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Hulas Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-27-1999

Reported in : 2000CriLJ874

Judge : R.R.K. Trivedi and ;M.C. Jain, JJ.

Acts : Evidence Act - Sections 27; Indian Penal Code (IPC), 1860 - Sections 302 and 304; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 1204 of 1983

Appellant : Hulas

Respondent : State of U.P.

Advocate for Def. : Dy. G.A.

Advocate for Pet/Ap. : S.P. Singh, Adv. and ;Kamal Krishna, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

M.C. Jain, J.

1. Appellant Hulas was convicted under Section 302, I.P.C. and sentenced to life imprisonment by the judgment and order dated 8-4-1983 passed by Sri S.C. Jain, the then Sessions Judge Mirzapur in S.T. No. 83 of 1982.

2. The prosecution case was that the appellant Hulas was living in village Tola Tumia and had been married to Smt. Jhauli daughter of Jagdhari of the same village. Subsequently he developed illicit connection with one Smt. Gulpatia daughter of Nanhu Gond of village Charappatli and kept her also as his wife together with the deceased Jhauli. He was allegedly more attached to his second wife Gulpatia. Smt. Jhauli, his first wife was maltreated by him. On this account there used to be frequent quarrels between the two. Since morning on the day of incident (28-12-1981) they were quarrelling. Moti was the neighbour of the accused-appellant and he sent his mother Kaushilya to call Jhauli's father Jagdhari to pacify them. Accordingly, at about 2 P.M. Jagdhari proceeded towards the house of the appellant. When he was at a distance of 70-80 paces, he heard the shrieks of his daughter Jhauli. At that time Shiv Shankar was proceeding to his new house and he was also attracted by the shrieks. Both of them hurriedly proceeded towards the house of appellant along with Moti who was at his door. All of them saw the appellant assaulting Jhauli with an axe at a distance of 7-8 paces towards the west of his house. Jhauli had fallen down on the ground and was profusely bleeding. The appellant gave her repeated axe blows even after she had fallen down. The witnesses remonstrated and rushed in the direction of the appellant but he escaped towards the north along with the axe. Writhing with pain. Jhauli succumbed to the injuries then and there. A number of neighbours appeared on the scene of the occurrence. Sita Ram brother of the deceased returned from the jungle at about 4. p.m. and was told about this occurrence. He got the report scribed and lodged the same at the police station at 6.30 p.m. which was at a distance of 15 kms where he went by cycle. The case under Section 302, I.P.C. was registered against the accused-appellant Hulas. The investigation ensued and ultimately chargesheet under Section 302, I.P.C. was laid against the accused-appellant. On being committed to the Court of Session, he was tried and convicted and sentenced as mentioned in the opening paragraph of the judgment. He is now in appeal before this Court.

3. Before proceeding further, we set forth below the ante-mortem injuries found on the person of the deceased at the time of her post-mortem by Dr. P.N. Singh PW-9 on 30-12-1981 at 10.30 a.m. The following ante-mortem injuries were found on her person:

1. Incised wound 8 cm x 6 cm on the right side of face.

2. Incised wound 12 cm. x 6 cm x 7 cm on left side of neck.

3. Incised wound 16 cm x 5 cm x 9 cm on the left side of chest.

4. Incised wound 6 cm x 2 cm x bone deep on the back right side. -

5. Incised wound 4 cm x 2 cm x 1.5 cm on the left side of back.

6. Incised wound 5 cm x 2 cm x 3 cm on the right side back 2 cm below shoulder joint.

7. Incised wound 2 cm x 1 cm x skin deep on the axilla.

8. Incised wound 4 cm x 3 cm x whole depth of left hand.

4. The deceased was aged about 35 years and about 40 hours had passed since she died. Dr. P.N. Singh opined that the death had occurred due to shock and haemorrhage resulting from the aforesaid injuries.

