

Anil Chouhan Vs. State

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Court : Rajasthan Jodhpur

Decided On : Aug-30-2013

Appellant : Anil Chouhan

Respondent : State

Judgement :

D.B. CR. APPEAL Nos.256/1987 & 296/1988 1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

(1) D.B. CRIMINAL APPEAL No.256/1987 Anil Kumar Chouhan V/s. State of Rajasthan. (2) D.B. CRIMINAL APPEAL No.296/1988 State of Rajasthan Vs. Anil Kumar Chouhan D.B. Criminal appeals against the judgment and order dated 22.07.1987 passed by Sessions Judge, Jodhpur in Sessions Case No.37/1985. Date of Judgment ::

30. h August 2013 HON'BLE MR. JUSTICE DINESH MAHESHWARI HON'BLE MR. JUSTICE V.K. MATHUR Mr. Mahesh Thanvi for the appellant. Mr. A.R. Nikub, Public Prosecutor for the State. BY THE COURT: These two appeals, one by the accused and another by the State, arising out of the same sessions case, and preferred against the same judgment and order, have been heard together; and are taken up for disposal by this common judgment. The accused-appellant Anil Kumar Chouhan and also the State of Rajasthan have challenged the judgment and order dated 22.07.1987 passed by the Sessions Judge D.B. CR.

APPEAL Nos.256/1987 & 296/1988 2 Jodhpur in Sessions Case No.37/1985, whereby the learned Judge has convicted the accused-appellant Anil Chouhan for the offence under Section 304 Part-II IPC and has sentenced him to five years' rigorous imprisonment and fine of Rs.10,000/-, and in default of payment thereof, to undergo nine months' rigorous imprisonment; has further convicted him for offence under Section 309 IPC and sentenced him to six months' rigorous imprisonment with fine of Rs.100/-, and in default of payment, to undergo one month's rigorous imprisonment; and has yet further convicted him for the offence under Section 324 IPC and sentenced him to three months' rigorous imprisonment and fine of Rs.100/-, and in default of payment to undergo fifteen days' rigorous imprisonment. The sentences were ordered to run concurrently. Briefly, the facts of the case are that on 29.01.1985, PW6 Hemant Kumar submitted a written report (Ex.P/7) at Mahatama Gandhi Hospital, Jodhpur stating, inter alia, that previously, he alongwith his sister Durgawati (since deceased) and his mother Dharmi Devi were residing at Agra. In the same house, Jagdev Singh Chouhan alongwith his son, the accused Anil Kumar Chouhan, also resided. When he and his mother suspected illicit relations of the accused Anil Chouhan with his sister Durgawati, about three and half years ago, he alongwith his family left Agra and shifted to Jodhpur. Hemant Kumar further stated D.B. CR. APPEAL Nos.256/1987 & 296/1988 3 in his report that at about 8:30-9:00 p.m. that day, the accused Anil Kumar came to his house and demanded that he wanted to talk to Durgawati and wanted to take Durgawati alongwith him in a taxi. Durgawati refused to go with the accused whereafter, the accused Anil Kumar took out a knife and started stabbing Durgawati. His cousin Rajendra Kumar (PW-9) intervened but the accused Anil stabbed him also with the knife. After hue and cry, the accused closed the door from inside. Upon receiving this information, he came to the house and broke the windows with stones and saw that the accused had caused a wound on his own neck and was trying to hang himself by the ceiling fan in the room. They broke open the door and by that time, the police also reached the spot. The condition of Durgawati was serious and they took her to hospital where she died. The complainant further alleged that the accused Anil forcibly wanted to take Durgawati with him for solemnizing marriage with her and when Durgawati refused to go with him, the accused murdered her by inflicting injuries on her body with

