

**(2011) 03 AHC CK 0408**

**Allahabad High Court**

**Case No:** Criminal Jail Appeal No. 5332 of 2005

Smt. Gujrati alias Seema

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** March 3, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313, 433
- Evidence Act, 1872 - Section 134
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2011) 61 ACR 2165 : (2011) 8 RCR(Criminal) 1183

**Hon'ble Judges:** Naheed Ara Moonis, J; Amar Saran, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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**Judgement**

Amar Saran, J.

This criminal appeal arises from a judgment and order dated 6.4.2004, passed by the Additional District and Sessions Judge, Kaushambi convicting and sentencing the Appellant Smt. Gujrati alias Seema to imprisonment for life u/s 302, I.P.C. and a fine of Rs. 20,000 and in default she was further sentenced to one year R.I.

2. Heard Shri Swetashwa Agrawal, learned amicus curiae for the Appellant and Shri V.K. Mishra, learned A.G.A. for the State.

3. In brief the facts of the case are that an F.I.R. was lodged by Bankey Lal, father of the deceased Deena Nath at 7.45 a.m. on 30.4.2002 in the police station Sarai Akil with the allegations that on the previous night. i.e. 29/30.4.2002 at 3.00 a.m. the Appellant Gujrati alias Seema who was the wife of the deceased Deena Nath assaulted him with a "gandasa" in their house in village Kotia. It was further mentioned in the F.I.R. that the relations between Deena Nath and Gujrati alias Seema were strained as Gujrati used to accuse Deena Nath of having illicit relations with his elder daughter Sushila. On the night in question, there was a quarrel

between these two and again she raised the usual charge of the illicit relations of the deceased with his daughter and the deceased had gone off to sleep without eating his food. At 3.00 a.m. on 30.4.2002 several gandasa blows were given by the Appellant to the deceased on his neck, which their daughter Guddi, P.W. 1 tried to prevent, but the Appellant ran away after assaulting her husband. A dibri was the source of light. After the information was received from Guddi, the informant Bankey Lal, P.W. 2 who was her grandfather came to the house of the deceased and saw the corpse of his son lying there. Ram Lakhan, the younger brother of the informant is also said to have seen the Appellant running away after committing the murder.

4. The Investigating Officer, P.W. 6, S.I. Arun Pradeep Shukla commenced the investigation of this case and conducted the inquest on the dead body of Deena Nath and sent it for post-mortem. He also prepared the site plan and recorded the statements of the witnesses u/s 161, Code of Criminal Procedure and thereafter submitted the charge-sheet u/s 302, I.P.C. against the Appellant.

5. A charge u/s 302, I.P.C. was framed against the Appellant in this case on 11.12.2003. The Appellant pleaded not guilty and claimed to be tried.

6. P.W. 1 Guddi, the daughter of the deceased Deena Nath and the Appellant Gujrati alias Seema has been examined as the solitary eyewitness. P.W. 2, Bankey Lal, father of the deceased, who was the informant. P.W. 3. Dilsukh who was the scribe of the F.I.R., P.W. 4 Dr. Arvind Kumar Srivastava, who conducted the postmortem on 30.4.2002. P.W. 5. Ram Sanehi, Head Constable, who prepared the chik F.I.R. and P.W. 6 S.I. Arun Pradeep Shukla, the Investigating Officer are the other witnesses. The Appellant denied having participated in the incident in her statement u/s 313, Code of Criminal Procedure.

7. P.W. 1 Guddi aged 10 years has described the incident and mentioned that the Appellant Gujrati was her mother, who was in jail and the deceased Deena Nath was her father. She had come to Court with her grandfather and she had come to speak the truth. In the opinion of the Court she was competent to depose. She has stated that there were frequent quarrels between her mother and father. The mother wanted her father to bring "pisna" on the date of incident, but he said that "pisna" had not been ground and he could not bring it. Then her father went to sleep. On that date no food was cooked in the house. A diya was burning inside. At that time, her mother hacked her father with a gandasa. When she objected, her mother cried out "Raan bhag jau nahi to tumhe bhi kaat dalege". Then she rushed to her grandfather, who was lying at the tube well. When her grandfather came back, her mother ran away. Her mother left the "gandasa" near the head of her father. Her father had come at about 12.00 mid night after watering the "parwal field". No food had been cooked at the house. Her father had eaten at his mother's place in Kundari, which was at some distance.

8. P.W. 2 Bankey Lal the father of the deceased has deposed that he was residing at Kundari with his family, whereas the deceased used to live with his family at Kotia. His son and daughter-in-law had been quarrelling for several years. He did not know the cause of the quarrel. His daughter-in-law used to quarrel because of the illicit relations of the deceased with his daughter Sushila. On the night in question, they were in Kundari. His grand-daughter Guddi gave information of the incident. His wife and younger daughter-in-law and his son had reached the place of incident from the tube well prior to him.

