

Rewaram Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Feb-27-1978

Reported in : 1978CriLJ858

Judge : N.C. Dwivedi and; D.M. Bhachawat, JJ.

Appellant : Rewaram

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. S. G. Datt

Judgement :

ORDER

N.C. Dwivedi, J.

1. In this appeal, the appellant Rewaram has challenged his conviction Under Section 302 of the Penal Code for which he has been sentenced to imprisonment for life for committing the murder of this wife Gyanwatibai between intervening night of 13th end 14th of May 1972.

2. The prosecution case is this: The deceased Gyanwatibai resided with her four children with the appellant in the house of Bhurkan Bai (P.W. 1) for the last five years. At about midnight, Bhurkan Bai (P.W. 1), Nathulal (P.W. 3) and Dhansingh (P.W. 4) heard cries of Gyan- watibai and her children. Hence, they went to the

house of the appellant and found the outer door locked from inside. Despite calls to open the door, the door was not opened and, therefore, the door was forcibly opened. It was found that Gyanawatibai was lying close to her bed on the ground in a pool of blood and the appellant was standing close to her. He had a blue handled open knife (Art. C-I) in his hand. On being reprimanded by Bhurkanbai, the appellant handed over the knife to her and went out of the room without speaking anything. Gyan-wati also rushed out of room and fell down in her Chapri. Gyanwati was brought to Katangi police-station where she lodged the first information report, Ex. P-34 at 4.30 A.M. on May 14, 1972, the police-station being at a distance of eight kilometers.

3. Dr. R. S. Rajput (P.W. 20) examined Gyanwati at 6 A.M. and, as per report (Ex. P-30), found 14 incised wounds on her person caused by a hard sharp object. Between 7.20 A.M. to A.M. Dr. K. R. Pachori (P.W. 21) recorded her dying declaration (Ex. P-33). She was then sent to the main hospital at Bala-ghat where she was admitted as an indoor patient at 1.30 P.M.

4. On May 14, 1972 Dr. A. P. Mahajan (P.W. 19) performed an operation on Gyanwati. She, after the operation, survived till 6 p.m. of 19-5-1972 and thereafter expired. Marg (Morgue?) intimation (Ex. P-8) was then registered and an inquest was held over her dead-body as per Panchanama, Ex. P-12, Dr. Mahajan performed the post-mortem examination and found numerous incised wounds on the person of the deceased. As per report (Ex. P-13), he opined that injury no. 5, as written in the report, was sufficient in the ordinary course of nature to cause death. He further stated that all the injuries found on the person of the deceased taken together could also cause death by producing shock. He was further of the view that Gyanwati had recovered from shock because of effective medical treatment. He was further of the view that the cause of death was not multiple injuries. The deceased developed hyperpyrexia, i.e., high temperature just a few hours before her death. This development was as a result of atmospheric temperature on weak debilitated individual who was already having some temperature. Thus, the opinion of Dr. A. P. Mahajan was that the deceased did not die as a result of multiple injuries on her person but because of hyperpyrexia as a result of atmospheric temperature on weakened debilitated v individual who was

already having some temperature.

5. After usual seizure, articles were sent for chemical examination to the Forensic Science Laboratory, Sagar, and, as per report (Ex. P-39), blouse and sari of the deceased, pajama, nail cuttings and the Banyan seized from the appellant and the earth seized from the spot were stained with blood. The report of the Serologist (Ex. P-40) shows that the blouse and sari of the deceased, pajama seized from the appellant and the earth seized from the spot were stained with human blood. Blood stains on the knife and the Banyan seized from the appellant were disintegrated and their origin could not be determined.

6. The appellant stated that he saw Gyanwati in compromising position with an unidentified person. On being questioned, that man ran out of the room, When he questioned the deceased, she abused him and told Mm that he was impotent. She wanted to run away but he closed the door by locking it with a chain and asked her to disclose the identity of her paramour. She then rushed towards him with an open knife in her hand and threatened to kill him. In order to save his life, he picked up another knife from the bed of Gyanwati and thereafter, he could not recollect what he did.

7. The following facts have been established beyond doubt by the prosecution evidence;

(i) that the appellant and the deceased with their children were alone in the room on the fateful night;

(ii) that the appellant admitted to have attacked the deceased:

(iii) that the deceased herself lodged the first information report (Ex. P-34) implicating the appellant;

(iv) that the deceased herself made a dying declaration recorded by Dr. K. R. Pachori (P.W. 21) implicating the appellant in knife attack on her (Ex. P-33);

(v) that there is no proof that on the fateful night an unknown person entered inside the room and this fact was not disclosed by the appellant to anyone

immediately after the occurrence; and

(vi) that there is nothing to substantiate the appellant's contention that the deceased had advanced to attack him or that he attacked her to save himself.

