

Manphool and anr. Vs. the State of Rajasthan

Manphool and anr. Vs. the State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/761392

Court : Rajasthan

Decided On : Aug-23-1979

Reported in : 1979WLN(UC)364

Judge : M.L. Shrimal and; K.S. Sidhu, JJ.

Appeal No. : D.B. Criminal Appeal No. 357 of 1976

Appellant : Manphool and anr.

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

M.L. Shrimal, J.

1. Accused-appellants (i) Manphool alias Phuliya (ii) Chotiya and (iii) Hem Chand (acquitted by the trial Court) were tried by learned Additional Sessions Judge No. 2, Alwar, for committing the murder of Ram Chandra, paramour of Mst. Chameli, brother's wife of the two accused appellants.

2. Learned Additional Sessions Judge, placing reliance on (i) the dying declaration Ex: P/4, made by the deceased in the presence of the Tehsildar P.W. 4 Bhanwar Singh, (ii) Ex D/3, recorded by Sub Inspector Ramdhan, corroborated by the conduct of the accused in setting up a false plea of 'Chor Chior' just after the

occurrence (iii) on giving a first information report at the Police Station Ex. D/2 and (iv) on the medical evidence, found the accused guilty of the offence punishable under Section 302 IPC and sentenced them to imprisonment for life and to pay a fine of Rs. 100/- each. The third accused Hemchand was acquitted of the charges framed against him.

3. Aggrieved by the verdict of the trial Court the two accused have come up to this Court in appeal.

4. The facts giving rise to this appeal are that accused Manphool and Chhotia are brothers of Heera, husband of Mst. Chameli and the third accused Hem Chand is their sister's son. It appears that Heera was neglecting his wife, which gave opportunity to Mst. Chameli to develop illicit intimacy with Ramchandra (since deceased). Mst. Chameli left her husband's house with her children and started living with Ram Chandra in the latter's village at Luhadra. Manphool and Chhotia protested before the Village Panchayat and ultimately the Panchayat directed Mst Chameli to live with Manphool and Chhotia and leave the house of Ramchandra. In pursuance of the direction of the Panchayat she started living in village Bambas Jhonpdi, Police Station Tijara, District Alwar.

5. On 8th September, 1975, deceased Ramchandra went to village Chamodi to purchase a cow. On his return he went to Dhani Multani to realise his debt from Mst. Chameli and from accused Chhotia. By the time he reached the Dhani it became dark and as such deceased Ramchandra thought it proper to stay with the accused for the night. At about mid-night Mst. Chameli came to the deceased and took him to her room. Accused Manphool and Chhotia came to know of this fact and when Ramchandra deceased came out of the room of Mst. Chameli, they inflicted two blows on his person and thereafter sprinkled some kerosene and set fire to his clothes as a result of which he sustained extensive burns,

6. Accused Chhotia also raised cries of 'thief thief'; which attracted PW 1 Ram Dayal, PW 2 Attar Singh, PW 5 Richhpal and PW 6 Ram Singh on the scene of the occurrence. Mst. Chameli tried to extinguish the fire. She poured some water with a pitcher on Ramchandra. Thereafter Ram Chandra fell down. On September 9, 1975, at 4 45 p m. Ramchandra was shifted to the Hospital Tijara A written

report of the occurrence Ex. P/2 was judged with the Police Station, Tijara, by PW 3 Ramavtar, son of Sohan Lal, at 7 p.m., on September 9, 1975. The formal first information report drawn on the basis of the written report has been marked Ex P/3 After usual investigation the police submitted a challan against all the three accused. Learned Additional Sessions Judge, after trial, convicted and sentenced the accused Manphool and Chhotia, as stated above

7. Learned Counsel, appearing on behalf of the accused-appellants, has strenuously urged that the case suffers from certain inherent improbabilities and that no reliance could be placed either on the dying declaration or on the statements of any of the prosecution witnesses. He further argued that even if it was held that the accused were responsible for causing the death of Ram Chandra, it should have been held by the trial court that the offence was committed under sudden and grave provocation and as such the accused could not have been convicted under Section 302 I.P.C. They at the most could have been convicted under Section 304, Part I, I.P.C. Learned Public Prosecutor on behalf of the State has supported the judgment of the trial Court.

8. The case mostly depends on the reliability of the dying declaration. The law with regard to dying declaration is very clear A dying declaration must be closely scrutinised as to its truthfulness like any other important piece of evidence in the light of the facts and circumstances of the case, bearing in mind on the one hand, that the statement is by a person who has not been examined in Court on oath and on the other hand, that the dying man is normally not likely to implicate innocent persons falsely If the Court is satisfied on a close scrutiny of a dying declaration that it is truthful, it is open to it to convict the accused on its basis without any independent corroboration. In other words, once the court comes to the conclusion that the dying declaration is a truthful version, there is no question of further corroboration : Vide : 1958 CriLJ106 , Kushal Rao v. State. In : AIR 1962 SC439 , Harbans Singh v. State, it has been observed:

It is neither a rule of law nor of prudence that a dying declaration requires to be corroborated by other evidence before a conviction can be based thereof.

Keeping in view the above noted proposition of Saw, we now proceed to examine the veracity of the dying declaration.

