

State of Himachal Pradesh

Vs

Jeet Singh

Criminal Appeal No. 263 of 1991

(K. T. Thomas and S.S. Mohammed Quadri JJ)

15.03.1999

JUDGMENT

K.T. Thomas, J.

1. Death of an Armyman's young wife was depicted as a case of murder and the Armyman was sent up for trial. Sessions Court found it a murder and him the murderer. Consequently Jeet Singh, the respondent was convicted of uxoricide and was sentenced to imprisonment for life under Section 302 of IPC. But a Division Bench of the High Court of Himachal Pradesh held it to be a case of suicide and exonerated him of the charges. This appeal is by the State of Himachal Pradesh by special leave.

2. Sudarshana Devi, wife of accused Jeet Singh, was a young fair and fashionable lass, but "Leucoderma" in its nascent stage had erupted small white patches on her bosom. This became the cause of dislike for her husband towards her as he mistook it to be a kind of leprosy. Though their marriage was solemnised more than three years before her death Jeet Singh was spending most of his days in the Army field except for short intervals when he used to go home availing himself of the annual leave. So Sudarshana Devi had to remain in her nuptial home mostly without her husband nearby, but putting up with the unsavoury epithets intermittently hurled by her mother-in-law and young sister-in-law at her.

3. Jeet Singh went home in April 1987 for his annual leave. He and his wife Sudarshana Devi left together in his family house at Lahar village (Hamirpur District), Himachal Pradesh. On the fateful night the couple went to bed in the "Overy" (which is said to be a bedroom of the house) but on the next morning Sudarshana Devi was found dead. The shocking news was conveyed to her father who rushed to the house and saw the dead body of his daughter. As he entertained doubts about some foul play he decided to report the matter to the police. He did it telephonically and the police arrived at the scene promptly. They held the inquest on the dead body and sent it for post-mortem examination. There doctors of the local district hospital conducted a joint post-mortem examination and it was then revealed that death of Sudarshana Devi was by smothering.

4. Prosecution version is that accused administered some kind of insecticide to the deceased either deceitfully or forcefully and smothered her.

5. Accused Jeet Singh was arrested on 21.4.1987. On the strength of his disclosures PW-24 Kashmir Singh (Sub Inspector of Police, Nandaun) recovered a bottle containing green insecticide, a towel, a vest, a steel Kauli, and steel glass and some ground "misri".

6. The trial judge counted a number of circumstances which were adverse to the accused, such as the strained relationship between the spouses, medical evidence suggesting administration of poison, and smothering of the deceased, recovery of incriminating articles under Section 27 of the Evidence Act, the fact that accused and deceased were in the same room on the fateful night and that she was found dead on the early morning and the subsequent conduct of the accused. The Sessions Judge reached the conclusion from the aforesaid circumstances that Sudarshana Devi was murdered by the accused. Accordingly, he was convicted and sentenced as aforesaid.

7. The Division Bench of the High Court drastically varied from the aforesaid conclusion. Even on the circumstances the Division Bench differed from the trial court. In the end the High Court held like this :

"In light of the evidence that has come on record of this case, it may be said that the deceased died on poison but it is difficult to conclude that the death was homicidal. As a matter of fact, it appears that it is a case of suicide for which the accused cannot be held to be responsible."

Shri Anil Soni, learned counsel for the State of Himachal Pradesh, while criticising the aforesaid conclusion of the High Court submitted that learned judges have grossly erred in holding that it is a case of suicide. The counsel made a forceful plea that on the medical evidence no court could possibly reach a conclusion that it was not a case of homicide.

8. Medical evidence in this case has a great significance. Prosecution examined three doctors who conducted the joint post-mortem examination. Ext. PB is the Post-Mortem Report signed by all the three doctors. Among them PW.5 Dr. P.C. Gupta seems to be the seniormost and he gave details of the autopsy in his evidence. The defence also examined a doctor (Dr. C. Madhav Rao - Prof. and Head of the Department of Forensic Medicines, I.G. Medical College, Shimla) to speak to an opinion on the data contained in Ext. PB Post-Mortem Report.

9. The general features of the dead body, as noted by the doctors, have been described in the Post-Mortem Report as "well plated hair with Sindoor in the middle parting bindi well placed over forehead (maroon coloured with white crescent and white dot in it); red coloured lip-stick well applied over both lips." Then the various ornaments worn by Sudarshana Devi were described.

