

Jagdish Vs. State

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Court : Uttaranchal

Decided On : Sep-13-2004

Reported in : 2005CriLJ816

Judge : Irshad Hussain and; J.C.S. Rawat, JJ.

Acts : Indian Penal Code (IPC) - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 468 of 2001

Appellant : Jagdish

Respondent : State

Advocate for Def. : D.K. Sharma, G.A.

Advocate for Pet/Ap. : Arvind Vashistha, Adv.

Judgement :

Irshad Hussain, J.

1. Appellant Jagdish stands convicted and sentenced to imprisonment for life under Section 302, I. P. C. per Judgment and order dated 2-3-1995 passed by the then Special Judge/Additional Sessions Judge, Nainital in sessions trial No. 333 of 1989 of Police Station, Khatima of the then District Nainital.

2. The prosecution case briefly stated was that the appellant was married to Smt. Shanti Devi deceased about 20 years before the occurrence of the case and he had set up his residence in village Mohammadpur Mudiya of Police Outpost Majhola, Police Station Khatima where the brothers of Smt. Shanti Devi were also residing. Appellant was residing with his wife and children in a thatch near the thatches of his brother-in-laws Shree Kishan and Rajendra. According to the prosecution appellant was suspecting that his wife Smt. Shanti Devi had compromised her chastity and this used to be the issue of quarrel between them.

3. On 26-5-1989 at about 10 a.m. Smt. Shanti was preparing day meal and whereas appellant Jagdish was sitting there and eating the preparations made by his wife. Suddenly some wordy altercation started between them and he dealt knife blows to Smt. Shanti while retorting that he will finish her today. Hearing noise Rajendra (P. W. 2) the brother-in-law of the appellant and a neighbour Ram Swaroop (P. W. 5) and few others rushed to rescue Smt. Shanti Devi who ran out of the thatch but was chased by the appellant to dealt knife blows. The witnesses made an attempt to caught hold of the appellant who at once stabbed himself in the abdomen. Witness Rajendra however snatched the knife from the hand of the appellant and threw it away at that place. Smt. Shanti instantaneously succumbed to her injuries whereas the appellant lay injured there at the scene of the occurrence.

4. Complainant Shree Kishan (P. W. 1) thereafter got prepared the written report (Ext. Ka. 1) from Ram Bahadur and lodged it at reporting Police Outpost, Majhola of P. S. Khatima the same day at 1.10 p.m. A case under Section 302, I. P. C. was accordingly registered. Investigation of the case was taken up by S. I. Harish Chandra Singh (P. W. 6) who reached the village of the occurrence and held inquest on the dead body of Smt. Shanti and dispatched it for post mortem. Appellant was also sent for medical examination. On completion of the formalities of the investigation charge-sheet was submitted against the appellant on 9-6-1989.

5. Appellant pleaded not guilty and contended that he has been falsely implicated in the case on account of enmity.

6. At the trial in order to bring home guilt to the appellant prosecution relied upon the evidence of six witnesses. Of these, complainant Shree Kishan (P. W. 1) proved the written F. I. R. which he got prepared on the basis of the version of the occurrence as told to him by his brother Rajendra (P. W. 2) who had seen the incident. Eye witness Rajendra (P. W. 2) supported the prosecution case as disclosed in the F. I. R. Other eye witness Ram Swaroop (P. W. 5) was declared hostile by the prosecution as he claimed that on the day of the occurrence he was out of his village. Hari Narayan (P. W. 4) is the panch witness of seizure of knife, blood-stained and plain earth from the scene of the incident and pieces of broken bangles from there by the Investigating Officer, vide memos Ext. Ka. 4, Ext. Ka. 5 and Ext. Ka. 6 Investigating Officer S. I. Harish Chandra Singh (P. W. 6) gave evidence to prove the various steps taken in the investigation of the case. He also proved the inquest report and connected documents, site plan and charge sheet filed against the appellant. Dr. J. K. Sharma (P. W. 3) conducted post-mortem on the dead body of Smt. Shanti Devi at 3.50 p.m. on 27-5-1989 and prepared the post-mortem report, Ext. Ka, 2. Following ante-mortem injuries were detected on the person of the deceased :--

