 days from the date of her Marriage she told her brother Ram Lubhaya (PW-5) about the said demand. Ram Lubhaya told her that it was not possible for them to pay Rs.20,000 but they would help R1 in securing employment. After staying at the parents' house for a few days, Jai Rani returned to her in-laws' house. On 3rd December, 1983, Ajit Singh (PW-3) who had brought about his marriage, went to village Jagatpur to meet his sister and brother-in-law, Bhajan Singh. Jai Rani went to the house of Bhajan Singh about 2.00 p.m. and told Ajit Singh about the demand of Rs.20,000/ by R1 and his brothers and the ill-treatment given to her for not bringing that amount. He advised her to return to her house and consoled her by saying that he would after some time meet her in-laws. In the evening at about 7 or 8 p.m., Ajit Singh along with his brother-in-law, Bhajan Singh went to the house of the Respondents. They saw that R-1, R-2 and R-3 were pulling her towards one of the residential rooms of their house. On seeing Ajit Singh and Bhajan Singh there they became nervous and left her free. Ajit Singh requested the respondents not to ill-treat her and then he returned to his in-laws' house. On the next day, Ajit Singh went back to his village in the morning. In the morning of 4th December.1983, at about 11 a.m. One Pokhar Ram (PW-4), a dealer in cattle, visited the house of the respondents along with one Santokh Singh as Santokh Singh was desirous of purchasing a young bullock and the father of the respondents had told Pokhar Ram earlier that he wanted to sell one. At that time, they saw the three respondents demolishing the roof of the 'kotha' of their house. The respondents' father told him that they were busy replacing the roof and, therefore, it was not possible for him to finalise the sale on that day. Some time thereafter and before 12 noon, Ram Lubhaya (PW-5) along with his sister Asha Rani went to the house of the respondents to meet her sister. When they reached there, they found her lying on a cot inside one of the rooms. R-1 was seen lying on a cot in the adjoining room. When Ram Lubhaya tried to talk to him, he did not respond. R-2 and R-3 told him that Jai Rani had died due to collapsing of the roof of the 'kotha'. So he returned to his village and informed his father Harbans Lal about the death of his sister. He then contacted Bhajan Singh (PW-2), Sarpanch of that village, and both of them along with one Mohinder Singh went back to village Jagatpur on a motor cycle. Bhajan Singh (PW-2) after verifying the death of Jai Rani went to the police station at Banga and reported the death of Jai

Rani. It was recorded in the Daily Diary as the information given by him did not disclose commission of any offence. However, after preparing the inquest report, the dead body of Jai Rani was sent for post mortem examination. The post mortem report disclosed that she had died as a result of strangulation. Therefore, on 6.12.1983, a case was registered for the offence punishable under Sections 302 and 201 IPC. Ultimately, all the three respondents were put up for trial in the court of Sessions Judge, Jalandhar who framed a charge against R1 under Sections 302 and 201 IPC and under Section 201 against R-2 and R-3.

3. In order to prove its case, the prosecution had mainly relied upon the evidence of Ajit Singh (PW-3), Pokhar Ram (PW-4), Ram Lubhaya (PW-5), Prem Kumar (PW-5) before whom the respondents were alleged to have made an oral confession and the medical evidence which ruled out the possibility of Jai Rani's death being accidental or suicidal and established that it was homicidal.

