

**Abdul Hakim Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/758596](http://sooperkanoon.com/758596)

**Court :** Rajasthan

**Decided On :** Mar-21-1984

**Reported in :** 1984WLN(UC)38

**Judge :** D.L. Mehta and; S.S. Byas, JJ.

**Appeal No. :** D.B. Criminal (Jail) Appeal No. 545/79

**Appellant :** Abdul Hakim

**Respondent :** State

**Judgement :**

**S.S. Byas, J.**

1. This is a jail appeal by accused Abdul Hakim against the judgment of the learned Additional Sessions Judge, Udaipur dated October, 24, 1979 convicting the appellant under Section 302, IPC, and sentencing him to imprisonment for life with a fine of Rs. 500/-.

2. Briefly stated, the prosecution case is that the deceased-victim Mst. Ruqayia was the daughter of the PW 2 Fakir Mohammed and was married to the accused a few days before her murder, which took place on 9-5-1979 in the house of the appellant situate in Kelwa House, Udaipur. It is alleged that the elder sister of the deceased-victim was also married in Udaipur with one Chhote Khan. The accused

suspected that Mst. Ruqayia was in illegal intimacy with Chhote Khan. Four or five days before the occurrence, Mst. Ruqayia went to live with her elder sister in the city. She also went with Chhote Khan to Nimbahera and returned from there. This further strengthened the accused suspicion about the infidelity of his wife. On 9-5-79, he went to the house of Chhote Khan and brought his wife back to his house. When he brought her to his house, Mst. Ruqayia asked for a divorce. The accused thereupon bolted the room and struck a number of blows with a dagger to Mst. Ruqayia. She fell down. There was profuse bleeding from her wounds and the clothes she was wearing got stained with it. The injuries proved fatal and she succumbed then and there. The occurrence was seen by the victim's brother Chhota Khan (PW. 1). After committing the murder of Mst. Ruqayia, the accused straight away went to police Station, Ghantaghar and lodged report Ex. P/11 of the occurrence at about 12.40 P.M. on that very day. the police registered a case and arrested the accused. The SHO Rameshwar Lal (PW. 7) arrived on the spot and prepared the inquest report of the victim's dead body. It may be mentioned that when the accused went to the police station, he was having a dagger with him. When he was arrested, the dagger was seized and sealed. The Investigating Officer inspected the site and prepared the site plan. The post-mortem examination of the victim's dead body was conducted at about 3.45 P.M. by Medical Jurist Dr. D.S Chaudbary (PW. 5). He found the following injuries on the victim's body:

- (1) Incised wound over left breast over areola inferior nipple horizontal indirections 1 x 0.2 cm. x skin deep. Margins are clean cut
- (2) Incised wound over right breast 5 cm. medial to the nipple 1 x 0.3 cm. x skin deep. Margins are clean cut
- (3) Two incised wound over left arm upper 1/3rd laterally one is horizontal other is vertical 1 x 0.5 cm. x skin to muscle deep
- (4) Stab wound over left side of chest oblique in direction (inferiorly to axilla) 2 x 0.5 cm. Depth described on further dissection
- (5) Incised wound over left buttock 1.2 x 0.3 cm. x skin deep. Margins are clean cut

(6) Incised wound over right thigh posteriorly upper 1/3rd 1 x 0.5 cm. x skin deep. Margins are clean cut

(7) Incised would over right thigh laterally upper 1/3rd 1,5 x 0.5 cm. x skin deep. Margins are clean cut

3. The injuries were ante mortem and were caused by sharp weapon like dagger, The cause of death according to Dr. Chaudhary was shock and haemorrhage as a result of injuries, specially to heart and lung. The injuries were found sufficient to cause death in the ordinary course of nature. The post-mortem examination report issued by him is Ex. P/8. On the completion of investigation, the police submitted a challan against the accused in the Court of Judicial Magistrate, Udaipur, who in his turn committed the case for trial to the Court of Sessions. The case came for trial before the learned Additional Sessions Judge who framed a charge under Section 302, IPC, against the accused to which he pleaded not guilty and faced the trial. In support of its case, the prosecution examined eight witnesses and filed some documents. In defence, the accused examined one witness. The defence taken by the accused during trial was that of complete denial and alibi. On the conclusion of trial, the learned Additional Sessions Judge found the charge duly proved against the accused-appellant. The defence version was found as having no substance and merit. The accused was consequently convicted and sentenced, as mentioned above.

