Ram Kumar Vs. State of U.P.

Ram Kumar Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/473807

Court : Allahabad

Decided On : Jan-29-1990

Reported in : 1990CriLJ1973

Judge : Palok Basu and ;Giridhar Malaviya, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302, 304 and 307; Juvenile justice Act, 1986; Uttar Pradesh Children Act - Sections 2(4); Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 3546 of 1978

Appellant : Ram Kumar

Respondent : State of U.P.

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : A.D. Giri, Adv.

Judgement :

Palok Basu, J.

1. This is an appeal by Ram Kumar against his conviction and sentence under Section 302 I.P.C. to imprisonment for life recorded by the Third Addl. Sessions Judge, Jalaun at Orai, by his judgment and order dated 6-12-1978.

2. The case is that Smt. Krishna Devi (deceased), wife of the appellant, had eloped with one Shivanath a few months prior to the occurrence. The father of Smt. Krishna Devi could procure the presence of Smt. Krishna Devi and saw to it that she lived in the house of Pancham Lal temporarily, who is related to Smt. Krishna Devi, being the son of the Sarhu of the father of the deceased. The prosecution case further is that Ram Kumar appellant had gone to the house of Pancham Lal and had talked with Smt. Krishna Devi and requested her to accompany to his village. A point-blank refusal by Smt. Krishna Devi resulted in a verbal altercation between the two. The result was that the appellant got infuriated and attacked Smt. Krishna Devi with a knife which he was allegedly carrying in the pocket of his pant. The first blow was saved by Smt. Krishna Devi. The second blow landed on the stomach region which later on proved fatal. On the alarm raised, Pancham, Chet Ram and Hori Lal and others rushed to the spot and saw the incident. The accused ran away leaving his shoes there. A report of this incident was lodged by Pancham Lal at Police Station Kuthond, district Jalaun at 6.05 p.m. on 23-9-1974 while the incident had happened the said day at about 4.30 p.m. The said F.I.R. gave rise to a case under Section 307 I.P.C. The arrangements to send Smt. Krishna Devi for medical examination were made and she was actually examined by Dr. L. R. Quaraishi, the then Medical Officer, Primary Health Centre, Kuthond at 6.45 p.m. The case being serious, she was referred to the district hospital. The FIR was lodged in the presence of Chandrabali Shukla, the Investigating Officer, who recorded the statement of Smt. Krishna Devi also. On the report of the doctor a dying declaration was recorded by Sri G. S. Hashmi, S.D.M., concerned in the presence of doctor S.D.S. Chauhan who opined that Smt. Krishna Devi was in a position to give the dying declaration. However, Smt. Krishna Devi expired at 10.10 a.m. on 26-9-1974.

3. The post mortem examination was conducted by Dr. Vajai Singh on 26-9-1974 at 5 p.m. and the following ante-mortem injuries were found on her dead body:---

1. Vertical stiched wound 16-1/2 cm in the right side of the stomach.

2. Two vertical stitched wounds 4 cm in length in the right side of the stomach.

4. In order to prove the charge the prosecution has examined two eye-witnesses Pancham Lal (P.W. 1) and Chet Ram (P.W. 2). The other six witnesses are formal in nature who proved the lodging of the FIR, the carrying of the dead body, the medical examination of the victim and the recording of the dying declaration.

5. The appellant denied the charge and also denied having visited the house of Pancham Lal. He denied the recovery of the shoes and attributed his false implication due to various reasons. In other words, the factum of the murder of Smt. Krishna Devi has not been denied. The only challenge has been as to the manner of the assault and as to who had caused an assault upon Smt. Krishna Devi.

6. We have heard Sri A. D. Giri learned counsel for the appellant and Sri Prem Prakash, learned Additional Public prosecutor, for the state and have perused the record. We have no doubt that in view of the dying declaration, the lodging of the first information report and recovery of bangles and blood-stained earth from the place of occurrence the prosecution case as to time and place of occurrence is proved beyond reasonable doubt.