- i. Contusion abrasion, 4 c.m. x 2 c.m. on the front of right forehead, 4 c.m. above the right eye-brow inverted.
- ii. Incised wound 4 c.m. x 2 c.m. x chest cavity deep, slightly oblique, just below the left nipple, tail being down, wound inward, wound directed inward, downward backward deep upto the root of spleen underneath.
- iii. Incised wound 3 c.m. x 1.5 c.m. x abdominal cavity deep oblique 2 c.m. above the left nipple of inguinal region.
- iv. Incised wound 4 c.m. x 2 c.m. x skin deep on the left inguinal region at its middle.
- v. Incised wound 4 c.m. x 2 c.m. x abdominal cavity deep on the right iliac region, 10 c.m. away from the umbilicus, at 7 o'clock position oblique tail being upward medially directed downward, inward medially underneath pleura and bowels, large intestine lacerated, the bowels coming out of the wound, the blood fluid present in

the abdominal cavity.

vi. Two incised wounds 4 c.m. x 0.5 c.m. x muscle deep 3.5 c.m. x 0.5 c.m. x muscle deep, about both parallel on the back and outer aspect of left lower arm at its upper part, tail being downward, inward (medially).

vii. Incised wound, 5 c.m. x 1.56 c.m. x muscle deep on the middle part of left thigh, oblique, tail being downward, outward.

7. In the opinion of the Medical Officer the death occurred about 1 1/4 days ago due to shock and haemorrhage as a result of ante-mortem injuries. He testified that the injuries were probably sustained by knife at about 10 a.m. on 26-5-1989.

8. Learned Sessions Judge on his appreciation of the evidence accepted the prosecution version and convicted and sentenced the appellant as aforesaid.

9. We have heard the learned Amicus Curiae for the appellant and the learned Government Advocate and have carefully considered the evidence, circumstances and the probabilities of the case. We have also gone through the Judgment under appeal with the help of both the learned counsel.

10. Learned Amicus Curiae did not challenge the factum of homicidal death of Smt. Shanti deceased but submitted that the time and place of the occurrence as set up by the prosecution have not been established beyond reasonable doubt by the evidence in the case and since the place of the incident appear to have also been changed this aspect of the matter is sufficient to discard the entire prosecution version. He also argued that the injuries of the deceased cannot be attributed to the knife said to have been seized from the spot as its tip was found to be blunt which cannot cause tail in the injuries going inward or downward and therefore the medical evidence being in conflict with the ocular evidence the learned Sessions Judge was not justified in accepting the prosecution evidence as reliable. He also submitted that at any rate it was a case of culpable homicide not amounting to murder because the assault was not pre-planned but on account of sudden wordy altercation the appellant appear to have started assaulting his wife. On the other hand learned Government Advocate argued supporting the judgment

under appeal and submitted that the lacunae pointed out by the learned Amicus Curiae do not warrant rejection of the prosecution evidence, particularly when the evidence of eye witness Rajendra is wholly reliable and the medical evidence in the case corroborate the prosecution version and the evidence of the witness. He also argued that the most important aspect of the case is that the appellant was arrested on the spot in injured state as he on account of sustaining injuries himself was not in a position to fled (sic) from the spot of the incident.

11. As stated above the case of the prosecution mainly rests on the ocular testimony of Rajendra (P. W. 2), the brother-in-law (Shala) of the appellant. Complainant Shree Kishan, the other brother-in-law of the appellant also reached soon after the occurrence on hearing noise while he was working in a field at a short distance but he himself had not seen the assault. Both these witnesses categorically stated that the occurrence took place at about 10 a.m. on the day of the occurrence (26-5-1989). Learned Amicus Curiae pointed out to the statement of Rajendra who gave out that the Sub-inspector of police had reached the village of occurrence at about 9-10 a.m. on that day. Pointing out to this it was argued that if the occurrence was to take place at 10 a.m. and the F. I. R. got to be lodged at 1.10 p.m. on that day, the Sub-inspector would not have reached in the village at the time as stated by the witness and this aspect of the matter indicate that the time of the occurrence has been changed. We see no merit in this argument because in examination-in-chief this witness has testified that the occurrence took place at 10 a.m. and it appear that out of some confusion he gave out in the cross-examination that the Sub-inspector had reached in the village at about 9.10 a.m. The time of the occurrence also stands corroborated by the medical evidence. Dr. J. K. Sharma (P. W. 6) gave out that the ante-mortem injuries were probably caused on the person of the deceased Smt. Shanti at about 10 a.m. on 26-5-1989 and this was the reason that the duration of the death at the time of the post mortem was stated to be 1 1/4 days before the autopsy. The autopsy was held on 27-5-1989 to 3.50 p.m. and therefore the probable time of the death as given also fully supports the prosecution version that the occurrence took place at about 10 a.m. on 26-5-1989 in which Smt. Shanti died instantaneously on being assaulted by the appellant.

