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JAGTA

v.

STATE OF HARYANA

April 23, 1974

[P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

B

Circumstantial evidence—Criminal case—Value of.

The accused was convicted for the offences of murder and attempt to commit rape. The evidence against him was purely circumstantial consisting of, (a) recovery of some petty ornaments belonging to the victim, (b) an extra-judicial confession made by him to one of the prosecution witnesses, (c) his presence near the place of occurrence on the day of occurrence, and (d) injuries on the person of the accused.

C

Allowing the appeal and acquitting the accused.

HELD : This Court does not normally, in an appeal under Art. 136 re-appraise the evidence, but there are glaring infirmities in the prosecution evidence in the case. Circumstantial evidence in order to warrant conviction, should be consistent only with the hypothesis of the guilt of the accused and when there is reasonable doubt the accused is entitled to its benefit. [172 C; 171F]

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(a) No reliance could be placed upon the evidence that the deceased was wearing the ornaments on the day of the occurrence and that those ornaments were removed from the person of the deceased by the accused because, (i) No mention of the ornaments not being found upon the body of the deceased was mentioned in the F.I.R. by her father and other witnesses who discovered her body. (ii) No mention was made in the inquest report prepared in broad daylight even though there is a specific column in the report relating to ornaments and clothes of the deceased, (iii) The nature of the crime shows that the crime is one of sex and not one for pecuniary gain, and (iv) It is extremely unlikely that the accused, who was a landowner, would carry away such petty ornaments to his house and keep them in his shirt pocket, and thus provide evidence of his complicity in the crime. [169G-H; 170A-D]

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(b) There is absolutely no reason why the accused, instead of surrendering himself to the police, should go to the house of a prosecution witness, blurt out a confession before him, and ask him to take him to the police. Since the evidence as to whether the accused at all made a confession is unreliable and lacking in probability the question as to what value would have been attached to the confession if the evidence had been found to be reliable and trustworthy, need not be considered. The attempt by the Investigating agency to introduce a false story regarding the removal of the ornaments and their recovery from the accused also affects the credibility of the evidence regarding the extra-judicial confession. Also, though the dead body was discovered according to prosecution at 11.30 p.m. even before, by 8.00 p.m., the father of the victim and the sarpanch were declaring that it was the accused who had committed the murder. It shows that body must have been recovered even by 8.00 p.m. [170E-G]

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(c) The fact that the accused was in his field at 1.00 p.m. and was walking away at a fast pace at sun set time would not necessarily point to the guilt of the accused especially when there is no evidence. (i) that no other persons were present in the field, and (ii) regarding the time at which the offence was committed. [171D]

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(d) Assuming that the explanation of the accused that the injuries on his person were caused by the police is not trustworthy, that circumstance though suspicious, would not be sufficient to warrant his conviction of a serious offence entailing death penalty. [171E-F]

(e) The mere fact that the accused cut an indecent joke with sister-in-law of the victim 20 days before the occurrence could hardly be a valid basis for

suspicion, or in any case for a positive assertion, that it was the accused who had murdered the deceased. [171H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 149 of 1973.

Appeal by special leave from the judgment & Order dated the 5th January, 1973 of the Punjab & Haryana High Court in Criminal Appeal No. 931 of 1972 and Murder Ref. No. 46 of 1972.

R. K. Garg, S. C. Aggarwal, S. S. Bhatnagar and V. J. Francis, for the appellant.

H. S. Marwah and Girish Chandra, for the respondent.

B. D. Sharma, for the complainant.

The Judgment of the Court was delivered by

KHANNA, J. This appeal by special leave by Jagta alias Jagdish (34) is directed against the judgment of the Punjab and Haryana High Court affirming on appeal and reference the conviction of the appellant under section 302 Indian Penal Code for causing the death of Phul Pati (23) and the sentence of death. The appellant was also convicted by the trial court under section 376 Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of eight years, but the High Court altered the conviction on that score to that under section 376 read with section 511 Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of two years.

