

Uttam Kumar Devnath Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-16-2002

Reported in : 2003CriLJ2725

Judge : M.C. Jain and ;K.S. Rakhra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 329 of 1986

Appellant : Uttam Kumar Devnath

Respondent : State of U.P.

Advocate for Def. : N.S. Kulshreshta, A.G.A.

Advocate for Pet/Ap. : G.N. Sharma, ;B.D. Shukla and ;Satish Trivedi, Advs.

Judgement :

M.C. Jain, J.

1. Appellant Uttam Kumar Devnath has been convicted under Section 302, I.P.C. and sentenced to life imprisonment by Judgment dated 23-1-1986 passed by Sri P.K. Dikshit, the then Sessions Judge, Mathura in Sessions Trial No. 234 of 1985. The charge was that he murdered his own wife Smt. Kajal.

2. Shortly stated, the material facts leading to this appeal are these. The deceased Smt. Kajal was the wife of appellant and both of them used to live in the compound of Madan Mohan Ji Ghera, P.S. Vridavan, District Mathura. He committed her murder by strangulation on 25-5-1985 at about 2p.m. in his house in which both of them resided on rent. The report was lodged the same day at 3.30 p.m. by PW 2 Karen Adhikari having got it scribed by PW 1 Sanatan Kishore Goswami. Karen Adhikari is the husband of the cousin sister of the deceased and lived in the same locality a little distance away. About 4-5 months before the incident also, the couple had quarrelled and on learning about it, PW 2 Karen Adhikari had intervened and advised them to live peaceably. It, however, did not have any, effect on the appellant.

3. On the fateful day at about 2 p.m. he was again informed by someone about the appellant and his wife quarrelling. Thereupon, he reached their house and found the same to be closed from inside. Smt. Kajal was inside the room and was crying which had attracted other witnesses also who gathered around the house. After sometime, the cries of Smt. Kajal were silenced, Karen Adhikari and others knocked at the door of the appellant but it was not opened. Then PW 2 Karen Adhikari, PW 5 Deenbandhu and other witnesses collected near the window which was on the back side of the room tenanted by the appellant. The appellant jumped from the side window and ran away. He was, however, apprehended by Karen Adhikari, Deenbandhu and others at the door of Madan Mohan Temple. He also allegedly made a confession to them that he had murdered his wife by strangulation as she used to always quarrel with him. He went to the police station along with the appellant where the F.I.R. was lodged. A case was registered and investigation followed which was conducted by PW 6 S.I. Subedar Singh.

4. The post-mortem over the dead body of Smt. Kajal was performed on 26-5-1985 at Mathura at 4.45 pm. by PW 3 Dr. Arvind Kumar. The following ante-mortem injuries were found on her person :

1. Multiple abrasions in an area 5 cm z 3 cm on the left side cheek.

2. Contusion 3 cm x 2 cm on the left side chin.

3. Multiple contusions in an area of 10 cm x 5 cm on the forehead extending from the right to the middle of forehead.
4. Contusion cm 17 x 3 cm on the neck extending from the left side sterno mastoid muscle (behind the left ear) to the right sterno mastoid muscle Just below the right ear.
5. As per the opinion of doctor, she had died as a result of strangulation and her death could have taken place the previous day at about 2 p.m. A dead foetus of 12 weeks was also found in the womb. The deceased was aged about 20 years.
6. It should also be related that the appellant was also subjected to medical examination on 25-5-1985 at 9.30 p.m. PW 4 Dr. J.P. Agarwal had medically examined him. The following injury was found to his person.
 1. Abrasion 1/2 x 1/10 on the back of outer palm on right hand 1/2 inch above little finger of right hand. Scab formed.
 7. The injury was simple and could be caused either by blunt object or friction against hard substance or by finger nail.
 8. After investigation, the charge-sheet was laid against the appellant who denied the charge and pleaded false implication. He stated in his examination under Section 313, Cr.P.C. that his wife was a beautiful lady and some persons of the locality used to cut Jokes with her and to enjoy her company in his absence which he resented. He also stated that he had gone for his service at the shop of his employer at about 9.30 a.m. and the police called him from that shop at about 4.30 or 5 p.m. He found his wife lying dead at the house.
 9. The prosecution relied upon the testimony of eight witnesses out of whom, as stated earlier PW 1 Sanatan Kishore Goswami was the scribe of the F.I.R., written at the dictation of PW 2 Karen Adhikari. PW 2 Karen Adhikari and PW 5 Deen Bandhu were examined as witness of fact. PW 3 Dr. Arvind Kumar and PW 4 J.P. Agarwal were Doctors as has been referred to earlier. PW 6 S.I. Subedar Singh was the Investigating Officer of the case PW 7 Muthura Singh had taken the dead body of the deceased in sealed condition for postmortem, PW 8 Raghunandan

Sharma was the Head Constable who wrote down the Chik F.I.R. and G.D. relating to the registering of the case.

10. As the trial Judge believed the prosecution evidence, he passed the impugned judgment which has been assailed by the appellant through this appeal.

11. At the hearing of the appeal none turned up from the side of the appellant though he was represented on record by Sarvasri G.N. Sharma, B.D. Shukla and Satish Trivedi, Advocates. We have heard learned A.G.A. in opposition of the appeal and have gone through the record and evidence with his assistance. We propose to decide the appeal on merits having regard to different relevant aspects of the matter.

