

State of Rajasthan Vs. Kantilal

State of Rajasthan Vs. Kantilal

SooperKanoon Citation : sooperkanoon.com/760903

Court : Rajasthan

Decided On : May-09-1978

Reported in : 1978(11)WLN282

Judge : C. Honniah, C.J. and; G.M. Lodha, J.

Appeal No. : D.B. Criminal Murder Reference No. 1 of 1978 and Cr. Appeals No. 6 and 7 of 1978

Appellant : State of Rajasthan

Respondent : Kantilal

Judgement :

C. Honniah, C.J.

1. The appellant Kantilal has been convicted under Section 302, Indian Penal Code and sentenced to death. The learned Sessions Judge Jalore has made a reference to this Court for confirmation of the death sentence

2. The facts leading to the prosecution of the appellant briefly stated are these : Kantilal appellant married Bhuri (deceased) 6 or 7 years prior to May 29, 1977. After the marriage he went to Palanpur where he was doing some business. A few days prior to May 29, 1977, he closed his business and came along with Bhuri and his three children to Bargain, where he was staying in a rented house belonging to Ukhaji. A few days after he came to Badgaon village, Bhuri went to Ratanpur to her

mother's place Eight days prior to the murder the appellant went to her mother-in-law's house to fetch her. On May 21, 1977 he came back to his house along with his wife and children. On that day, it appears, he did not give her any food on the ground that he suspected her character. On the next day, at about 9 p.m. or so Kantilal was in the company of Laxmichand (PW9), a neighbour of his, talking to him for some time. Later on he went to his house. Shortly thereafter Laxmichand (PW9) heard shouts coming from the house of the appellant. By then Bhanwar Singh (PW 7), who was going in that direction came near Laxmichand (PW 9) and both of them saw the appellant coming out of his house armed with an axe and going away. Mishrimal (PW 13), brother of Bhuri, who was living in the same village came to know about the incident. He went to the house of the appellant along with Dr Rajendra Prasad (PW1). PW 1 examined Bhuri and found her dead. Then (PW 13) came out of the house and met PW 7 and PW 9, who told him that they had seen the accused coming out of the house armed with an axe. PW1 went to the house of the father of the appellant and found the appellant sitting there with his father Malaji (PW 2). He questioned the appellant for which he replied that he had committed the murder of his wife in anger. Bhanwar Singh (PW7), who was in the company of Mishrimal (PW 13), heard this statement made by the appellant. Then PW 13 went to the Police Station, Raniwa Singh he lodged the complaint. Ex P 13 The Station House Officer, Punamchand (PW 14) on the basis of Ex.P 13 registered case against the appellant and proceeded to the spot, arrested the appellant, recovered from his person blood stained clothes and then on his information recovered axe from the well. The clothes recovered from the person of the appellant and the axe were found to contain human blood.

3. The case of the prosecution was that the appellant suspected the fidelity of his wife and therefore on the night of September 29, 1977 killed her in the most brutal manner and thereby committed an offence punishable under Section 302, Indian Penal Code

4. The entire case of the prosecution rests upon the circumstantial evidence. So far as motive is concerned, Mishri Mai (PW13) has stated that when he met his sister on May 28, 1977, she told him that her husband was ill treating her suspecting her the adulterer. Although there is no other evidence in this case from the

circumstance that the fact has been mentioned in Ex P 13 at the earliest point of time, we hold that the accused had some ground against his wife.

5. So far as the incident is concerned, there is no direct evidence at all. On the fateful night, the appellant was sitting talking to Laxmi chand (PW 9) about his business till about 9 P.M. or so. According to him, the appellant went into his house and soon thereafter he heard the there of Bhuri coming from the house. Bhanwar Singh (PW7, who owned a flour-mill was going to the mill at about 9 30 or 10 P M, and while passing near the house of PW9 met him. At that point of time he also heard the cries coming from 1 he house of the appellant. When both Bhanwar Singh (PW 7) and Laxmichand (PW9) were standing talking they saw the appellant coming out of his house armed with an axe and going away. Shortly therefore they told Mishrimal (PW 13), who came to the scene about their having seen the appellant going out of the house armed with an axe. That is also the evidence of Mishrimal (PW 13). Therefore, there is nothing to disbelieve the evidence of these three witnesses.

6. PW 13 went to the house of Malaji, father of the appellant, where he found the appellant sitting with his father. Bhanwar Singh (PW 7) also had accompanied him. When these two witnesses questioned the appellant why he had done so, the appellant confessed before them that he committed the murder of his wife in anger. Malaji (PW 2), who was present when the appellant confessed has turned hostile for obvious reasons, being father of the appellant. The evidence of Bhanwar Singh (PW 7) and Mishrimal (PW 3) find corroboration in the earliest statement made by PW 13 in Ex PW 3. Therefore, we are convinced that what these two witnesses have stated is a true version.

7. The Sub-Inspection of Police, who came to the spot found the accused wearing blood-stained clothes. He recovered the axe on the information given by the appellant from a well. These articles, as certified by the serologist, contained human blood. No explanation has been offered by the appellant in this behalf. Therefore, these circumstances taken singly and cumulatively point out that it was the appellant who committed the murder of his wife Bhuri on the night of May 29, 1977.

8. The only question that arises for consideration is whether the appellant has committed an offence under Section 302, Indian Penal Code or an offence Under Section 304, Indian Penal Code as contended by the learned Counsel for the appellant.

