

Roop Singh Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-15-2013

Appellant : Roop Singh

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Saumen Mukherjee

Judgement :

1 AFR HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR
DIVISION BENCH Criminal Appeal No.1604/2003 Roop Singh, s/o Trilok Singh
Thakur, aged 57 years, r/o village Hamirgarh, PS Lakhnadaun, District Seoni,
Presently residing at Jhuggi No.194, Bheem Nagar, Jahangirabad, district Bhopal,
M.P. Versus State of Madhya Pradesh through PS Jahangirabad, district Bhopal,
M.P. ----- For the
Appellant: Shri Saumen Mukherjee, Advocate. For the State: Shri Amit Pandey,
Panel Lawyer. -----

----- PRESENT:
HONOURABLE SHRI JUSTICE RAKESH SAKSENA HONOURABLE SHRI
JUSTICE D.K. PALIWAL
----- Date of

hearing:

02. 04/2013 Date of Judgment:

15. 04/2013

JUDGMENT

Per: Rakesh Saxena, J.Appellant has filed this appeal against the judgment dated 9th April, 2002, passed by Sessions Judge, Bhopal in Sessions Trial No.359/2002, convicting him under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life with fine of Rs.5000/-. In default of payment of fine, further rigorous imprisonment for one year.

2. In short, the prosecution case is that in the night of 2.8.2002 at about 8.00 O'clock, appellant came drunk in his hut. His wife Lalwati 2 (deceased) remonstrated him and asked him to take food, but he abused her and asked her to leave his house. A quarrel ensued between them, in the course of which, appellant picked up a kerosene Kuppi from the house, poured kerosene on deceased and ignited her with a matchstick. When deceased caught fire and cried, he tried to extinguish her fire whereby he also suffered burn injuries on his hands. Hearing cries of deceased, neighbours viz. Sarojbai, Radhabai and Laxmibai reached there and extinguished her fire by pouring water on her. She informed them that appellant ignited her. Ladies of the neighbourhood carried her to Hamidiya Hospital in an auto rickshaw where Dr. Subhash Singh Tomar (PW-5) examined her injuries and referred her to burn ward for further examination and treatment. On receiving information from Hamidiya Hospital, ASI Uday Beer Singh Tomar (PW-6) of Police Station, Jahangirabad, Bhopal requested Executive Magistrate, R.K. Singh Tomar (PW-11) to record dying declaration of deceased. Mr. Tomar (PW-11) went to Hamidiya Hospital and recorded dying declaration (Ex.P/6) of deceased after obtaining opinion of duty doctor Praveen Sharma (PW-12) about her fitness to make statement.

3. Investigating Officer, ASI Uday Beer Singh Tomar (PW-6), also enquired about the incident from the deceased and on her information recorded Dehati Nalishi (Ex.P/6). On the basis of Dehati Nalishi, a case under Section 307 of the Indian Penal Code was registered against the appellant. Assistant Sub Inspector Dinesh Onker (PW-8) also went to hospital and recorded case diary statement (Ex.P/10) of the deceased. In all the aforesaid statements, deceased stated that appellant

set fire to 3 her.

4. During treatment in Hamidiya Hospital, on 6.8.2002, deceased succumbed to her burn injuries. On receiving such information, police converted the offence against the appellant under Section 302 of the Indian Penal Code. Investigating officer went at the spot, seized kerosene can, match box etc. from the spot and arrested the appellant on 4.8.2002. After completion of the investigation, he filed charge sheet in the court of Judicial Magistrate First Class, Bhopal, who, in his turn, committed the case for trial.

5. On charge being framed, appellant abjured his guilt and pleaded false implication. Though no specific defence was taken by him in his statement under Section 313 Cr.P.C., but he led evidence by examining Jyoti Dixit (DW-1), Shivram (DW-2) and Sunil (DW-3) to prove that out of anger deceased made attempt to commit suicide and when he tried to save her, he also got burnt.

6. Upon trial and after appreciation of evidence learned Sessions Judge held the appellant guilty, convicted and sentenced him under Section 302 of the Indian Penal Code.

7. Aggrieved by the impugned judgment of conviction, appellant has preferred this appeal.

8. Shri Saumen Mukherjee, learned counsel for the appellant, submitted that learned Sessions Judge committed error of fact and law in holding the appellant guilty on the basis of sole evidence of dying declaration. In the facts and circumstances of the case, the evidence of dying declaration was unnatural, improbable and unreliable. According 4 to him, from the evidence of defence witnesses it was proved that deceased committed suicide. On the other hand, Shri Amit Pandey, learned Panel Lawyer for the State, submitted that the evidence of dying declaration recorded by the Executive Magistrate is reliable. It stood corroborated from the evidence of police officers who recorded Dehati Nalishi and the case diary statement of deceased. According to him, no interference was called for in the impugned judgment of conviction passed by the learned Sessions Judge.

9. We have heard the learned counsel for the parties and perused the impugned judgment and the evidence on record carefully.