8. We have heard Shri S. G. Datt, counsel for the appellant and Shri M. V. Tamaskar, Government Advocate, for the State. Shri Datt did not dispute the above findings and conceded that it was established beyond doubt that the appellant had attacked Ms wife Gyanwati: we have perused the record and find that Shri Datt had practically no say to challenge the facts established by evidence as enumerated above.

9. The only point urged before us, in view of the evidence of Dr. A. P. Mahajan (P.W. 19), is that the offence, would not fall Under Section 302 of the Penal Code, Shri Datta contended that the evidence of Dr. Mahajan excluded the possibility that the deceased met her end because of the injuries sustained by her. On the other hand, the evidence of Dr. Mahajan established beyond doubt that she died due to hyperpyrexia as a result of atmospheric temperature on weak debilitated individual who was already having some temperature and this development had nothing to do with the injuries sustained by the deceased. Shri M. V. Tamaskar, Government Advocate, appearing for the State, however, refuted this argument and stated that Dr. Mahajan had given a categorical opinion that injuries suffered by Gyanwati were sufficient in the ordinary course of nature to cause her death and the hyperpyrexia developed later on because of the weakness which the deceased had on account of the multiple injuries. We have considered these submissions and find that the argument of Shri Datt has no substance.

10. We will first discuss the law. In *Kishore Singh v. State of M. P.* : 1977 CriLJ1937 it is held as under: (at p. 1940 of Cri LJ).

In judging whether the injuries inflicted are sufficient in the ordinary course of nature to cause death, the possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant. (Para 14)

This case made a reference to *Virsa Singh v. State of Punjab* : 1958 CriLJ818 .

11. In *Chilamakur Nagireddy v. State of Andhra Pradesh* : 1977 CriLJ1602 it is held that according to the doctor's evidence, injuries caused by accused A with a spear and by B with a bana-stick were such that each of them was sufficient in the ordinary course of nature to cause death. Conviction of A and B Under Section 302 simpliciter was held justified. However, in respect of the other, there was no specific and definite opinion of the doctor that the injury caused by the accused on the person of the deceased by itself was fatal or sufficient in the ordinary course of nature to cause his death and, therefore, he was exonerated of the charge Under Section 302 of the Penal Code and found guilty Under Section 326 of the Penal Code.

12. In *Hari Chunnilal v. State of M. P.* 1977 MPLJ 321 : 1975 Cri LJ (NOC) 22 it is held as under:

If the supervening causes are attributable to the injuries caused, then the person inflicting the injuries is liable for causing death even if death was not the direct result of the injuries.

13. In *Manajar Allabux v. State* : AIR 1962 MP244 it is held as under:

Broadly speaking, the courts have to distinguish between two types of cases; first, where the intervening cause of death, like peritonitis, is only a remote and a rather improbable consequence of the injury; then it can be said that the injury is one which may, in particular circumstances, result in death, but which may not in ordinary course of nature be likely to lead to it. Secondly, there is the type, where the so called complication which is the intervening cause of death is itself a practically inevitable sequence to the injury. In that event, the probability is very high indeed, amounting to practical certainty; that is, death is a result in due course of natural events. A deep abdominal thrust with a knife followed by injury to the internal organs is practically certain to result in acute peritonitis causing death. It is clearly a case of murder Under Section 302 and not merely of culpable homicide.

14. In *Brij Bhukhan v. State of Uttar Pradesh* : 1957 CriLJ591 it is held that although the medical evidence does not say that any one of the injuries on the

body of the deceased was sufficient to cause death in the ordinary course of nature, it is open to the Court to look into the nature of the injuries found on the body of the deceased and infer from them that the assailants Intended to cause death of the deceased. Even if none of the injuries by itself was sufficient in the ordinary course of nature to cause the death of the deceased, cumulatively they may be sufficient in the ordinary course of nature to cause his death.

15. In *Salebhai Kadarali v. Emperor* AIR 194S Nag 19 : 49 Cri LJ 647 (2) it is held as under:

Where the accused intended to cause and caused an abdominal stab wound by knife on the deceased, which was sufficient in the ordinary course of nature to cause death or to cause such bodily injury as the accused knew to be likely to cause death, the offence is murder even though the death was ultimately due to the supervention of gangrene and paralysis of the intestines which were due to the abdominal wound.

16. Thus, looking to the law as cited above, what we have to see is whether the injuries were sufficient in the ordinary course of nature to cause death or to cause such bodily injuries as the accused knew to be likely to cause death although death was ultimately due to supervention of some other cause. An intervening cause or complication is by itself not of such significance. What is significant is whether death was only a remote possibility or is one which itself occurs in due course. Keeping in view the above principles, we will scrutinize the evidence.

