SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Loomb Singh Vs. State

Loomb Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/770716

Court : Rajasthan

Decided On : Oct-21-2005

Reported in : II(2006)DMC783

Judge : Satya Prakash Pathak, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313 and 374(2); Indian Penal Code (IPC), 1860 - Sections 302, 304, 307 and 323

Appeal No. : Criminal Appeal No. 901 of 2004

Appellant : Loomb Singh

Respondent : State

Advocate for Def. : J.P.S. Choudhary, Public Prosecutor

Advocate for Pet/Ap. : P.N. Mohnani, Adv.

Judgement :

Satya Prakash Pathak, J.

1. This appeal under Section 374(2), Cr.P.C. has been directed against the judgment of conviction and order of sentence dated 27.2.2004 passed by learned Additional Sessions Judge, Sojat camp Jaitaran in Sessions Case No. 35/2003 State v. Loomb Singh, whereby the accused-appellant has been convicted and

sentenced under Section 304 Part I, I.P.C. and sentenced to rigorous imprisonment for five years with fine of Rs. 1,000, in default of payment thereof to further undergo rigorous imprisonment for one month.

2. The brief facts of the case are that on 18.5.1999 at 9.15 a.m., P.W. 1 Prem Singh submitted a written report at Police Station, Sendra, inter alia, stating therein that his elder sister Kamla was married with Loomb Singh 14-15 years ago and was having four living children and on 16.5.1999 in day at about 4 o'clock, Dharm Singh informed him that his brother-in-law after beating his sister on previous night had run away somewhere and as his sister was in an unconscious state he was sent to inform him about that. Whereupon, it is said that the complainant went at the house of his sister and found his sister lying on a cot but unable to speak as she had received many grievious injuries on her face. He, after arranging the conveyance, along with Dharam Singh and Pukhraj, took his sister to the hospital at Bheem and from there taken her to the hospital at Beawar and got her treated. The doctor there called the police looking to the seriousness of the patient. In the morning, the doctor told him to take her to Jaipur but due to paucity of funds, at that time he took his sister to her house and stated the whole thing to her father-in-law, who asked him to bring money and thereafter he went home but as his father was not at home and the mother was ill, he stayed at home. He stated that at Bheem the police had visited the hospital and as he was not knowing the exact place of police station the report could not be made earlier. The scribe of the report prayed for taking action.

3. On the aforesaid report, inquiries were made by the SHO of the Police Station and finding a case under Sections 307 and 323, I.P.C, registered it at number 79 and started investigation. Kamla, during treatment at Government Amritkaur Hospital, Beawar, died on 18.5.1999 at 10.40 a.m., as such offence under Section 302, I.P.C. was also added. During investigation, site plan and site inspection memo Ex. P/2 was prepared. Memo in respect of condition of the dead body of Kamla Ex. P/3 was prepared. The post-mortem of the dead body of Kamla was conducted by Medical Jurist P.W. 8 Dr. Bhanwarlal Phanan, who after post-mortem examination, prepared report Ex. P/8. Panchnama Ex. P/9 and memo in respect of delivery of dead body to her father-in-law Kheemsingh for cremation Ex.

P/4 were prepared. Accused Loombsingh was arrested on 19.5.1999 and during custody he voluntarily gave information to the effect that the brick which was used in inflicting injuries was kept concealed in the 'Aala' (shallow recess in a wall) of his house and he could get it recovered from there. That information was recorded in Memo Ex. B/13 and as per the information furnished, the accused produced the brick in the presence of witnesses P.W. 3 Chiman Singh and P.W. 4 Poonam Singh, which after taking into possession was sealed and the packet was marked 'A'. Memo in respect of place of recovery Ex. P/6 was also prepared. Report in respect of medical examination of deceased Kamla Ex. P/7 was obtained and the statements of the witnesses were recorded and after completion of other formalities, challan against accused Loombsingh under Section 302, I.P.C. was filed in the Court of Judicial Magistrate, Bar on 15.6.1999 from where on committal ultimately came for trial before the learned Additional Sessions Judge, Sojat camp at Jaitaran.

4. After hearing the parties on charge, the learned Additional Sessions Judge, framed charge under Section 302, I.P.C. against the accused and same was read over and explained to him. Accused denied the charge and claimed trial.

5. The prosecution, in support of its case, examined as many as 19 witnesses and tendered several documents in documentary evidence. After close of prosecution evidence, accused was examined under Section 313, Cr.P.C. He denied the prosecution evidence and stated that on the day of incident he was at Sojat and the police had arrested him there but produced no evidence in defence.

