

Raj Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-21-2005

Reported in : 2006(1)WLC13

Judge : Shiv Kumar Sharma and; F.C. Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 610 of 2002

Appellant : Raj Kumar

Respondent : State of Rajasthan

Advocate for Def. : M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : M.K. Kaushik and; Neeraj Kumar Sharma, Advs.

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1. The appellant was placed on trial before the learned Additional Sessions Judge Fast Track, Ajmer in Sessions Case No. 141/2001 for having committed murder of his wife Praneeta. The learned Additional Sessions Judge vide judgment dated

May 11, 2002, convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and a fine of Rs. 3,000/-, in default to further suffer three months' simple imprisonment.

2. Praneeta now deceased after falling in love with the appellant, married him. Since the appellant was not economically sound, he along with Praneeta started residing in the house of Kamla Sharma, the mother of Praneeta. On August 15, 1997 at 10.00 p.m. Mustkeem Khan, S.I., P.S. Christianganj, Ajmer recorded 'Parcha-Beyan' Ex. PI A of Smt. Kamla Sharma, mother-in-law of the appellant wherein she stated that the appellant used to quarrel with her daughter Praneeta and after flag hoisting on the said day when Praneeta came back to the house, the appellant and Praneeta had a quarrel. At 7.30 p.m. she heard the cries of Praneeta, since it was altercation between husband and wife she did not intervene. After sometime the appellant came out of his room and told her that he had killed Praneeta. The neighbours gathered and Praneeta was taken to the hospital where she was declared dead. Muktkheem Khan, S.I. forwarded that 'Parcha-Beyan' to P.S. Christianganj, Ajmer Where case under Section 302 IPC was registered against the appellant and investigation commenced. Autopsy on the dead body was performed and as per Post-mortem report Ex.PI, the cause of death was respiratory failure. Viscera was kept preserved for chemical analysis. Necessary Memos were drawn. The appellant was arrested. Statement of witnesses were recorded and on completion of investigation chargesheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Fast Track, Ajmer. The appellant was charged under Section 302 IPC for committing murder of Praneeta by throatailling her. The appellant denied the charge and claimed trial. The prosecution in support of its case, examined as many as 12 witnesses and got exhibited 17 documents. In the explanation under Section 313 Cr.P.C., the appellant claimed innocence. Three witnesses in defence were examined by the appellant. Learned trial Judge on hearing final submissions, convicted and sentenced the appellant as indicated here-in-above.

3. We have heard the rival submissions and carefully scanned the material on record.

4. The prosecution case rests on the testimony of Smt. Kamla Sharma PW 2, Sunil Patni PW 3 and Raju Kewalramani PW 5. Smt. Kamla Sharma PW 2 in her deposition stated that Praneeta was a teacher and in the evening of August 15, 1997 the appellant threatened Praneeta and asked her not to go out of the house. After Praneeta entered the room, Kamla Sharma heard the cries of Praneeta. When Kamla Sharma knocked at the door, the appellant retorted not to intervene between the quarrel of husband and wife. After 10-15 minutes appellant came out of the room and told Kamla Sharma that he had killed Praneeta. Kamla Sharma then rushed to the room and found Praneeta lying dead. She could not restrain herself and started crying. The neighbours gathered and taken Praneeta to the hospital where the doctor declared her dead. In the cross-examination Kamla Sharma deposed that the appellant was also admitted to the hospital. She denied to have seen any injury on the body of Praneeta.

5. Sunil Patni PW 3 deposed that on hearing cries of Kamla Sharma when he went out of her house he was asked by Kamla Sharma to call doctor as Praneeta became unconscious. He then went to a lady doctor who refused to accompany him. After 20-25 minutes police arrived and Praneeta and the appellant in an unconscious state were taken to the hospital.

6. Raju Kewalramani PW 5 stated that he did not accompany Praneeta and the appellant to the hospital but he had seen Praneeta who was alive before going to the hospital. He thereafter informed police station Christianganj on telephone. 7. Dr. V.D. Kaviya PW 7, who was a member of the Medical Board that performed autopsy on the dead body, deposed that in the opinion of the Board Praneeta died as a result of respiratory failure and the Board did not find any mark of violence on the dead body.

8. Govind Singh, I.O. PW 11, in his deposition, stated that he seized the poisonous material from the house of Kamla Sharma vide Ex. P.9. In his cross-examination he stated that he did not find any mark of violence on the neck of Praneeta.

9. As per FSL report, portion of the viscera on chemical analysis gave negative tests for metallic poisons, ethyl and methyl alcohol, cyanide, alkaloids, barbiturates, tranquillizers and insecticides.

10. The prosecution is thus not able to establish that the death of Praneeta was caused by throatalling.

11. Learned Public Prosecutor then canvassed to take into consideration the extra judicial confession made by the appellant before Kamla Sharma that he had killed Praneeta. We have carefully weighed the statements of Kamla Sharma and Raju Kewalramani. Kamla Sharma even though in the parcha bayan and in her deposition at the trial stated that the appellant came out of his room and told her that he had killed Praneeta but she did not say so before her neighbours. Raju Kewalramni categorically deposed that when he asked Kamla Sharma as to what had happened she did not say anything. Looking to the fact that relations between Kamla Sharma and the appellant were strained and the appellant was unconscious when the neighbours gathered and he too was admitted to the hospital, we find ourselves unable to accept the testimony of Kamla Sharma. We see no element of truth in her version.

12. In view of the fact that the appellant was also got admitted in the hospital for treatment of unknown poisoning as is evident from the discharge-ticket Ex.D.2, this possibility cannot be ruled out that Praneeta and the appellant both consumed poison and made attempt to commit suicide, as a result of which Praneeta died but the appellant survived.

13. Learned trial Judge has failed to notice the afore quoted infirmities and committed illegality in convicting and sentencing the appellant. In our considered opinion, charge under Section 302 1PC has not been established against the appellant beyond reasonable doubt.

14. For these reasons, we allow the appeal and set-aside the impugned judgment of conviction. We acquit the appellant of the charge under Section 302 of the Indian Penal Code. The appellant, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.