

Dev Kishan Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Feb-04-1992

Reported in : 1992(1)WLN142

Judge : Milap Chandra Jain and; B.R. Arora, JJ.

Appeal No. : D.B. Criminal Appeal No. 377 of 1985

Appellant : Dev Kishan

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated October 30,1985, passed by the Sessions Judge, Merta by which the learned Sessions Judge convicted and sentenced the accused under Section 302, IPC.

2. Appellant Dev Kishan was tried by the learned Sessions Judge for the offence under Section 302 IPC for committing the murder of his wife at 9.00-p.m. on November 25, 1977, in the house of her father, situated in village Gachhipura. The report of the incident was lodged at Police Station, Gachhipura, on November 25, 1977, at 9.20 p.m. by Ramdeo-the brother of the deceased Sushila. The

prosecution, in support of its case, examine 17 witnesses and the accused, in his defence, examined four witnesses. The learned trial Court, after trial, convicted the accused under Section 302 IPC and sentenced him to undergo imprisonment for life and a fine of Rs. 200/- and in default of payment of fine further to undergo two months' rigorous imprisonment. It is against this judgment dated October 30, 1985, passed by the learned Sessions Judge, Merta convicting and sentencing the accused-appellant. Dev Kishan that the appellant has preferred this appeal.

3. Heard learned Counsel for the appellant and the learned Public Prosecutor.

4. It is contended by the learned Counsel for the appellant that the learned lower Court committed an error in convicting and sentencing the accused-appellant on the basis of the evidence produced by the prosecution, which consist of the statements of the highly interested and wholly unreliable witnesses and no conviction can be based on the testimony of such type of interested and unreliable witnesses. It is further submitted by the learned Counsel for the appellant that the prosecution has failed to explain the injuries found on the person of the accused on this count alone. Alternatively, it is argued that the appellant, at the relevant time was insane and by reason of unsoundness of the mind, he was unable to know the nature of the act what he was doing and, therefore, his case falls squarely within the provisions of Section 84, IPC and the appellant deserves to be acquitted on that score, also. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned lower Court and has submitted that the learned lower Court has rightly appreciated the evidence on record and has rightly convicted and sentenced the accused as the case against the accused stands proved beyond any reasonable manner of doubt. He has, also, stated that the prosecution has satisfactorily explained the injuries on the person of the accused-appellant and has submitted that the appellant was not insane at the time of committing the offence.

5. We have considered the rival submissions made by the learned Counsel for the parties.

6. The prosecution, in support of its case, has examined 17 witnesses. The nature of the evidence, produced by the prosecution, consists of the evidence of the three

eye witnesses, namely, PW 6 Ridh Karan-the father of the deceased, PW 1 T Nena Ram-the uncle of the deceased and PW 13 Rameshwar Lal- the brother of the deceased, who were present at the time of the occurrence in the house where the incident took place. This evidence of the three eye witnesses sought to be corroborated by the evidence of PW 1 Smt. Santosh-aunt of the deceased-and PW 5 Smt. Ganpati the mother of the deceased, who reached at the scene of the occurrence immediately after the cries were raised by the deceased and on coming there, they saw the accused armed with a knife, which was stained with blood. The other set of the witnesses, produced by the prosecution to support the prosecution case, consists of PW 2 Ali Hussain, PW 3 Nav Ratan and PW 7 Ramdeen-the neighbours-who came to the scene of the occurrence immediately after hearing the cries and when the accused opened the main doors of the house and came out armed with a knife, with which he killed Smt. Sushila these witnesses saw the accused coming out of the room, PW 9 Gafoor Chand and PW 15 Suwa Lal are the brother-in-law [Saadus) of the accused, who were sitting in the house of Tulsi Ram and came there after hearing the cries and reached at the place of the occurrence alongwith Ali Hussain, Nay Ratan and Ramdeen when the accused came out of the house after opening the main doors. The other set of witnesses, produced by the prosecution consists of the evidence of four Motbir witnesses, namely, PW 4 Rama Ram who is a witness to the arrest of the accused and the seizure of the knife; PW 8 Kishore Singh, PW 10 Tulsi Ram [in whose house the accused, Gafoor Chand and Suwa Lal were sitting) and PW 12 Chhotu, who took the blood-stained plaster of the room, where Smt. Sushila Was murdered. PW 4 is Dr. Shiv Prakash, who conducted the post-mortem on the deadbody of deceased Smt. Sushila and, also, examined the injuries of accused-appellant as well as Suwa Lal. PW 16 is Lal Mohammed [Police Constable), who recorded the First Information Report at the instance of PW 13 Rameshwas Lal and PW 17 Laxman Singh is the Investigating Officer, who was the Incharge of Police Station, Gachhipura.

