

Uda Vs. the State of Rajasthan

Uda Vs. the State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/755722

Court : Rajasthan

Decided On : Nov-23-1981

Reported in : 1982WLN(UC)87

Judge : M.L. Shrimal and; P.D. Kudal, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 286 of 1975

Appellant : Uda

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

M.L. Shrimal, J.

1. This appeal filed by convicted accused Uda is directed against the judgment dated March 21, 1975 of learned Additional Additional Sessions Judge, Jhalawar, whereby he convicted the accused-appellant under Section, 302, I.P.C, for committing the murder of his wife Mst. Shankari and sentenced him to imprisonment for life.

2. The facts giving rise to this appeal are that Mst. Shankari (since deceased) was married to accused-appellant Uda about 4 or 5 years prior to the occurrence. Mst. Shankari went to her father's place and thereafter did not return back to the house

of her husband. Uda came to fetch his wife, but she refused to oblige him. Oaths
fateful day i.e. February 1, 1975 Mst. Shankari (since deceased) along with Mst.
Champi (PW 1) went to work, as Labourer at the house of Radha Kishan, who was
constructing a house in the village. Mst. Champi and Mst. Shankari went to fetch
water. Mst. Champi filled her pitcher but Mst. Shankari remained behind. Seeing
Mst. Shankari all alone accused Uda came there, dragged her wife towards the
bed of the river and thereafter inflicted knife blows on her person as a result of
which Mst. Shankari met her death. First information report of this occurrence Ex.
P/1 was lodged at the Police Station, Manohar, District Jhalawar on February 1,
1975 at 10.30 p.m. i.e. nearly after ten hours of the occurrence. Autopsy on the
dead body of Mst. Shankari was performed by Dr. Brij Raj Singh Chandawal PW
13. During the course of investigation the accused was arrested on February 8,
1975. The accused after his arrest declared his intention to get the weapon of
offence discovered. The information given by the accused was reduced into writing
and the same has been marked as Ex. P/13. In consequence of the above noted
information, knife Article 1 was discovered and the same was seized vide seizure
memo Ex.P/6. Blood stained knife was sent to the Serologist on which human
blood could not be ascertained. As such the discovery of knife cannot be of much
importance to the prosecution. The police after usual investigation submitted a
challan against the accused and he was ultimately tried, convicted and sentenced
by the learned Additional Sessions Judge as mentioned above.

3. The convicted accused has come up in appeal.

4. The conviction of the accused is mainly based on the statements of two alleged
eye witnesses, PW 6 Bajranga and PW 7 Mst. Samudri. They are said to be
children of the servant of Kanwar Lal, who is admittedly the father of the
deceased. They are child witnesses and on the date of their examination before
the court their age was 9 years and 5 years respectively According to the
prosecution their statements find material corroboration by the statement of PW 4
Radha Kishan.

5. From the statement of Dr. Brij Raj Singh PW 13 and other witnesses it stands
amply proved that whosoever inflicted injuries on the person of Mst. Shankari

intended to cause her death. She sustained as many as 16 incised wounds and 38 blunt weapon injuries. The concerned Doctor found the injuries on her person to be sufficient in the ordinary course of nature to cause the death.

6. The only point which needs to be determined is whether the statements of the above noted two child witnesses can be held to be reliable. PW 7 Mst. Samudri is a child of five years of age. Under cross-examination she stated that as soon as Mst. Shankari raised cry Mst. Samudari and her brother ran away. She also admitted that the name of the accused was told to them by Kanwar Lal:

^^ eq>s esjs cki o daoj yky us mnk dk uke crk;k Fkk A ^^

7. Thus it cannot be said with certainty that she had seen the occurrence Now remains the statement of PW 6 Bajranga. On the date of his examination he was 9 years of age. Learned Additional Sessions Judge who recorded his statement observed that the witness could not understand and answer the questions properly, but he had some understanding and could make the statement. As such his statement was recorded without administering oath to him. This witness during cross-examination stated:

^^ mnk ds ikl eSus pkdw ugh ns[kk A rS rks ns[kdj Hkkx x;k Fkk A eSus ;g ckr xkao es lquh Fkh fd 'kadjh dks ekj fn;k A^^

In re-examination he resiled from this portion of the statement and stated that he saw the accused causing injuries to Mst. Shankri. This witness has made a vacillating statement. Besides that from the statement of PW 7 Mst. Samudri it appears that the name of the accused was given to the witness by Kanwar Lal and Amara, The witness was 9 years of age on the date of her examination. A child witness can be expected to give out a true version because of his innocence, but there is always the danger in accepting the evidence of such a witness, because under the influence of other persons he might have been coached to give out version by persons who may have influence upon him. The name of this witness has not been mentioned in the First Information Report. First Information Report of this occurrence reached the Court on February 3, 1975 i.e., nearly after 48 hours. In spite of that non-mentioning of the name of this eye-witness in the First

Information Report does create a suspicion about the presence of this witness at the time of the occurrence. If we discard the statement of these two witnesses then remains the statement of P.W. 4 Radha Kishan who only saw the accused running away at a distance from the scene of occurrence. In examination-in-chief the witness stated that he heard Mst. Samudri saying that Mst. Sankari was being taken away. This portion of the statement further suggests that neither Mst. Samudri nor Bajranga saw the occurrence of inflicting injuries on the person of the deceased. Simply on basis of the statement of Radhya Kishan that accused was seen running away from the scene of occurrence from a distance and other evidence to the point that accused was present in the village on the date of occurrence, it would not be safe to maintain the conviction of accused appellant Uda in an offence which is punishable with imprisonment for life or death. The child witnesses relied upon by the trial Court cannot be said to be of sterling worth. Beside that, the learned Additional Sessions Judge himself has observed that the witness does not understand the questions properly. In the facts and circumstances of the case we are of the opinion that it is a fit case in which the accused should be given benefit of doubt.

8. The net result of the above discussion is that the appeal is allowed. The order of conviction and sentence awarded by the trial Court is set aside. He is acquitted of all the charges framed against him. The accused is in jail. He is ordered to be released forthwith, if not required in any other case.

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