

Mohan Das Vs. State of Rajasthan

Mohan Das Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/760277

Court : Rajasthan

Decided On : Jul-25-2001

Reported in : 2002(4)WLN278

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

Acts : Indian Penal Code (IPC) - Sections 302 and 304

Appeal No. : D.B. Cr. Appeal No. 265 of 1998

Appellant : Mohan Das

Respondent : State of Rajasthan

Advocate for Def. : R.P. Meena, Public Prosecutor

Advocate for Pet/Ap. : N.C. Chaudhary and; Anuraj Rai, Advs.

Judgement :

Sharma, J.

1. In the instant appeal the appellant has impugned the judgment dated March 3, 1998 of the learned Special Judge, SC & ST (Prevention of Atrocities) Cases Ajmer whereby the appellant was found guilty, convicted and sentenced in Sessions Case No. 1 of 1995 under Section 302 IPC to imprisonment for life and a fine of Rs. 1000A (in default to further undergo six months R.I.).

2. As per prosecution story Pooran Singh, A.S.I., Police Station Sadar Kotwali, Ajmer on receiving information on June 24, 1983 at 9.50 p.m. from J.N. Hospital that a woman having burns on her body was admitted, reached at the Hospital and recorded Parcha Bayan of injured Asha (since deceased) who deposed that when she was alone in the house her husband Mohan Das (accused appellant) poured kerosene on her, ignite the match stick and set her ablaze. When she raised hue and cry, the tenants of the house came over there. After a while she also found her husband there who put a cloth on her. On the basis of Parcha Bayan of Asha, Police Station Ganj Ajmer registered case No. 116/83 under Section 307 IPC and commenced investigation. Asha died on July 21, 1983 and the case was converted into section 302 IPC. Deadbody of Asha was subjected to post mortem. Statements of witnesses under Section 161 Cr.P.C. were recorded. Accused appellant was arrested. On conclusion of the investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge who framed charge under Sec. 302 IPC. The appellant denied the charge and claimed trial. The prosecution examined as many as 16 witnesses and exhibited 23 documents. In the statement recorded under Sec. 313 Cr.P.C. the appellant denied the allegations and claimed innocence. No evidence in defence was however led. Learned trial judge after hearing the final submissions convicted and sentenced the appellant as indicated above.

3. The case of the prosecution is mainly based on the Parcha Bayan Ex.P.1 of the deceased Asha registered as FIR by Naval Kishore PW.1 and on her dying declaration Ex.P.17 noted down by the Magistrate Om Prakash Chorsia PW.13. It was canvassed on behalf of the appellant that from the evidence collected by the prosecution no case under Section 302 IPC is made out against the appellant. The incident had taken place on June 24, 1983 and Asha died in the Hospital on July 21, 1983 i.e. after about 28 days. The cause of her death according to post mortem report was septicaemic shock as a result of ante mortem burns. She was medically examined on June 24, 1983 and according to her injury report Ex.P.19 she sustained 55% superficial and deep burns on the various parts of her body. She was taken to the Hospital by the appellant. Her relatives tutored her before her statement was recorded. No independent witness had corroborated the alleged dying declaration and it cannot be acted upon. Alternatively it was urged

that even if the dying declaration of Asha is believed then also the case does not travel beyond section 304 Part II IPC.

4. On the other hand on behalf of the State of Rajasthan it was contended that the case under Section 302 IPC is established beyond reasonable doubt from the prosecution evidence and the appellant was rightly convicted by the learned trial judge.

5. We have pondered over the submissions advanced before us and carefully scanned the material on record. PW.1 Nawal Kishore registered the FIR on June 25, 1983 on the basis of Parcha Bayan of Asha. Shri Om Prakash Chorsia PW.13 Deposed that on June 25, 1983 he was posted as Judicial Magistrate No.2 Ajmer and he recorded the dying declaration of Asha. The dying declaration has been exhibited as Ex.P. 17. At the time of giving statement Asha was fit and conscious. Though learned Magistrate was cross examined at length but nothing could be elicited from the cross examination that could shatter the prosecution case. In the dying declaration Ex.P. 17 Asha deposed that when she was alone in the house around 6.00 p.m. her husband poured kerosene on her and set her ablaze. When she made hue and cry attempt was made to save her. Dr. B.D. Kavia, PW.5 who conducted the post mortem of the dead body of Asha, stated in his cross examination that though he had seen the bed head ticket of Asha but he did not examine the type of treatment which was given to her. The septicaemic shock which was the cause of death was developed because of infection but he did not examine the cause of infection. This witness was not in a position to definitely say that what could have been the prognosis in absence of infection. He also could not say that if the infection could not have developed in the patient whether she could have died or not. From the FIR Ex.P.2 it is revealed that after setting Asha ablaze the appellant made an attempt to rescue her by putting a cloth on her,

6. Having given our consideration to the entire material on record, we find no good reason to discard the dying declaration Ex.P. 13 given by the deceased regarding the actual occurrence and we are of the opinion that the trial judge has rightly acted on such dying declaration. The only question that needs our answer is whether the appellant is guilty of the offence of murder or culpable homicide not

amounting to murder?

7. From the material on record following factual situation emerges:

G) When Asha was admitted to the Hospital, she sustained 55 percent superficial and deep burns on various parts of her body.

GO Asha died after about 28 days of the occurrence due to septicaemic shock as a result of ante mortem burns.

(iii) In *Parcha Bayan Ex.P. 1*, Asha deposed that the appellant after the incident put a cloth over her.

(v) From the evidence it is also established that it was the appellant who took Asha in an auto rickshaw to the Hospital and got her admitted.

8. From the above facts we are inclined to think that all that the appellant thought was to inflict burns to Asha and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. In our considered opinion the appellant would not have intended to inflict the injuries which Asha sustained on account of his act. From the facts it is established that the appellant did not intend to kill. Asha. Unfortunately she died after 28 days of the incident because of infection developed on the burns, Thus, we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder.

9. In a similar situation their Lordships of the Supreme Court in *Kalu Ram v. State of Rajasthan (1)*, altered the conviction of accused Kaluram from the offence under Section 302 to 304 Part II IPC. That was also a case of superficial burn injuries sustained by the deceased.

10. We therefore alter the conviction from Section 302 to 304 Part II IPC and impose the sentence of rigorous imprisonment for seven years on the appellant. To that extent we set aside the impugned judgment of the learned trial judge and allow the appeal of the appellant in part.