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Court : Rajasthan

Decided On : Feb-27-1991

Reported in : 1991(1)WLN522

Judge : R.S. Verma and; Y.R. Meena, JJ.

Appeal No. : D.B. Cri. Appeal No. 231 of 1987

Appellant : Ramchander

Respondent : State of Rajasthan

Judgement :

Y.R. Meena, J.

1. This appeal is directed against the judgment of Additional Sessions Judge No. 1, Hanumangarh dated 15.7.87, whereby he has convicted accused appellant Ramchander Under Section 302, IPC and has sentenced him to undergo, imprisonment for life and to pay a fine of Rs. 100 and in default of payment of fine to undergo further simple imprisonment for one month.

2. The facts, in short, are that on 4.1.86 one Heeralal (PW 2) lodged an FIR stating therein that at about 4 p.m. he was in his field when he received an information that Ramchander, his brother had killed his wife Parmeshwari; thereupon, he went to the house of Ramchander and saw that Parmeshwari was lying dead. Her

daughter Imarti and her brother Kishan were sitting there. They told him that Ramchander had killed Parmeshwari at about 3.30 p.m., and had ran away. They further stated that Ramchander was asking Parmeshwari to give him money for drinking wine and when she did not give, he had beaten her and consequently she died. A case was registered Under Section 302, IPC on 4.1.86 at 10 p.m. After registration of the case, police undertook investigation. Site Plan Ex. P.2, site Inspection Memo Ex. P. 2- A, Description Memo of the corpus of the deceased Ex. P. 5 Seizure Memo of ornaments Ex. P. 6, Seizure Memo of Bangles Ex. P.7 Seizure Memo, of blood stained soil Ex. P. 8 and Seizure Memo of clothes of deceased Ex. P. 9 were prepared. Post mortem of the dead body was got conducted. Post mortem report is Ex. P.4. The injuries found on the corpus were as under:

1. Lacerated wound 2'x 1/2',x brain deep Lt. side frontal bone & brain material is coming out.
2. Lacerated wound 1'x 1/2'x 1/2' Rt. Eyebrow.
3. Lacerated wound 1'1/4' x 2' x 1/4' Rt. upper jaw.
4. Bruise 3'x 2' Rt. upper jaw.
5. Lacerated wound 1/2'x 1/2' x 1/4' Lt. side forehead.
6. Lacerated wound 1'x11/2x1/4' Lt. side forehead.
7. Lacerated wound 2'x1/2'x 1/2' Lt. Parietal bony area.
8. Bruise 6'x4' Lt. side face.
9. Abrasion 11/2'x1/2x1/4' Lt. thigh (Lat. side).
10. Abrasion 1/2'x1/2' Rt. Knee Jt.
11. Lacerated wound 1'x1/2' x1/2' Lt. side of face.
12. Lacerated wound 1'x1/4 x 1/4' Rt. ear (Infront).

13. Lacerated wound 1/2' x 1/4' x 1/4 Lt. parietal bony area.

Accused was arrested on 14.1.86. Arrest Memo is Ex. P. 10. On 16.1.86 at the instance of accused Baranga (about four feet long wooden stick) was recovered. The blood stained Baranga (danda), clothes and soil were sent for chemical examination. In Forensic Science Laboratory, on examination, blood of 'A' group was found on Baranga and clothes. Challan against the accused Ramchander was filed in the Court and the case was committed to the Court of Sessions. Ramchander accused was chargesheeted for the offence Under Section 302, IPC. He denied having committed any offence and prayed for trial. During the trial, as many as 7 witnesses were examined by the prosecution. In defence, accused Ramchander stated that his daughter and son-in-law wanted to grab his agricultural land and property and they have implicated him falsely in this case. Learned Additional Sessions Judge did not believe the defence story. He convicted him Under Section 302, IPC and sentenced as stated above.

3. Being dissatisfied with the judgments of learned Additional Sessions Judge, accused-appellant has come in appeal before this Court.

