

Gopal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-08-2006

Reported in : RLW2006(3)Raj2364; 2005WLC(Raj)UC227

Judge : Shiv Kumar Sharma and; Prem Shanker Asopa, JJ.

Acts : Indian Penal Code (IPC) - Sections 201, 302, 304 and 511; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 434 of 2003

Appellant : Gopal

Respondent : State of Rajasthan

Advocate for Def. : R.P. Kuldeep, Adv. and; Arun Sharma, Public Prosecutor

Advocate for Pet/Ap. : N.C. Choudhary, Adv.

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1. Gopal, the appellant herein was put to trial before the learned Additional Sessions Judge Sambhar Lake District Jaipur, who vide judgment dated March 6, 2003 convicted the appellant Under Section 302 IPC and sentenced him to suffer

imprisonment for life and fine Rs. 2000, in default to further suffer one year simple imprisonment.

2. The prosecution case as unfolded during trial is as under:-

On October 6, 2000 the informant Madan (PW. 8) submitted a written report (Ex. P. 18) at Police Station Phagi wherein he stated that his daughter was married to appellant who often used to beat her. On the day of incident when he reached to the house of appellant he found his daughter lying dead. There were injuries on her head, hands and legs. On that report a case was registered for the offence Under Section 302 IPC and investigation commenced. On completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Sambhar Lake District. Jaipur. Charges Under Sections 302 and 201 read with 511 IPC were framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 15 witnesses. In the explanation Under Section 313 Cr.P.C, the appellant claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard the learned Counsel for the parties and carefully scrutinised the material on record.

4. Indisputably the death of Sita Devi was homicidal in nature. As per post mortem report (Ex. P. 17) she received following injuries:-

1. Ecchymosis Rt. and Lt. eye 2 cm in broad at upper and lower lid and medial and lateral canthal region extending upto supra and intra orbital margins of BE (black eye)

2. Lacerated wound 1 cm x 1/2 cm skin deep at left lateral canthus.

3. Abrasion 1 cm x 2 cm Rt. maxillary region.

4. Abrasion 1 cm x 1 cm Rt. intra orbital margin below medial canthus.

5. Abrasion 1 cm x 1 cm Rt. pinna Helix

6. Abrasion 2 cm x 2 cm Lt. face at Maxillary region
7. Contusion whole arm circumscribed extending from deltoid region to 2 cm above elbow joint on both Rt. and Lt. upper arm. Erythema present at mid third of shaft of humerus with hematoma at mid 2/3 of both arms Rt. and Lt. in circumscribed manner.
8. Abrasion 2 cm x 2 cm Lt. arm upper 1/3 at deltoid region.
9. Abrasion 2 cm x 3 cm Lt. upper 1/3 of forearm anterior aspect
10. Abrasion 2 cm x 2 cm Lt. mid 1/3 of forearm posterior aspect
11. Abrasion 1 cm x 1 cm Lt. hand posterior aspect
12. Abrasion 1 cm x 1 cm Lt. knee
13. Crush injury lacerated Rt. hand middle finger at distal phalanx upto distal interphalangeal joint.
14. Abrasion 2 cm x 3 cm Rt. mid leg anterior aspect
15. Abrasion 2 cm x 2 cm Rt. knee.
16. Abrasion 2 cm x 3 cm Rt. shoulder
17. Abrasion 2 cm x 3 cm Lt. lumbar region above iliac crest (Lt.)
18. Abrasion 2 cm x 2 cm Lt. iliac crest.

In the opinion of Dr. Narendra Kumar Jain (PW. 13) the cause of death was coma as a result of head injury due to contusions and laceration of surface of temporo parietal region of brain.

5. learned Counsel for the appellant submitted that there is no eye witness of the incident and all the witnesses only stated about the quarrel of husband and wife which usually occur in routine life. No witness has stated that he saw the appellant beating the deceased. There was no intention or motive of the appellant to kill his wife. Even according to Autopsy Surgeon only one injury on right and left eye

proved fatal. Learned Public Prosecutor however opposed this contention and supported the impugned judgment.

6. Having weighed the prosecution evidence we notice that nobody had seen the incident. However from the testimony of neighbours viz. Hari Narain (P W. 1) Birdhi Chand (PW. 2), Ramesh Chand (PW. 3) it is established that the appellant and deceased used to quarrel and appellant used to beat the deceased. On the date of incident in a routine quarrel the appellant gave beating to the deceased and in the course of beating one injury on right and left eye caused Ecchymosis and that proved fatal. From the evidence it could not be established that appellant had any motive to cause the death of his wife. Except one injury on right and left eye, other injuries sustained by the deceased were simple in nature. We thus find that the appellant acted with the knowledge that the death of his was likely to ensue, but there was no intention to cause death or an injury likely to cause death. Since the occurrence appeared to have occurred all of sudden and there was no premeditation on the part of appellant, the offence has to be brought down from the first category of murder to culpable homicide not amounting to murder and the appellant can be held guilty Under Section 304 Part I IPC.

7. For these reasons, we partly allow the appeal and instead of Section 302 we convict the appellant Under Section 304 Part-I of Indian Penal Code and sentence him to suffer rigorous imprisonment of 10 years and a fine of Rs. 5,000/- in default of payment of fine to further suffer six months rigorous imprisonment.

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