10. The following are the marks noted by the doctors for reaching the unmistakable conclusion that Sudarshana Devi was subjected to forcible smothering :

"1. Three bruises 1/4" x 1/4" each (on left upper nasolabial area)

2. Three bruises 1/4" x 1/4" each (on left side just below the angle of mouth).

3. A semi-circular and curved bruise 1.5" x 1/2" obliquely placed along the face extending between right malar bone to right angle of mouth.

4. Four bruises 1/4" x 1/4" each on right side just below and lateral to angle of mouth".

Pleurae were congested, mucous membrane of trachea and larynx were bright red, covered with bloody froth and congested, right and left lungs and pericardium of the heart were congested.

11. The following injuries were found on the lower limbs :

"5. Multiple linear abrasion (looking like scratch marks) were present over dorsum of hands and forearms, varying in size from pin head to 3" in length.

6. Five bruises were present on lateral aspect of right thigh, measuring 1/2" x 1/4" each.

7. Two bruises 1/2" x 1/4" were present on the anterior aspect of the left leg."

When the viscera was sent for chemical analysis Ext. PZ Report was forwarded by the Chemical Examiner which showed that it contained halogenated organic phosphorous compound. In the context of the said chemical analysis report the following data supplied by the doctors who conducted the post-mortem can also be referred to : "Linear bluish discolouration on right iliac fossa along the inguinal ligament."

Without seeing the report of the Chemical Examiner, the doctors who conducted the autopsy expressed their opinion that the deceased had died of asphyxia due to suffocation caused by smothering and/or internal airway obstruction.

12. After the receipt of the Chemical Examiner's certificate the following data collected by the doctors also became important :

"Oesophagus had congested mucous membranes and gave pungent smell on the dissection. Stomach was distended and full of pungent smelling greenish white thick liquid, about a litre. Mucous membranes were congested.... Liver, spleen and kidney were congested. Bladder was empty."

13. Dr. C. Madhav Rao, who was examined as a defence witness, after looking into Ext. PB - Post-Mortem Report and Ext. PZ - Chemical Examiner's Report, has expressed his opinion as follows :

"In the present case after going through the Chemical Examiner's report, I am of the opinion that poison is responsible for death rather than smothering. It is true that the Chemical Examiner's report has not mentioned about the strength of poison, but as these substances are not normally in the body and the findings recorded in the post-mortem report are consistent with poisoning by these substances, in my opinion it will be correct to assume death by poison. But at the same time Dr. C. Madhav Rao conceded : "I cannot rule out the possibility of administration of poison mixed with "Misri" under the disguise of medicine." During cross-examination he was asked about the possibility of death by smothering as for the deceased. The following answer was given by him : "It is true that one of the important distinctive features of smothering is the injuries around the mouth including the inner surface of the lip.... It is true that smothering is sufficient for suffocation. It is correct that there are symptoms of asphyxia."

14. It appears to us that the High Court has totally overlooked the features of the victim which are consistent with the consequence of her having been subjected to smothering. The injuries found on both the legs of the dead body are proof positive that it was a homicidal smothering. We can place

reliance on the opinions of both sets of doctors that even without seeing the Chemical Examiner's report the doctors could say that death of the deceased might be due to smothering, and after seeing the Chemical Examiner's report a doctor could say that poison would also have worked fatally in the victim.

15. It is more realistic to conclude that it was a homicide either by smothering alone or by poisoning alone or that both causes worked independently and reached the common result. It is quite possible that the killer after administering poison, would have felt that the victim might expel the poison by vomiting and then he would have smothered her to see that the venom did not get evacuated and in that endeavour the smothering became fatal.

16. The court cannot ignore the large number of external injuries particularly those on the legs. When they are counted in association with the findings regarding the internal organs, they all would cumulatively lead to the one conclusion in favour of the theory of forcible smothering. In view of such external injuries, a conclusion that deceased would have committed suicide is a preposterous inference. We therefore unhesitatingly dissent from the finding of the High Court on that score.