12. It is a case of almost spot arrest, the appellant having been apprehended immediately after commission of this crime when he was running, having scaled down the window of the room in which the murder was committed by him. He was taken to the Police Station along with the F.I.R. lodged only after 11/2 hours of the incident by PW 2 Karen Adhikari against whom he has neither pleaded nor proved any enmity. Rather, he was his own relative. It is borne out of his own statement under Section 313, Cr.P.C. that the dead body had been found in the room in which he used to live with his wife as tenant. The Investigating Officer PW 6 Subedar Singh had found the dead body there.

13. Even leaving aside the extra-judicial confession made by the appellant to the witnesses, namely, PW 2 Karen Adhikari and PW 5 Deen Bandhu, testimony of these witness leaves not the slightest doubt that it was he who committed the murder whereafter he jumped from the window to make his escape good. PW 5 Deen Bandhu is the person who was the tenant in a portion of the same house on the ground floor. The portion of the appellant was on the upper storey. The cries had been heard by him from inside the room which was closed from inside. Several other persons had also collected including PW 2 Karen Adhikari who had reached there on being informed by Radha (Sala of the accused) about quarrel taking place between the accused and his wife. PW 2 Karen Adhikari explained that he as a labourer and as on that date he had not been able to get any work, he had returned to his house. The name of PW 5 Deen Bandhu finds place in the

F.I.R. The dead body of the deceased was found inside the room by the witnesses immediately after the Incident when the appellant had been apprehended while fleeing after jumping down from the window. There is nothing to doubt the testimony of PW 2 Karen Adhikari and PW 5 Deen Bandhu who appear to be truthful witnesses. They have rightly been believed.

14. As per the post-mortem report of the deceased, she had died due to asphyxia as a result of strangulation and some abrasions and contusions had also been found on her person which are indicative of some scuffle and struggle when she was strangled by the appellant. The injury found on the person of the appellant (abrasion on the back of outer palm of his right hand) is also well explained and is rather in confirmity with the prosecution case. The same could have been sustained by friction or by fingernails. He had jumped down from the window after committing this crime and as per PW 5 Deen Bandhu, height of window was about 4-5 metres from the Gali. Either he had sustained this injury when his palm came in contact of rough surface on jumping down or by the victim might have pierced her nails in an attempt to extricate herself from his, grip when he was trying to strangle her. We endorse the finding of the lower Court that it stood established beyond doubt that it was the appellant who had done his wife to death by strangulation on the given time, date and place.

15. Now we come to the question of the offence committed by him within the purview of law. The testimony of PW 2 Karen Adhikari indicates that there used to be quarrels and bickering between the appellant and his wife (deceased) and he had to intervene at an early occasion also without any fruitful result. The post-mortem report shows that the deceased was aged about 20 years. The statement of the appellant under Section 313, Cr.P.C. was that his wife was beautiful lady with attractive personality. He has also stated that some residents of the locality used to cut jokes with her and had lustful eyes on her, so much* so that they used to enjoy her company which he resented. It was natural that being the husband of the deceased, he did not like such overtures. The evidence is also there that on that date also PW 2 Karen Adhikari had reached the spot as he had been informed at his house in the same locality that the appellant and his wife were quarrelling. The room was found bolted from inside and cries of the lady were heard which

were silenced after a while. It was thereafter that the appellant jumped down from the window and was apprehended at the spot while fleeing from the spot. The victim was then found dead inside the room. Obviously, the prosecution has not been able to prove as to how the incident started. There is no evidence as to what suddenly prompted the appellant to murder his wife by strangulation. The possibility cannot be ruled out that he suspected her fidelity. May be that his wife, who was a beautiful lady, had encouraged some persons of the locality for flirting and even more. Just before the incident also, there was a spat between the couple. The appellant did not use any weapon to kill his wife. It is likely that he did not like his wife encouraging by her conduct some of the persons of the locality who had libidinous eyes on her and this was the reason of the quarrel that day also, which quickly rushed blood to the head of the appellant. Taken by a sudden impulse, he strangled her. We, therefore, find the case to be covered by Explanation I of Section 300 I.P.C. that while doing his wife to death the appellant was deprived of power of self control by grave and sudden provocation, as is indicated by wholesome consideration of the evidence and circumstances. It was not a pre-calculated murder and the incident took place all of a sudden. It was just at the spur of the moment that the appellant lost his cool and strangled his wife.

16. We, therefore, find the appellant to be guilty of the offence punishable under Section 304, I.P.C. Part I. In our opinion, the sentence of seven years' rigorous imprisonment would meet the ends of justice.

17. Resultantly, the appeal is partly allowed. The conviction of the appellant Uttam Kumar Devnath is converted from Section 302, I.P.C. to Part I of Section 304, I.P.C. The sentence of life imprisonment is also converted into seven years' rigorous imprisonment. He shall accordingly undergo seven years' rigorous imprisonment for the offence under Part I of Section 304, I.P.C. He is on bail. The Chief Judicial Magistrate, Mathura shall cause him to be arrested and lodged in Jail to serve out the sentence of seven years' rigorous imprisonment awarded to him.

18. Let a copy of this judgment along with record of the case be immediately sent to the Court below for needful compliance under intimation of this Court within two

months from the date of receipt.

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