6. The learned trial Judge, after hearing the parties, convicted and sentenced the accused-appellant as stated hereinabove and aggrieved the accused has preferred the present appeal.

7. Before examining the contentions raised by the learned Counsel for the parties, first it appears proper to see as to what is the medical evidence and as to whether the deceased died a natural death or the death was a homicidal one.

8. In the instant case, P.W. 5 is Dr. Ashish Saxena, who has examined the injured and prepared Injuries Report Ex. P/7 and found following six injuries:

1. Bruise 21/2' x 11/4' x 11/2' On right Mandibular Region

2. Bruise 1' x 1/2' x 1/2' on chin

3. Bruise 11/2' x 3/4' x 1/2' on left Mandibular Region

4. Bruise 3/4' x 1/4' x 1/2' on left Occipital vertebra area

5. Distorted mandible with abnormal mobility of mandible

6. Abrasion 3/4' x 1/2' on left elbow.

Dr. Saxena has stated that Injury No. 6 was simple in nature and all other injuries were caused by blunt object and he advised x-ray for the injuries. The duration of the injuries in his opinion was 12 hrs. from the time of examination. He has examined Smt. Kamla on police requisition on 16.5.1999. In the cross-examination, he has stated that except Injury No. 4, no other injury was sufficient to cause death. As regards Injury No. 4 of Ex. P/7, had got no impact on lung and liver. He has further stated that he referred the patient for further treatment.

9. P.W. 1 is Dr. Bhanwarlal Phanan. He has conducted post-mortem on the dead body of deceased Kamla on 18.5.1999. He has stated that on police requisition, while he was posted as Medical Jurist in Amrit Kaur Hospital, Beawar. He conducted postmortem and found following injuries:

(i) Bruise 3' x 2' oblique above the right nipple

(ii) Bruise 31/2' x 11/2' Vertebra left to left nipple.

(iii) Abrasion 1' x 1/2' right area.

(iv) Bruise 3' x 2' over mandible

(v) Bruise 1' x 1/2' on chin

(vi) Bruise 3/4' x 1/4' on occipital parietal bone

(vii) Abrasion 3/4' x 1/2' on left elbow.

He has further stated that cause of death was shock and internal haemorrhage on account of injuries to vital organs like right lung and liver. He has proved Ex. P/8, the post-mortem report. In the cross-examination, he has stated that the injuries mentioned in the post-mortem report cannot be the result of one fall from a transport vehicle.

10. In view of above two statements of doctors, it is established that on account of injury sustained by deceased Kamla, she died in the hospital and the cause of death was ante mortem injuries. Thus, the deceased died not a natural death but the death was homicidal.

11. The learned Trial Court has taken into consideration four circumstances while recording conviction of accused under Section 304 Part I of the Indian Penal Code. The circumstances relied upon are: (1) accused and deceased were husband and wife and were living together and if the wife sustained injuries and subsequently died, it can be presumed that accused was responsible for the same in absence of any explanation furnished by him, (ii) soon after the incident, the accused did not remain at house rather ran away from the house and absconded; (iii) the recovery of one brick was made on the basis of disclosure statement, and (iv) the behaviour of accused towards his wife was cruel as he used to beat her after taking liquor.

12. The learned Counsel for the appellant has argued that the circumstances relied by the learned Trial Court are based on conjectures and surmises because no evidence is available on record and almost all the witnesses, who have any say about the incident, have not supported the prosecution case, therefore, only for this reason that the accused was husband of the deceased, he cannot be held responsible and guilty for the death of the deceased. It has next been submitted that the accused was not at the house when the incident took place, therefore, the Trial Court has wrongly presumed that accused on the day of incident was at the house and was responsible for causing injuries which resulted in consequential death. It has also been submitted that there is no evidence to show that the behaviour of the accused was cruel and the recovery of brick alleged to have been made at the instant of accused-appellant is not correct as the witnesses of

recovery have not supported the case.

13. On the other hand, learned Public Prosecutor has submitted that the prosecution has fully established the case on the basis of circumstances. It has also been submitted that the only conclusion of the circumstances established by the prosecution is that it was none else but the accused who was responsible for causing injuries to the deceased and as a result of which she died subsequently.