7. PW 6 Ridh Karan-the father of the deceased Smt. Sushila- has stated that Dev Kishan used to illtreat his (accused's) wife and used to give beatings to her and, therefore, she left her husband's house and came to stay with him about a year before the date of the incident and was living with him for the last one year. She

had joined service as a teacher in village Doobariya, which is at a distance of one kilometre from Gachhipura and she used to go to the school in the morning and return in the evening. Dev Kishan came three to four times prior to this occurrence to his house and threatened Smt. Sushila and him that if they will not send Sushila to his house then he would cut her ears and nose and they will have to face the consequences. His son Ramdeo was to be married on November 27, 1977 (Mrigsar Sudi Dooz). On November 25, 1977 (Kartik Purnima), his sons-in-law Suwa Lal, Gafoor Chand and the accused Dev Kishan came there. On that day, he was at his house and was doing the work concerning the marriage. His house and the shop are situated in the same premises. All his three sons-in-law were sitting with him and his son Rameshwar Lal was, also, present there. Accused Dev Kishan was sitting in the shop and Smt. Sushila was doing the house-hold work. In the night, Smt. Sushila went out-side to call the ladies of the adjoining houses for singing the marriage-songs. When Smt. Sushila returned and went to her room to change her clothes, at that time he was sitting in the Tibara. The accused, who was, also, sitting in the Tibara, got-up, closed the main entrance and entered in the room, where Smt. Sushila had gone to change her clothes. Immediately after entering the room, he took- out a knife from the pocket of his pant caught-hold of the hair- tail of Sushila and inflicted injuries with the knife on the neck of Smt. Sushila. He repeated the knife-blows on the neck and arm- pit and other parts of the body of Smt. Sushila. On receiving the injuries, Smt. Sushila fell down on the cot. He tried to caught- hold of the accused, but the accused ran away. He alongwith his younger brother and son followed the accused. The accused, after opening the doors, came out-side the house. Rameshwar's Mother and Santosh W/o Nenu Ram, also, came there and all started crying. The accused ran away. When the accused came-out-side the house, Gafoor Chand, Suwa Lal, Nav Ratan, Khem Singh and Ali Hussain came there and tried to caught-hold of the accused. The accused tried to get himself rescued and inflicted injury by knife, whereupon Gafoor Chand took a lathi from there and in order to snatch the knife, inflicted injury with the lathi to the accused. Thereafter Rameshwar went to the Police Station and lodged the report. The police came there, arrested the accused, seized the knife from the possession of the accused, recovered the deadbody and prepared other Memos. Almost identical and similar is the statements of PW 11

Nenu Ram-the brother of Ridh Karan and the uncle of the deceased, who was, also, present in the house and who had seen the occurrence and was living in the same house, as well as that of PW 13 Rameshwar- the brother of the deceased, who was living in the same house and was present there and who lodged the report of the incident. A lengthy cross- examination was conducted by the learned Counsel for the accused, but nothing could be elicited from them which may shake the credibility of the evidence of these witnesses. It was a night-time at about 9.00 p.m. and only two days were left in the marriage and the presence of these persons at the relevant time, i.e., at about 9.00 p.m., was most natural. The witnesses were present there and had seen the occurrence and had narrated the fact what they had actually seen and how the incident occurred. We have no hesitation to believe the evidence of these three eye witnesses. The evidence of these three eye witnesses finds support from the evidence of PW 1 Smt. Santosh and PW 5 Smt. Ganpati, who came there immediately after the occurrence after hearing the cries of Smt. Sushila and saw the accused standing near Smt. Sushila with a blood-stained open knife in his hand and with blood-stained clothes. They, also, saw Smt. Sushila in an injured condition lying half on the cot and half on the earth. Their presence at the scene of the occurrence was most natural as they were the ladies who were residing in that very house. The evidence of these witnesses further finds support from the statement of PW 2 Ali Hussain, PW 3 Nav Ratan, PW 7 Ramdeen and PW 10 Tulsi Ram, who are the neighboured and who came immediately after hearing the cries at the house of Ridh Karan and found the accused coming out of the house after opening the doors and was armed with a knife, which was stained with blood and he tried to run away, but was not permitted by these witnesses and was caught-hold of by them. Their evidence further finds support from the evidence of PW 9 Gafoor Chand and PW 15 Suwa Lal, who are the brothers-in-law (Saadus) of the accused Dev Kishan and who had come there to attend the marriage of their brother-in-law (looser) Ridh Karan had made arrangements for the stay of his sons-in-law including Gafoor Chand, Suwa Lal and Dev Kishan in the house of Tulsi Ram and they had left the house of Ridh Karan only before 15 minutes of the incident and had gone to the house of Tulsi Ram after taking their meals. They, also, asked the accused to come there but the accused told that they should proceed and he would come within 15 minutes. A

