

Ved Prakash Vs. State

Ved Prakash Vs. State

SooperKanoon Citation : sooperkanoon.com/692902

Court : Delhi

Decided On : Oct-10-1990

Reported in : 43(1991)DLT279

Judge : N.N. Goswamy and; S.C. Jain, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 163 of 1987

Appellant : Ved Prakash

Respondent : State

Advocate for Pet/Ap. : Sethi,; Roman Sawhney and; G.S. Vashisht, Advs

Judgement :

S.C. Jain, J.

(1) This appeal has been filed by Shri Ved Prakash (hereinafter called the "appellant") challenging the judgment and order dated 3rd July, 1987 passed by an Additional Sessions Judge, Delhi, whereby the appellant was convicted under Section 302 Indian Penal Code . for intentionally causing the death of his wife Madhu Sharma and he was sentenced to undergo imprisonment for life and also to pay a fine of Rs. 10,000.00 (Rupees ten thousand only) and in default of payment of fine to suffer further R.I. for two years. A sum of Rs. 7.500.00 (Rupees

seven thousand five hundred only) was ordered to be paid to the father of the deceased out of the fine, if and when realised.

(2) The charge sheet in the case was filed under Section 279 and 304-A, Indian Penal Code . against the appellant with the allegations that on 8th June, 1981, the appellant while driving his Motor Cycle in a rash and negligent manner at about 10.30 or 11.00 P.M., caused the death of his wife who was sitting on the pillion seat of the Motor Cycle. The death actually took place in Dr.Ram Manohar Lohia Hospital at 6.05 A.M. on 12th June, 1981. From the time of her admission in the Hospital on 9th June, 1981 (as given in the M.L.C. Ex. Public Witness 4/A) the deceased remained unfit to make a statement till her death. The committing Magistrate, however, found a number of circumstances which according to him established on prime facie ground that it was actually a case of murder of the wife at the hands of her husband and exclusively triable by the Court of Sessions and he, therefore, committed the case to the Court of Sessions for trial under Section 302 Indian Penal Code .

(3) The learned trial court, while convicting the appellant under Section 302 Indian Penal Code . for intentionally causing the death of his wife, took into account various facts and circumstances, some of them are as follows :-

(I)Cruel treatment of the appellant and his parents towards Madhu (deceased) for not bringing sufficient dowry.

(II)Dissatisfaction of the appellant and his parents when their demands of clothes and other presents on the occasion of 'Reet Ceremony' in the 3rd or 4th month of pregnancy of Madhu (deceased) were not agreed to be fulfilled by the parents of the deceased.

(III)Abnormal behavior of the appellant and threats given by him on the fateful night of 8.6.1981, when he took his wife Madhu (deceased) from the house of her parents on his motor cycle in the late hours of the night.

(IV)Conduct of the appellant in not removing his wife to the hospital direct from the place of occurrence when she had a fall from the Motor Cycle and sustained

injuries.

(V) Contradictory version given by the appellant to the Medical Officer in the hospital as to how his wife received the injuries.

(VI) Relatives of the deceased were not informed immediately about the injuries suffered by her.

(VII) The appellant manoeuvred her fall from the Motor Cycle by giving a jerk while driving it.

(VIII) Investigating Officer did not investigate the case properly.

(4) In this case, admittedly, there is neither any dying declaration of the deceased nor there is any eye witness of the occurrence. Shri Ram Lal (PW 10), Nathoo Ram (Public Witness 11), Ram Nath (Public Witness 12) are the only witnesses, who have testified about the fall of the deceased Madhu Sharma from the Motor Cycle being driven by the appellant at about 10.00 p.m. to 10.30 p.m. on the Rajouri Garden Road. None of these witnesses has stated as to how the deceased had fallen from the Motor Cycle which was being driven by the appellant. They have only deposed that they heard the thudding noise of the fall of the lady. The Motor Cycle did not fall at all which came to halt at a distance of about 10/12 feet from the place where the lady had fallen. The appellant left his Motor Cycle at that place and took that lady in the cycle rickshaw of Pw 10 to his house which was nearby. The statement of these witnesses do not indicate at all that the appellant manoeuvred her fall from the Motor Cycle knowing it fully well that she was likely to suffer injuries which should be sufficient in the ordinary course of nature to cause her death. None of these witnesses has talked about any attempt made by the appellant to throw his wife from the Motor Cycle. The report made by Shri Surender Kumar, brother of the deceased, on 11th June, 1981 (Ex. Public Witness 1/A) that is about three days after the occurrence, also does not mention that the accused manoeuvred the fall of the deceased from the Motor Cycle knowing it fully well that she was likely to suffer injuries, which should be sufficient in the ordinary course of nature to cause her death. He only mentioned that he suspected foul play at the hands of his brother-in-law Ved

