

Mohan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-08-1994

Reported in : 1995(2)WLC266; 1994(2)WLN386

Judge : Rajendpa Saxena, J.

Appeal No. : S.B. Criminal Appeal No. 255 of 1994

Appellant : Mohan

Respondent : State of Rajasthan

Judgement :

Rajendra Saxena, J.

1. This appeal has been directed against the judgment dated 16.5.1994 passed by the learned Sessions Judge, Dungarpur in Sessions Case No. 69/93, whereby he convicted appellant Mohan for the offence Under Section 304 part-II I.P.C. and sentenced him to four years rigorous imprisonment and a fine of Rs. 500/-; in default to further under go three months simple imprisonment.

2. Briefly the case of the prosecution is that on 19th, August, 1993 at about 12 noon, appellant inflicted fits and kicks blows to his wife Smt. Kamali, who was pregnant and caused her death. The S.H.O., Police Station, Dhambola received a wireless message from police out post, Venja, about the alleged incident.

Thereupon he rushed to the spot, where Thana gave him oral information and details about the incident - Ex.P.6 and on that basis formal F.I.R. Ex.P. 7 was drawn.

3. P.W. 14 Dr. Daljeet Jadav, Medical Officer, P.H.C., Simalwada conducted the post-mortem examination on the dead body of deceased Smt. Kamali and found that there was no external injury on her stomach, but there was laceration on her liver in the area 4 x 3 x 3 cm. Her spleen had laceration measuring 3 x 1/2 x 1 cm. He also found that Smt. Kamali was having a pregnancy of about 4-5 months. The doctor, therefore, opined that her death was caused due to hemorrhagic shock secondary to rupture of her liver and spleen. After usual investigation, police filed the challan in the court of learned Munsif & Judicial Magistrate, Sagwada, who committed the case to the learned Sessions Judge, Dungarpur.

4. The appellant was charged for the offence Under Section 302 I.P.C., to which he pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as 15 witnesses. The appellant in his plea recorded Under Section 313 Cr.P.C. denied all the circumstances appearing against him in the prosecution evidence and asserted that his in-laws had taken the ornaments of his wife and sister and when he demanded those ornaments, they have falsely implicated him. In defence, the appellant examined D.W.I Smt. Dhuli, who has stated that a calf had hit its head on the stomach of deceased Smt. Kamali, who was pregnant and who fell down and later on died. The learned trial Judge disbelieved the defence version and relying on the testimony of eye-witnesses P.W. 2 Nana, P.W. 5 Motilal & P.W. 11 Smt. Nani as also the statement of P.W. 14 Dr. Yadav held that though the appellant had no intention to commit the murder of his wife Smt. Kamali, but he had the knowledge while inflicting kick blows on her stomach that she was pregnant and that the injuries caused, by him were likely to cause her death. The learned trial Judge, therefore, by his judgment date 16.5.94 acquitted the accused for the offence Under Section 302 I.P.C., but found him guilty for the offence Under Section 304 part II I.P.C. and sentenced him in the manner detailed above. Hence this appeal.

5. I have heard Shri A.K. Rajavanshi, the learned Counsel for the appellant and Shri S.M. Singhvi, the learned public prosecutor at length and carefully perused the record of the lower court in extenso.

6. Mr. Rajvanshi has contended that as per statement of P.W. 14 Dr. Daljeet Yadav, the external injuries sustained by the deceased could not have been caused by a bare foot, that there was no evidence that the appellant was putting on shoes at the time of the alleged incident and, therefore, in such circumstances the ocular evidence of P.W.2 Nana P.W.5 Moti Lal and P.W. 11 Smt. Nani has not been corroborated by the medical evidence. On the other hand, the defence theory that a calf had hit its head on the abdomen of the deceased could not be ruled out. According to him, the learned Sessions Judge has committed an illegality in relying on the alleged eye-witnesses and disbelieving the statement of D.W. 1 Smt. Dhuli. His another contention is that there was no motive for the appellant to have committed the murder of his wife Smt. Kamali, that even if it is believed that he had inflicted a kick blow on her abdomen, still then he neither had any intention or the knowledge that while doing that act he was likely to cause her death. According to him at the most, the offence made out against the appellant does not travel beyond the offence under action 323 I.P.C.