9. P.W. 3 Dilsukh, scribe of the F.I.R., was also the witness of the recovery of the "gandasa" which was used in the incident, at the pointing out of the Appellant Gujrati after her arrest, which was marked as Ext. Ka-2.

10. P.W. 4, Dr. A.K. Srivastava conducted the post-mortem on the body of the deceased Deena Nath Pasi on 30.4.2002. He found the following ante-mortem injuries:

1. Incised wound upper lip left side 7 cm. ✦ 1/2 cm. through and through.
2. Incised wound 8 cm. ✦ 3 cm. on left chin ✦ bone deep.
3. Incised wound left side neck 8 cm. ✦ 1 cm. ✦ bone deep. 2 cm. below left ear lobule.
4. Incised wound 12 cm. ✦ 2 cm. size, 5 cm. approximately below left ear pinna, extending up to mandible.
5. Incised wound 1-1/2 cm. ✦ 1/2 cm. left pinna ear lobule through and through.
6. Incised wound 10 cm. ✦ 5 cm. bone deep at cervical vertebrae (C4) level with cut on vertebrae and fractured, neck vessels of both sides are cut.
7. Incised wound 6 cm. ✦ 3 cm. right neck approx. 3 cm. below right pinna.
8. Incised wound 2 cm. ✦ 1 cm. over right clavicle, bone exposed.

11. P.W. 6 S.I. Arun Pradeep Shukla, S.O. Sarai Akil, commenced the investigation of this case. He got the inquest paper (Ka-11) filled up by S.I. Girwar Giri and he inspected the site and prepared site plan (Ka-5) collected the plain and bloodstained mud from the spot and prepared the recovery memo (Ka-6). He found three pieces of broken bangles at the spot, whose recovery memo was marked (Ka-7). The memo of the piece of blanket which was cut out and found lying under the corpse was marked as Ext. Ka-8. The dibri which was at the spot was inspected by him and handed over to the informant (Ext. Ka-9). The deceased was arrested on 1.5.2002 at 00.15 hour from the khandhar of the house of Mahendra Narayan Shukla in village Kotia.

12. It was argued by the learned amicus curiae that only a single child witness Km. Guddi has been examined and she could be tutored to give her evidence in Court

and it would not be safe to rely on his solitary testimony, as the other persons, who were present in the house have not been examined. The alleged recovery of the gandasas at the instance of the Appellant Gujarati from the khandhar of Mahendra Narayan Shukla is doubtful as P.W. 1 Guddi had stated in her evidence that gandasas were lying near the head of her father. There is some confusion about whether the dibri was burning outside the house or near her father. The allegations of illicit relations of the deceased with his married daughter Sushila have not been proved as Guddi denies any knowledge of her father having illicit relations with Sushila. The wounds on the body were of different dimensions, which were suggestive that the crime had been committed by some other persons. As P.W. 1 Guddi has admitted in her cross-examination that her father had one or two other enemies and some cases were pending on account of these enmities, hence some others could have committed his murder. According to the site plan, P.W. 1 was sleeping outside, but in her cross-examination she stated that her mother was also sleeping outside with her, hence P.W. 1 could not see when her father had entered the house.

13. It is further contended that Ram Lakhan, the brother of the deceased has not been produced although he is also said to have arrived at the place of incident after the event. The two other brothers (one younger and one older) of P.W. 1 Guddi have not been examined. No specific question regarding recovery of the gandasas on the pointing out of the Appellant from the khandhar of Mahendra Narayan has been put to the Appellant u/s 313, Code of Criminal Procedure. There was a discrepancy in the distance of village Kundari where the informant, the father of the deceased resided and also there was some contradiction as to whether the informant was present at the tube well or he was called by Guddi from his house in Kundari after the incident.

14. Learned Additional Government Advocate, on the other hand, argued that the discrepancies pointed out by the learned amicus curiae are minor in nature. The Appellant had been arrested in the night of 1.5.2002 from the khandhar of Mahendra Narayan Shukla and the gandasas had been recovered on her pointing out at 0.15 hours itself, immediately after her arrest. No evidence has been given that the deceased had any other enemy, who could have killed him. There was no reason for the P.W. 1, who was the daughter of the Appellant to have falsely nominated her for the murder of her father and no reason existed why the informant and the witnesses would have falsely nominated the Appellant and spared the real offender.