14. I have considered the submissions made before me.

15. It is correct that in the present case, P.W. 4 Poonam Singh, a witness in connection with the recovery of brick, P.W. 10 Pukh Singh, P.W. 12 Kamla, P.W. 11 Smt. Badami, the mother of the accused, P.W. 15 Jaswant, son of the accused, P.W. 17 Hari Singh, son of accused, P.W. 18 Movni, son of accused, and P.W 19 Smt. Tulsi, have not supported the prosecution. But, in the instant case, P.W. 1 Prem Singh, who is brother of the deceased and has lodged the First Information Report Ex. P/1 has stated that his sister got married 15 years ago before the incident took place and was having four sons and daughters. He has also stated that on 16th May, 1999 at about 4.30 p.m., one Dharam Singh had come to his house and told him that his sister was beaten badly by the accused and as a result of which she became unconscious. He has also stated that after hearing about beating of his sister by the accused, he along with Dharam Singh and other person proceeded for the house of the deceased and found there Kamla lying on a cot having several injuries on her face. He has also stated that thereafter he took her to hospital in Bheem and the doctor called police and subsequently it was told that the injuries were severe therefore, for further treatment she was required to be taken to Govt. Hospital at Beawar. He has stated that in Beawar Hospital the doctors advised to take her to Jaipur for proper treatment. As he has no money, he took his sister to her house and there he asked the father-in-law and mother-in-law of the deceased to make arrangement of money to which they declined and as he was also not having money, therefore, he went to his house to collect money. He has further stated that the other day police came to his house and told that his sister was again admitted in Beawar Hospital. He has stated that he then submitted a report in Police Station, Sendra. He has also stated that subsequently

his sister died. He has further stated that accused Loomb Singh, who was his brother-in-law, was drunkard and a person of quarrelsome nature and he used to maltreat his sister. In the cross-examination, nothing material has been extracted. The facts that deceased was taken by the witness to hospital and she died on account of injuries sustained stand established. He denied the suggestion that on account of some accident the ribs of the deceased got fractured and it has resulted in her death. The suggestions of enmity between accused and Dharam Singh has been denied and he has stated that report Ex. P/1 though was dictated by police but in the report he has written only what actually happened and he found.

16. P.W. 2 Dharam Singh has stated that he went to the house of P.W. 1 Prem Singh and informed him about accused giving beating to his wife Kamla and her becoming unconscious. He has also stated that P.W. 1 accompanied him to the house of the deceased where father of the deceased was not there but her mother was available. The witness has not been shaken with regard to the fact of informing about the incident to P.W. 1 and also with regard to the fact of P.W. 1 accompanying him upto the deceased's house.

17. P.W. 6 Sangram Singh is the father of the deceased and he has stated that his daughter was married 10 years before the incident and she gave birth to 4 sons and daughters. He has also stated that whenever she used to come to his house, she used to make complaint about the behaviour of the accused as the accused used to beat her and used to make demand for bringing money. He has stated that on some occasions he has given money to accused and also stated that on one occasion his daughter was given beating by the accused and she remained at his house for a month but as the younger brother of the accused was to be married soon, the deceased was sent with the younger brother of the accused to her in-laws house. He further stated that for construction of a new house of accused he spent a sum of Rs. 15,000. It has also been stated that accused, his wife and children were living separately. The cross-examination of the witness suggests that he took the plea of alibi. Suggestions were put to him that some other persons might have inflicted injury and the accused was not at the house at the relevant time and was falsely implicated in the case.

18. P.W. 7 Smt. Meera, the mother of the deceased stated about maltreatment given to her daughter by the accused. She has stated that accused is a drunkard and he used to make demand through her daughter. She has stated that Dharam Singh intimated about the beating given to her daughter by the accused and her daughter lying unconscious in her in-laws house in severally injured condition. She has also stated that his son went to the in-laws house of her daughter after receiving the information. In her cross examination, suggestions have been made regarding the plea of alibi of the accused. It has also been suggested that some person other might have inflicted injuries on the deceased and accused was falsely implicated in the case.

19. In the statements, it has come in evidence that accused and deceased along with her children was living separately in their house. It has also come in evidence that P.W. 2 Dharam Singh intimated about the incident to P.W. 1 and P.W. 1 Prem Singh has lodged the report. The fact that deceased sustained severe injuries on her face and head and accused being husband of the deceased has not furnished any explanation as to how she had sustained injuries, the deceased being his wife and was in his custody, he cannot escape his liability merely by taking a plea of alibi in order to show that he was not responsible for the injuries sustained by the deceased. The plea of alibi taken by the accused has not been established. Plea of alibi has been suggested to some of the witnesses and it has also been suggested to some of the witnesses that some other person might have inflicted injuries after committing rape with her. Be as it may, no evidence has been brought on record to prove that accused was away from the house on the day of incident, therefore, he was not responsible for the injuries sustained by her. It is correct that sons, daughters, mother and father of the accused have not supported the prosecution case but still the accused being husband of the deceased was required to give a plausible explanation for the injuries sustained by his wife and his being not present on the day of incident at the house as in the normal circumstance he ought to have been there.