4. On the basis of the evidence of Dr. Pahwa (PW-1), the trial Court held that the death of Jai Rani was due to asphyxia resulting from strangulation, that her death was not accidental or suicidal but was homicidal and that she died during the night intervening 34/12/1983. Believing the evidence of Pokhar Ram (PW-4), it held that on 4.12.1983 at about 11.00 a.m. when he had gone to the house of the respondents all the three were present, that they were demolishing the roof of their 'kotha' and that they had told this witness that they were replacing the roof. The trial Court partly believed the evidence of Prem Kumar (PW-6) and the extra judicial confession made before him by R-1. Relying upon the evidence of Pokhar Ram (PW-4) and Sub Inspector Sardul Singh (PW-9), it held that the roof of their 'kotha' was really pulled down and it had not accidentally fallen. The trial Court also took into consideration the circumstance that the respondents had at the outset attempted to explain the death of Jai Rani and R-1 becoming unconscious due to falling of the roof. As the death took place during the night and as all the three respondents were occupying separate rooms, the trial Court held that it was incumbent upon R1 to explain the circumstances under which his wife died during that night. The trial Court also held that the version of R1 that he had left for his field at about 7.00 a.m. and when he had returned at about 11.00 a.m. he had found his wife lying on a cot inside one of the rooms of the house and due to shock he had become unconscious, was false. The trial Court considered this false explanation as a missing link in the chain of circumstances. Though there was no direct evidence as to who out of the three respondents had caused the death of Jai Rani, the trial Court held that R1 had caused the death of Jai Rani. It, therefore, convicted R1 under Section 302 IPC and as all of them had tried to fabricate evidence in order to save R1, it held them guilty under Section 201 IPC.

5. The respondents challenged their conviction by preferring an appeal before the High Court. The High Court disbelieved the evidence of Ajit Singh and Ram Lubhaya as regards the demand of Rs.20,000/ and ill-treatment given to Jai Rani and held that the prosecution has failed to prove the motive. Ram Lubhaya's (PW-5) evidence was disbelieved as he had not stated anything before the Police regarding the demand of Rs.20,000/ and Jai Rani's visit to their house. Evidence of Ajit Singh (PW-3) was disbelieved treating his conduct as unnatural as he had done nothing except requesting the respondents not to misbehave with Jai Rani when he had seen them pulling her on 3.12.1983 and after his return to the village on 4th he had not informed the relatives of Jai Rani about it. The High Court disbelieved the evidence of Prem Kumar and the confession made to him in view of the material improvement made by him, by trying to make all the three respondents responsible for the murder of Jai Rani. In his evidence before the Court this witness had stated that "Hari Kishan, Baldev Kumar and Jagdev Kumar accused asked me that they had killed Mst. Jai Rani and I should bring about a compromise between them and Harbans Lal father of the deceased". Whereas before the Police he had stated that "Hari Kishan told me having apprised his brothers at their tubewell

regarding the murder of Jai Rani". Another reason given by the High Court is that even though he claims to have cordial relations with the respondents, he had not come to know of the death of Jai Rani till 16th and had not made any attempt to bring about a settlement. He went on his own to the police on 18th and gave a statement. The High Court held that even though the death of Jai Rani had taken place in the house of the respondents and that it was by strangulation and as such it raised a strong suspicion yet in absence of any direct evidence, R-1 cannot be held guilty for the offence of murder. In support of its conclusion, the High Court relied upon the evidence of Ram Lubhaya that only R-2 and R-3 were pressurizing Jai Rani to bring money or get a job for her husband and that no complaint was ever made by Jai Rani against her husband. The High Court also relied upon the circumstance that R-3 had become unconscious and was required to be admitted in a hospital at 1.30 p.m. According to the High Court if R1 had the courage to strangulate his wife, then so soon after her death he would not have become unconscious. The High Court also took into consideration the absence of any effort by the respondents to cremate the dead body in a hurry or to conceal it from the gaze of others. Taking this view of the evidence, the High Court allowed the appeal, set aside the conviction and acquitted them.

6. It was contended by the learned counsel for the State that the High Court has neither appreciated the evidence of witness Ram Lubhaya correctly nor given good reasons for discarding the evidence of Ajit Singh. He submitted that their evidence clearly established motive on the part of Respondent to cause the death of his wife. He further contended that the High Court has rejected the evidence of Pokhar Ram (PW-4) for no good reasons. It clearly established that all the three respondents were present in the house at about 11.00 a.m. on 4th and at that time they were in the process of pulling down the roof of their 'kotha' room. He also submitted that the High Court not having disagreed with the finding of the trial Court that the death of Jai Rani had taken place during the night intervening 3rd and 4th, ought to have held that the explanation given by R-1 that his wife was alive when he left for the field in the morning at about 7.00 a.m. was false. He also submitted that as witness Prem Kumar had cordial relations with the families of the deceased and the respondents, he was really an independent witness and had no reason to falsely involve the respondents by stating that they had confessed before him that they had caused the death of Jai Rani. He lastly submitted that the High Court committed a grave error of law in holding that in absence of any direct evidence R1 cannot be held guilty for the offence of murder. With respect to R-2 and R-3, the learned counsel submitted that in view of the evidence of witness Prem Kumar, their explanation ought to have been held as false and their conviction under Section 201, should have been confirmed.