12. Learned Amicus Curiae also drew attention to the injury report (Ext. Ka. 3) of the appellant Jagdish in support of the argument that the prolapsed intestinal loops lying over the abdomen were found gangrenous when he was medically examined at 5.51 p.m. on 26-5-1989 and if the occurrence were to take place at 10 a.m. on that day the gangrene was not expected to have developed so soon in the injured organ of the appellant and this aspect of the matter also militate against the prosecution version as regards the time of the occurrence. Again, we do not find any substance in this argument because the term gangrenous is referred in case of the death of body tissue and since the intestinal loops were cut due to stabbing by the appellant himself the said terminology was used in the description of the injury and this in no way indicate that this state of body tissue happens only if the time span is larger than in this case. In other words by the medical examination report of the appellant it cannot be assumed that his injuries could have been sustained much earlier to 10 a.m. on 26-5-1989: Therefore there is no merit in the argument that the time of the occurrence as alleged by the prosecution has not been established beyond doubt.

13. In regard to the argument that the place of the occurrence also appears to have been changed it need to be stated that there is definite statement of P.W. 2 that the appellant assaulted his wife Smt. Shanti in his thatch and also near the guava tree situate towards east of the thatch of the appellant. Learned Amicus Curiae drew attention to the site plan, Ext. Ka. 17, and argued that the blood spots have not been shown near the guava tree but in the west of the thatch of the appellant at which place the assault on the person of the victim has not been attributed by this witness and that this aspect of the matter indicates that the place of the occurrence has been changed. We see no merit in this argument also because the evidence is to the effect that the assault was started inside the thatch from where Smt. Shanti ran outside towards guava tree. While going towards the guava tree the blood was supposed to fall in front of the thatch in the west and this was the reason that the blood was found there by the Investigating Officer when he visited the scene of the occurrence and inspected it. The occurrence took place during the day time and on hearing the news of such an occurrence usually large number of villagers assemble in and around the scene of the occurrence and the possibility cannot be ruled out that the blood which may have fallen near the guava

tree got obliterated by the movement of the people at that place. Therefore, absence of any blood near the guava tree which is close to the thatch of the appellant cannot be taken to raise suspicion in the prosecution claim about the spot of the occurrence. Considering the definite statement of Rajendra (P.W. 2) and his brother complainant-Shree Kishan (P.W. 1) who has also reached the scene of the occurrence soon after and saw the victim lying there with injuries fully prove that the occurrence took place in the thatch of the appellant and outside near the guava tree in the east and that the place of the occurrence has not been shifted in this case. The learned Sessions Judge also rightly accepted the evidence of the prosecution in regard to the time and place of the occurrence and we find ourselves in agreement with the view as taken by the learned Sessions Judge.

14. The oral evidence in the case consisting of mainly the testimony of Rajendra (P.W. 2) was also adversely commented upon by the learned Amicus Curiae and it was argued that his evidence not being wholly reliable it would not be safe to place implicit reliance on his evidence in regard to the role of assailant assigned to the appellant-Jagdish in our view the argument carries no force because Rajendra has fully supported the prosecution version as stated above and there is nothing substantial in his cross-examination which may entail rejection of his testimony. At the time of the incident this witness was engaged in the work of placing straw on his thatch in the south-east of the thatch of the appellant and hearing noise he was attracted towards the thatch of the appellant and saw the actual assault made by the appellant by knife on the person of Smt. Shanti who sustained injuries on her person. The house of the witness was in the same vicinity and he was the most natural witness of the occurrence. He has failed to assert that the blood also fell in the west of the thatch of the appellant when Smt. Shanti ran from there and pointing out to this the learned Amicus Curiae argued that the witness in fact has not been the incident. The infirmity pointed out is very minor which cannot be taken to discard the evidence of this witness who otherwise has fully corroborated the prosecution version and stood the test of cross-examination. Therefore, this witness falls within the category of wholly reliable witness and in view of it implicit reliance on his evidence could be placed in regard to the manner of the assault made on Smt. Shanti and also its author, the appellant-Jagdish. His evidence also