4. Learned Counsel for the accused-appellant Shri Ganpat Ram appeared and submitted that accused appellant was wrongly implicated in the case. Heeralal, the first informant denied that Imarti (PW 1) and Kishanlal (PW 4) were sitting near the dead body while he came from the Held. In fact, police has planted them as eye witnesses. He submitted that there is no cogent explanation as to why the statements of Imarli and Kishanlal were taken at 3.30 on 5.1.86 while the offence had been committed at 3.30 on 4.1.86. When Heeralal did not support the case of prosecution, no eye witness remained to support the prosecution story. He further submitted that Imarti is daughter of accused, she alongwith her maternal uncle Kishanlal (PW 4) wanted to grab the land at the instigation of her in-laws as accused has no son and if accused is convicted, land of accused can be grabed by the in-laws of Imarti. He also submitted that no reason was given how Imarti was on the scene and why she had come to the house of the accused. Similarly, no satisfactory explanation was given why Kishanlal was present on the scene. The in-laws' village of Imarti is at a distance of 40 kilometres from the place of

occurrence and the village of Kishanlal was at a distance of 20 miles from the scene of the occurrence. Their presence on the scene of occurrence is not natural. The lower Court has not properly appreciated these facts and there is no reliable evidence against the accused. It is urged that in their police statements, both Imarti and Kishan did not give the story that after witnessing the offence, they had rushed out of the house because of fear. At the trial both these witnesses have made an attempt to show that after the incident they ran out of the house. It is urged that this improvement was purposeful. Had they admitted their continued presence on the spot, concealment of Baranga in that house could not have been possible. This deliberate change has been made so as to bring their testimony in accord with the theory of concealment of Baranga. This improvement also further shows that accused has falsely been implicated by Imarti and Kishanlal. Alternatively, the case does not travel beyond section 304 Part II as the incident took place all of sudden when Parmeshwari declined to pay money to the accused for drinking. A quarrel took place and in the heat of passion, Parmeshwari was beaten and consequently died but there was no intention of killing her.

5. On 16th November, 1990, learned Counsel for the accused-appellant Shri M.L. Garg, in addition to the arguments of Shri Ganpat Ram submitted that FIR in fact was not registered on 4.1.1986. It was registered after planting the eye witnesses PW 1 Imarti and PW 4 Kishanlal. Not only that, the FIR reached the Court on the third day of the incident and there is no explanation why the statements of PW 1 and PW 3 were taken on 5th at 3.30 while the police had reached on the spot on 4th itself. If these witnesses were actually present, their statements should have been taken on the very day of the incident. Hence, accused was wrongly convicted by the trial Court. He further submitted that signature of these eye witnesses viz. PW 1 Imarti and PW 4 Kishanlal were not taken on the site plan. There is no explanation why, even when they were present, their signatures were not taken. No explanation is given by the prosecution for this omission. Alternatively he also submitted that the case docs not travel beyond section 304, Part II IPC.

6. For the complainant, learned Counsel Shri Bhagwati Prasad submitted that Imarti, daughter of the accused and the deceased was pregnant and as per custom first child was to be delivered at the house of her parents, therefore, her

presence was natural. Kishanlal PW 4 was called upon by the deceased as accused had been beating her time and again and whenever she refused to give him money for drinking wine, therefore, his presence was also natural. He clarified that Kishanlal left the place of occurrence to inform his relations in his village on the same day and came back next day at 10 a.m. alongwith his brother. That was a very natural conduct, therefore, no doubt could be raised about his presence. He also submitted that Kishanlal PW 4 and Imarti PW 1 did not intervene as they were afraid of the accused as the accused was in the habit of beating his wife mercilessly even for not giving him money for drinking wine and in the natural course they cried for help. Learned Public Prosecutor Shri S.M. Singhvi supported the judgment of trial Court.

7. The cases referred before us are 1979 AIR 1985, AIR 1968 SC 687, AIR 1958 SC 456, 1989 RCC 476, 1975 SCC (Cr) 186, 1981 Cr. LR 462(SC), 1976 PART III SCC 330 and 1979 SCC 132.

