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Rajesh Vs. State

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Court : Delhi

Decided On : Jul-21-2006

Reported in : 2006(92)DRJ589

Judge : R.S. Sodhi and; P.K. Bhasin, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302 and 307; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 274 of 2002

Appellant : Rajesh

Respondent : State

Advocate for Def. : Ravinder Chadha, Addl. Public Prosecutor and; Jagdish Prasad, Adv.

Advocate for Pet/Ap. : V.K. Raina, Adv

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal No. 274 of 2002 challenges the judgment of conviction dated 17.8.2001 passed by the Additional Sessions Judge, Karkardooma, Delhi, in Sessions Case No. 42/2000 holding the appellant guilty for an offence punishable

under Section 302 IPC, and order of sentence dated 24.8.2001 imposing a sentence of imprisonment for life on the appellant as also a fine of Rs. 100/- and in default of payment of fine to further undergo simple imprisonment for five days.

2. Brief facts of the case, as noted by the learned Additional Sessions Judge, are as follows:

The deceased Smt. Chanchal was the wife of the deceased. The marriage between the two took place about 9 years prior to the occurrence. At the time of the occurrence, they had two sons aged about 4 and a half years and 6 years. The family had shifted in the tenanted premises consisting of one room, on the first floor of the house of PW 10 Khajan Singh only about 708 days before the occurrence which took place on 36.4.2000 at about 11.50 p.m.

On the night between 26.4.2000 and 27.4.2000, at about 12.45 AM, the police control room informed PS Khajoori Khas that one woman had got burnt at Chowk Karawal Nagar. The control room also passed on this information to PCR Van of PW13 ASI Laxman Singh stationed in the area of Johri Nagar, Karawal Nagar, ASI Laxman Singh rushed to the spot. Smt. Chanchal was found lying outside the house in burnt condition. Her husband i.e. the accused and other persons were present there. Both the hands of the accused were also burnt, ASI Laxman Singh removed Smt. Chanchal and the accused to GTB hospital.

At the GTB hospital Smt. Chanchal was examined by PW2 Dr. Reema Goel vide MLC Ex PW2/A. She had burns 72-80%. However, she was conscious and oriented and she gave the history of being burnt by her-husband which was recorded on the MLC by the doctor. After the preparation of the MLC, Smt. Chanchal was referred to the surgery department. Accused was medically examined but his MLC was not placed on record.

IO ASI Ajay Kumar (PW15) accompanied by a Ct. also reached the spot but by then the injured had already been removed to the hospital by the PCR Van. The incident had taken, place in the room of the accused. In the room, the IO found lying on the floor of the room, the burnt clothes of the deceased, one empty 5 litre plastic can and one iron stove. There was smell of Kerosene Oil in the room. The

plastic can also smelled Kerosene Oil. The floor of the room was wet with water. The IO deputed the Constable to guard over the spot and he himself went to the hospital.

At the hospital, the IO collected the MLC of Smt. Chanchal and recorded her statement Ex PW15/A in the presence of PW1 Dr. Sandeep Jain. The English translation of the statement is as follows:

Stated that I am living at the about mentioned address along with family for about one week. My husband returned home drunk today as well like other days and started beating me with legs and asked me to earn for his liquor. I told him that I do not have money because today I had not got even to work at the Bidi shop of Anuj. My husband Rajesh, with intention to kill, poured oil on me and set me on fire. Heard the statement and the same is correct

RTI of Chanchal

S/d Dr. Sandeep Jain, Senior Resident Surgery

27/4/2000

Attested

S/d Ajay Kumar, SI

PS Khajoori Khas, 27/4/2K.

On the basis of this statement, the IP got a case registered Under Section 307 IPC vide FIR No. 116/2000 at PS Khajoor Khas.

The IO got the place photographed (Ex PW3/A3 to Ex PW 3/A4), seized the exhibits and arrested the accused on the same night.

