

Tukaram Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jun-26-2008

Reported in : 2008(5)MPHT168

Judge : S.K. Kulshrestha and ;Manjusha Namjoshi, JJ.

Appellant : Tukaram

Respondent : State of Madhya Pradesh

Disposition : Appeal allowed

Judgement :

S.K. Kulshrestha, J.

1. This appeal is directed against the judgment dated 8-4-1999 of the learned Second Additional Sessions Judge, Khargone in Sessions Trial No. 104/1998 by which the appellant has been convicted under Section 302 of the IPC for voluntarily causing death of his wife Kadvibai and sentenced to imprisonment for life and fine of Rs. 250/- and also under Section 309 of the IPC for attempting to commit suicide and sentenced to one month's simple imprisonment.

2. According to the case of the prosecution, the appellant suspected fidelity of his wife Kadvibai particularly with regard to her promiscuous relation with the father of the appellant. There were frequency quarrels between the spouses on account

thereof. On 5-1-1998, the father of the accused had come to the village in connection with a death. On that day, the deceased Kadvibai, had left at 4 P.M. to collect cow dung. At 6 P.M., it was learnt by Dinesh that his mother Kadvibai was lying dead in the field of Ratan Patel and the accused was also present there. On hearing the said news, the son of the deceased rushed to the place and found that Kadvibai was lying dead but the accused was not there. It was suspected that the accused had caused death of Kadvibai on suspicion with regard to her character. On report being made, inquest was held and the body was sent for post-mortem examination. The post-mortem examination was conducted by Dr. V.K. Sharma (P.W. 7) who gave report (Exh. P-8). The testimony of Dr. Sharma and the report indicate that no injury was found on the deceased but she had died asphyxial death, For determination of the cause of death, the viscera was preserved and advised to be sent to the Laboratory for examination though it was suspected that it was a case of consumption of organo phosphorus poisoning.

3. Accused was also sent for medical examination. Dr. Yeshwant Malge (P.W. 10) examined the accused and gave report (Exh. P-13). In this report it was stated that he was semiconscious but unable to give any statement. His pupil were constricted and he was exuding smell of organo phosphorus compound from his mouth and perspiration. The stomach washing had been preserved.

4. The accused was arrested and after completion of the investigation, he was prosecuted. On being indicted for the said offences, the accused stated that he was not in the house on the date of the incident as he had gone to Bhikangaon with his father-in-law and upon return, he was apprised of the incident. On finding that his wife had died, he became very upset and consumed the medicine. The learned Additional Sessions Judge, on finding that the circumstances indicated that it was the accused who had administered poison to his wife and had thereafter attempted to commit suicide, convicted and sentenced the appellant as hereinabove stated.

5. Learned Counsel for the appellant submits that material witness did not support the prosecution with the result the case of the prosecution rests only on the circumstantial evidence of the poison having been found in the viscera of his wife

and detected in his examination by Dr. Yeshwant Malge (P.W. 10) as per his report (Exh. P-13). The learned Counsel, therefore, submits that since the circumstances relied upon by the prosecution are by themselves vague and suspicious and do not point to the guilt of the appellant, the appellant deserves to be acquitted. Learned Counsel for the State however, contends that poison was found in the viscera of the deceased as also in the stomach washing of the accused. The accused was also seen sitting near the dead body and these circumstances rule out any hypothesis of the innocence of the accused. He, therefore, urges that conviction of the accused be maintained.

6. We have heard the learned Counsel for the parties and perused the record.

7. The prosecution examined 11 witnesses to prove its case. However, Dinesh (P.W. 1), son of the deceased, Nannu (P.W. 2), Baliram (P.W. 3), Champalal (P.W. 4), Ramlal (P.W. 5) and Natthu (P.W. 8) turned hostile. The case of the prosecution is, therefore, founded on the testimony of Dr. V.K. Sharma (P.W. 7) who suspected poison in the post-mortem and gave report (Exh. P-8) and Dr. Yeshwant Malge (P.W. 10) who suspected that the accused had consumed poison. We may, at the outset, reject the contention that since the accused had admitted that he had consumed medicine, it was the poison that was suspected by P.W. 10. It has also been pointed out that although the stomach washing of the accused was preserved as deposed to by Dr. Yeshwant Malge (P.W. 10) and stated in the report (Exh. P-13), the said stomach washing was not sent to the Forensic Science Laboratory for confirmation of consumption of poison as admitted by Dr. Yeshwant Malge (P.W. 10), in his cross-examination. Thus, although a very strong suspicion arises with regard to the poisonous substance consumed by the appellant, the fact that there is no confirmation by any scientific test about the consumption of any poison, it cannot be said that the accused had consumed poison to commit suicide. Learned Counsel for the State has contended that in his examination under Section 313 of the Cr.PC the accused has admitted that seeing the condition of his wife, he had taken medicine. However, the said statement does not tantamount to admission of having consumed poison.

