

Kalabai Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-03-2004

Reported in : 2004(3)MPHT51

Judge : S.L. Kochar and ;Ashok Kumar Tiwari, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 328

Appeal No. : Criminal Appeal No. 840/99

Appellant : Kalabai

Respondent : State of M.P.

Advocate for Def. : G. Desai, Dy. Adv. General

Advocate for Pet/Ap. : Vivek Singh and ;S.S. Swami, Adv.

Judgement :

S.L. Kochar, J.

1. Being dissatisfied with the judgment dated 24-5-1999, rendered in Sessions Trial No. 14/99, by the learned Sessions Judge, Ratlam, whereby he convicted the appellant for the offence under Sections 302 and 328 of IPC, sentenced to suffer imprisonment for life with fine of Rs. 500/-; in default whereof to undergo one month S.I. and two year's R.I. respectively, the appellant has preferred this appeal.

Both the substantive sentences were directed to run concurrently.

2. Briefly stated the prosecution case before the Trial Court was that appellant Kalabai was married with deceased Shankarlal who was younger to her in age. After the marriage, she remained at her parents' house for twelve months and came to her in-laws house just before 2-3 days prior to the incident. On 10-12-1998, in the morning, Shantabai (P.W. 8), went to fetch water; at that time appellant and her husband Shankarlal were in the house. Appellant prepared tea and served the same to her husband Shankarlal. Deceased Shankarlal took the same. Thereafter Shantabai return back to house and she also took the tea and fell bitter taste. Her neighbour Ramesh was also served with the same tea and he also expressed his doubt about mixing of some medicine in the tea. Shantabai (P.W. 8) enquired about this fact from the appellant who denied regarding mixing of anything in the tea. Immediately thereafter Shantabai started vomiting. Therefore, she was taken to Namli for treatment on motor cycle. Deceased Shankarlal fell unconscious upon which his brother Balaram informed village Sarpanch and village sarpanch in his turn telephoned the matter to concerned police station, copy of which is Ex. P-15-C. On this report, S.H.O. sent Head Constable Jailal (P.W. 10) for enquiry.

3. Head Constable Jailal (P.W. 10) through Ex. P-1, seized from the spot one iron bottle having pesticides, one brass tureen, two pair cup plate, one plastic bottle having tea vide seizure memo/memorandum (Ex. P-1 and Ex. P-2). After some enquiry, the offence was registered vide Ex. P-13. Ramesh (P.W. 9) was admitted in the Ratlam Hospital, husband of the appellant Shankarlal died in the hospital. Information of the same was sent to P.S., Ratlam who registered merg (Ex. P-10). After inquest, dead-body was sent for post-mortem examination and the post-mortem was performed by Dr. Sunil Rathore (P.W. 5). His report is Ex. P-5. The MLC report of Ramesh (P.W. 9) is Ex. P-6. He was medically examined by Dr. G.L. Verma (P.W. 6). After registration of the crime, the investigation was done and completed by S.H.O. H.S. Parmar (P.W. 12), who has proved FSL reports (Ex. P-19 and P-20) and according to this report in articles A, B, C, D, E, F which were seized from the house of the deceased and appellant through seizure memos (Exs. P-1 and P-2), poison was found; Article 'A' was containing Zinc

Manganese (Soyashri Micro Fertilizer), a pesticide used for spraying on cotton crop. In Articles 'E and F' viscera of deceased Shankarlal as well as in Articles 'B, C and D', Let brass tureen, two pair of cup plates and plastic bottle containing tea all were having zinc phosphate (choohamaar),

4. After due investigation, charge-sheet was filed. Appellant denied the charges, therefore, put to trial. Prosecution examined in total twelve witnesses in its support. The learned Trial Court, found the appellant guilty and convicted her as mentioned above.

5. We have heard the learned Counsel for appellant S/Shri Vivek Singh and S.S. Swami, Shri G. Desai, learned Dy. A.G. for State and also gone through the record of the case.

6. The contention of the learned Counsel for appellant is that star witness Shantabai (P.W. 8) was not medically examined, though, according to prosecution, she was also served with the tea by the appellant and thereafter she also started vomiting. He further contended that two kind of poisons were found in the house of appellant and she has no motive for committing murder of deceased Shankarlal.

7. On the other hand, the learned Counsel for State has submitted that in view of the statement of Shantabai (P.W. 8), Ramesh (P.W. 9), who are the sufferers as well as seizure of poisonous substance from the house of the appellant and medical report of the deceased, it is amply proved that appellant was the perpetrator of the crime.

8. The conviction of the appellant is based mainly on the testimony of Shantabai (P.W. 8), Ramesh @ Rameshwar (P.W. 9), seizure of poisonous substance from the house of the appellant as well as the FSL Report (Exs. P-19 and P-20) which is disclosing the fact of presence of poison in the containers seized from the house of the appellant and viscera report.