On 30.4.2000, Smt. Chanchal succumbed to the burn injuries in the hospital, PW16 Dr. Mukta Rani conducted the post-mortem examination on the body of the deceased vide her report Ex. PWl6/A. She has opined the cause of death as shock as a result of anti-mortem burns covering about 75% of the total body

surface area produced by flames.

The case of the prosecution as made out from the statements recorded Under Section 161 Cr.P.C. is that the accused had become a liquor addict and he used to quarrel with the deceased and beat her after taking liquor. On 26.4.2000, at about 10.30 PM, PW10 Khajan Singh, the Landlord, heard the accused and the deceased quarreling with each other. He pacified them and he took both the children with him to the terrace and made them to sleep there. At about 11.45 pm, he heard, the cries of the deceased. He came down and saw that the deceased was on fire and the accused was trying to extinguish the fire. Thereafter, as mentioned earlier, the PCR Van took the deceased and the accused to the hospital where the IO recorded the statement Ex PW-15/A of the deceased which is now the dying declaration. During the investigation, the exhibits were sent to the CFSL. As per, the CFSL report, Ex PW15/E, Kerosene residues were detected in the plastic can but same could not be detected on the partially burnt clothes of the deceased.

After the completion of the investigation, a challan Under Section 302 IPC was filed against the accused. After the committal proceedings, the case came to the Sessions Court for trial.

Charge Under Section 302 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

3. The Prosecution, in order to establish their case, examined as many as 18 witnesses. Of these, PW-1, PW-2, PW-9 and PW-16 are Doctors while PW-4, Mrs. Sheela Arora, is the mother of the deceased and PW-10 is the landlord of the deceased. The Investigating Officer has been examined as PW-15.

4. Learned Counsel for the appellant has primarily attacked the dying declaration made by the deceased before the Doctor and the Investigating Officer. It was contended by counsel for the appellant that the dying declaration before the Doctor, Ex. PW-2/A, suffers on account of the same not being recorded in the manner as ordinarily is done, namely, that observations of the Doctor and the history of the case should be in the same line, but 'not recorded separately'. It was

contended that the deceased having 80 per cent burns could not possibly have narrated the cause of death to the Doctor. He also attacked the dying declaration made to the Investigating Officer, Ex. PW-15/A, on the ground that with 80 per cent burns it was not possible to obtain the thumb impression as also that the Doctor has not certified the patient fit to make a statement before the same was recorded by the Investigating Officer. Counsel further sought to direct attack towards the forensic evidence to the effect that the clothes of the deceased do not show presence of kerosene oil. He contended that once the clothes are found free from kerosene oil, the story put forth by the Prosecution based on dying declaration before the Doctor as also supported by the statement before the Investigating Officer are not reliable nor substantiated. He further contended that the injuries on the hand of the appellant goes to show that the appellant was extinguishing the flames and, therefore, cannot be held liable for an offence under Section 302 IPC. Counsel also vehemently argued that the genesis of the Prosecution case, namely, that after a quarrel, the husband poured kerosene oil on the wife, falls since the same is not supported by PW-10, the landlord.

5. We have carefully examined the submissions made before us with the assistance of counsel for the parties and the material on record. It appears from the statement of PW-4, Smt. Sheela Arora, that the accused was accustomed to consume excessive liquor as and when he was tired and that the marriage between the parties was not a happy one. PW-10, Khajan Singh, the landlord, while resiling from his earlier statement on the point of quarrel between the accused and the deceased on the fateful night, has deposed that at 9.30 p.m. he was informed by his tenants that Chanchal had burnt herself. When he came out, he saw the accused holding Chanchal in a burnt condition and asked his neighbor to inform the Police upon which a PCR van arrived and took the injured, Chanchal, to the Hospital. Dr. Reema Goel, PW-2, examined Chanchal at the Hospital and made an endorsement on the MLC, Ex. PW-2/A, that the patient had informed her that her husband had set her ablaze. We also have statement recorded by the Investigating Officer, SI Ajay Kumar, PW-15, being Ex.PW-15/A to the effect that the accused-husband had set Chanchal ablaze after a quarrel when the accused was in a drunken state.

