

**Pratap Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/762626](http://sooperkanoon.com/762626)

**Court :** Rajasthan

**Decided On :** Apr-26-2006

**Reported in :** RLW2006(4)Raj2720; 2006(3)WLC701

**Judge :** Shiv Kumar Sharma and; Prem Shanker Asopa, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 302, 304 and 307; Criminal Penal Code (IPC) - Sections 313

**Appeal No. :** D.B. Criminal Appeal No. 743 of 2000

**Appellant :** Pratap

**Respondent :** State of Rajasthan

**Advocate for Def. :** R.P. Kuldeep, Public Prosecutor

**Advocate for Pet/Ap. :** Biri Singh and; Kamlendra Sihag, Advs.

**Judgement :**

**Prem Shanker Asopa, J.**

1. The instant criminal appeal has been filed by the accused-appellant against the judgment dated 29.9.2000 passed by the Additional Sessions Judge, Kishangarh, Ajmer whereby he has been convicted under Section 302 IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment

of fine to further suffer six months' rigorous imprisonment.

2. On the basis of the 'Parcha-Bayan' Ex. P2 given by Smt. Dharmi W/o Pratap, a criminal case was registered against the accused-appellant Pratap initially for the offence under Section 307 IPC on 8.9.99, which was subsequently converted into Section 302 IPC after the death of Smt. Dharmi on the same day i.e. 8.9.99.

3. The case of the prosecution as per the aforesaid 'Parcha Bayan' Ex. P. 2, which was later on converted into dying declaration after the death of Smt. Dharmi and subsequent evidence on record, is that on 8.9.99 PW.8 Jeewanram, ASI, P.S. Madan-ganj received a telephonic information that a woman suffered severe burn injuries at Maliyon-ki-Dhani, Chamragarh, Madanganj and on receipt of the said information, PW.8 Jeewanram, ASI went on the place of occurrence and got the injured woman admitted in Y.N. Hospital, Kishangarh.

4. The further case of the prosecution, solely based on the dying declaration and the statement of PW. 8 Jeewanram, ASI, is that on 8.9.99 when Smt. Dharmi was cooking food and further cooked meat, her husband Pratap came drunk and asked her that she has eaten whole of the meat, then she (Smt. Dharmi) told her that 1/2 kg. meat is there. On hearing the same, her husband Pratap picked up the stove, took out kerosene from it and poured the same on the body of Smt. Dharmi, enlightened the matchstick and set her ablaze. Her children were not in the house and none other person was present at the time of the occurrence. PW.8 Jeewanram, ASI, who has recorded the said 'Parcha-Bayan' Ex. P2, has stated that he has recorded the said 'Parcha-Bayan' of injured Smt. Dharmi and before recording the same, he has requested the S.D.M. and A.C.J.M., Kishangarh for recording the 'Parcha-Bayan' of injured Smt. Dharmi, but both the officers were not present. Therefore, he has recorded the said 'Parcha Bayan' in the presence of the doctor and a Medical Jurist of Y.N. Hospital, Kishangarh, which is Ex. P. 2.

5. During the course of trial, the accused pleaded not guilty and claimed trial. The prosecution in support of its case, examined PW.I Mool Chand, PW. 2 Dr. P.C. Patni, PW. 3 Ramesh Chandra, PW. 4 Pappu, PW. 5 Panna Lal, PW. 6 Jagdish, PW.7 Nathulal, PW. 8, Jeewanram, ASI and PW. 9 Dr. Mukesh Kumar Joshi. In the statement under Section 313 Cr.P.C., the accused-appellant denied the

occurrence and pleaded that the deceased (Smt. Dharmi) had burnt herself at the time of cooking food. The accused-appellant has not examined any witness in his defence.

6. The Additional Sessions Judge, after hearing both the parties and considering the record of the case, more particularly the dying declaration of deceased Smt. Dharmi statement of PW. 8 Jeewanram, ASI, injury report Ex. P. 3 of injured Smt. Dharmi and the post-mortem report Ex. P. 5, convicted the accused-appellant under Section 302 IPC and sentenced him as indicated herein above vide its judgment dated 29.9.2000.