stands amply supported by the testimony of P.W. 1 who soon after the assault reached there and saw Smt. Shanti lying dead with injuries at the spot and the appellant was also lying injured. The witnesses have tried to caught hold the appellant and at that time the appellant stabbed himself in the abdomen by the same knife which was snatched by Rajendra and thrown away there at the spot. The appellant lay injured there at the spot from where he was arrested and sent for medical examination under custody. The spot arrest further corroborate evidence of the witnesses and in the totality of the circumstances of the case the prosecution version stands established beyond doubt. The learned Sessions Judge also rightly placed reliance on the evidence of Rajendra whose evidence was also amply supported by the complainant-P.W. 1.

15. Pointing out to the nature of the injuries of Smt. Shanti and the fact that the knife seized had a blunt tip it was argued that by such a knife tailing would not have occurred in the incised wounds detected on the person of the victim and, therefore, the medical evidence cannot be taken to corroborate the ocular testimony of the case. The argument does not admit of acceptance because it is in the evidence of Jagdish that the knife was snatched from the hand of the appellant and was thrown away on the spot and in the process it was highly probable that knife's Up got blunt. The assault had already been made by the knife before it had been thrown away and presence of tail in the incised wounds was thus natural. In other words there is absolutely no conflict between the ocular testimony and the medical evidence and in fact the medical evidence fully corroborate the testimony of the eyewitness of the case.

16. In view of above we are of the view that the evidence of the prosecution is sufficient to prove that appellant-Jagdish assaulted his wife Smt. Shanti by a knife and as a result of which she sustained fatal injuries and died at the spot itself at about 10 a.m. on 26-5-1989. The Sessions Judge rightly held that the appellant-Jagdish is the assailant of his wife Smt. Shanti deceased.

17. It was lastly argued that the evidence of the case does not fall under Section 300, I.P.C. because the facts of the case and the evidence of the prosecution itself indicate that the assault was not pre-meditated. It was also argued that quarrel

sparked of between the wife, the victim of the case, and the appellant suddenly while the husband was taking meal which was being at that time prepared by the wife and that all of a sudden on account of wordy altercation on the issue of chastity of the wife, the husband-appellant started giving knife blows on her person. Not only this the appellant appears to have soon felt repentant and thereby stabbed himself by the same knife and in a situation like this it clearly appears to be a case of culpable homicide not amounting to murder. Considering the circumstances of the case, particularly the absence of the allegation that in the past also the appellant had shown his intention to eliminate his wife and in view of the sudden quarrel and giving knife blows to the wife in a spur of moment we see force in the argument of the learned Amicus Curiae that the appellant is entitled to the benefit of Exception 4 of Section 300 of the Indian Penal Code. Therefore, the offence committed by the appellant was culpable homicide not amounting to murder. However there can be no doubt that the appellant intended to cause and did cause the injuries and we are therefore of the view that the appellant is liable to be punished under 1st Part of Section 304, I.P.C.

18. For the reasons aforesaid the finding of the learned Sessions Judge holding the appellant guilty of offence of murder punishable under Section 302, I.P.C. is set aside and he is held guilty for commission of offence of culpable homicide not amounting to murder punishable under Section 304 (Part I) of the I.P.C. and sentenced to undergo rigorous imprisonment for 10 (ten) years and to pay a fine of Rs. 2000/- (two thousand). In default of payment of fine he shall further undergo R.I. for 3 (three) months. Appellant is in jail. He shall suffer the sentence awarded.

19. The appeal is allowed to the extent indicated.

20. Let the record be sent to the Court below for compliance, to be reported to the Court within a month.