

(2003) 04 AHC CK 0259

Allahabad High Court

Case No: Criminal Appeal No. 1235 of 1979

Smt. Phool Dei and Another (in
Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 3, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 302, 34

Citation: (2003) 3 ACR 2201

Hon'ble Judges: M.C. Jain, J; K.N. Ojha, J

Bench: Division Bench

Advocate: Vinay Saran, for the Appellant; A.K. Verma, A.G.A. and Shambhu Nath Shukla and Akhilesh Tewari, for the Respondent

Judgement

M.C. Jain, J.

The judgment challenged in this appeal is one dated 31.3.1979 passed by Sri S. D. N. Singh, the then Sessions Judge, Mirzapur in the S.T. No. 81 of 1977. Three persons, namely, Smt. Phool Dei, Kashi Nath (Appellants) and Ram Kishan were tried in the said trial. Ram Kishan (husband of Appellant No. 1 and father of Appellant No. 2) was acquitted, but the present two Appellants who are mother and son were convicted u/s 302, I.P.C. read with Section 34, I.P.C. for double murder and sentenced to life imprisonment. They were also convicted u/s 201, I.P.C. read with Section 34, I.P.C. and sentenced to seven years' rigorous imprisonment, both the sentences to run concurrently.

2. Km. Pushpa alias Palo aged about six years and her cousin Uma Shanker aged about three years were the victims of this felony which was committed some time on 20.11.1976 in village Bharuhana, police station Kotwali Dehat, district Mirzapur. Suryamani was the daughter of Jai Narain alias Sant Ram, resident of the said village. Jai Narain had only three daughters but no son. He had two brothers but

they were also issueless. Kashi Nath Appellant is collateral of Jai Narain related to him as nephew. Jai Narain owned 30 bighas of agricultural land while the Appellants had only 2.5 bighas of field. It was alleged that the accused were interested in grabbing the land belonging to Jai Narain and wanted to create a situation in which his daughters might be deterred from visiting their father. They used to quarrel with Jai Narain and damaged his crops and harvests. On the date of alleged incident also, there was allegedly a quarrel between them over irrigation of fields and in the course of same, Kashi Nath Appellant had threatened Jai Narain to settle the score.

3. About 8 or 10 days before the incident, Jai Narain's daughter Suryamani (whose son Uma Shanker was) had come to live with her father. Pushpa alias Palo was the niece of Suryamani, being the daughter of the brother of her husband.

4. On the fateful day, after breakfast Uma Shanker and Pushpa went out of the house to play. Uma Shanker was then putting on a sando baniyan and Pushpa was putting on a frock and underwear. Their maternal grandmother Smt. Mangari P.W. 3 had carried breakfast for her husband Jai Narain to the field where he was working. The house of the Appellants was close to that of Jai Narain. At about 10.00 O'clock, Pyare Lal P.W. 5 who manufactures baskets and toys and sells them by hawking in the villages saw the two children playing at the door of Appellant Phool Dei and Phool Dei giving Gur to them. Ram Chandra P.W. 1 while passing that way also saw it. It was also seen that Kashi Nath Appellant had Uma Shanker in his lap and was holding a finger of Pushpa taking them inside his house. Phool Dei and Ram Kishan followed him. At about 11.00 a.m. when Mangari, maternal grandmother of the children, returned from the field after delivering breakfast to her husband, the Appellant Phool Dei met her on the way and told her that Pushpa had taken Uma Shanker to the pond for washing (saunch) and both the children were drowning when she saved them and took them to her (Mangari's) house. On reaching her house, Mangari inquired from her brother-in-law and also from her daughter Suryamani as to whether the Appellant Phool Dei had brought the children there. They declined. Mangari accompanied by her daughter Suryamani and other relations then searched for the children here and there. She also approached Phool Dei who again insisted that she had brought the children from the pond and had left them at her house. Having failed to find any trace of the children, Mangari informed her husband Jai Narain and he, accompanied by various other residents of the village, searched for the children and also looked into the wells and ponds. Since no trace of the children was found anywhere, he proceeded to Kotwali Dehat and lodged a written report about the disappearance of the children the same day at 6.10 p.m. The distance was about three miles. While Jai Narain went away to police station, Kashi Nath Appellant came and informed the inmates of his house that the two children were seen sitting in Mukeri Bazar of Robertsganj. On return from the police station, Jai Narain learned about it and accompanied by others left for Mukeri Bazar and looked for the children. They were, however, not to be found there. On return from Mukeri Bazar at about 10.00 O'clock in the night, Jai Narain and other

