

Ramesh Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-28-1998

Reported in : 1999CriLJ1734

Judge : V.G. Palshikar and; Bhagwati Prasad, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 302 and 304

Appeal No. : D.B. Criminal Appeal No. 402/95

Appellant : Ramesh Kumar

Respondent : State of Rajasthan

Advocate for Def. : Rajesh Choudhary, P.P.

Advocate for Pet/Ap. : K.K. Shah, Adv.

Judgement :

1. Being aggrieved by the judgment dt. 3-8-95 in sessions trial No. 18/94 passed by the Additional Sessions Judge, Raisingh Nagar, the appellant Ramesh Kumar has preferred this appeal on the facts and grounds mentioned here in after.

2. On 4-10-93, first information report was lodged by one Jagdish Lal that the accused Ramesh Kumar was married to Ramesh Rani, sister of the complainant Jagdish, has been killed by his brother-in-law present accused. On this information, investigation was conducted by the police in the incident of 4-10-93 at

about 4.00 in the morning and on completion of the investigation, Ramesh Kumar his mother and his father were prosecuted for homicidal death amounting to murder of Ramesh Rani on 4-10-93 as aforesaid. The prosecution examined as many as 15 witnesses, some of whom prove certain documents in connection with the crime and on appreciation of this oral and documentary evidence, the learned Additional Sessions Judge came to the conclusion of guilt. Consistent with his conclusion of guilt, he passed an order of sentence convicting the accused Ramesh Kumar of murder and sentencing him to life imprisonment under Section 302 of the Indian Penal Code while acquitting the father and mother of the accused Ramesh Kumar. It is this judgment of conviction of Ramesh Kumar which is challenged in appeal on several grounds mentioned in the memo of appeal.

3. It was contended by Shri K. K. Shah, learned counsel appearing for the appellant that the evidence on record even if completely accepted is not enough to sustain an order of conviction under Section 302 of the Indian Penal Code. According to the learned counsel for the appellant, the evidence on record was grossly insufficient to warrant conviction and the evidence on record is also wholly unreliable. In the alternative, it was also submitted by the learned counsel that even if the entire evidence as led by the prosecution is accepted as correct and trustworthy, yet conviction under Section 302 of the Indian Penal Code is not permissible as the injury due to which, death has occurred was such as was not intended to be caused nor was such as was known to the accused as one which must result in death and consequently, the ingredient of Section 299 of the Indian Penal Code have not been established. He therefore, submitted only in the alternative that the case of the accused could at the most be covered by provisions of grievous hurt and the accused is, therefore, liable to be released on sentence as already undergone.

4. With the assistance of the learned counsel for the accused and the learned Public Prosecutor, we have scrutinized the record and reappreciated the evidence in light of the submissions made by the learned counsel for both the sides. On reappreciation of the evidence, we are convinced that the learned Judge has not committed any error of appreciation of evidence in coming to the conclusion that the accused is guilty of causing homicidal death of Ramesh Rani. Sitting in

appellate jurisdiction and reappreciating the evidence on record, we feel that the learned Judge was correct in holding that the prosecution has proved beyond reasonable doubt that the death of Ramesh Rani was caused by the accused by his action. In view of the fact that we on reappreciation of the evidence endorse the findings of guilt as recorded by the learned Judge, we see no reason to again record our appreciation in detail by giving reasons for accepting the evidence all over again. We do hereby approve and confirm the findings given by the learned Judge in so far as the trustworthiness of the witnesses is concerned and the finding of guilt of the accused in causing homicidal death of Ramesh Rani is concerned.

5. That brings us to the question as to the correctness of the sentence under Section 302. On reappreciation of the evidence and the submissions made at the bar, we are of the opinion that the accused neither intended to cause death of the deceased nor had the knowledge that the injury he is inflicted on the deceased is such as will in ordinary course of nature resulting death. He was not even aware with the injury likely to result in death, though, it has factually so resulted in death of his wife.

6. It is pertinent to note that this case though of routine nature is such as would require careful scrutiny of the evidence on record for the purposes of arriving at the intention of accused in causing the injury resulting in death of the deceased. The accused is husband of the deceased. The evidence is of their children. There is nothing in this evidence to disbelieve any of these witnesses when they saw that the accused and the deceased used to regularly quarrel between themselves and on many occasions, accused Ramesh Kumar has beaten the wife Ramesh Rani. There is also no reason to disbelieve this evidence regarding previous conduct of the accused which shows a tendency on the part of the accused to beat his wife whenever he was angry or displeased with her. The quarrel which took place on 4-10-93 in which the accused gave a single blow with a stick on the deceased, he was acting as usual. He took up the stick to beat his wife as he was habituated to beating his wife earlier. The Doctor who conducted the post mortem (PW2 Deepak Monga) has stated that there were two injuries on the body of the deceased, one on the head and other on the jaw of the deceased and has opined that the head

injury was responsible for causing death. It is therefore, a case of single blow resulting in death of the deceased. In 1983 SCC (Cri) 459 : 1983 Cri LJ 852 it has been observed by the Supreme Court that a case where injury was inflicted by the accused on the spur of the moment to some extent on the deceased's provocation in a sudden and chance quarrel on a trivial issue, no premeditation or malice can be inferred nor can an intention to cause death or intention to cause that particular injury which proved fatal be inferred. In the present case also, the accused was quarrelling with his wife on a trivial issue and suddenly accused hurt a blow with the stick which proved fatal.

7. Taking into consideration the past quarrel, some conduct of the accused and the fact that earlier beating to his wife on several occasions and fact as proved by the medical evidence that only fatal injury was caused, we are of the opinion that in this case also, the injury inflicted by the accused on the spur of the moment in sudden quarrel over trivial issue with his wife to whom he caused one injury which proved fatal. In these circumstances, we are unable to infer an intention on the part of the accused to cause death of the wife or even intention to such injury as likely to cause death and therefore, in our opinion, conviction under Section 302 is not proper.

8. In the same case, it has been opined by the Supreme Court that where injury was likely to cause when the injury was causing which is likely to cause death, the case is covered by Section 304, Part II of the Indian Penal Code. In the present case also, the fact that the accused had the knowledge that if he hits the wife with the stick on the head, it is likely to cause an injury which is likely to cause death and therefore, the accused was liable to be convicted under Section 304, Part II instead of 302 as was done by the learned Sessions Judge. We therefore, partly allow the appeal. Set aside the order of sentence as passed by the learned Judge and instead sentenced the accused, convict him under Section 304, Part II of the Indian Penal Code to five years rigorous imprisonment. The accused is in jail from 6-10-93, he has thus undergone five years imprisonment. In our opinion taking into consideration the fact that he has children to maintain, interest of justice would be met if he is directed to be released on sentence already undergone. He be so released if not otherwise required by police in any other crime or case.

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