7. Though we find some substance in the contention that the High Court has not correctly appreciated the evidence of witness Ram Lubhaya and that the reasons given for rejecting his evidence and the evidence of Ajit Singh are not proper, we do not think it necessary to point out how the High Court has gone wrong in that behalf as we are inclined to agree with the submission made by Mr. Lalit, the learned counsel for the respondents that even if the evidence regarding motive is believed, the prosecution, in this case has failed to establish that R-1 was present in the house when the death of Jai Rani took place. Mr. Lalit submitted that the trial Court erroneously proceeded on the basis that the death of Jai Rani had taken place during the night between 3rd and 4th and even though the High Court has not specifically disagreed with the said finding, it becomes apparent from the Judgment of the High Court that it did not agree with the same. This being the most important aspect of the case, we have carefully scrutinised evidence of the doctor who conducted the autopsy on the dead body and also considered the reasons given by the trial Court in support of its finding. Dr. Pahwa (PW1) had started examination of the dead body on the 4.12.1997 at 9.30 a.m. He has stated that the death of Jai Rani had taken place 12 to 36 hours before he had started the autopsy. This Opinion was given by him after taking into consideration the extent of rigor mortis on

the dead body and the contents of stomach and small and large intestines. Thus according to the evidence of this doctor, the death of Jai Rani had taken place any time between 9.30 p.m. on 3rd and 9.30 p.m. on 4th. The other evidence on record discloses that she had died before 11.00 a.m. on 4th. The trial Court, however, relying upon some passages from Dr. Modi's book on Medical Jurisprudence, to which attention of Dr. Pahwa was not drawn, and what was found in the stomach and intestines of the deceased as a result of the post mortem examination, had drawn an inference that death of Jai Rani had taken place 6 to 7 hours after she had taken food and thus in all probability, she had died during that night and most probably in the early hours of the morning. Mr. Lalit submitted that the High Court has rightly not agreed with that finding as it was not proper to jump to the conclusion from the presence of some fluid in the stomach and some particles of food in the intestines that the death had taken place in the early morning hours of 4th. The contention raised by Mr. Lalit deserves to be accepted as Dr. Pahwa who had performed the autopsy, had not ruled out the possibility of the death having taken place in the morning of 4th after 7.00 a.m. Therefore, it cannot be said that the explanation of R1 that they had left for the field at about 7.00 a.m. his wife was alive then and he found her dead when he returned from the field at about 11.00 a.m., is inconsistent with the medical evidence. Moreover, the evidence of Ram Lubhaya discloses that when he had gone to the house of respondents on 4th at about 11.30 a.m. or 12 noon, he had seen many women sitting nearby the dead body of his sister. It is quite natural that on coming to know about the death of Jai Rani the neighbours and relatives of the respondents must have gone to his house. However, the prosecution did not examine any witness from the locality to establish as to when they came to know about the death of Jai Rani.

8. Only other evidence which could have established that R1 and his brothers were present in the house at about 11.00 a.m. and at that time were engaged in pulling down the roof of the 'kotha' room and which could have falsified the version of the respondents, is that of witness Pokhar Ram. According to this witness, when he had gone to the house of the respondents he had found the outer door of the house closed. He opened it by pushing the flaps of the door and from there he saw that respondents were demolishing the roof of the 'kotha' of the house with spades. He did not say that he had gone inside house by crossing the front room and then the open space and from there he had seen the respondents trying to pull down the roof. From the sketch of the house which has been exhibited in this case, it clearly appears that he could not have seen the 'kotha' room either while standing near the entrance door or even after entering the front room. Therefore, apart from the reasons given by the High Court, his evidence becomes doubtful for the reason stated by us. Moreover, if Jai Rani was already dead by that time and the respondents were trying to create evidence that her death was because of injuries received as a result of accidental falling of the roof then they would not have kept the front door unchained so that any one could open it and come inside and see what was going on there. It, therefore, cannot be said that the High Court is committed any error in discarding his evidence.