Prakash (appellant) in the incident. Suspicion cannot take the place of proof. In his statement before the Court as PW1, he has put much stress on the 'motive' which the appellant was allegedly having to kill his wife and tried to spin out a story of the demands by the appellant's family and has contradicted many time during his testimony. In his cross-examination he has admitted that at the time of marriage negotiation no demand of dowry was raised by the accused party. Before the marriage and during the negotiations he had visited the house of the accused and he was told that one of the brothers of the accused is a Major and other is a Lieutenant in the army. He knew that the accused had good family background. When there was no demand of dowry at the time of settlement of marriage, it is not believable that such demands were made thereafter. Public Witness 1 has deposed that he did not remember the date when for the first time the accused raised the demand of dowry. However, he added that it was only on the night of 8th June, 1981 for the first time he learnt from the deceased that the appellant was unhappy about the dowry.

(5) The statement of the father of the deceased (Public Witness 2) is also not convincing on this aspect. In his cross examination he has admitted that accused Ved Prakash never demanded anything directly from him but he added that he did so through Madhu (deceased). There was no demand of dowry up to 3 months of marriage. There is no convincing evidence on record that at any time Madhu Sharma (deceased) made a complaint to her relations that the appellant or her in-laws forced her to bring more dowry. The story now put up by Public Witness 1 and Public Witness 2 that the father of the deceased had gone to Amritsar to sell his land and he had actually sold his land for a sum of Rs. 22.000.00 to meet the alleged demands of the appellant's family, at the time of 'Reet' Ceremony also does not seem to be probable. As per admission of the father of the deceased, at that time the 3rd or 4th month of pregnancy of Madhu Sharma (deceased) was running and the 'Reet' ceremony is usually held in the 7th month of pregnancy. There does not seem to be any justification for making these demands of presents and gifts etc. 3 or 4 months earlier than that ceremony. Even otherwise, it cannot be a motive to kill Madhu by the appellant. He would rather wait for the money to come from Amritsar so that he can take whatever he wants to have. Public Witness 2 has put forward a new story that the appellant was suspecting the

character of the deceased. Public Witness 1 has never talked about it. Even Public Witness 2 never mentioned it to the police in his statement with which he was confronted. It is also not the case of the prosecution. The prosecution can succeed by substantially proving the very story it alleges.

(6) Regarding the alleged mal-treatment and the torture to the deceased at the hands of the appellant and his parents for not bringing sufficient dowry, if we dissect the statements of Public Witness I and Public Witness 2, it becomes crystal clear that the deceased never made any mention of any demand of dowry or any maltreatment at the hands of the appellant and his family members and that they got an impression out of gestures made by her. Though it has been alleged that the health of the deceased deteriorated and she was brought to her parental home by her sister Tripta and wife of Public Witness I and was taken to Rana Nursing Home, where the doctor remarked that Madhu had been neglected, but no efforts were made to prove these allegations. None of these witnesses namely Tripta, wife of Public Witness I or the doctor of Rana Nursing Home, who had examined her, has been examined. Even the record of the hospital has not been produced. Mere alleging a thing without any attempt to substantiate the same cannot take the place of proof.

(7) It has come in the statement of Public Witness I that on the fateful night of 8th June, 1981, he and other members of his family requested the appellant with folded hands to take Madhu to his house with him. This fact runs counter to their story that the appellant had any intention to kill his wife when he was showing reluctance to them to take his wife back because he was not feeling well. It has been observed by the Supreme Court in the case of State v. Hari Prasad and others 1974 CrL. LJ 274 as under :

'.....OFTENTimes a motive is indicated to heighten the probability that the offence was committed by the person who was impelled by that motive. But if the crime is alleged to have been committed for a particular motive, it is relevant to enquire whether the pattern of the crime fits in with the alleged motive.'

(8) There is no dispute about the fact that on 8th June, 1981, at about -10.30 or 11.00 p.m. the appellant took his wife Madhu Sharma on his Motor Cycle from the

house of his in-laws. She was sitting on the pillion seat of the Motor Cycle driven by the appellant. On the way she had a fall from the Motor Cycle and got injuries as mentioned in M.L.C. (Ex. Public Witness 4/A). Whether she had an accidental fall or the appellant manoeuvred her fall from the motor cycle knowing it fully well that she was likely to suffer injuries which would be sufficient in the ordinary course of nature to cause her death, is a question which needs answer

(9) Dr. A.K. Sen, Medical Officer, Civil Hospital, Delhi (Public Witness 3) who conducted the Postmortem on the body of Madhu Sharma (deceased) found one stitched wound long surrounded by an abrasion of 1"x' ' on the left parietal area posteriorly. On internal examination the wound was seen to be scalp deep and there was blood clot dark red in colour in the scalp tissue surrounding the wound 1' x 1' area. There was a fissured fracture on the left parietal bone posteriorly immediately under external injury No. 1 which extended forwards and downwards over the squamous part of the left temporal bone up to its petrous part in the base of the skull. Meninges were congested. There was generalised sub dural clotted blood more on the right side. At one place over the right parietal bone the clot was 1' thick and 1' in diameter. Brain was congested and the brain tissues under the clot on the right side showed signs of necrosis.

