

Suresh Kumar Vs. State of Rajasthan

Suresh Kumar Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/761539

Court : Rajasthan

Decided On : Sep-21-2000

Reported in : RLW2003(1)Raj64

Judge : N.N. Mathur and; Sunil Kumar Garg, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Appeal No. 86 of 1995

Appellant : Suresh Kumar

Respondent : State of Rajasthan

Advocate for Pet/Ap. : A.R. Nikub, Public Prosecutor; K.K. Shah, Adv.

Disposition : Appeal dismissed

Judgement :

Garg, J.

1. This appeal has been preferred by the accused appellant against the judgment and order dated 9.1.1995 passed by the learned Sessions Judge, Bhilwara in Sessions Case No. 2/9-1, by which he convicted the accused appellant under Section 302 IPC and sentenced to undergo imprisonment for life and a fine of Rs. 500/-, in default of payment of fine, to further undergo three months' R.I.

2. The brief facts giving rise to this appeal are as follows:-

On 19.10.1993 at about 3.30 AM, PW11 Shanti Swaroop, S.H.O., Police Station Bijoliya District Bhilwara made a parchakayami (Ex.P/16) to the effect that at about 3.15 AM, PW2 Dr. Durga Shankar, who was posted as Medical Officer in the Primary Health Centre, Bijoliya informed on telephone to him that the accused appellant has killed his wife Tara (hereinafter referred to as the deceased) with a knife and he further requested that necessary action be taken. On this information, PW11 Shanti Swaroop reached the hospital and found the dead body of the deceased lying on the stretcher and blood was oozing profusely from her dead body. He also found two incised wounds on the left side of her neck, which were caused by knife and visibly it appears to him that she died because of the injuries caused to her by knife and thus, this is a case under Section 302 IPC. Hence, he registered the case and started investigation.

The post mortem of the deceased was got conducted by PW2 Dr. Durga Shankar and PW.7 Devendra Kumar and the post mortem report is Ex.P/4.

During investigation, accused appellant was arrested by PW11 Shanti Swaroop through Ex.P/15 on 19.10.1993 at 3.00 PM in the presence of two motbirs PW10 Udailal and Shambhulal. The accused appellant gave information Ex.P/17 to PW11 Shanti Swaroop on 20.10.1993 at 2.00 PM to the effect that he could get recovered one knife and on this information, a knife Article-1 was recovered from the house of the deceased in the presence of two motbirs PW3 Ashok Kumar and PW5 Badrilal on 21.10.1993 at 10.10 AM. The clothes of the deceased as well as the accused appellant were also seized by PW11 Shanti Swaroop and they were sent to the FSL and the FSL report is Ex.P/18, which shows that they are stained with human blood etc.

After usual investigation, the police submitted challan against the accused appellant in the Court of Magistrate and thereafter, the case was committed to the Court of Session.

The learned Sessions 'Judge, Bhilwara on 25.1.1994 framed the charge under Section 302 1PC against the accused appellant. The charge was read over and

explained to the accused appellant, who pleaded not guilty and claimed trial. In support of its case. The prosecution examined as many as 11 witnesses and got exhibited 18 documents. Therefore, statement of the accused appellant under Section 313 Cr.P.C. was recorded and in that statement, in the last question No. 14, he replied in the following manner :-

^rkjk ds ekrk firk mls esjs lkFk Hkstuk pkgrsFks vkSj rkjk irk ugha D;ksa esjs lkFk eUnlksj tkuk ugha pkgrh Fkh A mlus jkrdks eUnlksj tkus ds fy;s euk fd;k rks eSusa mlls dgk fd rqEgkjs ekrk firk tcesjs lkFk Hkst jgs Fks rks eq>s pyuk pkfg, bl ij mlus pkdw ls Lo;a ds pksVsigqWpkbZ A eSsaus [kwu jksdus dk iz;kl fd;k rks esjs diM+ksa ds [kwu yx x;k AeSus jkr esa gh Fkkus ij tdkj mijksDr ?kVuk Fkkusnkj dks crk nh A**

After recording evidence and conclusion of trial, the learned Sessions Judge through his judgment and order dated 9.1.1995 convicted the accused appellant for the offence under Section 302 IPC and sentenced in the manner stated above, holding inter-alia.

