

Ashok Kumar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-08-2001

Reported in : 2001CriLJ2439; 2001(2)MPHT151

Judge : Mr. C.K. Prasad and ;Ms. Usha Shukla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 306

Appeal No. : Criminal Appeal No. 711/89

Appellant : Ashok Kumar

Respondent : State of M.P.

Advocate for Def. : Shri S.K. Gangrade, Panel Lawyer

Advocate for Pet/Ap. : Shri Mantosh Mishra, Adv.

Disposition : Criminal appeal allowed

Judgement :

1. Appellant has preferred this appeal being aggrieved by his conviction for offence under Section 302 of the Indian Penal Code and sentence of rigorous imprisonment for life, passed by the 3rd Addl. Sessions Judge, Bhopal in Sessions Trial No. 64/84, by judgment dated 29-7-1989.

2. It is an admitted position that the deceased Mohni alias Madhu was the wife of the appellant. According to the prosecution, appellant and the deceased fought several litigation and sometimes prior to the date of the incident, deceased had started living with him. On 21-12-82 Police Control Room gave information to the Hanumanganj Police Station about the death of Mohni on the basis of which, a Murg was registered. During the investigation, it was found that appellant used to harass the deceased which led her to commit suicide and accordingly case under Section 306 of the Indian Penal Code was registered.

3. Dead-body of the deceased was sent for post-mortem examination which was jointly conducted by P. W. 8 Dr. D.K. Satpati and one Dr. Harimohan Mangal. Doctors who have conducted the post-mortem examination did not find any injury on the person of the deceased and according to P.W. 8, 'the deceased died due to respiratory failure as a result of suspecting poisoning'. The doctors who had conducted the post-mortem, preserved the viscera of the deceased for chemical analysis. Viscera was sent for chemical analysis to the State Forensic Science Laboratory, Sagar, which has submitted its report dated 31-5-1983. According to the Forensic Science Laboratory, no chemical poison was detected in the viscera of the deceased.

4. Police after usual investigation, submitted charge-sheet against the appellant for offence under Section 306 of the Indian Penal Code and the case was committed to the Court of Sessions for trial where charge under Section 302 of the Indian Penal Code was framed against the appellant.

5. The Trial Court on appreciation of evidence held that the death of Mohni was homicidal in nature and relying on the circumstantial evidence, held that it was caused by the appellant.

6. We have heard Shri Mantosh Mishra for the appellant and Shri S.K. Gangrade, Panel Lawyer for the State. Mr. Mishra raises a very short point. He submits that the finding recorded by the Trial Court that the death of Mohni was homicidal in nature is erroneous in law and once it is held so, appellant cannot be convicted for offence under Section 302 of the Indian Penal Code. Shri S.K. Gangrade, however submits that from the material placed on record, it is evident that the death of

Mohni was homicidal in nature and the learned Judge did not err in holding it to be so.

7. Having appreciated the rival submissions, we find substance in the submission of Shri Mishra. P.W. 8 Dr. Satpati, who along with Dr. Harimohan Mangal had conducted the post-mortem examination, had not found any injury on the person of the deceased and in his opinion, deceased died due to respiratory failure as a result of suspected poisoning. This doctor had preserved the viscera of the deceased and the same was sent for chemical examination to the State Forensic Science Laboratory, Sagar. The State Forensic Science Laboratory, Sagar is very categorical in its opinion that no chemical poison was found in the viscera of the deceased. The doctor who had conducted the post-mortem examination, suspected respiratory failure of the deceased on account of poisoning but from the report of the State Forensic Science Laboratory, same is ruled out. May be in a given case in the absence of trace of poison, it can be held that the person died of poisoning, but there has to be some material to suggest that. Reference in this connection can be made to a decision of the Supreme Court in the case of Anant Chintaman v. State of Bombay, AIR 1960 SC 500. However, in the present case, we do not find any material so as to hold that the deceased died of poisoning. In that view of the matter, we are of the opinion that the prosecution has not been able to prove its case beyond all reasonable doubt and Mohni died on account of poisoning. As such, it cannot be held that her death was homicidal in nature. That being so, appellant can not be held guilty for offence under Section 302 of the Indian Penal Code.

8. In the result, appeal is allowed. Impugned judgment of conviction and sentence is set aside. Appellant is on bail. He shall be discharged of his bail bond.

9. Criminal Appeal allowed.