Careful scrutiny of the evidence of these witnesses clearly shows that it was the accused, who has come to attend the marriage of his brother-in-law and who assaulted Smt. Sushila, inflicted injuries on her and killed her. A careful scrutiny of the evidence of these witnesses clearly shows that they are the most natural and reliable witnesses and they have stated what they had actually seen and the learned lower court has not committed any illegality in placing reliance over their testimony.

8. The next question, which requires consideration is: whether the prosecution has been able to explain the injuries on the person of the accused. The accused received as many as eight injuries. According to the prosecution case, Ridh Karan (PW 6) tried to caught-hold of the accused and tried to rescue his daughter from the accused, while he was inflicting injuries to her, but he could not caught-hold of the accused and the accused ran-away armed with the knife and waiving the same to threaten the witnesses and after opening the doors, came outside the house and then he was apprehended by PW 2 Ali Hussain, PW 2 Nenu Ram PW 7 Ramdeen, PW 9 Gafoor Chand and PW 15 Suwa Lal and Gafoor Chand inflicted injuries on the person of the accused in order to disarm him so that he may not inflict injuries to any other person. According to the prosecution, the injuries were inflicted to the accused by Gafoor Chand. Thus, the injuries, found on the person of the accused have been properly explained by the prosecution.

9. The last but the most important question, which requires consideration is: whether at the time of the incident the accused was in a fit condition of mind or was insane? According to Section 84 IPC, nothing is an offence which is done by a person, who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Section 84 of the Indian Penal Code deals with the acts of a person of unsound mind and lays down the legal test of responsibility in case of alleged unsoundness of mind. It is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground for exemption from criminal responsibility. In order to get the benefit of the provisions of Section 84 IPC on the ground of insanity, it has to be proved that at the time, of committing the act, the accused was labouring under such defect of reason from disease of

mind, as not to know the nature and quality of the act he was doing: or, if he did know what he was doing, that he did not know it was wrong. It is not every impairment of mental process or any deviation from the recognised standards, which will ipso facto exempt the accused from its criminal responsibility and will earn the accused the verdict of not guilty, but he must be a man who, at the time of committing the act, is totally deprived of his understanding and memory and does not know what he is doing. - ..

10. The accused, in support of his defence of insanity, has produced four witnesses and has placed on record eight documents, DW 1 is Dr. Pramod Bhardwaj, who was the lecturer in the Mental Hospital, Jodhpur, and who examined the accused on May 31, 1977 i.e., about six months before the date of the occurrence, and found the accused suffering from the disease of psychosis and prescribed him the medicines. He has proved Ex. D. 7 the discharge slip of the accused. It is pertinent to note here that in this prescription, the registration number of the hospital has not been mentioned though he treated the accused in the hospital. If the accused would have gone there for his treatment in the hospital then the slip should have to bear the inward number of the hospital which was not on the slip. This witness has, also, proved Ex. D. 8 and Ex. D.9. Ex. D. 8 is the medical certificate dated July 8, 1977 issued by this witness for the treatment of the accused for the disease texts Psychosis since 31-5-77 to 8-7- 77. Ex.D.9 is the certificate dated 8-6-78 of the Mental Status Examination Report of the accused. According to this report, the accused suffered from the attack of Schizopaenia and was treated in the Mental Hospital, Jodhpur, from 1-6-77 to 8-7-77. According to this witness, the accused was suffering from the disease Schizopaenia from 1-6-77 to 8-7-77, i.e. about four months prior to the date of the incident and not at the time of the incident. So far as Ex. D. 9 is concerned, that, also, relates to the period either before or much after the date of the incident.