knife blows. On the basis of this report, FIR No.12/1985 (Ex.P/19) was chalked out for offences under Section 302, 307, 324 and 309 IPC. After due investigation, the police filed the charge- sheet against the accused; and after committal, the accused was charged for the offences under Sections 302, 309 and 324 IPC. The accused denied the charges and claimed trial. D.B. CR. APPEAL Nos.256/1987 & 296/1988 4 In order to support its case, the prosecution examined 11 witnesses and submitted 23 documents. After going through the oral and documentary evidence, by the judgment and order dated 22.07.1987, the learned Sessions Judge convicted and sentenced the accused-appellant Anil Kumar Chouhan as aforementioned. The accused Anil Kumar Chouhan has filed the appeal for setting aside his conviction and sentence while the State of Rajasthan has filed the appeal for enhancement of the sentence awarded to the accused Anil Chouhan. Mr. A.R. Nikub, the learned Public Prosecutor has contended that the learned Judge has erred in not convicting the accused for the offence under Section 302 IPC. According to the learned Public Prosecutor, the prosecution has proved that as many as 15 injuries were inflicted on Durgawati by knife and collectively, they were sufficient to cause death in the ordinary course of nature; and that the statements of the prosecution witnesses are consistent and there are no contradictions in the statements. The learned Public Prosecutor contended that evidently, the intention of the accused had been to kill Durgawati and, therefore, prayed that the accused Anil Kumar Chauhan be convicted under Section 302 IPC. The learned counsel Mr.Mahesh Thanvi appearing for the accused-appellant Anil Kumar Chouhan, however, contended that the accused had no intention to cause death D.B. CR. APPEAL Nos.256/1987 & 296/1988 5 of Durgawati and the prosecution witness PW-9 Rajendra Kumar, the alleged eyewitness to the incident has not stated that the accused inflicted 15 injuries on deceased Durgawati; rather he caught hold of the accused and when the accused allegedly inflicted injuries on him, the witness Rajendra Kumar left the house from the back door. The learned counsel for the accused also contended that the mother of the deceased Durgawati, who was an eye witness to the incident, has not been produced in evidence by the prosecution, which casts a doubt on the prosecution story. The learned counsel for the accused-appellant submitted in the alternative that in any case, the matter does not travel beyond Section 304 Part II IPC. He also submitted

that the accused has served about 3 years of the sentence and the incident had been of the year 1985. Therefore, in the circumstances of the case, the sentence awarded be reduced to that of the period already undergone. We have given anxious consideration to the rival submissions of the learned counsel for the parties and have carefully perused the record. The prosecution witness PW-9 Rajendra Kumar, who is the cousin of the deceased Durgawati, stated that the accused Anil Kumar Chouhan came to the house and demanded that he wanted to speak to Durgawati. Then, Rajendra Kumar and the mother of Durgawati told him that D.B. CR. APPEAL Nos.256/1987 & 296/1988 6 he may speak to Durgawati, who was standing there. The accused asked Durgawati to come along with him in the taxi, which was waiting outside the house. Durgawati declined and asked the accused to leave. Upon Durgawati's refusal, the accused took out two knives and inflicted injuries on Durgawati. Rajendra Kumar caught hold of the accused. The accused inflicted an injury above his left eye and also on his left leg. Rajendra Kumar shouted for help and ran out through the back door. The accused also kicked the mother of Durgawati, as a result of which, she fell down and thereafter, the accused closed the room. In his cross-examination, Rajendra Kumar stated that the accused inflicted injuries on Durgawati by both the knives on both her shoulders. Thereafter PW-6 Hemant Kumar, who is the brother of the deceased Durgawati, came to the house, who broke open the window of the room. The police had also come by that time, who took Durgawati to the hospital. The prosecution witness PW-6 Hemant Kumar, who is the brother of the deceased Durgawati, has stated that on 21.01.1985 at around 08:30 -09.00 p.m., he had seen from his shop the accused Anil Kumar Chouhan coming to their house. Thereafter, one person came to him and said that there was a quarrel in his house. He immediately rushed to his house, which was at a distance of D.B. CR. APPEAL Nos.256/1987 & 296/1988 7 about 100 steps and found his mother shouting and PW-9 Rajendra Kumar stating that the accused was beating Durgawati. He tried to open the door of the house, but it did not open and thereafter, he broke the windows and saw the accused Anil Kumar Chouhan inflicting a wound by knife on his own neck and thereafter, hanging himself from the ceiling fan in the room by using a curtain. Thereafter, the police also came and he saw Durgawati lying in a pool of blood, who later died in the hospital. The