8. We have heard the rival submissions and perused the material on record. The facts are not very much in dispute that Parmeshwari did not die a natural death and her death was homicidal. That is supported by the post-mortem report. As many as 13 injuries were found on the corpus. All injuries were caused by blunt object. Injury No. 1 was sufficient to cause death in the ordinary course of nature. Frontal bone was found broken and brain material had come out, therefore, it is neither a case of natural death nor of suicide. It is a case of homicide.

9. The next issue which is to be seen is whether Ramchander accused had caused all these injuries? PW 2 Heeralal lodged FIR stating therein about the incident in hand but during trial he was declared hostile, therefore, he is not a witness of sterling worth and cannot be relied upon. But PW 1 Imarti and Kishanlal PW 4 were consistent in their statements during the investigation as well as during the trial except for some minor improvements. Therefore, they are the witnesses of sterling worth. Imarti PW 1 as well as Kishanlal PW 4 both support the story of prosecution that Ramchander killed his wife at 3.30 p.m. on 4.1.85. Reason given by both of them is that whenever Parmeshwari, the deceased refused to give money for drinking to the accused, the accused used to beat her and on that day,

accused had beaten her mercilessly and gave that Baranga blow which hit her head so forcefully that her gbrain material came out and she fell down. The present of Imarti is natural. She was pregnant and there is custom in some communities that the girl should deliver first child at her parents house, secondly the story of defence that her in-law wanted to grab the agricultural land of the accused does not appeal to us. No iota of evidence is on record to support the defence. It is difficult to believe that daughter would falsely implicate her father. Her presence was doubted because she did not intervene while the accused was beating her mother. The person who is in habit of beating his wife whenever she refused to give money for his drinking, may be accruel person and out of fear she could not have courage intervene while the accused was beating her mother. Kishanlal PW 4 is the brother of the deceased. His presence also appears to be natural. The reason is that on the complaint of the deceased, he had come to see her and to help her. He also could not intervene while accused was beating his sister as he was also afraid of the accused who was so cruel that he used to beat his wife only for the reason that she refused to give money for his drinking. The reason, why he left the place of occurence, has been sufficiently explained. After death of Parmeshwari, he went to his village to infrom his relations and came next day with his brother and attended the funeral. Not taking of signatures of PW 1 and PW 4 on the site plan is not so serious infirmity which may destroy the case of prosecution in toto. Kishanlal had left for his village and came the next day. When the site plan had been prepared in his absence, there was no question of obtaining his signatures on the site plan. Statements of PW 1 & PW 4 were taken after completing the necessary formalities and other preliminary enquiries, therefore, the statements recorded on next day at 3.30 p.m. also do not affect the story of the prosecution. Further, Ex. P 21, the FSL report reveals that Kurta, Baniyan, Odhna, Ghagra and Boriya were stained with human blood and lakdi(Baranga) was also stained with human blood. The post-mortem report also supports that case of prosecution as there was one fatal injury at the frontal bone and brain matter had come out. As many as 12 other lacerated and bruises injuries were found on the corpus. Thus, that also supports that when she fell down after the Danda blow at head, accused continuously beat her and caused injuries on different parts of her body. There remains no doubt that accused caused the injuries which were found

on her body.

10. Further, after the incident, the accused ran away and was arrested after 10 days of the incident. No satisfactory explanation was given why he left and remained out of village. That further supports the story of the prosecution.

11. The defence taken by the accused that Imarti has given false statement at the instance of her in-laws who alongwith the brother-in-law of the accused, Kishanlal wanted to grab the agricultural land of the accused, in our view, is not convincing as normally no daughter will falsely implicate her father in a murder case if he is innocent. Except this oral submission, no evidence has been brought on record which may support the defence of the accused. Further, the story of prosecution is corroborated by the FSL report according to which the blood group found on Baranga and clothes of the deceased is of the same group as of the smeared soil.