9. Madanlal (P.W. 1) was the sarpanch of the village. He was informed by the elder brother of the deceased Balaram regarding serving of tea by appellant Kalabai after mixing some medicine to deceased Shankarlal. Balaram has also

informed about serving of same kind of tea to Shantabai (P.W. 8) and thereafter Balaram, Pannalal and so many other persons in the village, after tying Kalabai, brought her in the Panchayat. Thereafter, Madanlal (P.W. 1) reported the matter in the police station on telephone. Deceased Shankarlal and Shantabai (P.W. 8) were taken to the hospital by the villagers. On his report, police reached in the village and effected seizure of bottle of pesticide, brass tureen (thapeli), tea, as well as two pairs of cup plate. Madanlal (P.W. 1) has proved the seizure memo (Ex. P-1). He has also proved seizure of tea vide Ex. P-2. In cross-examination, defence has not put any question to this witness about seizure of above mentioned articles from the house of deceased and appellant through seizure memos (Exs. P-1 and P-2). Therefore, this evidence remains intact. In cross-examination, this witness has accepted that in the Panchayat, Kalabai had denied the allegation, therefore, she was freed and allowed to sit in the Panchayat.

10. Pannalal Dhakkad s/o Nandram Dhakkad (P.W. 2) is a witness about seizure of cup plate, brass tureen (thapeli), medicine bottle etc., from the spot through seizure memo (Ex. P-1). He was also the witness of seizure of tea kept in a bottle vide seizure memo (Ex. P-2). He is the independent witness and in his cross-examination, nothing substantial has been pointed out by the defence to discard his testimony about seizure of above mentioned articles from the house of the appellant.

11. Pannalal Dhakkad s/o Dayaram Dhakkad (P.W. 3) upon receiving information from one Sundarbai, reached at the house of the appellant who was sitting near the oven (choola). When Shankarlal fell on the ground, appellant Kalabai ran away from the house and jumped from a small wall (Kotda). She was caught and as per suggestion by the villagers she was taken to the Panchayat. He is brother-in-law (sister's husband) of the deceased Shankarlal. In cross-examination, he has deposed that when he reached at the house of deceased Shankarlal, he saw Shankarlal and Shantabai (P.W. 8) were vomiting.

12. Shantabai (P.W. 8) and Ramesh @ Rameshwar (P.W. 9) are the victims of this case and they have no reason to falsely implicate the appellant. According to Shantabai, appellant came to her from her parents' house two days prior to the

incident. In the morning, she prepared tea and first she served the tea to her husband Shankarlal. After taking tea, Shankarlal felt uneasiness and disclosed the same before her. When she went to fetch water, appellant and Shankarlal alone were in the house. When she returned back after fetching water, she too was served with tea, and she found bitter taste in the tea. Therefore, she left half cup of the tea. When she was taking tea, her neighbour Ramesh (P.W. 9) also came to their house. She offered tea to him also. Ramesh, after taking some sip of tea, told that nobody should drink this tea, it is containing medicine. This witness enquired from appellant, who denied about mixing of anything foul in the tea. This witness was also complained by the deceased about bitter taste in the tea. This witness has testified that after marriage, appellant lived for twelve months with her parents and came to her house two-three days before the incident. She was older to her husband deceased Shankarlal. She has admitted that Balaram is his son. In cross-examination of this witness, again she has stated that tea was served to her by the appellant and at that time, appellant was sitting near the oven (choola). In cross-examination of this witness, there is nothing to discard her version about preparing and serving of tea to deceased as well as to her by the appellant.

13. Ramesh @ Rameshwar (P.W. 9) is a witness, who is the neighbour of the deceased Shankarlal and on daily wages from time to time working as labour at the house of Shankarlal. On the date of incident, in the morning, he went to the house of Shankarlal, he was informed by Shantabai (P.W. 8) that tea was prepared by appellant and same is giving some bitter taste on which he replied that she might have mixed excess tea powder. He was also given a cup of tea. In a second sip of tea, he also felt bitter taste and bad odour. He was also informed by Shantabai that Shankarlal and she had also taken the same tea and after some time Shantabai started vomiting and she was shifted to the hospital. Shankarlal fell on the ground. He proceeded on bicycle towards Village Namli, but he also had giddiness and fell near sabji mandi. He was taken to the hospital where he regained consciousness. He was informed by Shantabai that tea was prepared by Kalabai.