inmates of his house were informed by Pyare Lal P.W. 5 and Ram Chandra P.W. 1 that they had seen the children playing at the door of Kashi Nath Appellant and Phool Dei giving Gur to them and further that Kashi Nath was keeping Uma Shanker in his lap and holding a finger of Pushpa and taking them inside his house with Appellant Phool Dei and Ram Kishan following him. The accused by that time escaped after locking their house from outside. S.I. Gorakh Nath Singh P.W. 8 visited the village the following morning and found the dead body of Pushpa floating in the pond situate adjacent to the house of the accused. On further search, the dead body of Uma Shanker was also found in the pond entangled in the bushes growing at its bank. The inquest reports of the two dead bodies were held and they were dispatched for post-mortem which was conducted by Dr. D. D. Tripathi, P.W. 7 between 9 to 10 a.m. on 22.11.1976. Pushpa was aged about six years and two days had passed since she died. The following anti-mortem injuries were found on her person:

- (1) One punctured wound 0.5 cm. - 0.5 cm. - bone deep, 1 cm. below left eye.
- (2) One punctured wound 0.5 cm. - 0.5 cm. on outer side of left upper eye lid.
- (3) One punctured wound 0.5 cm. - 0.5 cm. on medial side of left upper eye lid.
- (4) One lacerated wound 1 cm. - 0.25 cm. - skin deep on left eye lid.
- (5) Punctured wound 1.5 cm. - 1 cm. over right lower eye lid.
- (6) Abrasion 1 cm. - 0.5 cm. on left angle of mouth.
- (7) Traumatic swelling with contusion 10 cm. - 4 cm. on left buttock.

On internal examination, the Doctor found congestion of sub-cut tissues, in front of neck with sub-cut haemorrhage. Pleural cavity contained very little fluid. All the larynx were congested, and very little fluid was present there. Lungs were also congested and there was petechia haemorrhage at some places. Stomach was full of partially digested food particles like "roti", rice and "dal". Small and large intestines contained gases and faeces. Gall bladder was congested.

In the opinion of the Doctor, the death was due to asphyxia caused by strangulation.

5. Uma Shanker was aged about three years and about two days had passed since he died. The following anti-mortem injuries were found on his person:

- (1) Lacerated wound 1 cm. - 0.5 cm. on left side upper lip, over inner surface.
- (2) Lacerated wound on right cheek, 1 cm. - 0.5 cm.
- (3) Lacerated wound on left cheek, 1 cm. - 0.5 cm.

On internal examination, the Doctor found contusions in the front and sides of the neck with sub-cut haemorrhage and congestion. Brain was congested. Larynx were congested and swollen. The lungs were also congested and with petechia over the

surface. The stomach was full of partially digested food. Small and large intestines had gases and faeces.

In the opinion of the Doctor, the death of Uma Shanker was also caused due to asphyxia owing to throttling.

6. Phool Dei allegedly got recovered the frock of the girl which she was wearing at the time of incident from the pond on 22.11.1976 to S.I. Gorakh Nath Singh, Investigating Officer.

7. The defence was of denial and of false implication due to enmity. At the trial, the prosecution examined 9 witnesses. The case and evidence of the prosecution found favour with the court below and conviction of the present two Appellants was recorded whereas the case was not found proved against the third accused Ram Kishan who was acquitted.

8. We have heard Sri Vinay Saran, learned Counsel for the Appellants and Sri A. K. Verma learned A.G.A. from the side of the State. The record of the case has been summoned before us which we have carefully perused.