Phul Pati deceased was the daughter of PW Roopa of village Guhna in district Rohtak. She was married to Head Constable Baldev Singh of village Bajana. About two days before the present occurrence Phul Pati came to her father's house. In the afternoon of January 13, 1972 Phul Pati left her father's house to go to his field to cut grass. The said field is in the area of village Farmana at a distance of 1½ kos from the abadi of village Guhna. The three villages Guhna, Farmana and Ridhao are near each other. The accused belongs to village Ridhao. The field of the accused adjoins that of Roopa, father of Phul Pati. As Phul Pati did not return from the field in the evening, it is alleged, her father Roopa and brother Maha Singh went to the fields in search of her. On reaching their field they found a heap of grass. They shouted for Phul Pati but got no response. Khes P1 which had been taken by Phul Pati was seen lying on the patri of a drain. Roopa and Maha Singh shouted for Phul Pati at the patri of the drain also but got no response. Roopa and Maha Singh thereupon returned to their village abadi and told Dharam Singh sarpanch, Bhima lambardar and Sube member Panchayat and others of their village that their daughter Phul Pati was not traceable. It became dark by that time. Dharam Singh, Bhima, Sube, Roopa, Maha Singh and four or five other persons took four lanterns and went to the fields to search for Phul Pati. The party found the dead body of Phul Pati lying in the field of Risala. The string of the salwar of Phul Pati had been untied and she was lying with her face downwards. Her *choti* had been tied round her neck. Blood was found to have oozed from her mouth and nose. Leaving

A Dharam Singh, Bhima, Sube and others near the dead body, Roopa left for police station Kharkhoda at a distance of 14 miles from the place of occurrence and lodged report PF at the police station at 5.30 a.m. on the following morning. In that report Roopa after giving the above facts stated that he suspected Jagta accused as the culprit responsible for the murder of the deceased. The basis of that suspicion, according to Roopa, was that the accused had about
B 20 days earlier cut indecent joke with his daughter-in-law Birhmi (PW 3), wife of Maha Singh.

Sub Inspector Gugan Singh after recording the first information report, took a police party and went with Roopa to the place of occurrence on scooter. The party reached the place of occurrence at about 8.30 a.m. The Sub Inspector found the dead body of Phul
C Pati lying there guarded by Dharam Singh sarpanch, Maha Singh and others. Blood was found to have fallen on the ground. There were also signs of struggle. The Inspector prepared the inquest report and the injury statement. The dead body was then sent for post mortem examination to Rohtak. Post mortem examination on the dead body of Phul Pati was performed by Dr. K. K. Sen at Rohtak on January
D 15, 1972 at 10 a.m.

According further to the prosecution case, the accused could not be found by the Sub Inspector on January 14, 1972. On the morning of January 15, 1972 the Sub Inspector was present in the office of the co-operative society of village Farmana. At about 6.30 a.m. on that
E day, it is stated, the accused went to the house of PW Ram Singh of village Farmana and told him that Phul Pati had been murdered at his hands in the fields and that he had committed a sin. The accused also requested Ram Singh to produce him before the police. Ram Singh accordingly produced the accused before Sub Inspector Gugan Singh in the office of the co-operative society at 7.30 a.m. The Sub Inspector put the accused under arrest. On interrogation by the Sub
F Inspector the accused disclosed in the presence of Dharam Singh and Sube that he had kept one Dhol (a small ornament for wearing round the neck) and one Koka (nose pin) in a shirt pocket in his house and could get the same recovered. Statement PW of the accused was then recorded by the Sub Inspector. The accused then led the police party to his house in village Ridhao, at a distance of two furlongs from Farmana, and from the pocket of shirt PS hanging in his house the accused got recovered Dhol P2 and Koka P3. The shirt, though
G washed, appeared to be blood stained. Dhol, Koka and shirt were taken into possession and were sealed.