11. DW 2 Dr. Deo Raj Purohit is the Vice Principal and Attending Doctor in the Mental Hospital, Jodhpur, and was serving there in the month of January, 1979, who examined the accused in the month of January, 1979 and treated the accused on 23-5-78, 15-6-78 and thereafter on various other dates and the last date he was admitted in the hospital is 14-4-1982 to 8-3-84. All these dates, on

which this doctor treated the accused, were much after the date of the occurrence and can, also, be of no help to the appellant. This witness has, also proved Ex.D.12 the report dated 15-7-1982 regarding the mental condition of the accused and Ex.D.13 the letter issued by this witness to the Sessions Judge Marts, on 16-7-1982, stating therein that accused Deo Kishan has been still found to be suffering from Schizophaania and so far he has not shown any improvement. This witness has stated the condition of the accused much after the date of the occurrence and, therefore, this witness is, also, of no help to the accused.

12. DW 3 Ratan Lal Shastri is the retired Vaidhya and lives in the neighbour-hood of the accused. He has proved Ex.D. 14 the prescription issued by this witness and Ex.D.15 the entry in the register. According to this witness, he treated the accused on 23-11-1977 for severe head-ache. In the cross-examination, this witness has admitted that he has mentioned the name of the disease on the asking of the father of the accused as the accused came to him only on that day and neither before and nor thereafter and, therefore, he cannot say whether he was suffering from that disease or not. Even the slip on which the prescription has been written, is a very small piece of paper and not a regular slip, which is issued in the normal course in the hospital. From the evidence of this witness, also, nothing could be gathered that the appellant was suffering from any mental disease on the relevant date.

13. DW 4 is Salaluddin Rizvi-a compounder who was working in the Government Hospital, Nagaur and who has proved the prescription slip Ex.D. 16 issued by Dr. K.M. Verma, who has gone out of India and whose signatures he could identify.

14. This is the all evidence, produced by the accused in support of his case to show that he, at the relevant time, was insane and was not a fit mental condition to understand the consequences of his act. The evidence produced by the accused has to be examined to determine : whether the benefit of Section 84 IPC can be given to the appellant or not and whether he committed the offence when he was deprived of the understanding and memory and did not know what he was doing For determining this, the behaviour of the accused before and after the commission of the crime has to be taken note-of as it furnishes some clue

regarding the mental state of the accused. Mere entricite or strange behaviour or mental up-set will not absolve the appellant from his criminal liability which is the consequence of his act. The Court, for the determination of this aspect of the case, has, also, to take into consideration the circumstances which preceded, attended and/or followed the crime as these are, also, relevant considerations for the determination of this point, because the state of the mind of the accused can only be established from these circumstances. As per the evidence produced by the prosecution, there was a marriage in the house of Ridh Karan. His son Ramdeo was going to be married on 27-11-77. The accused and the other two sons-in-law of Ridh Karan, namely, Suwa Lal and Gafoor Chand, also, came there to attend the marriage on 25-11 -77. They all took their meals collectively and after taking their meals, as the arrangement for there stay was made at the house of Tulsi Ram and, therefore, they returned to the house of Tulsi Ram and, also, asked the accused to accompany them, as he was, also, staying there. The accused told them that they should proceed and he would come within ten to fifteen minutes. After Suwa Lal and Gafoor Chand went way.. Smt. Sushila came to the house after calling the ladies of the adjoining houses for singing marriage songs. She entered into the house and went into the room to change her clothes. The accused, who was sitting in the Tibari, closed the main doors, entered into the room, took-out the knife from the pocket of his pant and inflicted injuries on the person of Smt. Sushila, who succumbed to these injuries. Prior to the time of the incident, he was talking to his, father-in-law and was in full senses. Nothing abnormal was found in his conduct or behaviour. Even after inflicting the injuries, he tried to run away after opening the main doors and waving the knife in order to threaten the witnesses. All this sort of behaviour of the accused does not show that he, in any way, acted as an insane person or his cognitive and willing faculty were imparies. He was asked by the Station House Officer to hand-over the knife and he responded to that and gave the knife to the Station House Officer. The circumstances, which preceded, attended and followed the crime and the behaviour of the accused before and after the commission of the crime clearly show that the cognitive and willing facultys of the accused-appellant were not lost nor was he insane at the time of the occurrence. He came armed with a knife from his village, and even did not carry and luggage with him though he came to attend

the marriage and all these things clearly show that he came pre-planned. His action cannot be said to be an action of a person of unsound mind. We, therefore, not find any merit in the contention, raised by the learned Counsel for the appellant, that the appellant was of unsound mind at the time of the commission of the offence.

15. In the result, we do not find any merit in the appeal and the same is hereby dismissed.

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