

Devi Das Vs. State

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Court : Rajasthan Jodhpur

Decided On : Sep-17-2014

Appellant : Devi Das

Respondent : State

Judgement :

D.B.Cr.

Jail Appeal No.464/2006 1 IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR

JUDGMENT

Devi Das versus The State of Raj.

D.B.Criminal Jail Appeal No.464/2006 under Section 383 of Criminal Procedure Code against the judgment dated 1.3.2006 passed by Sessions Judge Jaisalmer in Sessions Case No.13/2005.

Date of Judgment : 17.9.2014.

PRESENT HON'BLE Mr.GOPAL KRISHAN VYAS,J.

HON'BLE Mr.ATUL KUMAR JAIN, J.

None present for the appellant.

Mr.J.P.S.

Choudhary, Public Prosecutor for the State.

BY THE COURT(Per Hon'ble Mr.Jain,J.).Accused-appellant is said to be in jail since 27.2.2005 in a case under Section 302 of Indian Penal Code.

His Advocate is also not present in the court.

His jail appeal was filed in this Court on 3.3.2006 and since last eight years appeal has been pending in this Court.

Today, the learned Public Prosecutor has agreed to finally argue the appeal and so his arguments in detail were heard by this Court.

The accused-appellant was convicted on 1.3.2006 by the Sessions Judge, Jaisalmer in Sessions Case No.13/2005 under Section 302 of Indian Penal Code and he was sentenced to life imprisonment D.B.Cr.

Jail Appeal No.464/2006 2 with a fine of Rs.500/- and, in default of payment of fine, he was ordered to undergo rigorous imprisonment for three months.

After hearing the arguments of the learned Public Prosecutor and after perusal of the written arguments which were submitted by the accused in the trial court, we are fully convinced that the prosecution story was full of doubts and benefit of reasonable doubt should have been given by the trial court to accused Devi Das, which has not been given by the trial court and hence this appeal of accused-appellant Devi Das deserves to be allowed in the following circumstances of the case.

The learned Public Prosecutor frankly admits that the prosecution case solely depends upon the dying declaration(Ex.P.8) of Smt.

Amarawati w/o Devi Das Soni aged 30 years resident of Sunarpara of Ramgarh.

He further argues that the dying declaration, though recorded by the S.H.O, Police Station, Ramgarh as Parcha- Bayan, on the basis of which FIR No.5/2005 under

Sections 498A, 307 and 302 of Indian Penal Code was registered by the S.H.O., Ramgarh but he argues that the S.H.O.had no bias against the accused and he had innocently written the dying declaration as per the statement given by the deceased before her death.

It has been argued that the said statement was recorded in presence of Dr.

Avdhesh Gautam (PW-

3) and it has been submitted by the learned Public Prosecutor that PW-3 Avdhesh Gautam fully supports the statement of PW-17 Gulab Singh and on the basis of these two statements only, the conviction of D.B.Cr.

Jail Appeal No.464/2006 3 accused-appellant Devi Das under Section 302 of Indian Penal Code is fully justified.

We do not agree with the arguments submitted by the learned Public Prosecutor in this regard.

Smt.

Amarawati had met with her death because of burn injury after ten years of celebration of her marriage with Devi Das and she was having two daughters and one son.

In the statement Ex.P.8, she has stated that her husband used to misbehave with her when he was intoxicated and on the date of incident also, he had beaten her and then caused injuries on her head with a lock and then he sprinkled kerosene over her and lit the fire.

The incident is said to have occurred on 2.2.2005.

Her statement Ex.P.8 was also recorded by S.H.O.Gulab Singh on the same day which had been allegedly signed by Smt.

Amarawati.

Ex.P.7 is injury report of Smt.

Amarawati which was also prepared on 2.2.2005 and this report does not contain the signature of Smt.

Amarawati and only thumb impression of Smt.

Amarawati has been marked on it.

PW- 3 Dr.

Avdhesh Gautam has been examined in this regard and he says that Smt.

Amarawati was having 80% burns on her body and her both hands were also burnt and perhaps because of burn injuries on her hands, she was not in a position to put her signature on her injury report and so her thumb impression only was marked on injury report Ex.P.7.

In the circumstances of the case, alleged signature of Smt.

Amarawati on her alleged dying declaration Ex.P.8 becomes doubtful.

For obvious reasons, the S.H.O.must have registered a case under Section 302 of Indian Penal Code against Devi Das, though PW-5 D.B.Cr.

Jail Appeal No.464/2006 4 Mangi Lal, who was real brother of the deceased Smt.

Amarawati, had even specifically stated not only in his police statement Ex.P.9 but also before the Court that his sister Smt.

Amarawati had told him after the burn injury that this is wrong to say that Devi Das has burnt her sister by pouring kerosene over her.

On the other hand, he specifically states that in injured condition when his sister Smt.

Amarawati was admitted in Jodhpur hospital, then she told him that she had put kerosene by herself over her body and tried to commit suicide.

He further states that when the incident occurred, Smt.

Amarawati told that her husband Devi Das was not at the place of incident and rather he was taking his meals at the residence of Thakur Das(PW-10).It is a sorry state of affairs that there was no justification for declaring PW-5 Mangi Lal as hostile and he has wrongly been confronted with her police statement Ex.P.9 because he has not deviated from his police statement Ex.P.9 at all and really he was not a hostile witness.

There is no reason to disbelieve the testimony of Mangi Lal (PW-5) who was real brother of deceased Smt.