The accused at the time of his arrest was also found to have injuries on his person. He was got examined from Dr. Pawan Kumar at 12.30 p.m. on that day. The doctor found 12 abrasions on the person of the accused. The injuries were simple and had been caused
H by blunt weapon. In answer to a question, the doctor stated that two of the abrasions on the left hand could be caused by nails or tooth bite. Smegma was also found on the organ of the accused at the time he was examined.

Identification proceedings in respect of Dhol P2 and Koka P3 were held by Shri Ranapartap Tehsildar (PW 10) on February 4, 1972. Dhol and Koka were mixed with one other Koka and two Dhols. Dhol P2 and Koka P3 were correctly identified by Birhmi, wife of Maha Singh, as these belonging to the deceased. The said Dhol and Koka were also identified by Than Singh goldsmith (PW 11) as those having been prepared by the witness for Surja Mal, father-in-law of the deceased.

At the trial the plea of the accused was denial *simpliciter*. As regards injuries on his person, the accused stated that he was called by the police from his field at 10 a.m. on January 14, 1972 and was thereafter kept at the police station. The accused added that the injuries on his person had been caused by the police. The allegations about his having made an extra judicial confession to Ram Singh and about his having got recovered Dhol and Koka from the pocket of a shirt were denied by the accused.

Learned Sessions Judge Rohtak, before whom the accused was tried, accepted the prosecution evidence about the extra judicial confession of the accused as well as about the recovery of Dhol and Koka from the pocket of a shirt at the instance of the accused. The recovery of shirt P8 was held to be not an incriminating circumstance as no one had deposed that the accused was wearing that shirt on the day of occurrence. Reliance was also placed by the learned Sessions Judge upon the evidence of Kishna (PW 5) and Chattar Singh (PW 6). According to Kishna, he had seen the accused at about 1 p.m. on the day of occurrence present in his fields. The witness also saw Phul Pati going at that time to her father's field along the drain. Chattar Singh PW deposed that at about sunset time on that day, he saw the accused walking on a pucca road at fast speed. The accused was at that time going towards his village. On being accosted by the witness, the accused did not stop and stated that he had some work. In the result the accused was convicted and sentenced as mentioned earlier.

On appeal and reference the High Court substantially agreed with the view taken by the trial court. In view of the presence of smegma on the organ of the accused, the High Court was of the opinion that the actual commission of the offence of rape was doubtful. It was held that the accused had attempted to commit rape on Phul Pati.

We have heard Mr. Garg on behalf of the appellant and Mr. Marwah on behalf of the State and are of the opinion that the conviction of the accused-appellant cannot be sustained.

There can be no manner of doubt that Phul Pati was the victim of a beastly assault. The assailant not only committed or attempted to commit rape upon her but also strangulated her to death. According to Dr. K. K. Sen, who performed post mortem examination on the dead body, the neck of the deceased was found tied tightly all round with her *choti*. Ligature mark was horizontal, continuous and

A complete. On dissection of the ligature mark, blood was found in the subcutaneous tissues. The face of Phul Pati was swollen and cyanosised. The mouth was open and the tongue was protruding out. Her face and nose were besmeared with blood-stained mud. Blood was also coming out from the right ear. There was a laceration on the right side of the vaginal wall. A lacerated wound was also found on the left middle finger. There were also a number of abrasions all over the body. The stomach contained three ounces of digested food. Death, in the opinion of the doctor, was due to asphyxia as a result of strangulation. The doctor took three slides of vaginal smear and sent the same to the chemical examiner, whose report shows the presence of semen on the same.

C The case of the prosecution is that it was the accused who murdered Phul Pati deceased by strangulating her. The High Court has further found that the murder of the deceased was committed by the accused when he attempted to commit rape upon her. There is no eye witness of the occurrence, but the prosecution has relied upon the recovery of Dhol P2 and Koka P3 belonging to the deceased from the accused as well as upon his extra judicial confession made to Ram Singh PW. Reliance has further been placed by the prosecution upon the fact that the accused was present nearabout the place of occurrence on the day of occurrence and that he had injuries on his person.