5. The prosecution in all examined nine witnesses at the trial. Sita Ram PW-1 was the brother of the deceased and was the informant who lodged the FIR but he was not an eye witness. Sheo Shankar PW-2, Moti PW-4 and Jagdhari PW-5 were examined as eye witnesses of the occurrence. Deepan PW-3 was the witness of the recovery of the weapon of the offence at the instance of the accused. Constable Shyam Behari Singh PW-6 had taken the dead body for postmortem, Lallah Tiwari PW-7 had scribed the chick FIR and G.D. registering the case S.I. R.P. Saroj PW-8 was the Investigating Officer and Dr. P.N. Singh PW-9 had conducted the post-mortem.

6. The accused pleaded not guilty and claimed false implication, but did not produce any oral evidence in the defence.

7. The learned Trial Judge believed the prosecution evidence and convicted and sentenced the accused. The appeal was filed by the appellant through Sri S.P. Singh, Advocate. He did not take any steps and by order dated 7-2-1998 of this

Court Sri Kamal Krishna, Advocate was appointed as Amicus curiae for the accused-appellant.

8. We have heard learned Amicus-cu-riae on behalf of the appellant in support of this appeal and the learned A.G.A. from the side of the State in opposition. We have also carefully gone through the evidence of the case. The learned Amicus-curiae has submitted three arguments. First, there was no motive on the part of the accused-appellant to commit murder of his wife. Second the eye witnesses produced from the side of the prosecution were not at all reliable and conviction could not be based on their testimony. Third, at the best, it was a case of culpable homicide not amounting to murder under Section 304, I.P.C. because of the fact that at the given time the accused appellant was deprived of the power of self control by grave and sudden provocation. We wish to deal with these submissions in the succeeding discussion having regard to the evidence on record and attending circumstances.

9. So far as the question of motive is concerned, it is an admitted fact that deceased Jhauli had been married with the accused appellant. He himself has admitted in his statement under Section 313, Cr. P.C. that subsequent to his marriage with Jhauli he had kept another lady Gulpatia who was formerly married with Brij Mohan and that he was living with his two wives in his house. The motive assigned by the prosecution is that the accused-appellant was more attached to his second wife Gulpatia and used to maltreat the deceased Jhauli. There used to be frequent quarrels between the two. It sounds to be logical because the accused-appellant was keeping two ladies together in the same house. The very fact that he had kept another lady as second wife was an indicator that there had been loss of love between him and his first wife Jhauli and his attachment towards her had diminished. Sita Ram PW-1 brother of the deceased stated that the accused-appellant was more attached to his second wife Gulpatia and had rendered the life of his sister Jhauli miserable by harassing and maltreating her. There used to be constant quarrels. Moti PW-4 is a close neighbour of the accused-appellant. He too stated that after the accused had kept Gulpatia with him, his relations with Jhauli had deteriorated and there used to be frequent quarrels. Almost to the same effect is the statement of Jagdhari PW-5 who is the

father of the deceased. On the day of the occurrence also, there was quarrel between the accused-appellant and the deceased since morning. They had quarrelled in the preceding night also. This is what Moti PW-4. neighbour of the accused appellant stated. The quarrel had again started at 11 a.m. He sent his mother to Jagdhari to call him to pacify the matter. Therefore, it cannot be said that the accused-appellant had no motive to commit this crime. He was keeping a second wife in his house and it sounds appealing that to get rid of frequent, quarrels and bickerings, he took a decision to put an end to the life of his first wife Jhauli. We, therefore, reject the argument that, the appellant had no motive to commit this crime.

10. Now comes the question of reliability of the eye witnesses, namely, Sheo Shankar PW-2, Moti PW-4 and Jagdhari PW-5. Sheo Shankar PW-2 has given plausible explanation for his presence at the spot that he was going to his new house when he heard the alarm near the door of Moti which was at a distance of 30-40 yards from that of the accused. Moti PW-4 and Jagdhari PW-5 also joined him and they rushed forward. Moti PW-4 is the own neighbour of the accused-appellant. He has spoken about the quarrel and that when he was resting after mid-day meals, he heard the noise emanating from the house of the accused. He came out and joined Sheo Shankar PW-2 and Jagdhari PW-5. The evidence of all these witnesses reconcile that they rushed in the direction of the house of the accused and saw him assaulting Jhauli with axe repeatedly in the western side of his house at the distance of 7-8 paces. Jagdhari PW-5 had come on the call of Moti who had sent his mother to him with the message that a quarrel was going on between the accused and Jhauli. No motive could be assigned to any of these witnesses that would have tempted any of them of depose falsely against the accused-appellant Jagdhari PW-5 is the own father-in-law of the accused-appellant and he would not falsely implicate his son-in-law giving a clean chit to the real culprit. It has to be kept in mind that it is the case of single accused and the chance of false implication is minimal in such a case. Of course, the accused-appellant had kept a second wife Gulpatia. But it appears that ultimately, Sita Ram PW-1 and Jagdhari PW-5 had reconciled to this situation and they only wanted the accused not to harass or maltreat Jhauli. Even the victim Jhauli had also resignedly accepted the reality, living in the same house with the second wife of