1. That in the room in which incident took place in the intervening night of 18/19.10.1993, none was present except accused appellant and his wife deceased.
2. That just after the occurrence, cries of deceased were heard by PW4 Smt. Hari Bai, the mother of the deceased and on hearing cries, she rushed towards the door and found that the accused appellant was running from the room.
3. That accused appellant has admitted in his statement recorded under Section 313 Cr.P.C. that his clothes were stained with the blood of the deceased.
4. That the deceased did not commit suicide and there were no reasons for her to commit suicide.
5. That the accused appellant did not inform about the alleged incident to the police in any manner and in case the information would have been given to the police, the police would have acted upon it positively.

6. That the prosecution has been able to prove its case beyond reasonable doubt against the accused appellant for the offence under Section 302 IPC.

Aggrieved from the said judgment and order dated 9.1.1995 passed by the learned Sessions Judge, Bhilwara, the present appeal has been filed by he accused appellant.

3. In this appeal, the following submissions have been made by the learned counsel for the accused appellant:-

1. That the learned Sessions Judge has committed an irregularity in predominately basing his judgment on the evidence of PW4 Smt. Hari Bai, whose testimony is full of infirmities, contradictions and furthermore, she is an interested witness being the mother of the deceased and her statement is not supported by any other evidence.

2. That recovery of the knife in the present case is doubtful and thus, accused appellant cannot be connected with the so- called recovery of knife Article-1.

3. That the learned Sessions Judge erred in not considering that on 18.10.1993, accused appellant has himself gone to the Police Station at 3.00 AM in the dark night to report that his wife Tara (deceased) has tried to commit suicide.

Hence, it has been argued on behalf of the accused appellant that it is a case of suicide by deceased herself and it is not a case of homicidal death and thus, accused appellant should be acquitted of the charge under Section 302 IPC.

4. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Sessions Judge, Bhilwara.

5. We have heard the learned counsel for the accused appellant as well as the learned Public Prosecutor and perused the record of the case.

6. Let us first take the medical evidence of the present case.

7. The post mortem report of the deceased is Ex.P/4 which is dated 19.10.1993. There is no dispute on the point that the alleged incident took place in the

intervenes night of 18/19.10.1993 and just after the incident, deceased died. To prove the post mortem report Ex.P/4, two doctors, namely, PW2 Dr. Durga Shankar and PW-7 Davendra Kumar have been produced on behalf of the prosecution.

8. PW2 Dr. Durga Shankar in his statement states that on 18.10.1993, he was Medical Officer in the Primary Health Centre, Bijoliya and on that day in the night at about 3.00 AM deceased was brought in the hospital and she was medically examined by him and he conducted the post mortem of the deceased on 19.10.1993. He further states that when the dead body of the deceased was brought in the hospital, her mother PW4 Smt. Hari Bai told him that accused appellant, who was husband of the deceased, had struck knife injuries on her neck. He further states that on opening the dead body of the deceased, the following injuries were found :-

1. One incised wound 5cm x 2cm on the left side of the neck at middle of neck and about 3 cms deep at centre and low end and with abrasion of about 3cm in length and 1/4 cm width sternoclerdo mustard muscle exposed.

2. Incised wound 3cm x 1/2 cm x skin deep on upper part of left temporal region.

He further states that the post mortem of the deceased was conducted by him as well as by PW-7 Davendra Kumar and in their opinion, the cause of death is :-'We have thoroughly examined dead body of Smt. Tara Kumari. She died due to excessive haemorrhage caused by cutting of Ext. Jugalar vein and internal carotid art. of left side leads to instant death:'

He has proved the post mortem report Ex.P/4 and from his statement, it is clearly proved that the death of the deceased was not a natural one.

9. Whether it was homicidal or suicidal, it would be seen later on.

10. In the present case, the pertinent question to be decided is whether deceased died because of the injuries caused by accused appellant with knife on her neck or not or she has committed suicide by causing injuries herself on her neck by knife.

11. It is true that sometimes the case of homicide is presented as the case of suicide. But, it need not be pointed out that whenever the victim commits suicide she leaves behind some evidence, may be circumstantial in nature to indicate that it is not a case of homicide, but of suicide. In such case, it is the duty of the Court to examine the circumstances of each case and evidence adduced on behalf of the parties, for recording a finding on the question as to how the death has taken place.

12. Thus, in the present case, it is to be seen whether the plea of suicide is altogether tenable or not or whether the theory of suicide is ruled out or not.