9. On behalf of the State Mr. Mathur strenuously urged that the accused had sufficient motive to commit the murder of his wife According to him, from the very fact that the appellant had inflicted as many as 24 injuries indicates that he must have done so with the intention and knowledge that by doing such an act the death of Bhuri was imminent He pointed out that if the evidence of Mishrilal (PW 13) is to be accepted that the accused was having a grudge against his wife because of her infidelity he must have, after a good deal of deliberation, committed the murder and therefore this is a case in which the appellant should be not only convicted under Section 302, Indian Penal Code, but the extreme penalty as inflicted by the court below should be sustained. We do not subscribe to this view because we find some intrinsic 'Rudeness' available in the case to point out that the appellant must have murdered his wife, while deprived of the power of self control by grave and sudden provocation This we say to because of the following circumstances: The appellant no doubt had some suspicion about the character of his wife That is a reason why he did not give her food on May 28, 1977 in order to punish her On the fateful day there is no evidence that he did any overt act against his wife. Even at 9 PM, when he was in the company of Laxmichand (PW 9), he did not tell him anything about the misconduct of his wife, nor did he express any indignation about the misconduct of his wife. He talked to him in the usual course and thereafter went to his house. The medical evidence in this case shows that some undigested food was found in the stomach of Bhuri indicating that she had taken her food some time before the death. This circumstance indicates that the appellant had not prevented her from taking food What transpired after the appellant went into his house, no evidence is forthcoming. Soon after the murder the appellant confessed before PW 7 and PW 13 that he did commit the murder of his wife in anger This confession made by the appellant in all probability indicates that there must have been a violent quarrel between the appellant and his wife Although the appellant has not led any evidence in support of his case that he committed the murder of his wife in grave and sudden provocation, from the very fact that he inflicted so many

injuries on his wife and there after confessed that he did so in anger in all probability indicate that he did so under grave and sudden provocation, having lost his self control. As pointed out by the Supreme Court in Harbhajan Singh v. State of Punjab : 1966 CriLJ82 , there is consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. This, however, is the test prescribed while deciding whether the prosecution has discharged its onus of proving the guilt of the accused. It is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception Where he is called upon to prove that his case falls under an Exception, Jaw treats the onus as discharged if he succeeds in proving a preponderance of probability.

10, In this case as pointed out by us earlier that on the fateful day no untoward accident happened between the appellant and his wife. Even prior to the murder the appellant did not show any indication that he was intending to do harm to his wife As a matter of fact he talked to Laxmichand (PW 9) about the loss which he had so tainted in his business and thereafter he went to his house. At the risk of repetition we want to point out that from the fact that he inflicted so many injuries we are inclined to hold that there must have been a violent quarrel during which Bhuri must have accused the appellant in filthiest language which must have provoked the appellant to such an extent to lose his self control and in that state of mind must have inflicted as many as 24 injuries, in the presence of three children, who were sleeping nearby Added to this, the appellant straight-way confessed shortly after the murder that he did so in anger This statement of the appellant can only be explained as to what must have horned between him and his wife Bhuri which provoked him to murder her. This is a case where the accused must have lost his self control due to grave atod sudden provocation which made him to murder his wife and this act of the appellant squarely falls within Exception to Section 300, Indian Penal Code.

11. The learned Counsel for the appellant, however, pointed out that the appellant at the time of committing the murder was insane and therefore he must be given the benefit of Section 84, Indian Penal Code. He brought to our notice the

evidence of Dr Radhey Shyam am (DW 1), and submitted that if his evidence is accepted, then at the relevant point of time the appellant was an insane person. We have gone through the evidence of DW 1 and we find that his evidence does not bring the case of the appellant under Section 84 of the Indian Penal Code. Section 84 provides that nothing is an offence which is done by a person who, at the time of doing in, by reason of unsound ness of mind, is incapable of knowing 'he nature of the act, or that he is doing what is either wrong or contrary to law. The law on this point is well settled.

12. Reading G.J., in Henry Perry 14 Cri. App. Rep. 48 has observed as follows :

The crux of the whole question is whether the man was suffering from epilepsy at the time he committed the crime, other wise it would be a most dangerous doctrine if a man could say, 'J once had an epileptic fit, and every thing that happens hereafter must be put down to that.

In dismissing the appeal the learned Chief Justice said, -

Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts braless the contrary is proved. To establish insanity it must be clearly proved that at the time of committing the act the party is laboring under such defect of reason as not to know the nature and quality of the act which he is commuting that is, the physical nature and quality as distinguished from the moral, or, if he does know the nature and quality of the act he is committing that he does not know that he is doing wrong

13. In this case the evidence of Dr. Radheyshyam (DW 1) does not iudicate that at the time of committing the murder the appellant was insane. It might be at a time long before the murder he exhibited signs of insanity as as spoken by the doctor but from the very fact that shortly before the murder he was talking to Laxmi Chand (PW 9) about the loss in his business is a clear indication that at that time he was sane. Even after the murder he exhibited behavior of a normal man and did confess before Bhanwar Singh (PW 7) and Mishrimal (PW 13), at his father's house, that he had committed the murder in anger. More over the very fact that after committing the murder Vic went out of the house and threw the axe into the

well to destroy the evidence of murder is indicative that he was sane. Therefore, there is no material worth the name that the appellant at the time of committing the murder, at any rate, was insane. Incidentally we may mention that the medical report now indicates that he is suffering from a sort of insanity, that is not a circumstance which would take back his mensal condition to the time at which he committed the murder. The appellant might have now become insane, as the medical evidence indicates, but that cannot be a ground to hold that at the time he committed the murder he was insane.

14. For the reasons stated above, we set aside the conviction under Section 302, Indian Penal Code, instead we convict the appellant under Section 304, part I, Indian Penal Code and sentence him to undergo rigorous imprisonment for seven years. It, there/ore, follows the reference made by the Sessions Judge, Jailor is liable to be rejected. We accordingly reject it. The appeals, one by the appellant from jail and another by his counsel are partly alloyed as indicated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com