7. The question, however, remains about the participation of the appellant and if that is proved, what offence is made out. Another ancillary question of vital importance is what was the age of the appellant at the time of incident? It was strenuously argued by the learned counsel for the appellant that in view of the record available it is proved by cogent circumstances that the appellant must have been below 16 years of age on the day of the incident. It was, therefore, prayed that in view of the type of order which was passed by the Hon. Supreme Court in the case of Bhoop Ram v. State of U.P. reported in AIR 1989 SC 1329, the appellant should be let off with what he has already suffered i.e., about six weeks of imprisonment undergone and no further directions, bail order or order for good conduct are necessary, if it is held that the appellant was actually aged below 16 years on the day of the incident, i.e., 23-9-1974. Since the discussion about the type of the offence, the manner of assault as also the age of the appellant are intermingled we will take up these three questions simultaneously.

8. The appellant had made an application for surrendering in court on 20th October, 1974 and the magistrate directed him to be taken into custody and refused bail. The sessions Judge granted him bail by his order dated 5-11-1974. The bonds were furnished on 6-11-1974 and release order was passed on 9-11-1974. The sessions Judge has passed the instant judgment giving rise to this appeal on 6-12-1978 when the appellant was taken into custody. This appeal against the said judgment was preferred on 14-12-1978 when the appellant was taken into custody. About 10 days were undergone by the appellant then. In other words, the learned counsel for the appellant is right in his contention that the appellant has undergone about six weeks as an undertrial and as a convict, from the date of the incident till this date. The Statement of the appellant was recorded by the sessions Judge on 4-12-1978. The appellant gave out his age as 20 years and there is no finding of the Judge that the said age was wrong or did not appear probable. While considering the question of sentence, this matter was specifically taken up by the sessions Judge as we find that he has recorded the following categorical finding:--

'It is submitted on behalf of the accused convict that the facts and antecedents of the case especially the breach of the faith committed by the wife deceased warrant a lesser penalty provided under the law. The accused is a young man of 20 or 21 years. No doubt he was aggrieved of the conduct of his wife whom he killed later on. There are circumstances which convince this court to take a lenient view in the matter of sentence. 1, therefore, think that the lesser penalty would meet the ends of justice.'

It follows that on 23-9-1974 the appellant was less than 16 years of age. It was rightly pointed out by the learned counsel for the appellant that in the dying declaration recorded by the magistrate the deceased Smt. Krishna Devi has herself admitted that no other witness was present when the occurrence took place. Translated into English the relevant portion of the dying declaration recorded by the magistrate would read thus:

'.....From there he wanted to take me along with him but I refused because he would create trouble. At this a quarrel started and when I said that I will not go

then he gave forceful blow from the knife which he was keeping in his pant. At my shouts my brother Chet Ram came. On seeing him he fled and nobody could catch hold of him. At that time there was no other person in the house. The time of assault was about 4 p.m.'

It is argued that since the prosecution case in the first information report is that the appellant had given one blow with the knife which was warded off by Smt. Krishna Devi at the first instance must be rejected in view of the said dying declaration. The learned counsel was emphatic on this part of the argument because he himself did not challenge that the dying declaration should not be believed but, instead, he argued that not an offence under Section 302 I.P.C. but some much lesser offence should be taken to have been made out against the appellant. In view of what has been said above concerning the age his argument is that the period undergone should meet the ends of justice on the special facts and circumstances of the present case.

9. Sri Prem Prakash, however, raised two questions in opposition. He said that the procedure laid down in Juvenile justice Act, 1986, should be followed and the matter should be remanded to the competent authority for recording a finding in accordance with the provisions contained in the said Act. This court should not take upon itself to judge the accuracy of the age given by the appellant before the trial Judge in his statement under Section 313 Cr. P.C. The second argument of Sri Prem Prakash was that the case will be covered by Section 302 I.P.C. because the wife had, after all, come back from her paramour and the accused should be taken to have had enough time to think over his action and thus grave and sudden provocation cannot be pleaded by him at this appellate stage.

