

Udai Singh Vs. State

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Court : Rajasthan Jodhpur

Decided On : Aug-26-2015

Appellant : Udai Singh

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :::

JUDGMENT

D.B.Criminal Appeal No.434/2007 Udai Singh versus State of Rajasthan Date of judgment: 26th August, 2015 PRESENT HON'BLE Mr.JUSTICE GOPAL KRISHAN VYAS HON'BLE Mr.JUSTICE VIJAY BISHNOI Mr.Chaitanya Gehlot, for the appellant.

Mr.CS Ojha, Public Prosecutor.

<><><> (per Hon'ble Mr.Gopal Krishan Vyas, J.).The instant cr.

appeal has been filed by the appellant under Section 374(2) of Cr.P.C.against the judgment of conviction and sentence dated 7.5.2007 passed by the learned Addl.

Sessions Judge (Fast Track) Rajsamand in Sessions Case No.5/2007 whereby the appellant was held guilty for offence under Section 302 IPC and learned trial court imposed the sentence of life imprisonment with fine of Rs.1000/- and in default of payment of fine to further undergo 3 months additional SI.

As per brief facts of the case on 9.12.2006 at about 11.30 am ASI Bhoor Singh Chouhan, Incharge Out Post Oda, Police Station Kelwara recorded an oral information 2 while camping at Maharana Bhopal Government Hospital, Udaipur given by Smt.

Suraj Kanwar W/o appellant Udai Singh, resident of Lakmavaton Ka Guda, Police Kelwara when she was admitted on Bed No.7 of Ward No.33 of the hospital.

The wife of the appellant Smt.

Suraj Kanwar informed that today at 4O Clock when I was in my house, my husband came in a bus from Bombay at 2O clock and thereafter, he slept and when her husband was sleeping she received a phone call of her brother and she went out of house and come back.

When she come back, at that time, her husband used filthy words and assaulted her and left the house.

After some time, her husband come back in the house and after bolting the gate, he poured kerosene from the kerosene cane lying in the house upon her body and set fire to the cloths wearing by her.

Upon crying her sister and husband of sister Khem Singh who is brother of accused living near their house came on spot and all the persons including accused appellant Udai Singh put water upon the body of the deceased and immediately took her to the hospital.

The said incident took place on 8.12.2006 but later on Smt.

Suraj Kanwar died on 30.12.2006 at about 6.00 am after 22 days of incident.

As per prosecution case before the death, the FIR was registered on the basis of statement made by the deceased Smt.

Suraj Kanwar, thereafter, on 22.12.2006 the statement (dying declaration) of Late Smt.

Suraj Kanwar 3 was recorded by the Magistrate PW-5 Tirupati Kumar Gupta in the Udaipur Hospital and ultimately, during treatment she died on 30.12.2006 at 6.00 am.

Initially, upon statement of deceased Smt.

Suraj Kanwar recorded by the PW-13 Bhoor Singh Chouhan, ASI, FIR No.167/2006 was registered under Section 307 IPC on 8.12.2006, later on, after death of Smt.

Suraj Kanwar offence under Section 302 IPC was added and after investigation, police filed challan in the court of Judicial Magistrate, Kumbhalgarh on 14.2.2007 under Section 302 IPC from where case was committed to the court of Sessions Judge, Rajsamand from where the case was transferred to the court of Addl.

District & Sessions Judge (Fast Track).Rajsamand for trial.

In the trial, after framing charges under Section 302 IPC, the statements of 15 prosecution witnesses were recorded including PW-5 Tirupati Kumar Gupta, Judicial Magistrate, who recorded the dying declaration, so also, the statement of PW-13 Bhoor Singh author of FIR and other witnesses.

After recording evidence of prosecution, the statements of accused appellant were recorded under Section 313 Cr.P.C.in which it is stated by him that totally false case is registered against him and allegation of witnesses are totally false.

Further, it is submitted that character of his wife Smt.

Suraj Kanwar was questionable, therefore, he has been falsely implicated in this case.

No evidence was produced in defence by the accused appellant.

4 The learned trial court after hearing the final arguments considered the entire evidence laid by the prosecution and on the basis of fiRs.statement recorded by the PW-13 ASI Bhoor Singh Police Station Kelwara and dying declaration recorded by the witness PW-5 Tirupati Kumar Gupta, Judicial Magistrate held the

accused appellant guilty for offence under Section 302 IPC.

The appellant was arrested in connection with the offence under Section 302 IPC vide arrest memo (Ex.P/25) on 11.12.2006, since then he is in custody.