7. Mr. Biri Singh, counsel for the accused-appellant submitted that no case under Section 302 IPC is made out. He further assailed the admissibility of dying declaration. PW. 2 Dr. P.C. Patni has examined accused-husband of Smt. Dharmi, also and stated that there were two burn injuries on the person of the accused-appellant, which can be caused when a person makes an attempt to save a burning person and he prepared the injury report of the accused, which is Ex. P.4. Dr. Patni has also stated that on examination of the accused Pratap, there were no symptoms of consuming alcohol. He has further stated in his cross-examination that there was no smell of kerosene from the body of injured Smt. Dharmi (since deceased) and her lower portion up to 1/3rd level of foot was not burnt. Alternatively, the counsel for the accused-appellant submitted that since the accused has also suffered burn injuries at two places on his person, which have been caused while he made an attempt to save his wife from burning, therefore, there was no intention of the accused-appellant to cause death of his wife and at the most, the present case is of Section 304 Part-II IPC, instead of Section 302 IPC.

8. Learned Public Prosecutor appearing for the State has supported the impugned judgment and contended that the trial Court has rightly relied on dying declaration of deceased Smt. Dharmi. Dr. Patni has also prepared post-mortem report Ex. P. 5 of deceased Smt. Dharmi on 8.9.99, wherein the cause of death has been shown as hypovolumic shock as a result of ante-mortem burn. He further submits that the present case is of Section 302 IPC and not of Section 304 Part II IPC.

9. We have heard learned Counsel for the accused-appellant, learned Public Prosecutor for the State and have also perused the materials available on record.

10. The Additional Sessions Judge has placed reliance mainly on the evidence of PW. 2 Dr. P.C. Patni PW. 8 Jeewanram, ASI, PW. 9 Dr. Mukesh Kumar Joshi, 'Parcha-Bayan' Ex. P. 2 given by injured Smt. Dharmi, injury report Ex. P. 3 of injured Dharmi and injury report Ex. P. 4 of accused Pratap and convicted and sentenced the accused appellant as indicated herein above but while doing so, he has not given weightage to the most important circumstance that there was no smell of kerosene from the body of Smt. Dharmi and further there were no symptoms of consuming alcohol by the accused-appellant at the time of his medical examination, who himself has suffered burn injuries which the prosecution has failed to explain.

11. Even if the dying declaration is to be believed, as believed by the trial Court, then also the case under Section 302 IPC is not made out as the accused-appellant simply frightened her wife and when the situation slipped out of his control, he made an attempt to save his wife from burning, during the course of which he had also suffered two injuries, which are on record as Ex. P. 4 and are as under:

(1) Superficial to deep burn with blister from right forearm from elbow to lower 1/3 of chest.

(2) Superficial burn with blister and epigastric region to right hypochondrium region.

12. The Supreme Court in the case of Kalu Ram v. State of Rajasthan, reported in : AIR 2000 SC3630 , has held that conduct of the accused cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. Para No. 7 of the aforesaid judgment is as follows:

7. But then, what is the nature of the offence proved against him? It is an admitted case that the appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him. When

she refused to oblige he poured kerosene on her and wanted her to light the matchstick. When she failed to do so he collected the matchbox and ignited one matchstick but when the flames were up he suddenly and frantically poured water to save her from the tongues of flames. This conduct cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all that the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore, we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder.

13. The aforesaid judgment has been further followed by the Division Bench of this Court in the case of Mohan Das v. The State of Rajasthan reported in 2001 (S) WLC (Raj.) 682 : RLW 2002 (3) Raj. 1471 on the ground that in such circumstances/the intention was only to frighten and not to kill the deceased.

14. In these circumstances, we are of the view that the present case is identical to the aforementioned two cases and at the most the accused-appellant is liable to be held guilty for the offence under Section 304 Part-II IPC, instead of Section 302 IPC.

15. For these reasons, we partly allow the appeal and instead of Section 302 IPC, we convict appellant Pratap under Section 304 Part-II IPC. In view of the fact that the appellant has already undergone confinement for more than six years and two months, the ends of justice would be met in sentencing the appellant to the period already undergone by him in confinement. The appellant, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.