7. On the other hand, the learned public prosecutor has reiterated the reasonings given by the learned trial Judge.

8. I have given my most anxious and careful consideration to the rival contentions.

9. P.W.2 Nana has deposed that he along with Moti Lal and deceased Kamali were grazing their cattle in the field, that appellant Mohan came there and inflicted a kick blow on the abdomen of Smt. Kamali and thereafter he took her beating and that she succumbed to her injuries in the way. P.W. 11 Smt. Nani has specifically stated that the appellant had inflicted a kick blow on the abdomen of his wife Smt. Kamali and thereafter took away beating her. P.W.5 Moti Lal has also deposed like-wise. These witnesses have been thoroughly cross examined, but their statements have remained unshattered. There is no reason to disbelieve the consistent versions given by these witnesses. Their testimony is duly supported by the statements of the doctor and Nana. The report of the alleged incident was

lodged without delay. P.W. 14 Dr. Daljeet has proved the post-mortem examination report Ex.p. 8 and stated that he had noticed an abrasion of the size 2 cm. below the chest and that on opening the body he found that her liver and spleen were ruptured. He has further deposed that the internal injuries sustained by the deceased were ante mortem in nature. He has stated that her spleen was enlarged but liver was not enlarged and that the deceased was pregnant. He has also stated that the impact of the external injury caused by a kick blow ruptured the liver. However, in his subsequent statement dated 6.5.94, he changed his early statement and stated that the external injury sustained by the deceased could not have been caused by kick or fists blows. The learned Sessions Judge has rightly held that the alleged incident took place in the jungle where the deceased was grazing her cattle and that it was unlikely that the appellant could have gone their bare footed and that there was every likelihood that he was putting on shoes and that by the kick blow the injuries detailed in the post- mortem Ex.P. 8 could have been sustained by the deceased. I do not find any material inconsistencies in the ocular evidence and the medical evidence. The defence theory to the effect that a calf had hit its head on the abdomen of the deceased is patently false and positively a creature of after thought Even the appellant in his statement Under Section 313 Cr.P.C. has not taken such a plea. He has rather disclosed a different reason. In my considered opinion, the learned trial Judge has correctly discussed, analysed and evaluated the evidence recorded in this case and rightly convicted the appellant for the offence Under Section 304 part II I.P.C.

10. Shri A.K. Rajvanshi has lastly submitted that the accused appellant is in custody since 21.8.92 and thus he has already under gone sentence for about ten and a half months. According to him the appellant had no intention to commit the murder of his wife. It was just all of a sudden that the alleged incident took place and that due to the rupture of her liver and spleen, Smt. Kamali died. He has further submitted that the appellant has two children of tender age and that there is no body to look-after them. He has, therefore, submitted that the sentence of the appellant be reduced to the period already under gone by him. The learned public prosecutor has opposed this.

11. To my mind, in this case there exist certain mitigating circumstances. There was no motive for the appellant to have caused the death of his wife. Smt. Kamali was having pregnancy of 4-5 months. She was grazing the cattle. The appellant came there and in heat of passion he inflicted kick and blows on her abdomen. The appellant is a young man of about 24 years and there is no other male person in his family to look after his two kids of tender age. Therefore, keeping in view all the facts and circumstances, one year's rigorous imprisonment and a fine of Rs.100/- will suffice to meet the ends of justice.

12. Accordingly, this appeal is partly allowed. The conviction of the appellant Under Section 304 part II I.P.C. is maintained, however, his sentence is reduced from four years rigorous imprisonment to one year's rigorous imprisonment and his fine is also reduced from Rs.500/- to Rs. 100/- only and in default of payment of fine he will further under go one month's simple imprisonment. The jail authorities be informed accordingly.

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