

Suraj Mal Vs. State of Rajasthan

Suraj Mal Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/765342

Court : Rajasthan

Decided On : Sep-29-2004

Reported in : RLW2005(1)Raj480

Judge : Shiv Kumar Sharma and; Rajendra Prasad Vyas, JJ.

Acts : Indian Penal Code (IPC) - Sections 300, 302, 304 and 324

Appeal No. : D.B. Criminal Appeal No. 653 of 1999

Appellant : Suraj Mal

Respondent : State of Rajasthan

Advocate for Def. : Brahma Nand Sandhu, Public Prosecutor

Advocate for Pet/Ap. : Shailendra Balwada, Adv.

Judgement :

Shiv Kumar Sharma, J.

1. Holy the festival of colours turned into festival of blood in village Ratlia Police Station Todarai Singh on March 12, 1998. In an unfortunate incident Sohni (deceased) lost her life and her daughter-in-law Sushila sustained injuries. The appellant (herein after described as 'accused') was indicted before the learned Additional Sessions Judge, Malapura District Tonk in Sessions Case No. 13/1998.

Learned Judge vide judgment dated September 30, 1999 convicted and sentenced the accused as under:-

Under Section 302 IPC:

To suffer Imprisonment for life and fine of Rs. 1000/- in default to further suffer One Month Imprisonment.

Under Section 324 IPC:

To suffer Rigorous Imprisonment for One Year and fine of Rs. 500/- in default to further suffer Fifteen Days Imprisonment.

The substantive sentence were directed to run concurrently.

2. It is the prosecution case that the accused infuriated by the hot exchanges at the time of making boundary with shrubs near his house, scaled the wall of the house of his near relative Sohni and inflicted blows with axe on her person as a result of which Sohni died and her daughter in law Sushila sustained injuries. A case under Section 302, 307, 452 and 323 IPC was registered by the Police Station Todarai Singh and investigation commenced. On completion of investigation charge sheet was filed and in due course the case came up for trial before the learned Additional Sessions Judge Malpura, District Tonk. Charges under Sections 302 and 324 IPC were framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 27 witnesses. In the explanation under Section 313 Cr.P.C, the accused claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing the final submissions convicted and sentenced the appellant as indicated herein above.

3. We have carefully examined the evidence adduced by the prosecution and also the arguments addressed on behalf of the parties.

4. Dr. Ashok Kumar Jain (PW. 20), who performed autopsy on the dead body of Sohni, found following injuries on the dead body as per post mortem report (Ex.P-18) as under:-

'1. Incised wound over Rt. Lateral aspect of neck 4, 1/2 cm below Rt. Ear, size 13cm x 3cm x 3, 1/2cm involving blood vessels, nerve and Neck muscles.

2. Incised wound over lower lip below Rt. Angle of mouth extending up to Rt. Cheek 4cm x 1cm x 1cm'.

Injuries were ante mortem in nature and cause of death was hemorrhagic shock due to cut through injury of Rt. Carotid vessels in the neck region.

5. Injuries sustained by Sushila @ Gyarsi (PW. 22) were also examined by Dr. Ashok Kumar Jain and as per injury report (Ex.P-17) Sushila @ Gyarsi sustained following injuries:-

'1. Incised wound 5cm x 1 cm x 1 cm over Rt. Parietal region of skull.

2. Incised wound 2cm x 1cm x 1/4cm over posterior aspect of Rt. Shoulder.'

6. It is contended on behalf of the accused that the incident occurred all of sudden while the accused was cutting shrubs with axe. There were altercations between the deceased and accused and the accused was provoked by the abuses hurled by the deceased. The act of the accused comes within the purview of Section 304 Part II IPC. Reliance is placed on Tarsem Singh and Ors. v. State of Punjab, 2002 WLC (SC) Criminal 263 and State of UP v. Indrajeet @ Sukhatha, 2000 (3) Crimes 184 (SC).

7. Per contra, learned Public Prosecutor supported the impugned judgment and urged that it was a calculated act of the accused and he was rightly convicted and sentenced under Section 302 IPC.

8. The prosecution case is mainly founded on the testimony of Sushila @ Gyarsi (PW. 22), who is injured eye witness. In her deposition she stated that on the fateful day around 4, 4.30 PM her mother-in-law Sohni asked me accused not to obstruct the street by putting shrubs. When Sohni asked the accused not to obstruct the path, there were altercations between them and suddenly accused scaled the wall and inflicted injuries on the person of Sushila and Sohni, who died instantly. Bhoja (PW. 1), Kana (PW. 2), Ladu (PW. 4), Sita (PW. 7) and Mahesh

Kumar (PW. 8) corroborated the testimony of Sushila. A close look at the testimony of these witnesses demonstrates that the accused while cutting shrubs with axe near his house and erecting boundary, Sohni hurled abuses at him. Infuriated by the abuses, the accused lost his balance, scaled the wall and committed crime. We, therefore, find that the case of the accused is covered under Exception I to Section 300 IPC as the injuries were caused by the accused whilst he deprived the power of self control on being provoked suddenly by the abuses hurled by the deceased. The accused in our opinion is guilty of committing offences punishable under Section 304 Part II IPC, since the accused did not have any intention to kill Sohni, but he had knowledge that his act would cause death.

9. For these reasons we partly allow the appeal of the accused. Instead of Section 302 Part IPC, we convict the accused under Section 304 II IPC. Since the accused has remained in confinement for a period of 6 years and 5 months, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. We however maintain the conviction of accused under Section 324 IPC. The accused Suraj Mal who is in Jail shall be set at liberty forthwith, if not required to be detained in any other case.

10. The impugned judgment dated September 30, 1999 of learned Additional Sessions Judge Malpura, District Tonk stands modified as indicated above.