15. On examining the submissions made by the learned Counsel for the parties, we are satisfied that sufficient material exists for establishing the complicity of the Appellant in this offence. The Court has examined the child witness P.W. 1 Guddi and found her capable of giving evidence and that she understands the need to speak the truth. There was no reason for her to falsely implicate her father in this crime. In spite of a long cross-examination, the defence has failed to elicit any

material to dislodge her testimony. Some minor variance whether she was sleeping outside with her mother, or whether her mother was sleeping inside the room with her father, or whether she called her grandfather, the informant from village Kundari or whether he was present at the tube well nearby would not make any difference to her testimony. If an argument broke out between the mother and father and at that moment her mother went inside the room and hacked her father with a gadasa, this girl could easily have woken up if she was earlier asleep on hearing the sounds and witnessed the incident.

16. The medical evidence corroborates the presence of gadasa injuries on the deceased. Moreover, because of the varying sizes of injuries, no inference can be drawn that more than one weapon had been used and other persons were also involved in the crime. The size and nature of the injury depends on where the weapon lands on the deceased and whether it is drawn out, or the victim is given a direct blow etc. No inference can be reached from varying sizes of the injuries that they were the result of more than one weapon, involving more than one accused.

17. Non-production of Lakhan and other brothers of P.W. 1 Km. Guddi is also not very material because it is not necessary in every case to multiply the witnesses. Moreover, the other brothers may not have been interested in giving evidence against their mother, having already lost their father earlier in the incident or they may have been sleeping at the time of incident.

18. In *Namdeo v. State of Maharashtra* AIR 2007 SC 100 : 2007 (2) ACR 1522 (SC), after considering a conspectus of authorities, in paragraph 30 it has been observed:

From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the Legislature (Section 134 Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye-witness therefore, has no force and must be negatived.

19. Lack of affirmative evidence regarding the illicit relations of the deceased with his married daughter Sushila, as P.W. 1 Guddi had stated that she did not know about any such illicit relations, will also not help the defence case much, because if the Appellant suspected that the deceased was having illicit relations with his daughter Sushila (even if there were actually no such illicit relations between the two) she could have nursed a grievance against her husband, which may have culminated in the assault on the deceased with a gadasa in the night in question

after a quarrel broke out between the two. In any case, where there is an eyewitness account, the non-affirmative proof of motive loses importance.

20. In [Molu and Others Vs. State of Haryana](#), it has been observed at page 368:

It is well-settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eyewitnesses is creditworthy and is believed by the Court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant.

21. Again nothing turns on the point whether the dibr was burning inside or outside the room because the witness (the daughter) would have no difficulty in recognizing her own mother as the person who had assaulted her father with the gandasa and some light was needed for the Appellant to assault the deceased.

22. So far as the recovery of gandasa from the mother when she was apprehended from the khandhar on M.N. Shukla, the learned Sessions Judge rightly repelled the defence argument that P.W. 1 Guddi had seen the gandasa lying near the head of her father by observing that after she had left for her grand-father's house, leaving the Appellant behind at home, she may have removed it and hidden it to the place from where it was recovered after her arrest. Simply because a separate question regarding the recovery of the gandasa on the pointing out of the Appellant was not put to her u/s 313, Code of Criminal Procedure but reference to the recovery was generally put, would not in our opinion, detract from the value of the recovery as the Appellant was aware of this incriminating circumstance against her and her counsel could not point out how she had been prejudiced by not framing a separate question regarding the recovery.

23. Also the gandasa and the broken bangles which were found at the spot, were having human blood as per the Serologist Report, which are corroborative circumstances for showing the Appellant's participation in the crime.

24. In view of the aforesaid circumstances, we are of the view that there was adequate evidence for showing the complicity of the Appellant in this crime. Accordingly we see no illegality in the finding of conviction recorded by the learned Sessions Judge.

25. However, considering the fact that the Appellant appears to be an impoverished woman, who has been represented by an amicus curie, the fine awarded to her is reduced from Rs. 25,000 to Rs. 1,000 and in default thereof, she will need to further undergo three months R.I.

26. Before parting, we would like to observe that a perusal of the evidence shows that in the night in question when the quarrel took place, the deceased Deena Nath

had not brought pisna and P.W. 1 stated that the family had gone to sleep hungry that night, although the deceased had himself taken his food in his father's house in Kundari. In such a background the annoyance of the Appellant with her husband is somewhat understandable. Therefore, we are of the view that as soon as the Appellant completes 14 years imprisonment, i.e., immediately after 1.5.2016, the Government is to sympathetically consider her prayer for premature release by commuting her sentence as required u/s 433, Code of Criminal Procedure or releasing her in Form "A" under the Prisoners Release on Probation Act, 1938 or after consideration of her nominal role.

27. With these observation the appeal is dismissed.