prosecution witness PW-14 Dr. Madhav Prasad Joshi has stated in his statement that he had conducted the post mortem (Ex.P/13) of deceased Durgawati and found 15 injuries on her body, which were inflicted by sharp edged weapon. The cause of death of the deceased was shock and hemorrhage due to injuries on her body. He further stated that injury No. 9, which was an incised wound on the left side of the chest and other injury No.11 on the stomach of the deceased above the naval were sufficient to cause the death of the deceased in the ordinary course of nature. From the scrutiny of the statement of PW-9 Rajendra Kumar, who was an eyewitness to the incident, it emerges that he had seen the accused Anil Kumar Chouhan inflicting injuries on both the shoulders of Durgawati by two knives but this witness had not seen the accused Anil Kumar Chouhan inflicting other injuries on the deceased D.B. CR. APPEAL Nos.256/1987 & 296/1988 8 Durgawati since he ran away from the house. The prosecution witness PW-6 Hemant Kumar, who is the brother of the deceased Durgawati, had come to his house and found the door of the house locked and upon breaking the windows, saw the accused inflicting a wound on his own neck and thereafter attempting to hang himself from the ceiling fan of the room. This witness has not seen the accused Anil Kumar Chauhan inflicting injuries on the body of Durgawati, but had seen her lying in a pool of blood in the room. In this case, the mother of deceased Durgawati, namely Smt.Dharmi Devi Rathore, was admittedly present in the house alongwith PW-9 Rajendra Kumar at the time of occurrence. During investigation, the statement of Smt.Dharmi Devi was recorded by the Investigating Officer, purportedly as the other eyewitness to the incident. Examination of the record of the Trial Court makes out that the mother of deceased, a material witness in the case, did not appear despite opportunities and then, at the request of the Public Prosecutor, summons was issued for her appearance on 23.09.1986. On the given date, she did not appear but a certificate was produced by the Public Prosecutor suggesting that she was suffering from Involitional paid psychosis and was not in a position to depose for three months. The learned Sessions Judge was not satisfied with the certificate so produced, particularly D.B. CR. APPEAL Nos.256/1987 & 296/1988 9 when it was not given out if she was unable to reach the Court and to give out intelligible answers. Hence, the learned Sessions Judge ordered her summoning alongwith other witnesses by bailable warrant. Thereafter, on 21.10.1986,

Smt.Dharmi Devi indeed appeared before the Court and another witness Narain Singh was also present but, for the reference proceedings and non-sitting of the Court, the matter was adjourned to 10.11.1986 and both the witnesses were bound down to appear on the given date. However, both the witnesses did not appear on the next date i.e., 10.11.1986 and were, again, ordered to be summoned by bailable warrants. Thereafter, on 21.01.1987, the witness Narain Singh was examined but a prayer was made by the Public Prosecutor seeking to give up the witness Dharmi Devi by filing an application with a doctors certificate suggesting that she was suffering from schizophrenia and with depressive symptoms and was not fit to give evidence. The learned Sessions Judge accepted the prayer and allowed the Public Prosecutor to give up the said witness. The result of the proceedings noted above had been that the prosecution did not produce Smt.Dharmi Devi before the learned Sessions Judge and the learned Judge could not verify the fact that she was unable to make any statement at all. In the given circumstances, the learned Sessions Judge has observed that omission to examine D.B. CR. APPEAL Nos.256/1987 & 296/1988 10 Dharmi Devi had, to some extent, weakened the prosecution case. In our view, it has not only weakened the prosecution case but for her non-production, adverse inferences are required to be drawn against the prosecution. It is noticed that the defence case, as consistently put to the witnesses, had been that the mother of deceased asked the brother and cousin of the deceased to prevent her (the deceased Durgawati) going away with the accused and, thereafter, the brother and cousin of the deceased attacked her. It is also undeniable a fact that the mother of deceased was present at the scene all through the occurrence. In the totality of circumstances, we are constrained to observe that by withholding Smt.Dharmi Devi, the prosecution has avoided bringing out all the relevant and material facts concerning the occurrence. An adverse inference, per force, arises against the prosecution that if examined, she would not have supported the prosecution case. The adverse inference further against prosecution goes to the extent that if she was examined, the accused would have been able to elicit the true story in her cross-examination. In the given status of record and taking up together the aforesaid factors i.e., testimony of the eyewitness PW-9 Rajendra Kumar and the other prosecution witness PW-6 Hemant Kumar coupled with adverse inferences