(10) According to him, this injury was sufficient to cause death in ordinary course of nature. Besides this fatal injury there were multiple abrasions and bruises on right elbow, forearm, foot and shoulder etc. which were simple in nature. All the injuries were antemortem and were caused by blunt object/ force and were also possible by a vehicular accident. He has proved his report Ex. Public Witness 3/A. In cross examination he has, however, admitted that injuries No. 1 to 7 are possible by means of 'danda' or 'stick' blows but it is not the case of the prosecution that the accused caused these bodily injuries to the deceased by using 'danda' or 'stick'.

(11) Nobody has come forward to depose about the action of the appellant while driving the Motor Cycle at that time. Nobody has actually seen the deceased falling from the Motor Cycle. After hearing the thudding noise of the fall of the lady some persons sitting nearby reached there. In such circumstances, we have to

rely upon the circumstantial evidence available on record. In dealing with circumstantial evidence, the rules specially applicable to such evidence must be borne in mind. Supreme Court in its decision Hanuman v. State of M.P. MR 1952 S.C. 343, while pointing out the duty of the Court while appreciating the circumstantial evidence has observed :

'IT is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature- and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.'

(12) The entire evidence on record reveals that there can be only two circumstances which at the most can create suspicion regarding the bonafides of the appellant. First circumstance is that after the fall of Madhu (deceased) from the Motor Cycle of the appellant, he did not remove her to the hospital for immediate medical treatment despite the request of Public Witness 10, Ram Lal. He rather removed her to his house in a cycle rickshaw leaving his motor cycle at the spot. She was removed to the hospital after sometime from his house after changing her clothes. The other circumstances which can be made use of against the appellant, is that he gave contradictory version to the Medical Officer about the manner of injuries having been suffered by Madhu (deceased) which were found to be false later on.

(13) Though the appellant has explained the circumstances in a satisfactory and convincing manner and we have no hesitation in accepting his Explanation, yet these circumstances are not sufficient in themselves for the conviction of the appellant under Section 302 Indian Penal Code . for the offence of murder of his wife. The nature of the injuries shows that the appellant could hardly see any seriousness in it because even according to the witnesses of the locality he picked

her up, gave her water and also sprinkled some water on her face. In these circumstances, the appellant first thought of immediately removing her to his house which was close by and then after getting aid of his family members and neighbours rushed to Dr. Ram Manohar Lohia Hospital in a taxi where she was admitted at 12.40 a.m. It has come in the statement of the taxi driver who has appeared as Public Witness 13 Subhash Chander that the father of the appellant had asked him to keep the taxi waiting outside the hospital and he kept waiting there for about 1 1/2 hours when father of the appellant came to him and told that the wife of the appellant had been admitted in the hospital and, therefore, asked him to go away. This fact alone goes to show that the impression in the mind of the appellant and his family members was that she was having no serious injury and they would be able to take her back home.

(14) Regarding mis-representation about the manner of her sustaining injuries, the appellant has explained in his statement under Section 313 Code of Criminal Procedure that he had to make a false statement to the attending doctor in the hospital about the manner other sustaining injuries in order to save time and to see that his wife should get immediate medical treatment. Had he stated that she had fallen from the Motor Cycle and it was an accidental case the doctor on duty would not have attended her till such time the Medico Legal Case was made out on the basis of the report to be lodged with the police of the area. When his brother-in-law, Surender Kumar, Public Witness 1 , came to the hospital he immediately narrated him the true version.

(15) It is common knowledge that in accidental cases police takes a lot of time in getting the formalities completed and by that time inmost of the cases the injured succumbs to his or her injuries. This act of the appellant in the present circumstances of the case, cannot be said to be malafide. 16. All the circumstances relied upon by the learned Addl. Sessions Judge are based on conjectures or suspicion and they cannot take the place of proof and, therefore, it is right to recall the warning addressed by Baron Alder- son to the jury in Reg. v. Hodge (1838) 2 Lew 227, where he said :

'THE mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.'

(17) There is no evidence on record either direct or circumstantial which can lead us to the conclusion that the appellant did commit murder by intentionally or knowingly causing the death of his wife Madhu Sharma. The learned trial Court has completely ignored the cardinal principles of law while appreciating the circumstantial evidence and convicting the appellant on the basis of no evidence.

(18) In these circumstances, we hereby accept the appeal, set aside the judgment and order dated 3rd July, 1987 passed by the Additional Sessions Judge, and acquit the appellant. The fine amount, if realised, be refunded to him. The appellant is on bail, his bail bond shall stand discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com