13. The following circumstances would clearly indicate and go to prove that the present case is not a case of suicide, but a case of homicidal death caused by the accused appellant :-

(A) Statement of PW4 Smt. Hari Bai (mother of deceased)

PW4 Smt. Hari Bai has clearly stated in her statement that the accused appellant came to her house to take his wife deceased back to his house and upon this, she stated that she would be sent with him, but wait till the arrival of her husband and, thereafter, deceased and accused appellant slept in one room. She further stated that at about 2.00 in the night, cries of the deceased came from that room and upon this, she went there and she opened the door by pushing and then saw that accused appellant was having a knife in his hand and also found injuries on the neck of the deceased and, thereafter, accused appellant ran away from the scene. She further stated that after the alleged incident, Om Prakash, PW6 Kishan and father of Om Prakash came there, She further stated that she took the deceased to the hospital, but on the way of hospital, deceased succumbed to the injuries and in the hospital, doctor (PW2 Dr. Durga Shanker) met her and dead body of the deceased was handed over to him. In her cross-examination, she has admitted that she did not lodge any report about the alleged incident and accused appellant was arrested on the same night and on the next day i.e. in the morning, police came and took the knife from her house.

In this respect, the statement of PW2 Dr. Durga Shanker may also be referred to again where he has stated that in the hospital, he was told by PW-4 Smt. Hari Bai that deceased had been killed by accused appellant, who is husband of the deceased, by knife.

Thus, from the statement of PW4 Smt. Hari Bai, it appears that in the room where the alleged incident took place, there were only two persons, namely, accused appellant and deceased and the deceased was having injuries on her neck and accused appellant was having knife in his hands and when PW4 Smt. Hari Bai went there after hearing cries of deceased, accused appellant ran away and, thereafter, deceased was brought to the hospital where PW4 Smt. Hari Bai told to the doctor that deceased has been killed by accused appellant by knife. The statement of PW4 Smt. Hari Bai further gets corroboration from the statement of PW2 Dr. Durga Shanker and from the post mortem report Ex.P/4, where it has been written that PW-4 Smt. Hari Bai informed to PW2 Dr. Durga Shanker that her daughter has been killed by the accused appellant.

It may be stated here that the learned Sessions Judge has relied on the statement of PW4 Smt. Hari Bai in coming to the conclusion that the accused appellant was guilty of the offence under Section 302 1PC and in this appeal, it has been vehemently argued on behalf of the accused appellant that the statement of PW4 Smt. Hari Bai should not be believed as she is an interested witness being the close relative of the deceased.

While judging the evidence and circumstances of the present case, this Court is very much cautious of the fact that the death of the deceased has taken place inside the house, where Outsiders, who can be said to be independent witnesses in the traditional sense, are not expected to be present. Thus, the close relative i.e. PW4 Smt. Hari Bai, in the present case, cannot be regarded as an interested witness, and thus, her evidence can be looked into, if it is found true. No doubt for accepting the evidence of the close relative witness, it should be subjected to careful and close scrutiny, it may further be stated here that simply because PW-4 Smt. Hari Bai is the mother of the deceased, her evidence cannot be discarded, if her testimony is otherwise acceptable.

On relative witness, the following observations made by the Hon'ble Supreme Court in State of Rajasthan v. Kalki and Ors. (1), may be quoted here :-

'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; 'in the decree in a civil case, or in seeing an accused person punished. A witness who is natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested.' Thus, from every point of view, it is held that PW4 Smt. Hari Bai cannot be regarded as interested witnesses and her evidence can be relied upon as in the present case, she was the only witness available at the time of incident and just after the occurrence, she took the deceased to the hospital, where she narrated the name of the accused appellant as the author of the injuries received by the deceased to PW2 Dr. Durga Shanker. The presence of PW4 Smt. Hari Bai at the alleged time and place of incident is natural one and is beyond doubt and in her statement, there is nothing improbable or unreliable and her statement has ring of truth. On consideration, we are inclined to believe her statement and the learned Sessions Judge has rightly placed reliance on her testimony.

The learned counsel for the accused appellant has argued that the name of the accused appellant does not find place in the post mortem report Ex.P/4 and in the statement of PW2 Dr. Durga Shankar. In our opinion, this argument is wholly misconceived as in the post mortem report Ex.P/4, the word 'husband' of the deceased is there and in all respects, it refers to the accused appellant, who is the husband of the deceased.