8. In respect of the death of Kadvibai, wife of the accused, viscera was sent to the Forensic Science Laboratory for examination of the chemical/poison found in her body. In its report (Exh. P-14), the Forensic Science Laboratory has stated that out of the six articles sent to the Laboratory for examination/analysis, one piece of sack, one old trouser, viscera of deceased Kadvibai, the organs of the deceased and a plastic can contained organo phosphorus pesticide.

9. In his testimony G.S. Mujalda (P.W. 11) (Investigating Officer) has stated that the accused had given him information that he had thrown the bottle which he would get recovered. A plastic bottle containing 50 gms insecticides was seized from him vide memo (Exh. P-12). If the said testimony is examined in juxtaposition with the Forensic Science Laboratory report (Exh. P-14), it becomes luculent that what was sent to the Forensic Science Laboratory was only a plastic can allegedly containing insecticide. In these circumstances, it cannot be said that what was sent to the Forensic Science Laboratory was the bottle made of plastic containing 50 gm insecticides allegedly seized from the accused. The recovery, therefore, does not connect the accused with the articles sent to the Forensic Science Laboratory. The statement of Mohanlal (P.W. 9) also does not further the prosecution case as he has also deposed that it was a plastic bottle that was seized. It is also alleged that a pair of trousers was sent to the Forensic Science Laboratory and according to the report (Exh. P-14) foul smell of insecticide was emanating from it, there is nothing on record to suggest that the said trousers belonged to the accused. In these circumstances, insofar as the medical evidence is concerned, the prosecution not only failed to establish that the accused had consumed insecticide, but also failed to prove that the trousers seized by the Police belonged to the accused and further the bottle seized by the Police suspected of containing insecticide was not sent to the Forensic Science Laboratory but only a plastic can was sent. Accordingly, these circumstances completely rule out the complicity of the accused and his attempt to commit suicide.

10. The Trial Court has observed that there being no eye-witness to the incident, the two circumstances namely that the deceased died of poison and the accused consumed poison indicate that it was after administering poison to his wife, the

accused tried to commit suicide. We have already observed that the prosecution has failed to establish that the medicine consumed by the accused was an insecticide. There is also no evidence that the substance which was found in the viscera of the deceased contained the same poison as the poison consumed by the accused. There being no nexus between the poison consumed by the deceased or administered to her, it would be a far fetched conclusion that the accused alone was the person who administered poison to the deceased. In view of the suspicion of the accused about her fidelity commission of suicide by the deceased was not ruled out. In any case, by the said solitary circumstance the innocence of the accused is not ruled out. It is trite that in case of circumstantial evidence, each circumstance should point to the guilt of the accused and should not be consistent with any hypothesis of his innocence and all the circumstances taken together should make a complete chain indicating his guilt. In the present case, it has not been proved that the accused administered poison to the deceased and on the basis of the presence of the accused as alleged and consumption of some medicine by him, it cannot be inferred that the accused was the perpetrator of the crime.

11. We may also point out that the motive furnished for commission of the said crime was that the accused was suspecting the fidelity of his wife thinking that she was having promiscuous relations with her father-in-law. In this connection Baliram (P.W. 3) examined by the prosecution has not supported the prosecution. Dinesh (P.W. 1), son of the deceased, who lodged FIR has also not supported the prosecution. Nannu (P.W. 2) examined to prove extra-judicial confession has resiled from his statement and so also Champalal (P.W. 4). In circumstantial evidence, motive acquires significance and once the prosecution has failed to prove the motive alleged and further, there is no evidence to attach culpability to the accused, merely on suspicion, surmises and conjectures, the accused could not have been convicted.

12. Ex-consequencia, this appeal is allowed.

13. The conviction of the appellant for offence punishable under Sections 302 and 309 of the IPC and the sentence awarded thereunder are all set aside.

14. The accused is acquitted of the charges. The accused is in jail. He be released forthwith if not required in connection with any other offence.

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