10. It has not been disputed by the learned counsel for the appellant that deceased died of burn injuries. Radha Bai (PW-1), Saroj (PW-2), Laxmi (PW-3) and Jagdish Singh (PW-4) unequivocally stated that on hearing noise at the house of deceased, when they reached there, they saw deceased burning. They extinguished her fire and carried her to hospital. During treatment, she died. This fact was not even challenged by the appellant or by the defence witnesses viz. Jyoti Dixit (DW-1), Shivram (DW-2) and Sunil (DW-3). Head Constable Narendra Pratap Singh (PW-7) stated that he conducted inquest proceedings and drew inquest memorandum (Ex.P/4) of the dead body of deceased.

11. Apart from above, Dr. Geetarani Gupta (PW-10), who conducted postmortem examination of the body of deceased, deposed that on 6.8.2002 she found following injuries on the body of deceased:-

1. Marginal scalp hair, eyebrows , eyelashes, axillary hair, pubic hair singed
2. Superficial infected burn present on face all over including neck.
3. Superficial infected burn present on chest and abdomen up to waist, while it is in patchy form at pubic region and upper antero lateral part of right thigh.
4. Superficial infected burn present on left upper limb extending from upper part of arm up to wrist and partial deglobing of hand present while on right upper limb it is in patchy form extending from upper part of arm up to wrist. Palm is healthy.
5. Superficial infected burn present on both lower limbs extending from upper part of thigh up to ankle region both aspects. On left lower limb dorsum of foot also burnt.
6. Superficial infected burn present on back laterally both sides while rest of the area is healthy. Both gluteal region is health. OPINION:- Death of deceased was due to cardio respiratory failure as a result of burn and its complications. Duration of death is within 24 hours since postmortem examination. (Hospitalized case).

Postmortem examination report (Ex.P/14) was written by Dr. V.K. Dhruv and signed by her and also by Dr. Dhruv.

. From the above evidence, in our opinion, it has been amply established that the deceased died of burn injuries.

12. Next we have to see whether it was appellant who caused burn injuries to deceased, which resulted into her death.

13. The case mainly rested on the evidence of dying declaration (Ex.P/

16) recorded by Executive Magistrate R.K. Singh Tomar (PW-11). Learned counsel for the appellant submitted that this dying declaration was not reliable since deceased could not have been in a position to speak. Naib Tahsildar R.K. Singh Tomar (PW-11) deposed that on the requisition made by Police Jahangirabad, he went to Hamidiya Hospital 6 for recording dying declaration of Lalwati, wife of Roop Singh, who was admitted in burn ward. Before recording her dying declaration, he obtained opinion from RSO of the burn ward whether she was fit to make statement. When doctor gave certificate, he recorded the dying declaration (Ex.P/16). In the dying declaration, Lalwati told that her husband came after consuming liquor and quarreled with her. He also asked her to leave the house. He then poured kerosene on her from a Kuppi and set fire to her with a matchstick. She suffered burns at his hands.. After recording the said statement, he again obtained opinion from the doctor who certified that Lalwati was fully conscious during the time her statement was recorded. It was deposed by PW-11 that during the time when he recorded the dying declaration, no person including any police person was present near the deceased. She was able to speak and put her thumb impression on the dying declaration.

14. The aforesaid dying declaration finds corroboration from the evidence of Dr. Praveen Sharma (PW-12), who was posted as RSO in Burn Ward of Hamidiya Hospital. According to Dr. Sharma, when Executive Magistrate sought his opinion, he examined Lalwati (deceased) and found that she was fit to give her statement. He endorsed the certificate on the dying declaration (Ex P/16). According to him, after the dying declaration was recorded, he again examined Lalwati and found

that she was fully conscious while making statement.

15. On a critical examination of the evidence of Naib Tehsildar R.K. Singh Tomar (PW-11) and Dr. Praveen Sharma (PW-12), we find nothing to indicate that they recorded dying declaration (Ex.P/16) incorrectly or 7 falsely or that the deceased was not in a position to make dying declaration. It is also important to note that the incident had occurred in the night of 2.8.2002 whereas the said dying declaration was recorded in the morning of 3.8.2002 and that the deceased died on 6.8.2002. These witnesses were public servants and were totally strangers to the appellant and the deceased. Therefore, there appeared no reason to doubt that they would have manoeuvred the dying declaration to make it incriminating against the appellant. In these circumstances, we are of the opinion that learned Sessions Judge committed no error in holding the dying declaration (Ex.P/16) reliable and trustworthy.

16. The dying declaration (Ex.P/16) stood further corroborated from Dehati Nalishi (Ex.P/6) recorded by the Investigating Officer Uday Beer Singh Tomar (PW-6). According to him, on 2.8.2002 while he was posted at Police Station, Jahangirabad, Bhopal, on receiving information from J.P. Hospital, he went to Burn Ward of Hamidiya Hospital, where deceased was admitted. On the information given by deceased, he recorded Dehati Nalishi (Ex.P/6). Deceased informed him that her husband Roop Singh used to quarrel with her after consuming liquor. At about 8.00 O'clock in the night, he doused her with kerosene and set fire to her with a matchstick. She also told that hearing her cries women of the neighbourhood viz. Saroj, Radha Bai and Laxmi reached there and extinguished her fire and also brought her to hospital. She put her thumb impression on Ex.P/6.