against the prosecution for not producing Smt. D.B. CR. APPEAL Nos.256/1987 & 296/1988 11 Dharmi Devi, the mother of the deceased, who was a material witness, in our view, a finding cannot be reached beyond reasonable doubt that the accused Anil Kumar Chouhan had an intention of causing death of Durgawati or an intention of causing such injuries as were likely to cause her death. The relevant background aspects of the matter had been that the accused Anil Kumar Chouhan and the deceased Durgawati developed intimacy when both of them were residing at Agra and they were in intense love with each other. The accused had come from Agra to Jodhpur only to meet and persuade Durgawati to accompany her. This relationship of Durgawati and the accused was, admittedly, unacceptable to the family of the deceased. In the given set of facts and circumstances, we are unable to reach to the conclusion to the extent that the accused Anil Kumar Chouhan had an intention of causing death of Durgawati or an intention of causing such bodily injury as was likely to cause her death. However, in his acts and deeds, particularly when he had indeed inflicted injuries on the person of Durgawati, the accused Anil Kumar Chouhan cannot be said to be not knowing that he was likely by such acts to cause death. For what has been discussed hereinabove, the view taken by the learned Trial Court in convicting the accused Anil Kumar Chouhan for the offence under Section 304 Part D.B. CR. APPEAL Nos.256/1987 & 296/1988 12 II IPC appears to be a possible view of the matter and we find no cogent reason to consider alteration of the conviction to the one under Section 302 IPC, as prayed by the Public Prosecutor. The appeal filed by the State is, therefore, required to be dismissed. Further, for what has been discussed and held hereinabove, so far the appeal of the accused-appellant on the principal part of conviction is concerned, there appears no reason to interfere with the findings of the learned Trial Court and the findings on conviction as recorded deserve to be affirmed. However, so far sentencing is concerned, it is noticed that the incident in question took place way back on 29.01.1985 i.e., more than 28 years back. The incident had essentially been the result of a love affair. The appellant appears to have remained in custody for a period of about 2 years and 10 months. In the totality of facts and circumstances, we are of the view that the sentence as awarded by the learned Trial Court for the offence under Section 304 Part II IPC of imprisonment for a term of five years deserves to be reduced to the

period already undergone while maintaining the other sentences. Accordingly and in view of the above, the appeal filed by the State (D.B.Cr.Appeal No.296/1988) stands dismissed. The appeal filed by the accused Anil Kumar Chouhan (D.B.Cr.Appeal No.256/1987) is partly allowed to D.B. CR. APPEAL Nos.256/1987 & 296/1988 13 the extent that the sentence for the offence under Section 304 Part II IPC is reduced to the period already undergone. Needless to reiterate that other parts of the judgment and order impugned are not interfered with. The accused-appellant shall deposit the fine as imposed by the Trial Court within a period of three months from today, if not already deposited. In default of payment of fine, he shall undergo the imprisonment as ordered by the Trial Court. As the other sentences are to run concurrently, the accused-appellant would not be required to surrender but his bail bonds shall stand discharged after due compliance of the directions aforesaid. (V.K. MATHUR), J.

(DINESH MAHESHWARI), J.

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