H.S. Parmar (P.W. 12) has proved the Rojnamcha Sanha No. 455 which was recorded on the basis of telephonic message given by Madanlal in which it is

mentioned that appellant has served tea to deceased Shankarlal and his mother after mixing some medicine and appellant tried to run away. Therefore, she was caught and after tying, kept in the Panchayat. On this information, police reached over there. Head Constable Jailal (P.W. 10) prepared the seizure of tea, utensils, cup plate, pesticide, some bottles as mentioned hereinabove.

Dr. Sunil Rathore (P.W. 5) has not given any opinion about cause of death and preserved the viscera of the deceased for sending the same to F.S.L. Report from F.S.L. is vide Exs. P-19 and P-20 proved by H.S. Parmar (P.W. 12). These reports are confirming presence of poisonous substance in Article 'A', small plastic box on which Soyashri Micro Fertilizer was written, Article 'B' brass tureen, Article 'C' two pair of cup plate, Article 'D' plastic bottle containing tea and Articles 'E and F' are the viscera of deceased Shankarlal. In Article 'A' Zinc Manganese was found which is defined as Soyashri Micro Fertilizer and in Articles 'B, C, D, E and F' Zinc Phosphate was detected. So the poison which was found in viscera was found also found in cup plates, brass tureen and tea which was seized from inside the house. The seizure of all these articles have been properly and legally proved by the prosecution by examining witness Madanlal (P.W. 1) and Jailal (P.W. 10).

Ramesh (P.W. 9) was medically examined by Dr. G.L. Verma (P.W. 6) and his medical report is Ex. P-6. According to Dr. Verma, Ramesh (P.W. 9) had complained about nausea and giddiness. He was admitted as a patient of poisoning. It is true that medical report of witness Shantabai (P.W. 9) has not been filed by the prosecution. But no question was put to Investigating Officer H.S. Parmar (P.W. 12) as well as Jailal (P.W. 10) in cross-examination about non-production of medical report of Shantabai.

14. Learned Counsel has also submitted that the appellant was having no motive for committing murder of her husband for administering poisonous substance to Shantabai and Ramesh. Regarding motive, the learned Trial Court, in Paragraph 22, has given finding that appellant was elder than the deceased husband and after marriage, she lived at the house of her parents. She came just 2-3 days prior to the date of incident and it appeared that she was not happy with her marriage with Shankarlal and wanted to get rid of him. This could be a motive for the

appellant to administer poisonous substance to her husband and mother-in-law. Sometimes it is very difficult to have a direct and conclusive evidence of motive and the same is to be judged from the circumstantial evidence. Therefore, as assessed by the learned Trial Court in Paragraph 22, the same could be the motive for the appellant to administer poisonous substance.

15. Thus, on the basis of the statements of Shantabai (P.W. 8), Ramesh (P.W. 9) and Madanlal (P.W. 1), it is amply proved that on the date of incident, appellant prepared tea and served the same to her husband, who died because of the poisonous substance and the same kind of poison was found in his viscera as well brass tureen in which tea was prepared, cup and plates in which tea was served as also remaining tea which was seized from the spot and kept in bottle. These evidences are positively confirming that the appellant was having sufficient chance to administer the poisonous substance to the deceased and her mother-in-law. Ramesh (P.W. 9) was not served tea by the appellant but the same was given to him for taste by Shantabai (P.W. 8). Ramesh (P.W. 9) is an independent witness confirming about the nature of tea in which he felt bitter taste and odour.

16. The Supreme Court in the case of Anant Chintaman Lagu v. The State of Bombay (AIR 1960 SC 500) has held that prosecution must establish in a case of poisoning : (a) that death took place by poisoning; (b) that the accused had the poison in his/her possession; and (c) that the accused had an opportunity to administer the poison to the deceased. In the case in hand, death took place by poison and the appellant had an opportunity to administer the same. Separate poison was not seized from the exclusive possession of the appellant but the same was found in the tea and all the containers in which tea was prepared, kept and served, therefore, this part is also proved by the prosecution that appellant was having poison in her possession. The appellant was immediately caught when she was running away from the house and taken to the Village Panchayat and village Sarpanch had sent telephonic message about the incident in the police station in which the allegation was levelled against the appellant. So these are all the circumstances unerringly pointing out towards the guilt of the appellant and according to us all the circumstances are very decisive on the basis of which the learned Trial Court has rightly come to the conclusion that the appellant was the

perpetrator of the crime.

17. We also, after reappreciation of the whole evidence, unhesitatingly hold that appellant had administered the poisonous substance to deceased Shankarlal as a result of which he met homicidal death, but since no medical report of Shantabai (P.W. 8) was filed, therefore, acquit the appellant from the charge of commission of offence under Section 328 of IPC.

18. For the foregoing reasons, the appeal is partly allowed. The conviction and sentence passed against the appellant under Section 302 of IPC is confirmed whereas conviction and sentence under Section 328 of IPC is hereby set aside.

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