4. We have heard the learned Amicus Curiae and the learned Public Prosecutor. We have also gone through the case file carefully.

5. It was vehemently contended by the learned Amicus Curiae that the conviction of the appellant on the basis of the testimony of PW 1. Chhote Khan is wholly bad and erroneous. It was argued that he is the real brother of the victim and as such, he was highly interested person. No independent witness is forthcoming. It was also argued that in absence of any independent evidence, the conviction of the appellant should not be maintained. In reply, the learned Public Prosecutor supported the finding of the court below and submitted that the name of this witness Chhote Khan (PW. 1) has been mentioned as an eye-witness of the occurrence by the accused himself in the first information report Ex. P.11 lodged

by him. It was further argued that when the accused appeared at the police station, he was having dagger with him. These circumstances speak heavily against the appellant, though the FIR Ex. P/11 is not admissible in evidence against him. We have taken the respective submissions into consideration.

6. We may at-once point out that the prosecution case rests entirely on the testimony of PW. 1 Chhote Khan. It is true that he is the real brother of the victim, but that cannot be taken as sound and good reason to distrust what he testified on oath. He deposed that the deceased-victim was living with her elder sister Meharu Nisa and her husband Chhote Khan. The accused came there on the day of occurrence and brought the victim with him to his house. He also came with the deceased-victim to the house of the appellant. The appellant and the victim went in a room and he sat cut-side. All of sudden, he heard the screams of his sister Ruqayia. He went running to that room. He saw the accused with a blood stained dagger in his hand. The accused told him that he had finished his (of the witness) sister. The accused thereafter, made good his escape. The witness further dated that he saw Mst. Ruqayia lying in a pool of blood in that room. Many persons thereafter collected there. Mst. Ruqayia did not survive and passed away then and there. The witness was cross-examined, but nothing could be elicited from him which may make his testimony unworthy of belief. The learned Additional Sessions Judge accepted the testimony of this witness as true and reliable. On a careful scrutiny of what he testified on oath, we are unable to take a view different from that taken by the learned trial Judge.

7. PW. 4 Mst. Alia Rakhi is the mother of the appellant. She also deposed that on the day of incident, the accused brought his wife Mst. Ruqayia from the house of her elder sister. Both of them went together in a room. All of a sudden, she heard the cries. Many persons collected there Mst. Ruqayia was found lying badly injured in that room. Though she was declared hostile by the prosecution, she admitted that the accused and the victim came together to her house and went in the room in the first floor. Thereafter the deceased raised cries. In these circumstances, when the accused and the victim were together in that room, a natural inference arises that it was he and he alone who had put the victim to death.

8. The accused was arrested as soon as he lodged the FIR Ex. P/11. He was found having a dagger with him. The dagger was blood stained. This also affords a very valuable corroboration the testimony of PW. 1 Chhote Khan.

9. We, therefore, find on no force in the contention of the learned Amicus Curiae that the appellant was convicted on nil evidence. The evidence discussed above unmistakably points out that Mst. Ruqayia was done to death by the accused and none else. It was next contended by the learned Amicus Curiae that the accused committed the murder of his wife on a grave and sudden provocation and as such, the offence stands reduced to under Section 304 Part I, IPC. We have given our thoughtful consideration to the contention and find no substance in it. The accused in his statement under Section 313, Cr PC did not state that he committed the murder of his wife due to any sudden and grave provocation. He advanced the plea of alibi, which has been found false. There is no material on record to show that the accused committed the murder on account of any sudden and grave provocation given by the deceased-victim. The FIR Ex. P/11 is not admissible in evidence against the accused. Even if it is held admissible in evidence, the mere fact that the deceased-victim asked for a divorce, does not constitute grave and sudden provocation so as to incite the accused to commit her murder.

10. From what we have discussed above, we find no force in this appeal of the accused. He was rightly convicted and sentenced under Section 302, IPC. The appeal of accused Abdul Kakim is consequently dismissed.