The learned trial court while assessing the evidence held that although eye witness turned hostile but on the basis of dying declaration, the prosecution has proved its case beyond reasonable doubt.

The learned trial court observed that although PW-4 Bheem Singh, PW-6 Pyari, PW-7 Champa Lal and PW-8 Moti Singh turned hostile and stated before the court that deceased herself set fire upon her body but there is no reason to disbelieve the dying declaration of the deceased.

The learned trial court while relied upon the dying declaration recorded by the Judicial Magistrate, Udaipur PW -5 Tirupati Kumar Gupta and gave finding that prosecution has proved its case beyond reasonable doubt for offence under Section 302 IPC, but learned counsel for the petitioner vehemently argued that all the eye witnesses turned hostile and two witnesses PW-1 Kheem 5 Singh and PW-3 Sajjan Kanwar, whose name were disclosed by the deceased in her statement turned hostile, therefore, the testimony of the deceased cannot be accepted because the story of prosecution is totally false.

More so, the truth was disclosed by the hostile witnesses but the learned trial court disbelieved their testimony so as to come to the conclusion that accused appellant is guilty for offence under Section 302 IPC.

The learned counsel for the appellant submits that even if the evidence of prosecution is accepted then also it is not a case to hold the accused appellant guilty for offence under Section 302 IPC because the deceased herself stated in her statement (Ex.P/4) before the Magistrate that after letting fire the accused appellant put water upon her so as to close the fire, therefore, the conduct of the accused appellant is to be seen that he has tried to come to rescue of deceased, which is evident from the statement of deceased recorded by the Magistrate PW-5 Tirupati Kumar Gupta.

Learned counsel for the appellant invited our attention towards the judgment of the Hon'ble Supreme Court delivered in the case of Kalu Ram versus State of Rajasthan reported in 2000 SCC (Cri) 86 in which in similar circumstances, the Hon'ble Supreme Court altered the conviction from Section 302 IPC to Section 304 Part II IPC, therefore, it is submitted that in this case also, on the basis of conduct of the petitioner stated by the deceased herself 6 and 2 hostile eye witnesses PW-1 Kheem Singh and PW-3 Sajjan Kanwar the conviction of the accused appellant Udai Singh may be altered from Section 302 to Section 304 Part II IPC.

Per contra, learned Public Prosecutor vehemently opposed the prayer and submits that learned trial court has correctly gave finding upon the evidence led by the prosecution to prove the prosecution case of murder by the accused appellant of her own wife Smt.

Suraj Kanwar.

It is argued that although eye witnesses of incident PW-1 Kheem Singh, real brother of the accused and PW-3 Sajjan Kanwar, real sister of the deceased turned hostile, but in the statement recorded by PW-13 Bhoor Singh, upon which FIR was registered and in the dying declaration (Ex.P/7) recorded by PW-5 Judicial Magistrate Sh.

Tirupati Kumar Gupta in accordance with law in which there is specific allegation about the appellant, therefore, it is a case in which no lenient view is required.

More so, it is a case in which the learned trial court convicted the accused appellant under Section 302 IPC on the basis of trustworthy evidence, therefore, this appeal may be dismissed.

After hearing the learned counsel for the parties, we have gone through the entire evidence on record.

Admittedly, the FIR was registered at Police Station Khelwara on the basis of oral statement (Ex.P/20) given by 7 the deceased Smt.

Suraj Kanwar to the witness PW-13 Bhoor Singh, ASI of Police Station Kelwara.

The said statement was recorded in the Government Hospital, Udaipur by Bhoor Singh ASI on 8.12.2006 upon which thumb impression of deceased Smt.

Suraj Kanwar is appearing.

We have perused the statement of PW-1 Kheem Singh.

The said witness although turned hostile, but not disputing the presence of the accused appellant and said that deceased Smt.

Suraj Kanwar herself poured the kerosene upon her and let fire.

We have also perused the statement of PW-3 Sajjan Kanwar, sister of deceased.

The said witness also turned hostile but this Court cannot lose sight of the fact PW-13 Bhoor Singh, ASI of Police Station Kelwara categorically said in his statement that he has recorded statement of deceased Smt.

Suraj Kanwar on 8.12.2006 when she was admitted in the Government Hospital, Udaipur in Ward No.33 at Bed No.7 in which it has categorically stated by her that her husband poured kerosene and set fire.

We have perused the FIR (Ex.P/21) in which following allegations were levelled by the deceased Smt.