17. Dr. R. S. Rajput (P.W. 20) was the first to treat the Injured Gyanwati in the Primary Health Centre at Katangi. As per report (Ex. P-30), he found 14 incised wounds on her person which could be caused by a hard sharp object. Injury no. 1 pierced the abdominal cavity in left epigastrium region. Omentum was protruding out of this wound. There was another incised wound above umbilicus; another incised wound at the level of 6th rib; an incised wound, skin deep, over left breast; and another incised wound at the right breast. In the opinion of the doctor, injury no. 1 alone was sufficient in the ordinary course of nature to cause death.

18. Dr. A. P. Mahajan (P.W. 19), who performed the operation while Gyanwati was alive and who also performed the post-mortem examination, opined that injury no. 5 as written in Ex. P-13 was sufficient in the ordinary course of nature to cause death. He further stated that all the injuries on the person of Gyanwati taken together can also cause death by producing shock (Para 6). Then he stated with reference to the query (Ex. P-16) that the injuries found on the person of the patient taken together can cause death by producing shock in the absence of medical treatment (Para 8). He stated that, in this case, the cause of death was not multiple injuries but because she developed high temperature just a few hours before her death and this development was as a result of atmospheric temperature on weak debilitated individual who was already having some temperature. Thus, according to Dr. Mahajan, Gyanwati died not as a result of multiple injuries but due to high temperature, i.e., hyperpyrexia. Therefore, Shri Datt contended that the death of Gyanwati could not be directly connected with the multiple injuries and, therefore, the offence will not fall Under Section 302 of the Penal Code. We have perused the evidence of Dr. Mahajan and we are definitely of the view that Gyanwati died as a result of multiple injuries on her person.

19. The controversy can be set at rest by quoting para. 9 of Dr. A. P. Mahajan (P.W. Ws) evidence which runs as under

The patient was running high temperature immediately preceding her death. This is a complication of high temperature of the atmosphere on a debilitated weak individual. This patient fell into debilitated condition because of multiple injuries, which she has sustained, operation which she had to undergo and post operative starvation which was necessary for her recovery.

It is, therefore, clear that Dr. R. S. Prasad (P.W. 30) and Dr. A. P. Mahajan (P.W. W) both agreed that the injuries on the person of Gyanwati individually as well as cumulatively were sufficient in the ordinary course of nature to cause death. Dr. Mahajan admitted that the patient fell into debilitated condition because of multiple injuries which she had sustained, the operation which she had to undergo and post operative starvation which was necessary for her recovery. Thus, Gyanwati's debilitated condition was the direct consequence of the multiple injuries

sustained by her as also post operative starvation which was considered necessary for her recovery. But for the deceased having sustained multiple injuries, there should be no operation and no debilitated condition or post operative starvation. Thus, everything that flows from the cause of death of Gyanwati was the direct consequence of the multiple injuries sustained by her. Intervening or supervening cause of hyperpyrexia was the direct result of the multiple injuries and could not be independent or unconnected with the serious injuries sustained by her. We are, therefore, of the view that hyperpyrexia was developed because the multiple injuries necessitated an operation and post operative starvation and, therefore, the death can be directly connected with the multiple injuries. Since the injuries individually and collectively were sufficient in the ordinary course of nature to cause death the act of the appellant would definitely attract the observations in *Vinasingh v. State of Punjab* AIR 1058 SC 465 : 1958 Cri LJ 818 and since the evidence of Dr. Rajput and Dr. Mahajan is that the weapon used was a sharp knife, the causing of injuries which were sufficient in the ordinary course of nature to cause death coupled with injuries being situated on vital parts of the body causing internal damage collectively taken together established beyond doubt that the appellant intended to kill his wife. He was rightly convicted Under Section 302 of the Penal Code,

20. Shri Datt relied upon a decision of this Court in *Noor Khan v. State of M. P.* Cri. Appeal No. 1032 of 1972, D/- 18-4-1977. In that case, the medical evidence was highly inconclusive to indicate that the injuries sustained by the deceased Chand Khan were either fatal or sufficient in the ordinary course of nature to cause the death of the victim. In that case, besides the inconclusive opinion of the doctor, the Additional Sessions Judge believed that there was a supervening cause of death of Chandkhan and further held that it was difficult to say that the death was a probable consequence of the abdominal injury. In that case, there was no direct relationship between the death of Chandkhan and the abdominal injury. That case is clearly distinguishable from the case in hand because, in our opinion Dr. Mahajan had definitely stated that injuries were sufficient in the ordinary course of nature to cause death and hyperpyrexia developed because of the multiple injuries coupled with post operative starvation. That case, therefore, does not help the appellant,

21. In the result, the appeal fails and is hereby dismissed. The conviction of the appellant Rewaram Under Section 302 of the Penal Code with the sentence of imprisonment for life is confirmed.

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