

Madan Lal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-06-2006

Reported in : I(2006)DMC864; RLW2006(4)Raj2621; 2006WLC(Raj)UC614

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 307; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal Nos. 407 and 495 of 2001

Appellant : Madan Lal

Respondent : State of Rajasthan

Advocate for Def. : Brahmanand Sandu, Adv.

Advocate for Pet/Ap. : S.C. Sharma, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

ORDER

1. The appellant was indicted in Sessions Case No. 47/1999 before the learned Additional Sessions Judge No. 2, Sikar for having committed murder of his wife Gita. Learned Judge vide judgment dated June 8, 2001 convicted and sentenced the appellant under Section 302, IPC to suffer imprisonment for life and fine of Rs.

5000 in default to further suffer six months imprisonment.

2. As per the prosecution case Gita (since deceased) was brought to the Hospital at Sikar on August 27, 1999 from village Lalasi in an injured condition. Hospital authorities admitted her and informed the Police vide letter (Ex, P-27). Bhagwan Singh, ASI (P.W. 15) reached hospital and recorded Parcha Bayan' of Gita at 6.00 a.m. In the Parcha Bayan (Exp. P-29) Gita stated that her husband Madan Lal (appellant), who had gone to Saudi Arabia 20 months ago, suddenly came back and around 2 a.m. woke her up and asked her to come out. No sooner did she got up, appellant kicked her and inflicted blows with a cutting instrument on her neck, breast, abdomen, hand and broke her left hand. On hearing her hue and cry her mother-in-law, sons, brother-in-law and neighbours arrived and intervened. Her brother-in-law then took her to the hospital. On the basis of this 'Parcha Bayan' a case under Section 307, IPC was registered. Since the incident occurred within the jurisdiction of Police Station Laxmangarh, Parcha Bayan was forwarded to Police Station Laxmangarh. During the pendency of investigation Gita died and the case was converted under Section 302, IPC. After usual investigation charge-sheet was filed and in due course the case came up for trial before the learned Additional Sessions Judge No. 2, Sikar. Charge under Section 302, IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 21 witnesses. In the explanation under Section 313, Cr.P.C., the accused claimed innocence and stated that on the date of incident he had returned from the foreign country and brought gold weighing 25 Tolas and money in the sum of one lakh. In his absence some unknown persons came to his house, murdered his wife and took the gold and cash. His brother Chhotu and other witnesses falsely implicated him in the case in order to grab his land. No witness in defence was however examined. Learned trial Judge on hearing the final submissions convicted and sentenced the accused as indicated hereinabove.

3. Learned Counsel for the appellant vehemently contends that in view of the injuries sustained by Gita, she was not in a fit state of mind to give the statement. The learned trial Judge, therefore, committed illegality in placing reliance on her alleged dying declaration which was not corroborated by the independent

evidence. Having carefully gone through the record, we find no merit in this contention. Gita was admitted to S.K. Hospital, Sikar at 5.00 a.m. on August 27, 1999 and Police Station Sikar was informed at 5.30 a.m. by the Hospital Authorities vide Ex. P-27. Bhagwan Singh, ASI (PW 15) at 5.40 a.m. made a written request (Ex. P-28) to Medical Jurist to certify as to whether Gita was in a fit state of mind to give the statement. At 5.45 a.m. Medical Jurist made endorsement that she was fit to give statement and thereafter her statement was recorded at 6.00 a.m. Principles that have been laid down in the various judgments by the Apex Court may be looked into at this juncture. They are as under--

- (i) there is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration;
- (ii) if the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration;
- (iii) the Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination;
- (iv) where a dying declaration is suspicious, it should not be acted upon without corroborative evidence;
- (v) where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected;
- (vi) a dying declaration which suffers from infirmity cannot form the basis of conviction.

4. Adjudging the dying declaration of Gita in view of the above parameters, we find it true and voluntary. Bhagwan Singh, ASI (P.W. 15) after obtaining the certificate from the Medical Jurist promptly recorded it and there is no reason to disbelieve it. Testimony of Bhagwan Singh could not be shattered even after searching cross-examination.

5. As per post-mortem report (Ex. P-39) Gita had sustained as many as 29 ante mortem injuries and cause of her death according to Dr. Raj Kumar (P.W. 20) was

shock brought about as a result of ante mortem injuries to lungs.

6. Evidence of extra-judicial confession was also adduced by the prosecution at the trial. Banshidhar (PW 2) and Mahaveer Mali (PW 14) deposed that when they reached the place of incident they saw appellant armed with 'Katari' and his wife was lying in an injured condition inside the house. On being asked by them as to what had happened the appellant told them that he had beaten his wife and killed her.

7. Katar allegedly used in commission of offence also got recovered on the basis of disclosure statement of the appellant made under Section 27 of the Evidence Act. As per FSL report (Ex. P-36) blood group of deceased was of 'O' group which was found on the shirt of the appellant and on 'Katar' recovered at the instance of the appellant.

8. There is nothing on record to establish that in order to steal gold and cash some body else had committed murder of Gita. The appellant gave false explanation in his statement under Section 313, Cr.P.C. The prosecution in our considered opinion, has established charge under Section 302, IPC against the appellant beyond reasonable doubt and we find no infirmity in the impugned judgment of learned trial Judge.

9. For these reasons, we do not find any merit in the instant appeals and the same stand dismissed. We confirm the conviction and sentence awarded to appellant under Section 302, IPC.