Suraj Kanwar, which reads as under:- 4 2 - \$ \$ 2, 3 \$ \$ 1 12 8 3 2 2 1 1 Likewise we have perused the dying declaration recorded by the Judicial Magistrate PW-5 Tirupati Kumar Gupta in which while giving answer to question no.3 following reply is given by the deceased.

The relevant portion of Ex.P/7 statement of deceased Smt.

Suraj Kanwar reads as under: Q.3 9 2?.

- 2 9 1 08/12/06 2 \$ 3 () 1 \$ 9 9 2 \$ 2 \$ 1 1 9 9 3 2 " 9?..

2 " Upon perusal of the above statement of deceased Smt.

Suraj Kanwar, upon which FIR was registered and dying declaration (Ex.P/7) recorded by the PW-5 Tirupati Kumar Gupta Judicial Magistrate, Udaipur in both the statements it is revealed that the accused appellant himself tried to put water upon deceased Smt.

Suraj Kanwar his wife and further this Court cannot lose sight of the fact that Smt.

Suraj Kanwar died after 22 days.

We have perused the 9 statements of PW-9 Dr.

Anish Ahmed, who has conducted post mortem vide Ex.P/12 which reads as under: 1 30.12.06 C 1 1 1 E 1 H 2 2 6 C 10 33 C C \$ 2 1 8.12.06 9 H 2 H 2 C 9 H 2 \$ H 2 \$ C C -12 9 H3\$ 1 H 1 H 2 P 9 2 13 9 , 9 P :- 9 H 2 2 29 9 H H 2 C 9 9 E 1 " In the light of above evidence we have perused the judgment cited by the learned counsel for the appellant delivered in the case of Kalu Ram (supra) in which the Hon'ble Supreme Court held that dying declaration given by the deceased regarding actual occurrence cannot be disbelieved but upon assessment of totality of circumstances in which accused appellant himself tried to come on rescue and put water upon the deceased to stop the fire altered the conviction from Section 302 to Section 304 part II IPC.

The para no.6 to 8 of the said judgment is as follows: 6.

We find no good reason to discard the 10 two dying declarations given by the deceased regarding the actual occurrence.

The Courts below have rightly acted on such dying declarations.

7.

But then, what is the nature of the offence proved against him.

It is an admitted case that appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him.

When she refused to oblige he poured kerosene on her and wanted her to lit the match-stick.

When she failed to do so he collected the match box and ignited one match-stick but when flames were up he suddenly and frantically poured water to save her from the tongues of flames.

This conduct cannot be seen divorced from the totality of the circumstances.

Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die.

If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her.

We are inclined to think that all what the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent.

He would not have intended to inflict the injuries which she sustained on account of his act.

Therefore, we are persuaded to bring down the offence from the fiRs.degree murder to culpable homicide not amounting to murder.

8.

We, therefore, alter the conviction from Section 302, I.P.C.to Section 304, Part II of the I.P.C.Both sides conceded that appellant is continuing in jail.

We impose a sentence of rigorous imprisonment for seven years on him.

It is for the jail authorities to count whether the period he had already undergone would be sufficient to complete the period of sentence imposed by us and if so, the jail authorities shall release him from jail.

Otherwise he will continue in jail until completion of the period of seven years of imprisonment.

The appeal is disposed of accordingly.

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11 After persuing the aforesaid adjudication made by the Hon'ble Supreme Court, We have considered the prayer of the accused appellant for the purpose of altering the conviction from Section 302 to Section 304 Part I IPC.

In our opinion, when the deceased herself stated in her dying declaration that after letting fire when she cried, the accused appellant himself put water upon her body and deceased died after 22 days and as per opinion of Dr.

Anish Ahemd PW-9 the cause of death was septicemia, we deemed it appropriate to alter the conviction of accused appellant from Section 302 to Section 304 Part I IPC.

Consequently, upon above facts and the judgment of the Hon'ble Supreme Court in Kalu Ram (supra) the instant cr.

appeal is hereby partly allowed.

The conviction and sentence of the accused appellant vide judgment dated 7.5.2007 passed by the learned Addl.

Sessions Judge (Fast Track).Rajsamand in Sessions Case No.5/2007 whereby the accused appellant is convicted and sentenced under Section 302 IPC is hereby altered and the appellant is hereby convicted for the offence under Section 304 part I IPC and sentenced of life imprisonment is reduced to 10 years RI.

However, the fine imposed by the learned trial court is hereby maintained.

(VIJAY BISHNOI),J.

(GOPAL KRISHAN VYAS),J.

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