(B) Post Mortem Report

The post mortem report giving the description of injuries found on the body of the deceased, in our considered opinion, would defy all doubts about the theory of suicide.

In this case, the deceased had sustained knife injuries on her neck and injury No. 1 has been opined to be a very serious one by the doctor and in our opinion, these injuries could not have been caused in a suicidal attempt, if we look to the nature

of the injuries. The argument that these injuries should have been regarded as self-inflicted and they have been caused in making attempt to commit suicide by deceased, is not at all tenable. Further, the argument that if the deceased would have fallen on a sharp edged weapon, such injuries would have been received by deceased, is also not tenable looking to the facts and circumstances of the present case.

Thus, in our considered opinion, these injuries are consistent only with the theory that deceased was struck with knife by the accused appellant.

(C) Cries of deceased

The other point to be noticed in the present case is that PW4 Smt: Hari Bai heard the cries of the deceased and, thereafter, she went there and found that the accused appellant was there and deceased was having knife injuries as mentioned in the post mortem report Ex.P/4 by PW2 Dr. Durga Shankar. Had deceased would have committed suicide, she would not have cries and thus, this fact itself goes to show that deceased was struck by the accused appellant with knife and as a result whereby, she cried. This aspect also rules out the case of suicide.

(D) Grounds for committing suicide

Normally one would not commit suicide unless there are strong and compelling reasons for it. In the present case, such compelling reasons are not available and the only dispute that has come out from the evidence is that accused appellant wanted that deceased should accompany him to his house and deceased was not agreeable to this proposal. This fact alone cannot be regarded as a strong and compelling reason for which deceased would have committed suicide. Thus, there is no evidence that there was any proximate cause for the deceased to attempt to end her life on the fateful night. Hence, this aspect also rules out the theory of suicide.

(E) Different methods for committing suicide

It may be stated here that a person, who commits suicide, can adopt different methods in committing suicide; for example; use of fire arm, poisoning specially by drugs, over drugs, hanging inhalation of gas etc. etc., but the injuries which are found on the neck of the deceased cannot be the result of the suicidal attempt and thus, from this point of view also, it is not a case of suicide.

14. Thus, it is held that the theory that deceased committed suicide is wholly untenable and is ruled out and the findings recorded by the learned Sessions Judge in this respect are liable to be confirmed.

15. When the theory of suicide is ruled out, the result is that the death of the deceased is nothing but homicidal one and as per the statement of PW4 Smt. Hari Bai, accused appellant is the author of the injuries which were found on the body of the deceased and thus, it is held that injuries which were found on the body of deceased and mentioned in the post mortem report Ex.P/4 were caused by the accused appellant with knife with an intention to kill her. Thus, the findings of the learned Sessions Judge in this respect are also liable to be confirmed.

16. It has been argued on behalf of the accused appellant that in this case accused appellant was arrested on 19.10.1993 through Ex.P/15 and information was given by accused appellant on 20.10.1993 at 2.00 PM through Ex.P/17 and knife was recovered at the instance of accused appellant on 21.10.1993 through Ex.P/11, but as per the statement of PW4 Smt. Hari Bai, knife, was recovered on the same day in the morning and therefore, the theory of recovery of the knife is after thought and does not connect the accused appellant with the commission of the crime.

17. In our opinion, whatever may it be or it may be a defect in the investigation, which is conducted by PW11 Shanti Swaroop, but since in the present case, there is a direct evidence of PW4 Smt. Hari Bai corroborated by medical evidence, therefore, so-called recovery whether it is doubtful or not has become meaningless and if it is excluded, all the same, the case of the prosecution does not suffer and on the contrary, stands proved. In this connection, it may be stated here that recovery and seizure of weapon is not material when there is a direct evidence. Hence, if any irregularity has been committed by PW11 Shanti Swaroop in making

recovery of the knife, it would not affect the prosecution case.

18. Thus, for the reasons stated above, we uphold the conviction of the accused appellant under Section 302 IPC and sentence awarded to him for the said offence by the learned Sessions Judge, Bhilwara through his judgment and order dated 9.1.1995.

In the result, the appeal filed by the accused appellant Suresh Kumar fails and is dismissed, after confirming the judgment and order dated 9.1.1995 passed by the learned Sessions Judge, Bhilwara.

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