17. Similarly, during investigation, ASI Dinesh Onker (PW-8) recorded police statement (Ex.P/10) of deceased. According to him, he went to 8 Hamidiya Hospital and in the burn ward and recorded statement of deceased wherein she stated that her husband Roop Singh poured kerosene and set fire to her. He recorded the statement as narrated by the deceased. Dinesh Onker (PW-8) categorically stated that when he recorded the statement of deceased, she was

fully conscious and no boy or girl or anybody else was present near her. We have no reason to doubt the veracity of the evidence of this witness.

18. Dehati Nalishi (Ex.P/6) as well as the case diary statement of deceased (Ex.P/10) being the statements of deceased in respect to the circumstances and the transactions in which she died, are certainly relevant and admissible in evidence by way of dying declarations under the provisions of Section 32 of the Indian Evidence Act.

19. In addition to the aforesaid evidence of written dying declarations, there is also evidence of oral dying declaration made by the deceased to Radha Bai (PW-1), Jagdish (PW-4) and Dr. Subhash Singh Tomar (PW-5). Radha Bai (PW-1) and Jagdish Singh (PW-4) stated that when they reached the house of deceased after hearing her cries, she told to them that her husband Roop Singh ignited her. When deceased was taken to J.P. Hospital, Bhopal, she was examined by Dr. Subhash Singh Tomar (PW-5). Dr. Tomar deposed that in giving history of the occurrence deceased told to him that her husband Roop Singh quarreled with her after consuming liquor and set fire to her.

20. Dr. Subhash Singh Tomar (PW-5) stated that the deceased had suffered second degree burn injuries. After primary treatment, he referred her to the Burn Unit of Hamidiya Hospital. Though upper part of her upper lip was burnt, but her mouth was not burnt. He stated that since the condition of patient was serious, she was referred for further treatment immediately without detailed examination, but it was wrong to say that deceased was not able to speak.

21. After carefully scanning and scrutinizing the aforesaid evidence of dying declarations, we find that it has been established that it was appellant who caused burn injuries to deceased. As far as the evidence of defence witness Shivram (DW-2) is concerned, he stated that on his asking deceased told to him that after a quarrel with appellant, with a view to frighten him, she sprinkled a little bit of kerosene and ignited herself without anticipating the proportion it assumed. This kind of defence was not pleaded by the appellant in his statement under Section 313 Cr.P.C. Such suggestions were also not put to prosecution witnesses. Jyoti Dixit (DW-1) and Sunil (DW-3) merely stated that deceased did not say anything to

them as she was not in a position to speak. In these circumstances, we find the evidence of Shivram (DW-2) an attempt to create an afterthought defence for appellant.

22. not we have to see whether conviction of appellant under Section 302 of the Indian Penal Code is just and proper. It has been deposed by Radha Bai (PW-1) and also by ASI Dinesh Onker (PW-8) that the fingers of both the hands of appellant were burnt. According to Jagdish (PW-4), when he went inside the house of appellant, he saw appellant extinguishing the fire of deceased. In the dying declaration (Ex.P/16), Dehati Nalishi (Ex.P/6) and the police statement (Ex.P/10) it has been disclosed by the deceased that at the time of occurrence appellant was 10 under the spell of liquor and because of that the quarrel occurred between them, in the course of which, he asked her to go out of the house and set fire to her after pouring kerosene on her from a kuppi. In this fact situation, in our opinion, it could be inferred that the incident occurred under a sudden impulse/quarrel without any premeditation on the part of the appellant. It seemed to be a spur of the moment affair with no intention of appellant to commit murder of deceased. In these circumstances, Exception-4 to Section 300 IPC was clearly attracted. However, since setting fire to deceased after pouring kerosene on her indicated that appellant acted either with the intention of causing death or of causing such bodily injury to deceased as was likely to cause her death, the case of appellant clearly fell under Section 304-I of the Indian Penal Code.

23. For the reasons aforesaid, the conviction and sentence of appellant under Section 302 of the Indian Penal Code is set aside, instead he is convicted under Section 304-I of the Indian Penal Code and sentenced to rigorous imprisonment for a period of 10 years.

24. Appellant is reported to be in jail since 4.8.2002. If he has served out his sentence, he be released forthwith, if not required in any other case.

25. Appeal partly allowed. (RAKESH SAKSENA) (D.K. PALIWAL) JUDGE JUDGE shukla 11 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR Criminal Appeal No.1604/2003 Roop Singh vs. State of Madhya Pradesh

JUDGMENT

For consideration (Rakesh Saksena) JUDGE __/04/2013 Hon'ble Shri Justice D.K. Paliwal JUDGE __/04/2013 12 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR Criminal Appeal No.1604/2003 Roop Singh vs. State of Madhya Pradesh I hereby authorize Honourable Shri Justice Rakesh Saksena to pronounce the judgment in my absence. (D.K. PALIWAL) JUDGE

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