

Smt. Sridevi Vs. State

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Court : Allahabad

Decided On : Sep-19-1973

Reported in : 1974CriLJ126

Judge : J.M.L. Sinha and ;B.N. Katju, JJ.

Appellant : Smt. Sridevi

Respondent : State

Judgement :

B.N. Katju, J.

1. Smt. Shridevi has filed Criminal appeal No. 316 of 1970 against the judgment of 2nd Addl. Sessions Judge, Agra dated 12-1-70 passed in Sessions Trial No. 110 of 1969 convicting her under Section 302. I.P.C. and sentencing her to imprisonment for life.

2. The case of the prosecution is that the appellant assaulted the deceased who was her husband at about midnight between 3/4th June, 1969 with a brick in village Suphipur inside the house of Gyasi, the uncle of the deceased, which resulted in his death on the spot.

3. There are no eye-witnesses in. the case. The evidence produced by the prosecution is of a circumstantial nature.

4. Ramshri (P.W. 3) deposed that the deceased Sita Ram was her cousin and lived in her father's house in village Suphipur. He had been married to the appellant about 8 or 10 years prior to the occurrence but the appellant normally lived in the house of her father even after her marriage. She used to visit her husband after long intervals and stayed with him only for a short time. About ten days before the occurrence the deceased had an attack of cholera. He, however, recovered after two or three days. The appellant came to her father's house four or five days before the occurrence. On the night of occurrence the deceased and the appellant were sleeping in the Angan of the house and she was sleeping on the Chabutra outside the house. At about midnight the appellant woke her up and told her that some thief had entered the house and removed her silver bangles. She told the appellant that she should have informed the deceased about the theft. When the appellant kept quiet she went inside the house and found the deceased lying dead on his cot. She immediately raised an alarm hearing which Maharaj Singh Pradhan (P.W. 2), Ram Chandra (P.W. 5) and Smt. Vidya (P.W. 4), whose houses are nearby, reached her father's house. In the torch light flashed by Smt. Vidya blood was detected on the person of the appellant and also on her clothes. The appellant was then accused by Maharaj Singh of having committed the murder and she confessed to him that she had assaulted the deceased.

5. The first information report was scribed by Mahraj Singh (P.W. 2) in the village and was lodged by him at police station Firozabad at about 2.45 a.m. on the same night (4-6-69).

6. Sri H. P. Dhawan (P.W. 9) the Station Officer of police station Firozabad, reached the place of occurrence at about 4 in the morning on 4-6-69 found the body of the deceased lying on a cot inside the house. The appellant informed him that she had hidden the brick with which she had assaulted the deceased in an earthen Kutiya. The appellant thereafter took out the brick from the Kutiya. The appellant also told the investigating Officer that she had concealed her silver bangles in a hole and gave them to the investigating officer. The investigating officer also found blood on the finger nails of the appellant and also on her petticoat (Ext. 4), Dhoti (Ex. 5) and blouse (Ex. 6). These garments were taken into possession by the investigation officer and the nails of the appellant were also

cut and were taken into possession by him. The investigating officer also found ornaments on the person of the appellant. He took them in his possession and gave them in the supurdagi of Smt. Ramshri.

7. Dr. Chandra Sekhar Tripathi conducted the post-mortem examination and found the following injuries on the body of the deceased:

1. Abrasion 1/2' x 1/2' on the forehead just above the left eye brow.
2. Abrasion 2' x 1/2' on the left side of the face outside the left eye brow.
3. Abrasion 1' x 1/4' in the middle part of the left cheek.
4. Abrasion 1' x 1/2' on the bridge of the nose.
5. Lacerated wound 1' x 1/2' x muscle deep on the inner side of the lower lip right side.
6. Abrasion 1/2' x 1/4' on the head 2' above and behind the left eye brow
7. Lacerated wound 1/2' x 1/2' x scalp deep 2-1/2' above and behind the right brow.
8. Lacerated wound 1/2' x 1/4' scalp deep on the left side of the head 1' behind injury No. 7.
9. Abrasion 1/2" x 1/4' on the right cheek 1/2' below the right eye.

In the opinion of Dr. Tripathi the cause of death could not be determined and the injuries found on the body of the deceased were simple in nature.

8. The recoveries made by the investigation officer have been supported by the evidence of Mahraj Singh (P.W. 2), Smt. Ramshri (P.W. 3) and Ram Chandra (P.W. 5). It may be mentioned that human blood was found on all the recovered articles except the silver bangles.

9-10. The evidence of Mahraj Singh (P.W. 2), Smt. Vidya (P.W. 4) and Ram Chandra (P.W. 5) corroborated the evidence of Smt. Ramshri. We have gone

through the evidence of these four witnesses and have come to the conclusion that their testimony is wholly reliable. They are natural witnesses and there was no reason for them to falsely implicate the appellant. Nothing was brought out in their cross-examination which could demolish their evidence. We are also of the opinion that the evidence of the investigating officer is wholly reliable.

11. The evidence of the prosecution witnesses establishes that the appellant was the only person who was sleeping with the deceased inside the house when the deceased was assaulted. The appellant had human blood on her garments and also on her finger nails. The brick with which the assault was committed and which was found stained with human blood was recovered at the instance of the appellant. The appellant made an attempt to mislead Smt. Ramshri by telling her that a thief had entered the house and hiding her silver bangles. The appellant confessed to Mahraj Singh (P.W. 2) in the presence of Smt. Ramshri (P.W. 3), Smt. Vidya (P.W. 4) and Ram Chandra (P.W. 5) that she had assaulted the deceased. This confession was no doubt made in the presence of the Chaukidar who is a police officer but we are of the opinion that it is admissible in evidence as the appellant was neither in the custody of the Chaukidar nor did she make any confession to the Chaukidar. It was also not made under the influence of the Chaukidar. We are fortified by two authorities, namely, Emperor v. Shankar AIR 1934 Oudh 222 : 35 Cri LJ 894 and Mst. Maharani v. Emperor : AIR1948 All7 . The statement of the appellant that she was not present in the house of the uncle of the deceased at the time of the incident but was staying with her father is clearly false. We are of the opinion that the circumstantial evidence produced in the case conclusively establishes that the appellant assaulted the deceased with a brick.

12. Coming to the question as to what offence has been committed by the appellant, we have no hesitation in saying that we are faced with an extra-ordinary situation. We have no doubt in our minds that the death of the deceased took place either immediately after he was assaulted with a brick by the appellant or soon thereafter but we cannot hold the appellant guilty either of murder or of culpable homicide not amounting to murder as, according to Dr. Tripathi, the injuries found on the body of the deceased were simple in nature and the cause of death of the deceased could not be determined. It, therefore, clearly means that

the injuries inflicted by the appellant were neither sufficient in the ordinary course of nature to cause death nor, were they likely to cause death. The death of the deceased did not take place as a result of the injuries received by him but took place on account of some unknown reason. The appellant can therefore only be held guilty under Section 323, I.P.C. for causing simple injuries to the deceased.

13. We accordingly allow the appeal in part, set aside the conviction and the sentence of the appellant under Section 302, I.P.C, and convict her under Section 323, I.P.C. and sentence her to one year's R. I. The appellant is on bail. Her bail-bonds are cancelled. She shall surrender forthwith and serve out the sentence awarded to her.

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