17. If Sudarshana Devi was murdered on the night of occurrence the next point for discussion is whether accused Jeet Singh was her murderer. The foremost circumstance which stares at him is that the couple were closetted together in the same "Overy" (bedroom) during the fateful night. PW-10 Birbal, who is the uncle of accused Jeet Singh and who is residing in the adjoining house, has said in his evidence that Jeet Singh and Sudarshana Devi were together in the same "Overy" on that particular night and that on the next morning he found Sudarshana's dead body lying on the floor of the "Overy". The residence of PW-10 Birbal and accused Jeet Singh has only one common courtyard. PW-10 said that he slept on the said courtyard during that night. Except a feeble suggestion put to PW-10 during cross-examination that he had a property dispute with Jeet Singh's father (that suggestion was strongly denied by the witness) nothing else is shown to doubt the truth of his version.

18. The conduct of the accused has some relevance in the analysis of the whole circumstances against him. PW-3 Santosh Singh, a member of the Panchayat hailing from the same ward, said in his evidence that he reached Jeet Singh's house at 6.15 a.m. on hearing the news of that tragedy, and then accused Jeet Singh told him that Sudarshana complained of pain in the liver during early morning hours. But when the accused was questioned by the trial court under Section 313 of the Code of Criminal Procedure he denied having said so to PW-3 and further said, for the first time, that he and Sudarshana did not sleep in the same room but they slept in two different rooms. Such a conduct on the part of accused was taken into account by the Sessions Court in evaluating the incriminating circumstance spoken to by PW-10 that they were in the same room on the fateful night. We too give accord to the aforesaid approach made by the trial court.

19. The next circumstance against the accused is the disclosure statements made by the accused to the Investigating Officer which led to the recovery of Ext. P.5 - bottle (green insecticide) from tobacco bushes, Ext. P-6 towel and Ext. P-7 vest from the heap of rubbish situated in the compound of his residence, and Ext. P-8 steel Kauli from his cow-shed. PW-24 Kashmir Singh, Investigating Officer said in his evidence that when accused Jeet Singh was interrogated after arrest he told the Investigating Officer thus : "I have concealed the bottle containing poison under the bushes situate beyond Gohar; I have concealed the towel and vest under the heap of rubbish and the steel Kauli in the Lakola of the cow-shed....."

What is significant is that when Ext. P-6 and Ext. P-9 were sent to the Chemical Examiner he recorded his opinion after analysis that they contained halogenated organic phosphorous compound.

20. Learned Judges of the High Court repelled the aforesaid circumstances on two premises. One is that PW-3 Santosh Singh, who was present when the recovery was effected, said that the accused had not made any disclosure statement. Second is that as the places from where the recoveries were made were "open and accessible to others", the recoveries cannot be used as evidence under Section 27 of the Evidence Act.

21. Both the aforesaid premises were not of any use to reject the evidence tendered by PW-24 Investigating Officer. It must have been during the interrogation of accused that he would have made the disclosures. It is not necessary that other witnesses should be present when the accused was interrogated by the Investigating Officer. On the contrary, investigating officers used to interrogate accused persons without the presence of others. So the mere fact that any witness to the recovery did not overhear the disclosure statements of the accused is hardly sufficient to hold that no such disclosures were made by the accused.

22. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

23. It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it. *Pulikuri Kottaya*, AIR 1947 PC 67. The said ratio has received unreserved approval of this Court in successive decisions. (*Jaffar Hussain Dastagir v. State of Maharashtra*, 1969(2) SCC 872, *K. Chinnaswamy Reddy v. State of Andhra Pradesh*, A.I.R. 1962 SC 1788, *Earabhadrapa @ Krishnappa v. State of Karnataka*, 1983(2) SCC 330, *Shamshul Kanwar v. State of U.P.*, 1995(4) SCC 430, *State of Rajasthan v. Bhup Singh*, 1997(10) SCC 675).

24. In the present case, the fact discovered by the police with the help of (1) of disclosure statements and (2) the recovery of incriminating articles on the strength of such statements is that it was the accused who concealed those articles at the hidden places. It is immaterial that such statement of the accused is inculpatory because Section 27 of the Evidence Act renders even such inculpatory statements given to a police officer admissible in evidence by employing the words : "whether it amounts to confession or not."