12. Learned Counsel for the accused-appellant, Shri M.L. Garg, mainly emphasised that prosecution witnesses Imarti (PW 1) and Kishanlal (PW 4) are planted witnesses. The FIR was lodged on 5.1.86 and not on 4.1.86 and finally it reached to Court on 6.1.86. If we see the incident and the time of incident, the offence was committed on 5.1.86 at 3.30 p.m. The report was lodged at 10 p.m. on the same day. The next day was Sunday, therefore, the copy of FIR was not sent to the Court of Munsif on Monday the 6th January, 1986. Therefore, there is nothing abnormal in it. About the presence of Imarti and Kishanlal, we have already discussed, therefore, we do not find substance in the submission of the learned Counsel for the accused appellant, Shri M.L. Garg.,

13. Now question remains for consideration is whether the offence of the accused comes within the purview of Section 302 IPC or 304 IPC.

14. In Jagrup Singh v. State 1981 Cr. L.R. (SC) Vol IX 462, the accused had given blows with blunt side of Gandhasa on the head of the deceased in heat of moment. He was held guilty of offence Under Section 304 II and not for the offence Under Section 302 IPC.

15. In *Atma Singh and Anr. v. State of Rajasthan* (1989) RCC 478, looking to the nature of injury and relationship between the deceased and accused person, this Court was of the view that accused can be attributed the knowledge that his act was likely to cause death but he cannot be attributed the intention to cause death, the offence covers only Under Section 304 Part II, IPC.

16. In *Hardev Singh and another v. State of Punjab* (1975 SCC(Cr.) 186 their Lordships laid down the ratio on the basis of which to decide whether it was a case Under Section 302 or 304 IPC. The test to be applied is to see whether causing of the fatal injury was accidental or unintentional or whether some other kind of injury was intended to be inflicted by the assailant. Ordinarily and generally, once the existence of the injury is proved, the intention to cause it will be presumed unless the evidence of circumstances warrant an opposite conclusion.

17. In *Pandurang Narayan Jawleker v. State of Maharashtra* : 1978 CriLJ995 their Lordships observed that before the provisions of Section 304 may be applied with the act committed by the accused, it cannot be said that the injury caused by the accused was a cruel one or the accused did not act in a cruel manner.

18. In *Bhagwan Munjaji Pawade v. State of Maharashtra* (1970 SCC (3)330) their Lordships have taken the view that Section 300 Exception 2 does not apply where the deceased was an armed man and no right of private defence of body or property accrued to the accused and when a sudden fight on a sudden quarrel took place and accused inflicted three fatal blows on an unarmed deceased, case is not covered by Exception 4 either.

19. In the light of the principles enunciated in the judgments of their Lordships referred to above, when we look into the facts of this case, we find that the accused Ramchander was in habit of beating his wife deceased Parmeshwari whenever she refused to give money for drinking wine. On the day of incident also he demanded money and on refusal he beat her and the danda blow on her head in the heat of passion which resulted in her death. It cannot be said with any amount of certainty that he intended to cause a blow on her head with the intention of killing her. It was an act done in sudden passion of anger. It appears that he only wanted to chastise his wife for not paying him money. It is purely

accidentally that the Baranga hit her on the head and caused her death. It is to be remembered that all other injuries caused to her were simple. It appears that the beating was given in blind rage. Hence, the offence in no way comes under the purview of Section 302, IPC. The beating was cruel and the danda blow at her head was a cruel action of the accused, but no intention to commit murder can be inferred from these facts. However, the accused in any case is punishable for offence Under Section 304 II, IPC. We therefore, alter his conviction from one Under Section 302, IPC to one Under Section 304 II, IPC.

The appellant is in jail since 14.1.86. He has, thus undergone imprisonment for more than five years. In our opinion, ends of justice will be met if the sentence of the appellant is reduced to one already undergone by him. Hence, we reduce his sentence to that already undergone by him. He shall be released forth with if not required in any other case.

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