E We may first deal with the evidence about the recovery of Dhol P2 and Koka P3 belonging to the deceased from the house of the accused at his instance. The evidence in this respect consists of the testimony of Sub Inspector Gugan Singh (PW 16), Dharam Singh sarpanch (PW 12) and Rajmal lambardar (PW 13). We have further the evidence about the identification of those two ornaments by Birhmi and Than Singh PWs in the identification proceedings held by Shri Ranapartap. After having been taken through the evidence on record, we are of the view that the prosecution allegation that the deceased at the time of the occurrence was wearing Dhol P2 and Koka P3 and the same were removed by the accused is highly improbable. If Phul Pati deceased was, in fact, wearing Dhol P2 and Koka P3 on the day of occurrence and the same were found to be missing when her dead body was recovered, it is most unlikely that her father Roopa (PW 2) and brother Maha Singh (PW 8) would not have noticed the fact that those two ornaments were missing when they found the dead body lying in the fields. Roopa in that event would have made a mention of the fact that Dhol and Koka were missing in the first information report. There was, however, no mention in the first information report of those two ornaments or about their having been removed from the body. Mr. Marwah on behalf of the State has argued that it is possible that the father and brother of the deceased might not have noticed the removal of those two ornaments at night time when they found the dead body. Assuming it to be so, we find no reason as to why no mention of this fact was made when the inquest report was prepared in broad daylight on the following day by Sub Inspector Gugan Singh. In the inquest

report the Sub Inspector reproduced the statement of Roopa as given in the first information report. Column No. 7 of the inquest report specifically relates to the condition of the clothes and ornaments of the deceased and the police officer preparing the inquest report has to make an entry in that column about any marks on the dead body caused by the removal of ornaments as well as other matters connected with those ornaments. It is natural to assume that the Sub-Inspector would make an enquiry from Roopa and others regarding ornaments worn by the deceased at the time he filled in the above column. The fact that, in spite of the above column, no mention was made of the missing Dhol and Koka would tend to show that the evidence in this respect has been subsequently introduced. It would also seem from the nature of the crime that the object of the culprit was satiation of carnal passion and not pecuniary gain. It seems most unlikely that the accused who is a landowner would carry two petty ornaments belonging to the deceased to his house and keep them in the pocket of his shirt even though those two ornaments would provide evidence of his complicity in the crime relating to the murder of the deceased. We are, therefore, not prepared to place any reliance upon the evidence that the deceased was wearing Dhol P2 and Koka P3 on the day of occurrence and that those two ornaments were removed from the person of the deceased by the accused.

So far as the alleged extra judicial confession of the accused is concerned, the prosecution has relied upon the evidence of Ram Singh (PW 4). After having been taken through the evidence of that witness, we find the same to be lacking in credence and devoid of any ring of truth. The police was admittedly present in the office of the co-operative society in village Farmana on the morning of January 15, 1972. We find no reason as to why the accused, instead of surrendering himself before the police, should go to the house of Ram Singh in village Farmana, blurt out a confession before him and ask him to produce the accused before the police. Nothing has been shown to us as to why the accused could not himself go and appear before the police. We have mentioned above that an attempt has been made in this case to introduce the story of the recovery of ornaments belonging to Phul Pati deceased from the accused. The attempt of the investigating agency to introduce a false story about the removal of the ornaments of the deceased and their recovery from the accused would, in our opinion, also affect the credibility of the evidence regarding the extra judicial confession alleged to have been made to Ram Singh PW. The evidence about an extra judicial confession is in the nature of things a weak piece of evidence. If the same is lacking in probability as it is in the present case, there would be no difficulty in rejecting the same. We are, therefore, not prepared to place any reliance upon the evidence regarding the extra judicial confession of the accused.