9. Obviously, the case rests entirely on circumstantial evidence, there being no eye-witnesses of the felony.

10. The submission of the learned Counsel for Appellants is that it being a case of circumstantial nature, the aspect of motive is most important and, according to him, there was no motive on the part of the accused Appellants to commit this crime of double murder of two children of tender age. True, the motive is important in the present case, but on consideration, we do not find any force in this argument that there was no motive on the part of the Appellants for the commission of the crime. The undisputed fact is that Jai Narain P.W. 4, maternal grandfather of the two children, owned considerable agricultural land, viz., 30 bighas. The accused-Appellants only had 2.5 bighas of land. He had three daughters, but no son. His two brothers were also without issues. Suryamani P.W. 2 was one of his daughters whose third son Uma Shanker deceased was. The girl Pushpa alias Palo was the daughter of younger brother of her husband. Suryamani P.W. 2 had come to live with her father 8 or 10 days before this incident with these two children. The learned Counsel for the Appellants has urged that Suryamani P.W. 2 had two other sons aged about 12 and 10 years at the time of incident as admitted by her and admittedly Jai Narain had two other daughters also. Therefore, no direct benefit could accrue to the accused-Appellants by killing Uma Shanker, the third son of Suryamani as other heirs of Jai Narain would have inherited his property even if Uma Shanker was not there. The matter is not so simple as has been sought to be projected by the learned Counsel for the Appellants. Possession is 9 point ownership out of ten, even if it is illegal. The accused-Appellants being jealous of agricultural land of Jai Narain wanted to create a situation in which his daughters could be deterred from visiting him. They, therefore, nursed a hope to grab the land of Jai

Narain by succeeding in discouraging his daughters from visiting him. Murdering the two children was a step in that direction to achieve their goal. We are, therefore, of the view that the accused-Appellants had firm motive to commit this crime.

11. Solid proved circumstances of irrefutable character are lined up to establish the guilt of the accused-Appellants. We allude to them in succeeding discussion one by one.

12. The first circumstance is that at about 11-11.30 a.m. on the fateful day, the Appellant Phool Dei misinformed Smt. Mangari P.W. 3, maternal grandmother of the two children, that the children were drowning in the pond and she had escorted them back to their home. Own evidence of Mangari P.W. 3 in this behalf is there that at about 8 O'clock, she had carried breakfast for her husband to the field and when she had returned at about 11.00 O'clock in the forenoon, the Appellant Phool Dei met her on the way and informed her that Pushpa had taken Uma Shanker to the pond for washing and that two children were drowning there and further that she had escorted them back to their house. The statement of the witness is also to the effect that on reaching her house, she inquired from her brother-in-law, who was sitting at the door, and also from her daughter Suryamani who was inside the house whether Phool Dei had brought the children there, but both of them declined. The submission of the learned Counsel for the Appellants is that in any case by that time, there could be no occasion for Phool Dei to give false information to Smt. Mangari as by that time, no body knew as to where the children were and whether they were alive or dead. It may be related here that the factum of this information having been given by the Appellant Phool Dei to Mangari is found mentioned in the report that Jai Narain lodged about missing children at the police station on 20.11.1976 on 6.10 p.m. itself. By that time also, it was not known whether the children were dead or alive. The family members were only searching the children frantically, but to no avail. It was for this reason that this report was lodged by Jai Narain at the police station seeking help of the police in tracing them out, only suspecting the accused-Appellants to be behind the episode of the disappearance of the children. There could hardly be any possibility or occasion for mentioning the fact of above information given by the Appellant Phool Dei to Mangari in the F.I.R. without any basis. This misinformation was given by the Appellant Phool Dei with two-fold purpose. First, she wanted to misdirect her and other family members from immediately tracing the children in the pond. Second, by giving such misinformation she wanted to avoid the entertaining of any suspicion against her or her family members. Therefore, the misinformation given by Appellant Phool Dei to Mangari P.W. 3 about the children, while she was returning from fields after serving breakfast to her husband, is the first strong circumstance in the chain proving the guilt of the Appellants.