6. The criticism of the counsel to the dying declaration is hardly tenable. Dr. Reema Goel, PW-2, has categorically stated that the patient, Smt. Chanchal was brought to the Hospital in a burnt condition; she was conscious and oriented and she gave history of being burnt by her husband which was recorded in the MLC. In cross-examination, this Doctor says that 'the history recorded at mark 'A' (on the MLC) was recorded by me at the same time when I recorded the history mentioned'. She has given a satisfactory answer as to why the history recorded was in brackets, the witness testifies that 'the noted alleged history of burn was recorded by me on seeing the burn injuries on the person of the patient. The history given in the bracket mark 'A' was recorded after the patient gave it'. This Doctor also testifies that before preparing the MLC, she had inquired from the patient as to how she got burnt. There is nothing to suggest in the cross-examination that PW-2 has any animus towards the appellant or that she had not examined the patient, Chanchal, nor that it was not possible for Chanchal to have made a statement to this Doctor. In other words, we find no reason to disbelieve PW-2. However, we find corroboration in Ex. PW-15/A being the statement recorded by the Investigating Officer of the deceased in the presence of PW-1, Dr. Sandeep Jain. The criticism of learned Counsel to PW-15/A is also not sustainable.

7. PW-1, Dr. Sandeep Jain, states on oath that he was posted as Senior Resident Surgeon at GTB Hospital, Shahdara when the patient, Chanchal, was admitted to the Burns Wards. The Investigating Officer recorded statement of Chanchal in his presence and that the patient was fit to make such a statement. In cross-examination, this witness states that though a certificate of fitness is not mentioned, yet on examination he found the patient fit to make a statement and, therefore signed PW-15/A in toke thereof. We find no reason to disbelieve PW-1.

8. The Investigating Officer, PW-15, has deposed that he reached the Hospital at about 1.30 a.m. On the fateful day and obtained the MLC of the injured, Chanchal. Thereafter, he recorded statement of Chanchal in the presence of Dr. Sandeep Jain. The statement recorded is in the hand writing of PW-15 and bears the thumb mark of Chanchal at point 'A'. It also bears the signature of Dr. Sandeep Jain. This witness also states that on inspection of the room on the first floor of the house in

which the incident had taken place, some burnt clothes were found lying on the floor. Smell of kerosene oil was present in the room. The floor was wet with water. One 5 litre plastic cane which was almost empty was lying on the flsor. The articles were taken into possession, seized vide Memo Ex. PW-12/B and sealed. He deposed that on 30.4.2000 Chanchal succumbed to her injuries whereupon SI R.K. Meena conducted inquest and got the post mortem done. The articles seized vide Memo Ex. PW-12/B were sent to the CFSL whose report is Ex. PW-15/E.

9. In cross-examination, this witness states that the thumbs of the deceased were not burnt nor bandaged. He also states that when he recorded the statement, Ex. PW-15/A. No member of the family was present by the bed side of Chanchal. It took about 10-15 minutes to record the statement on narration of Chanchal. There appears nothing in the statement of this witness to cause any suspicion regarding the recording of the statement of Chanchal in the presence of the Doctor, PW-1 at the Hospital.

10. The criticism of the learned Counsel to the dying declaration based on the report of the CFSL that no kerosene residue was found on the partially burnt clothes, is also of little avail since the clothes collected from the house were not positively those of the deceased which she was wearing at the time she was set ablaze but were remnants of those found in the room where she was set ablaze. Even otherwise, the non detection of kerosene residues cannot be said to be fatal inasmuch as it is no one's case that the deceased was totally doused before she was set ablaze.

11. Taking into consideration the totality of the circumstances of the case and the evidence on record, we are of the opinion that the Prosecution has brought home the guilt of the accused inasmuch as it was the accused who had set ablaze his wife, the deceased - Chanchal, as a result whereof Chanchal succumbed to her injuries which were sufficient in the normal course to cause death. We find that the judgment of the trial court is well reasoned and needs no interference with. Consequently, we uphold the judgment of conviction and order of sentence handed down by the trial court and dismiss the appeal.

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