

Niranjan @ Neeru Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-03-2005

Reported in : RLW2005(2)Raj990; 2005(2)WLC400

Judge : Shiv Kumar Sharma and; Dalip Singh, JJ.

Acts : Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 98 of 2000

Appellant : Niranjan @ Neeru

Respondent : State of Rajasthan

Advocate for Def. : M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : A.K. Gupta,; Rinesh Gupta,; Pooja Gupta and;

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1. This appeal impugns the judgment dated March 8, 2000 rendered by learned Additional Sessions Judge No. 1, Jaipur District Jaipur in Sessions Case No. 4/1999, whereby the appellant (herein after described as 'accused') was convicted

for the offence under Section 302 IPC and sentenced to suffer Imprisonment for life and fine of Rs. 5000/-, in default to further suffer Imprisonment for six months.

2. As per the prosecution story, on September 19, 1998 the informant Laxman submitted a written report at Police station Bagru with the averments that his sister Kanta was married four years back to the accused who was resident of village Ajayrajpura. Since the accused had illicit relations with some other girl, he had never developed liking for Kanta. This fact was disclosed by Kanta to her mother. On September 19, 1998 at 7.30 AM after receiving the information about the death of Kanta, the informant rushed to her house where he found Kanta dead. The informant saw the injuries on her neck. On the basis of the written report the Police Station Bagru registered a case under section 302 IPC and investigation commenced. Dead body was subjected to post mortem. The accused was arrested and after usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No. 1 Jaipur District Jaipur. Charge under Section 302 IPC was framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 22 witnesses. In the explanation under Section 313 Cr.P.C., the accused claimed innocence and stated that the deceased was a patient of Epilepsy and she used to fall down of the cot after sustaining attack of Epilepsy. The accused denied to have any illicit relations with any other woman. Learned trial Judge on hearing the final submissions convicted and sentenced the accused as indicated herein above.

3. The prosecution case was based on circumstantial evidence and the learned trial Judge was of the view that the evidence was complete and incapable of explanation on any other hypothesis than that of the guilt of the accused. Following circumstances were found established against the accused:-

(i) Accused and his wife Kanta (deceased) were together in the intervening night of September 18 and September 19.

(ii) Father of accused had gone to Jaipur while his mother was also away from the house and came back at 5.00 AM.

(iii) Mother of the accused made attempt to awake Kanta and when Kanta did not respond, Mother came to know that Kanta had died.

(iv) As per post mortem report cause of death of Kanta was asphyxia as a result of pressure over neck and the injuries were sufficient to cause death in the ordinary course of nature. The death was caused in the intervening night of Sept. 18 and Sept. 19 between 10 and 11 PM.

(v) The accused used to tell Manju (the sister of the deceased) that he did not like the deceased and would arrange for another wife.

4. Having carefully analysed the rival submissions and scanned the entire evidence adduced at the trial we noticed that informant Laxman (PW. 10) (brother of the deceased) did not support the prosecution case and was declared hostile. Ram Nath (PW. 18) (the father of deceased) also deposed against the prosecution. Both these witnesses categorically stated that deceased was patient of Epilepsy and attack of Epilepsy could be the cause of her death. Laxman and Ram Nath gave clean chit to the accused. We also find from the evidence of Suman (PW. 1) (the sister of the accused) that the accused had gone with his mother and in the intervening night of 18 and 19 he was away from the house and Kanta (deceased) was alone in her room. It is also established from the evidence of Lachhma (PW. 4) (mother of the accused) that she was away from her house in connection with a delivery case and came back at 5 AM. At that time her daughter Suman was sleeping. She asked Suman to milk the cow who in turn replied to awake Kanta. She then made attempt to awake Kanta, but she did not respond because she was dead. Suman and Lachhma were declared hostile Neighbours of the accused viz. Gulab (PW. 3) and Birda Ram (PW. 6) deposed that they saw the accused in the morning. Around 6 AM the accused came to Gulab and told her to accompany him. She then went to his house and found Kanta lying dead. It is not doubt established that Kanta married to the accused and was found dead in the house of her in-laws but from the evidence already noticed no inference could be drawn that it was the accused who applied pressure on the neck of Kanta and killed her. There is nothing on record to show that the accused was with the deceased in the intervening night of September 18 and 19. The reasons on the

basis of which the conclusion was drawn that the accused and the deceased were together in the intervening night of September 18 and 19, have not been incorporated in the impugned judgment by the learned trial Judge. The death of Kanta according to autopsy surgeon Dr. Sumant Dutta (PW. 13) was although homicidal, the possibility that it could be caused by the fits of Epilepsy could not be ruled out.

5. Coming to the evidence of Manju (PW. 10) we notice that although in the examination in chief, she deposed that the accused used to tell her that he did not like Kanta and he would arrange for another in consideration of Rs. 20,000/-, in her cross examination she stated that neither did Kanta nor accused tell her about another lady. It was one Keli, who told her that the accused had relations with another woman and he would keep her in his house in consideration of Rs. 20,000/-. On the basis of the testimony of Manju, no inference could be drawn against the accused that he had any motive to kill Kanta.

6. The law relating to circumstantial evidence no longer remains res Integra and it has been held by catena of decisions of the Supreme Court that the circumstances proved should lead to no other inference except that of the guilt of the accused, so that, the accused can be convicted of the offences charged. The court before recording conviction, on the basis of circumstantial evidence, must satisfy that the circumstances from which inference of guilt could be drawn, have been established by unimpeachable evidence and the circumstances unerringly point to the guilt of the accused and further all the circumstances taken together are incapable of any explanation on any reasonable hypothesis save the guilt of the accused. In a case based on circumstantial evidence the court has to be on its guard to avoid the danger of being swayed by emotional considerations, however, strong they may be, to take the place of proof.

7. in the case on hand the circumstances established by the prosecution are not of such nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged.

8. For these reasons we allow the appeal and set aside the finding of conviction and sentence arrived at vide judgement dated March 8, 2000 by the learned

Additional Sessions Judge No. 1. Jaipur District Jaipur. We acquit the appellant of the charge under section 302 IPC. The appellant, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

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