13. The second circumstance is that when Mangari P.W. 3 did not find the children at the house and her brother-in-law and daughter replied in the negative to her query

whether Phool Dei had left the children there, she (Mangari P.W. 3) and Suryamani P.W. 2 again went to the house of the accused-Appellants to confirm the information that had earlier been given by her, but she again insisted that saving the two children from drowning in the pond, she had left the children at their door. The testimony of Suryamani P.W. 2 and Mangari P.W. 3 is there on this aspect of the matter. Not only this, when Jai Narain P.W. 4 knew on the field about the disappearance of the children, he had also rushed up to his house and had himself inquired from Appellant Phool Dei, but she had reiterated the information earlier given by her. It was a bold attempt on her part to misguide the family members of the two children and to ward off any suspicion on her.

14. The third important circumstance is that two children were last seen alive on the date of occurrence in the company of the accused-Appellants at their door. In this behalf, there is the testimony of two uninterested witnesses, Ram Chandra P.W. 1 and Pyare Lal P.W. 5 residents of the same village. The defence could not show that either of these witnesses was thick with the prosecution side or was inimical against the accused-Appellants. Both of them had seen the Appellants Phool Dei giving Gur to the two children, Kashi Nath was holding Uma Shanker in his lap and Pushpa alias Palo by hand and taking them inside his house followed by Phool Dei and Ram Kishan (husband of Phool Dei, who has been acquitted). Ram Chandra P.W. 1 clearly stated that he saw the children in their company between 9-10 O'clock in the morning when he was going to the tailoring shop of Lal Bahadur to collect the clothes therefrom and passed by the door of the accused-Appellants. After visiting the tailoring shop of Lal Bahadur, he had gone to Chunar and returned to his house late in the night when his wife informed him about the disappearance of the two children. Then he went to the house of Jai Narain and told him what he had seen at the door of accused-Appellants. Pyare Lal P.W. 5 manufactures baskets and toys and sells them by hawking in the village. His evidence is to the effect that he had seen the two children at the door of the accused-Appellant Phool Dei who was providing Gur to them. He had also witnessed the above incident between 9-10 a.m. while going in the abadi of the village. He returned to his house in the night and learnt about the disappearance of the two children from his wife and it was then that he went to Jai Narain and informed about what he had seen between 9-10 a.m. in the morning. It is well-explained that they could not give the above information to Jai Narain earlier as they were out and they returned in the village during the night. It is also to be pointed out that earlier to the gaining of this information from them, Jai Narain had gone to the police station to lodge the report regarding the disappearance of the two children and for this reason, the factum of the information supplied by these witnesses could not find place in the F.I.R.

15. Learned Counsel for the Appellants argued that on the same evidence, Ram Kishan has been acquitted whereas the same evidence has been taken to be conclusive and sufficient to convict the present two Appellants. It is not really so. The truth of the matter is that while Ram Chandra P.W. 1 has stated that the accused

Ram Kishan also went inside his house following Kashi Nath, Pyare Lal P.W. 5 did not mention his name. Thus, it was for this reason that the presence of Ram Kishan was deemed to be doubtful and he was acquitted.

16. The learned Counsel for Appellants then urged that it has come in the testimony of Ram Chandra P.W. 1 that when he had seen the two children at the door of the Appellants, the children of the family of the Appellants were also there. He reasoned that the two children could not be taken inside by Kashi Nath and Phool Dei when other children were also there. The argument does not have the attraction of logic at all. Children are innocent creatures whose conduct is not guided by the cultivated or acquired instincts as of mature persons. Accused-Appellants, besides being collaterals of the maternal grandfather of the children, were his neighbours also. The presence of children in the family of the accused-Appellants also could well be the reason for the two unfortunate children to be attracted there to enjoy their company. To lure them, Phool Dei gave Gur to them as also to other children playing there. While others kept playing outside, she and Kashi Nath managed to take the two children inside the house and there is nothing unnatural about it.