Mr. Marwah, has argued on the basis of observations in some cases that the value of a confession should be judged by taking it along with other evidence adduced by the prosecution. This question, in our opinion, would arise only if there be reliable evidence about the making of the confession. If, however, the court finds the

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A evidence on the point as to whether the accused at all made the confession to be unreliable and lacking in probability, no question need be considered as to what value would have been attached to the confession, if the evidence about the accused having made it had been found to be reliable and trustworthy. It is plain that the value of the confession can be gone into only if its existence is established by leading reliable evidence about the accused having made it.

B We may now deal with the evidence about the accused having been seen at or about the place of occurrence on the day of occurrence. The evidence in this respect consists of the statement of Kishna (PW 5) and Chattar Singh (PW 6). According to Kishna, he saw the accused working in his field at 1 p.m. The witness also saw Phul Pati going to the fields alongside the drain. There is no material on the record to indicate as to what was the time of the commission of the offence. There is no evidence on the record also to show that no other persons were present in the fields at that time. In the circumstances the presence of the accused in his field at 1 p.m. cannot take the prosecution case very far. So far as the evidence of Chattar Singh PW is concerned, we find that all that the witness has deposed is that the accused was found walking towards his village on a pucca road at a fast speed at sunset time. On being accosted by the witness, the accused did not stop and stated that he had some work. This circumstance would also not necessarily point to the guilt of the accused.

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F Lastly, we have the evidence about the injuries which were found on the person of the accused. The explanation of the accused is that those injuries were caused to him by the police. Assuming that the explanation of the accused with regard to those injuries is not trustworthy, this circumstance as well as the circumstance about his being present in his fields at 1 p.m. on the day of occurrence and about his going at sunset time on a pucca road towards his village are hardly sufficient to warrant the conviction of the accused in a serious offence entailing death penalty. It is well established that circumstantial evidence in order to warrant conviction should be consistent only with the hypothesis of the guilt of the accused. The same cannot be said to be true of the circumstantial evidence adduced in this case.

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H We may also refer to one other circumstance. According to Dharam Singh sarpanch (P W12), the dead body of Phul Pati was discovered in the field of Risala at about 11 or 11.30 p.m. As against that, the evidence of Dharma (PW 7) is that he was told by Dharam Singh and Roopa at 8 p.m. on that day that Jagta accused had murdered Roopa's daughter. The evidence of Dharma would thus go to show that the dead body of Phul Pati had been found before 8 p.m. and the evidence of Dharam Singh PW that it was at about 11 or 11.30 p.m. that the dead body was found is not correct. It is also not clear as to how Roopa and Dharam Singh could be positive that it was the accused who had murdered the deceased because in a matter like this, when there is no eye witness, one cannot be certain about the actual culprit. The fact that the accused had cut an indecent joke with Birhmi about 20 days before the present occurrence

would hardly be a valid basis for the suspicion or in any case for the positive assertion that it was the accused who had murdered Phul Pati deceased. Although in the first information report Roopa PW only expressed his suspicion regarding the complicity of the accused-appellant, the evidence of Dharama PW shows, as mentioned above, that Roopa and Dharam Singh PWs asserted positively at 8 p.m. that the murder of the deceased had been committed by the accused. It is possible that there was some other evidentiary material with Roopa and Dharam Singh about the complicity of the accused but the same has not been produced at the trial. The evidence actually produced is either unreliable or such as is not sufficient to warrant the conviction.

It is no doubt true that this Court does not normally in an appeal under article 136 reappraise the evidence, but that fact would not stand in the way of this Court examining the matter for itself, if it finds that in a case involving death sentence the prosecution evidence is afflicted with some glaring infirmity. The presence of injuries on the person of the accused does create a suspicion regarding his complicity but that suspicion by itself and in the absence of other incriminating evidence would not warrant his conviction. The matter in any case is not free from reasonable doubt and the accused must necessarily have the benefit thereof.

We therefore accept the appeal, set aside the conviction of the accused and acquit him.

V.P.S.

Appeal allowed