25. The High Court observed that the accused had no good motive to liquidate his young wife. This is what the learned Judges of the High Court have stated on that aspect :

"Although it is not always necessary for the prosecution to prove motive in a

criminal trial, however, this is one of such cases where motive is essential in case the prosecution wants to succeed in its endeavours to prove the case against the accused. But, we are not convinced with this kind of motive. These factors, narrated by the prosecution, are too trivial to be taken note of to establish it. They are thoroughly insignificant and do not, in any way, indicate that they could influence the accused to the extent that he would take the extreme step of killing his wife."

Having stated the legal principle correctly that it is not the requirement of law that unless prosecution establishes a motive of the accused to murder the deceased prosecution must necessarily fail, learned judges proceeded to treat the case on hand as an exception to the aforesaid general approach. Why should the present case be an exception to the aforesaid legal principle ?

26. Learned counsel for the accused invited our attention to the decision of this Court in *Sharad Birdhichand Sarda v. State of Maharashtra, A.I.R. 1984 SC 1622* in which an earlier decision in *Ram Gopal v. State of Maharashtra, A.I.R. 1972 SC 656* was followed with approval as laying down different tests regarding the mode and manner of proof in cases of murder by administration of poison. They are : (1) Whether there is a clear motive for an accused to administer poison to the deceased. (2) Whether the deceased died of poison which is said to have been administered. (3) Whether the accused had poison in his possession. (4) Whether he had an opportunity to administer it to the deceased.

27. On its basis learned counsel contended that the establishment of a clear motive is *sine qua non* for a conviction in cases of murder through administration of poison.

28. No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. In this context we may extract the observations made by a two Judge Bench of this Court (Dr. A.S. Anand, J. - as the learned Chief Justice then was and Thomas, J.) in *Nathuni Yadav v. State of Bihar, 1978(9) SCC 238* :

"Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in *R.V. Palmer* (Shorthand Report at p. 308 CCC MAY 1856) thus :

"But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.

"Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant."

(Para 17)

Be the position as it may, this is a case where prosecution succeeded in showing that the accused had some cause for dislike of his wife. Some of the letters which accused had written during the preceding months were seized by police and marked as exhibits of the prosecution. Some of those letters contained the adverse remarks made by him about Sudarshana Devi's conduct in domestic activities. The High Court did not read much in those letters as exhibiting any prejudice or ill will towards his wife. Of course such an interpretation is plausible. Hence those letters do not afford any clue for the motive to finish her.

29. But there was another side of it. PW.12 Raj Kumari one of the elder sisters of Sudarshana Devi has, in her evidence, said that Sudarshana had told her about the accusations which the accused used to make pointing to the white patches on her body and describing them as marks of leprosy. Of course in cross-examination PW.12 admitted that the accused was told about such white patches even before the solemnisation of the marriage. PW.13 Urmila is another elder sister of the deceased and she too has stated in her evidence that Sudarshana Devi told her of the remarks which her in-laws used to make that she was having leprosy.

30. It may be that during the pre-marital months Sudarshana Devi had only one tiny mark of discolouration which was not considered to be of any serious notice. But as years passed the leucoderma would have caused spreading of the discolouration to different parts of her body. In this context it is useful to refer to what the doctors have recorded in the post-mortem report regarding that aspect: "Multiple depigmented patches of varying sizes were present over the feet, arterial abdominal wall and sternal area of chest."

31. If the in-laws of Sudarshana Devi had treated such escalating white patches as symptoms of leprosy we have no doubt that they would have conveyed that opinion to the accused also. If the accused was making accusations against her that she was suffering from leprosy it would have reflected his mind towards her. It could be that he would have thought of getting rid of a leper as his wife once and for all.

32. In this case prosecution has succeeded in establishing all the four tests laid down in Ram Gopal's case (supra).

33. The High Court committed a grave error in reaching the conclusion that Sudarshana Devi had committed suicide. Due to gross misappreciation of evidence and misreading of the circumstances proved in this case, the High Court caused a miscarriage of justice by clearing the accused who committed such a heinous crime by liquidating his hapless female partner.

34. We therefore allow this appeal and set aside the judgment of the High Court and restore the conviction and sentence passed by the Sessions Court on the accused. We direct the Sessions Judge, Hamirpur (H.P.) to resort to prompt steps to put the accused back in jail for undergoing the

remaining portion of the sentence.

Appeal allowed.