17. Another clinching circumstance is that when no trace of the children was found in the village and around, Jai Narain P.W. 4 went to the police station to lodge the report regarding their disappearance. Kashi Nath then went to his house and informed that the children had been seen sitting in Mukeri Bazar. There is evidence of Suryamani P.W. 2 to this effect that when Jai Narain returned to home from the police station, he accompanied by various persons of the village including the inmates of the house, rushed to Mukeri Bazar and made frantic search for the children, but he did not find any trace of them there. Such misinformation was given by accused-Appellant Kashi Nath with a purpose. It is manifest from the conduct of the accused-Appellants that by the time Jai Narain with inmates of the house and various other persons returned from Mukeri Bazar without any trace of the children, they absconded from their house after locking it. The statement of Suryamani P.W. 2 has been corroborated by Mangari P.W. 3 and Jai Narain P.W. 4, both of whom stated that on return from the police station Jai Narain accompanied by the residents of the village including the inmates of his house went to Mukeri Bazar and searched for the children in vain. The exercise of searching the children in Mukeri Bazar was undertaken on the basis of the information given by Kashi Nath. Purposely giving this false information, the accused-Appellants took advantage of the absence of Jai Narain and other inmates of his house and escaped from their house after locking it out and could be arrested only on 22.11.1976 at about 3 p.m. near the railway line from the outskirts of the village.

18. Further, there were injuries on the person of the two deceased, meaning thereby that violence had been applied to them before they were thrown in the pond after murder. It could be during intervening period of the absence of Jai Narain and other inmates of his house when the accused-Appellants managed to throw the two dead

bodies in the pond adjacent to their house. It was obviously not a case of drowning as the death of both the children occurred due to asphyxia caused by strangulation/throttling with several other injuries having been caused to them. It is, however, not necessary to speculate as to how they precisely and actually managed the trick of two bodies being thrown in the pond.

19. There is conclusive evidence of the prosecution to the effect that dead bodies of the children were found in the pond in the following morning which was just adjacent to the house of the accused-Appellants. After Jai Narain had lodged the report at the police station, the Head Constable Jiledar Singh P.W. 9 sent the same to S.I. Gorakh Nath Singh P.W. 8 who was in the interior area in connection with investigation of some case. S.I. Gorakh Nath Singh P.W. 8 directly proceeded to the village and in the following morning at about 5 O'clock, the dead body of the girl was noticed floating in the pond. On further search, the dead body of the boy was also found in the pond entangled in the shrubs growing by its side. The pond lies adjacent to accused-Appellants' house just in front of their northern door.

20. There is yet another circumstance that the Appellant Phool Dei got recovered frock of the girl that she was wearing at the time of her murder from inside the pond. She herself dug it out from there. In this behalf, there is testimony of S.I. Gorakh Nath Singh P.W. 8. Though he was Investigating Officer, but decidedly a disinterested person with no animus against her. There was no suggestion either to him that he had any animus against the Appellant Phool Dei.

21. Learned Counsel for the accused-Appellants argued that the pond was public place frequented by a large number of persons and the recovery of the frock from it at the instance of Phool Dei carries no weight. No doubt, it was a public place. But the point of the matter is that the Appellant Phool Dei had dug the frock out from knee deep water and she alone could know the range of the area of the pond where it was concealed. Therefore, recovery of the frock at her instance from the pond is also a strong circumstance against her. It was identified by Suryamani P.W. 2 that the girl was wearing that frock when she had left her house for playing. Ram Chandra P.W. 1 also identified the frock (Ext. 1) which Pushpa alias Palo was wearing when he saw her at the house of the Appellants when she was taken inside by them.

22. As we have indicated above, there was sufficient motive on the part of the accused-Appellants to commit this crime. The children were last seen in the company of the two accused-Appellants. Their conduct in giving false information to the members of their family is not at all compatible with their innocence. Rather it proves their guilty mind. The circumstances discussed above threadbare are fully established and are of conclusive nature consistent only with the hypothesis of the guilt of the Appellants excluding any other possibility. The chain of circumstantial evidence is complete, not leaving any scope for the conclusion which could be consistent with the innocence of the accused-Appellants.

23. To close, we do not find any merit whatsoever in this appeal and it is liable to be dismissed. We hereby dismiss the appeal and maintain the conviction and sentences passed against the Appellants Smt. Phool Dei and Kashi Nath. Both of them are on bail. The Chief Judicial Magistrate, Varanasi, shall cause them to be arrested and sent to jail to serve out the sentences passed against them.

Let a copy of this judgment along with record of the case be immediately sent to the court below for needful compliance under intimation to this Court within two months from the date of receipt.