Amarawati and who had no ulterior motive to save accused- appellant Devi Das also.

PW-10 Thakur Das has also been declared hostile by the prosecution in the trial court.

He says that he had invited Devi Das for Dinner that afternoon and when the incident occurred, Devi Das was taking his meals with him in his house.

He further states that on the day of incident, accused-appellant was with him from 3.30 p.m.to D.B.Cr.

Jail Appeal No.464/2006 5 7.00 p.m.and he did not inform Devi Das about the incident because he would have suffered a shock.

He states that at about 7.00 p.m.when Devi Das came to know about the incident of burning of his wife then he went to the hospital.

In the statement recorded under Section 313 of Criminal Procedure Code also, accused-appellant Devi Das has stated that he had gone to take meals with his uncle Thakur Das and his wife was not happy with this fact and so when he was taking the meals with his uncle, the incident occurred at his house and when he came to know about the fact of burning of his wife, he immediately went to the hospital.

It has been argued by the learned Public Prosecutor that the incident occurred on 2.2.2005 and accused Devi Das could have been arrested only on 28.2.2005 and

this fact proves that the accused had not gone to the hospital to see his wife even in burnt condition.

It has been argued by him that this fact itself proves the culpability of the accused-appellant.

We have examined the record in this regard and we have come to the conclusion that because of registration of a case under Section 307 and 498A of Indian Penal Code, the accused had to run away from the village.

He must have been trying for his anticipatory bail and only when he could not get any bail order, he was taken in custody on 28.2.2005.

When on 2.2.2005, a clear cut statement was recorded by the S.H.O.Gulab Singh against accused- appellant Devi Das, there was no reason for S.H.O.Gulab Singh for not D.B.Cr.

Jail Appeal No.464/2006 6 arresting the accused-appellant for twenty five days.

It appears that for obvious reasons, S.H.O.Gulab Singh gave undue liberty to accused-appellant Devi Das.

Gulab Singh has been examined as PW-17 before the trial court.

He admits that when Smt.

Amarawati was in Jaisalmer Hospital, the court was hardly hundred yards away from the hospital but still he did not try to get the dying declaration of Smt.

Amarwati recorded by a Judicial or Executive Magistrate of Jaisalmer.

He admits that even at Jodhpur, Smt.

Amarawati was alive till 12.2.2005 but even at Jodhpur he did not bother to get her statement recorded before any Judicial or Executive Magistrate.

He has given no reason for not availing the services of a Magistrate in this regard.

We have read the statement of PW-17 Gulab Singh the then S.H.O., P.S., Ramgarh, District Jaisalmer and that statement does not inspire truth and this witness appears to be biased against accused-appellant Devi Das for one or the other reason and it can be said that the alleged dying declaration recorded by the aforesaid witness is not reliable at all in the circumstances of the case.

PW-1 Radha Kishan, brother of accused Devi Das, PW-2 Nand Kishore, PW-7 Kishan Lal and PW-12 Satya Narayan were declared hostile by the prosecution.

PW-4 Hem Singh is a formal witness and PW-8 Jabbar Singh is also a formal witness of panchnama of dead body. PW-16 Chanana Ram is Sub-inspector of Police and he is also a formal witness in this case.

D.B.Cr.

Jail Appeal No.464/2006 7 PW-6 Parmanand is real brother of deceased Smt.

Amarawati.

He has been declared hostile by the prosecution in the trial court and he also states that his sister was never burnt by accused-appellant Devi Das and rather she had committed suicide.

PW-9 Tola Ram has been declared hostile by the prosecution.

He states that Smt.

Amarawati was not happy with Thakur Das and when accused- appellant Devi Das had gone for dinner at the residence of Thakur Das, she had committed suicide because of that hostility.

PW-11 Banshi Lal is also a hostile witness.

He states that at the time of incident, Devi Das was taking meals with Thakur Das and others. PW- 13 Smt.

Kasturi is mother of deceased Smt.

Amarawati.

She is also a hostile witness and she states that her daughter was totally illiterate and she was not even able to put her signature on any document and she used to put her thumb impression only.

PW-14 Smt.

Radha is sister of deceased Smt.

Amarawati.

She has also been declared hostile and she has also supported the statement of her mother.

PW-15 Dr.

P.C.Vyas is the person who had conducted the post- mortem of deceased Smt.

Amarawati and gave report Ex.P.18.

He proves that Smt.

Amarawati had died because of septicemic shock caused by burn injuries.

Thus, the prosecution has not been able to prove its case at all against accused-appellant Devi Das and it appears that a case of suicide has been converted into a case of murder for no reason by the Investigation Officer.

In the circumstances of the case, the impugned D.B.Cr.

Jail Appeal No.464/2006 8 judgment dated 1.3.2006 passed by the Sessions Judge, Jaisalmer is not sustainable and deserves to be quashed and set aside.

Hence, this appeal of accused-appellant Devi Das is hereby allowed and the impugned judgment of the trial court is hereby quashed and set aside.

He is acquitted from the charge of Section 302 of Indian Penal Code.

He is in Jail, he be released forthwith if not required in any other case.

The record of the court below along with a copy of this judgment be sent to the trial court immediately.

A copy of this judgment be also sent to the Superintendent, Central Jail, Jodhpur.

(ATUL KUMAR JAIN),J.

(GOPAL KRISHAN VYAS),J.

mlt

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