9. No other evidence was led by the prosecution to prove the presence of R1 in the house at the time of death of Jai Rani. The medical evidence being inconclusive and the evidence of witness Pokhar Ram having been rightly rejected, the High Court was rightly in holding that the prosecution has failed to establish that it was R1 who had caused the death of Jai Rani. His version was that he had left for the field at 7.00 a.m. and when he had returned therefrom at about 11.00 a.m. he had found his wife lying on a cot and some women were sitting and weeping near that cot and due to the shock he had become unconscious. His version that he had become unconscious received support from the evidence of witness Ram Lubhaya and the two doctors, viz., Dr. Hazari Lal (CW1) and Dr. Laxmi Narayan (CW2) who were examined as Court witness. Rani Lubhaya has stated his evidence that when he went to his sister's house at about 11.30 a.m. he found the dead body of his sister placed on a

cot in one of the rooms and in the adjoining room his brother in law R-1 was seen lying on a cot. When he had gone near him and attempted to talk with him he had not responded. Dr. Hazari Lal (CWI) who is a private Medical Practitioner at Mukandpur, which is at a distance of about 3 to 4 kms. from village Jagatpur, has deposed that on 4.12.1983 he was approached by Baldev Kumar (R-2) who requested him to go to village Jagatpur to treat his brother Hari Kishan (R-1). When he went to the house of the respondents he found Hari Kishan lying unconscious. He gave him medicines but considering his condition he advised them to remove him to Primary Health Centre at Mukandpur. According to the evidence of Dr. Laxmi Narayan (CW-2), Hari Kishan was brought to Primary Health Centre at about 1.30 p.m. and at that time he had found him unconscious. His condition improved on 7.12.1983 and he was discharged on 10.12.1983. Both the doctors have thus categorically stated in their evidence that they had found R1 unconscious. No questions were put to these doctors by the prosecution as to whether he was really unconscious or not and how he had become unconscious. From the evidence of these doctors, it further appears that there was no injury on his person. Thus he had not become unconscious as a result of any injury received by him while pulling down the roof as was tried to be made out by the prosecution. This circumstance thus makes the version of R1 more probable.

10. It was, however, contended by the learned counsel for the State that if what the respondents have stated in their statements under Section 313, Cr.P.C. was correct, why did they attempt to mislead Ram Lubhaya and the police by stating that Jai Rani had died as a result of injuries caused to her by falling of the roof. In his cross examination, Ram Lubhaya has admitted that it was not R1 but R-2 and R-3 who had stated so. R-2 and R-3 in their statements under Section 313, Cr. P.C. had stated that they knew nothing about how Jai Rani had died and that they returned from the field at about 12.00 noon. Even if we proceed on the basis that R-2 and R-3 had given a false explanation for the death of Jai Rani, that by itself cannot lead to an inference that R-1 had caused the death and that they had tried to fabricate the evidence to save him.

11. It was lastly submitted by the learned counsel for the State that the confession made by the accused before witness Prem Kumar, deserved to be accepted and that alone was sufficient to prove the guilt of the respondents. The High Court has given good reasons for not placing reliance on the evidence of Prem Kumar. This witness cannot be regarded as a reliable and independent witness in view of the material improvement made by him while deposing before the Court. His version also does not appear to be natural. The High Court was, therefore, justified in not placing any reliance upon the evidence of this witness.

12. Though it is a fact that Jai Rani died as a result of strangulation and that too in the house of the respondents and that does create a strong suspicion that her death was caused by someone residing in the house and in all probability by R1 as he had some motive to do so, it is not possible to convict him as the evidence led by the prosecution is not conclusive and no evidence was led by the prosecution on the basis of which it can be said that the explanation given by him in his examination under Section 313, Cr.P.C., is not probable. The evidence led by the prosecution against R2 and R3 is also not sufficient to warrant their conviction under Section 201 IPC.

13. This appeal is, therefore, dismissed. Bail bonds of the respondents are ordered to be cancelled.