10. It is no doubt true that so far as P.W.1 Pancham Lal is concerned, he does make a statement that two blows were sought to be given by the appellant. But medical evidence does not support this version. P. W.3 Dr. L.R. Quraishi had found the following injury on 23-9'74 at 6.45 p.m. on examining her:--

'Incised wound 5-1/2 cm X 2-1/2 cm intestinal Mestentry protruding out from the wound (probing not done) in the rt. hypochordium 5 cm above and lateral of the umblicus. Abdomen is distended in upper part.'

We are not satisfied with this part of the prosecution case regarding repetition of the blow by the appellant because of the dying declaration quoted above and the injury found. Notably, P. W.2 Chet Ram also makes a statement to the effect that he had seen the appellant giving one blow to the deceased.

11. There is, of course, no material on the record on the basis of which we can throw out the statement of Dr. Chauhan (P.W.7) and Mr. G. S. Hashmi, the S.D.M. concerned, as to the genuineness of the dying declaration. The said dying declaration indicates that an altercation had taken place. It may further be relevant to mention here that Smt. Krishna Devi though married to the appellant, had deserted him, she had eloped along with her paramour and it was with difficulty that her father could trace her out and bring to the house of Pancham Lal. Thus the prosecution case itself is that the appellant had gone to the house of Pancham Lal in order to persuade his wife to come and live with him. The dying declaration itself recites that she had refused and insisted on a separate living. Again, the dying declaration refers to a quarrel. At this place we are left with no evidence as to what that quarrel was and what really ensued inside the room. In view of the said quarrel there was grave and sudden provocation to the appellant to perpetrate the crime by inflicting only one blow on the victim.

After giving our thoughtful consideration we find that the entire case depends upon the quarrel that suddenly took place inside the room. As stated above, the appellant was trying to persuade his wife to the best of his ability so that she could go back to his residence and they make a good living as husband and wife. But that was not to be. We have no doubt in our mind that the accused had absolutely no intention to cause the death of his wife. It was an act of desperation on his part because his persuasion had failed resulting in quarrel and consequently one blow was suddenly inflicted on his wife by the accused. Under the circumstances a young boy of 16 or 17 years was expected to lose his balance of mind and act in excess of what a normal adult would have done. Similarly, we are of the view that the appellant was actually aged about 16 years on the date of incident i.e., 29-9-1974. At this place the relevant paragraph 8 of the Hon. Supreme Court's judgment in Bhoop Ram's case (AIR 1989 SC 1329) (supra) may be usefully quoted :

Since the appellant is now aged more than 28 years of age, there is no question of the appellant now being sent to an approved school under the U.P. Children Act for being detained there. In a somewhat similar situation, this court held in Jayendra v. State of U.P. (1981) 4 SCC 149 : (AIR 1982 SC 685 : (1982 Cri LJ 1000) that where an accused had been wrongly sentenced to imprisonment instead of being treated as a 'child' under Section 2(4) of the U.P. Children Act and sent to an approved school and the accused had crossed the maximum age of detention in an approved school viz. 18 years, the course to be followed is to sustain the conviction but however quash the sentence imposed on the accused and direct his release forthwith. Accordingly, in this case also, we sustain the conviction of the appellant under all the charges framed against him but however quash the sentence awarded to him and direct his release forthwith. The appeal is, therefore, partly allowed in so far as the sentences imposed upon the appellant are quashed.'

12. Under the authority of the said ruling we cannot and do not propose to send the appellant to jail or remit the matter back for any fresh enquiry now that nearly 16 years have lapsed since the incident had happened. It was argued by the learned counsel for the appellant that the appellant has settled in life as a good citizen and is earning livelihood for his family and sending the man to jail or asking him to keep peace and be of good behaviour for one or two years now will not serve the cause of justice in any manner whatsoever. We are supported in this view of ours by the further fact that this court directed the appellant to be released on bail on 14-2-1978 when the appeal was admitted. There is no adverse report or comment about the behaviour of the appellant. It is not said that he was involved in any other case during this period of bail.

13. In view of the above facts and circumstances the appeal is partly allowed. The conviction of the appellant under Section 302 I.P.C. is set aside. Instead, he is convicted under Section 304 Part II, I.P.C. His sentence is reduced to the period already undergone. He is on bail. He need not surrender and his bail bonds are discharged.