9. Deceased Ramchandra, after having been burnt, fell unconscious in the Bada of the accused. There is evidence on record to prove that till he was taken to the Hospital he remained unconscious. PW 7 Dr. D.N. Bohra, who was attending the patient, gave intravenous injection as a result of which Ramchandra deceased regained consciousness. He sent message to the police with regard to the recording of dying declaration. Thereafter PW 4 Bhanwar Singh, Tehsildar, Tijara, went to the Hospital and recorded the dying declaration of Ramchandra. Dr. D.N. Bohra further states that at the time of recording the dying declaration the injured was not confused and was having very clear conception regarding the words which he had uttered. A similar dying declaration was also recorded by S.I. Ramdhan, which has been marked Ex. D/3. Learned Counsel appearing on behalf of the appellant has not been able to point out any material discrepancy in both the dying declarations or inherent improbability on the basis of which it could be said that the dying declaration made by the deceased was false. No doubt in the dying declaration recorded by the police, name of Hem Chand accused does appear; but it was conspicuously absent in Ex P/4. The contention of the learned Counsel, that the introduction of Hem Chand's name in Ex. D/3 detracts the evidentiary value of Ex. P. 4 needs being mentioned only to be rejected PW 2 Attar Singh stated that on hearing the cries he rushed to the scene and found the deceased lying in their 'chowk'. At that stage one of the villagers asked the deceased regarding the cause of his being burnt, on which the latter replied,

dkdk esjh [kksVh rdnhj Fkh tks eS ;gkW vk x;k] NksVk euQqy us eq>s vkx yxkdj tyk fn;k A

D.W. 1 Mst. Chameli has admitted in her cross-examination that during the nights of the occurrence Attar Singh was sleeping at the same place. The presence of this witness, therefore, at the time of making oral dying declaration was most natural and cannot be doubted. PW 5 Richhpal Singh states that, he questioned the deceased regarding the cause of his having been burnt and the deceased replied that Chota, Phooia and their relatives had burnt him.

10. As regards the question of tampering with Ex. P/4 it would suffice to say that the oral dying declaration before PW 2 and PW 5 was made within a few minutes of the occurrence as such no allegation regarding any tutoring of the deceased could be made. If at that stage the deceased had named both she accused, the so called tampering in Ex. P/4 does not affect the merits of the case. From the statement of Bhanwar Singh and PW 7 Dr. Bohra, corroborated by the oral dying declaration made by the deceased before PW 2 and PW 5, we are satisfied that the contents of the dying declaration, relied upon by learned Additional Sessions Judge No. 2, Alwar, are true and reliable

11. The dying declaration of the deceased further stands corroborated from the statement of PW 1 Ram Dayal, who states that when he reached the spot, he found the face of the deceased tied with the turban, which was removed by him It will be profitable to note here that the deceased while giving the names of the accused as well as the details regarding the manner of his being assaulted, has stated that his neck was tied with the turban. The minor contradictions pointed out by learned Counsel in the dying declaration as well as in the statements of the witnesses regarding the time of the arrival of the deceased in the house of Mst. Chameli are of no consequence. The main question for consideration before the Court is whether Manphool and Chhotia committed the murder of Ram Chandra or not. It does not matter much whether the deceased arrived in the house at 9.00 P.M or 12.00 P M.

12. Now remains the most vexing question, which the learned Counsel for she appellants has raised. His contention is that the accused ought not to have been convicted under Section 302 I P.C., the case of the accused, according to him, is covered by Exception (1) to Section 300, I.P.C. It is an admitted case of the parties that Mst. Chameli is a woman of loose character. She had been voluntarily living in the house of the deceased in the life time of her husband for a pretty long time. Manphool and Chhotia naturally did not like it & had a grudge against the conduct of the deceased as well as Mst. Chameli. They protested before the Panchayat as a result of which Mst. Chameli had to leave the house of the deceased and reside in the Village Rambas Jhonpadi. From the dying declaration and other circumstances it appears that the deceased and Mst. Chameli stayed together in a

closed room for some time, may be an hour or more. In between this period, the two accused came to know that the guest who was permitted by them to stay in their house for the night was misusing the trust imposed in him and had gone to bed with Chameli surreptitiously. They felt insulted, waited for him and sought for an opportunity to teach him a lesson. As soon as the deceased came out, they administered blows to him, tied him, threw kerosene on his clothes and set fire to him. While he was burning Mst Chameli brought a pitcher of water and threw water over his body. PW 2 Attar Singh asked the accused to extinguish the fire, but the accused contemptuously expressed 'let the rascal die'.

13. It has also come in the evidence that after causing injuries by burns to Ram Chandra the accused raised the cry of 'thief thief.' The very fact that the accused raised a cry of 'thief thief' and invited the attention of other persons suggests that at that time they wanted to put up a defence to the effect that the deceased had burnt himself. A man who so coolly and calculatedly puts a false defence could not be said to be over powered by violent anger; Vide : AIR 1962 SC605 , K.M Manavati v. State of Maharashtra The act of burning the deceased could not thus be said to be sudden. In order to attract Exception (1) to Section 300, I P.C., the accused must prove that the provocation was not self sought and that it was not only grave but also sudden.

14. We are of the opinion that in the case on hand if any provocation was working in the mind of the accused it must have subsided by the time Ramchandra came out of the room or at least by the time they sprinkled kerosene on his body and set fire to him. There was sufficient time for the accused to regain self control. On the other hand, their conduct shows that murder was deliberate and calculated one. The proved facts do not attract the provisions of Exception 1 to Section 300 I.P.C. In order to attract the proviso, the cause of death should be clearly traced out to the influence of passion arising from the provocation and not after the passion had cooled down by lapse of time or otherwise giving room and scope for premeditation and calculation.

15. In the result, the conviction of the accused under Section 302, I P.C., and the sentence awarded to them by the trial court are correct. There is no ground for

interference. The appeal is accordingly dismissed.

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