her husband. The testimony of Jagdhari PW-5 has been criticised by the learned Amicus curiae that he stated that he took about an hour to reach up to the house of Moti. It has been urged that this being so, he could not have seen the occurrence himself as also running of the accused from the spot with the axe. There is not the slightest doubt that this witness, who is completely unlettered, has no sense of time and he happened to make the above statement inadvertently, unmindful of the length and duration of an hour. The distance of the house of the accused from the house of this witness is only two furlongs as stated by Sita Ram PW-1. He had actually reached near scene of occurrence. On a careful scrutiny of the testimony of the eye witness namely. Sheo Shankar PW-2 Moti PW-4 and Jagdhari PW-5 it is perfectly believable that they saw the incident when the accused-appellant was striking axe blows on Jhauli.

11. It may also be pointed out that the ocular version as contained in the evidence of the above named three eye witnesses is in complete agreement with the post-mortem report which shows that as many as eight incised wounds had been inflicted on different parts of the body of the victim and the same were capable of being caused by the axe. They were sufficient in ordinary course of nature to cause death and the death could have occurred at about 2 p.m. on 28-12-1981 as deposed Dr. P.N. Singh PW-9.

12. There are two other factors which lend additional strength to the prosecution case. The first is that when the accused-appellant was arrested by the Investigating Officer R.P. Saroj on 29-12-1981 at about 3 p.m. he was putting on vest and underwear which were blood stained. These clothes were taken in possession and were subjected to scientific examination. The same were found to contain stains of human blood. The relevant reports are Exts. Ka-20 and Ka-21. The second factor is that on being arrested the accused-appellant got recovered the weapon of offence-axe buried and concealed under sand at the bank of river Domahani. There was even an independent witness Deepan PW-3 to support the facturn of this recovery got made by the accused-appellant. Therefore, the statement of the Investigating Officer Ram Pyarey Singh PW-8 of the aspect of this recovery under Section 27 of the Indian Evidence Act finds corroboration from the testimony of an independent witness on cumulative consideration of all the

relevant factors, we find the eye witnesses to be worthy of belief inspiring judicial confidence. The argument of learned Amicus-curiae to the contrary does not hold water.

13. Lastly comes the argument of grave and sudden provocation. We do not find anything on record to support the submission of the learned amicus curiae that at the given time the accused-appellant was deprived of power of self control by grave and sudden provocation. His case is of total denial. There is no evidence to the effect that some grave and sudden provocation had been given to the accused-appellant. There is no circumstance either on the basis of which any inference can be drawn in this behalf. He mercilessly hacked his unarmed and defenceless first wife without any fault on her part, just to get rid of her as he was more attached to another lady Gulpatia, whom he had kept as his second wife. It was an out and out murder the accused-appellant intentionally and knowingly causing the death of the unfortunate victim. We reject the argument of the learned Amicus-curiae that at the best it was a case of culpable homicide not amounting to murder.

14. It follows from the discussion made hereinabove that accused-appellant Hulas has rightly been convicted under Section 302; I.P.C. for murdering his wife Jhauli wherefor he has been sentenced to life imprisonment. The appeal has no merit and we accordingly dismiss it. Accused-appellant Hulas is already in jail. He shall serve out the sentence of life imprisonment imposed on him by the judgment and order of the learned Sessions Judge, where against this appeal has failed.

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