20. In view of above discussion while taking into consideration the overall circumstances of the case, I am of the opinion that the learned Trial Court has correctly found the circumstances established against the accused that the

accused and deceased were husband and wife and no explanation has been offered by the accused regarding his being away from the house and the injuries sustained by the deceased while she was living with the accused along with children with accused.

21. The second circumstance, relied by the learned Trial Court, is that accused was not available after the incident. The accused has taken plea of alibi only by way of putting suggestions to the witnesses saying that at the time of incident he was at Sojat as he was employed there in some hotel, therefore, he does not know as to who caused injuries to the deceased. This explanation, unless some evidence is brought on record, till then the plea of alibi taken by the accused would not be of any help to him only on the basis of suggestions put to the witnesses, and would not establish that accused was not at his house on the day of incident and some other person might have caused the injuries to the deceased. Severe beatings to the deceased were given on 15th May, 1999 and as a result of which she died on 19th May, 1999. From 15th to 19th May, 1999, the accused was away from his house and was absconding. The accused was arrested on 19th May, 1999. This circumstance is suggestive of the fact that the accused after the incident ran away from the house leaving his injured wife (deceased) and kids alone at the mercy of God. Thus, this finding of the learned Trial Court also appears to be based on proper appreciation of material available on record.

22. The third circumstance is recovery of the brick. P.W. 3 Chiman Singh has proved recovery memo of brick Ex. P/5 and the memo in respect of place of recovery Ex. P/6. He has stated that the accused is known to him. He has further stated that accused got recovered a brick from his house. In the cross-examination, he has stated that he signed Exs. P/5 and P/6 after the same were read over to him. He has also stated in the cross-examination that police persons, accused Loomb Singh and father of Loomb Singh were present at the time of recovery.

23. P.W. 16 Kuljeet Singh, the Investigating Officer, has stated that he conducted investigation in the case. He has also stated that the accused gave voluntary information to him that the brick by which he made assault on the deceased was

lying in his house and he was prepared to get the same recovered. He has stated that he recorded the information given to him in Ex. P/13. He has further stated that in the presence of witnesses, the accused got recovered the brick. Recovery Memo Ex. P/5 contains his signatures and the signatures of witnesses. Thus, the recovery of brick at the instance of accused stands proved.

24. The last circumstance, relied upon by the learned Trial Court, is with regard to the conduct and behaviour of the accused appellant towards him wife. The evidence which has come on record, particularly of P.W. 1 Prem Singh, P.W. 6 Sangram Singh and P.W. 7 Smt. Meera, who are brother, father and mother of the deceased, shows that they have stated that accused was in habit of taking liquor and thereafter he used to give beatings to his wife. The marriage of the deceased with accused took place long back but their relations were not cozy and cordial. It also appears from the evidence that the husband was a person of quarrelsome and short tempered and this might have been the reason of the incident which resulted in inflicting some blows on the person of deceased by the accused and in that process the deceased might have sustained injuries on her face and on head. Thus, I do not find any illegality in relation to appreciation of evidence by the learned Trial Court with regard to this circumstance.

25. The learned Trial Court has convicted the accused appellant under Section 304 Part I of the Indian Penal Code. The contention of the learned Counsel for the appellant has been that in view of nature of the injuries sustained by the deceased, it cannot be said that accused had any knowledge or intention to cause such bodily injuries which would have been sufficient in the ordinary course of nature to cause death. According to the learned Counsel, the rapture of lung and liver, which resulted in death of the deceased, might be the cause of fracture in the ribs. It has also been his submission that since the incident appears to have taken place at the spur of moment, therefore, at the most, the present case is one where accused was liable to be convicted under Section 304 Part II of the Indian Penal Code.

26. It has also been submitted by the learned Counsel that the accused is the only bread earner of the family, the sons and daughters of the accused are now grown

up and need proper supervision of the father who is in jail for last two years and 9 months, therefore, his sentence may be reduced to the period already undergone by him so that he may take proper care of his family. The learned Public Prosecutor has submitted that the Trial Court has correctly convicted the accused appellant under Section 304 Part I, IPC on the basis of proper appreciation of evidence.

27. I have considered the submission made before me.

28. It is to be seen that in Ex. P/7, in all, 6 injuries have been mentioned. Out of those injuries mentioned in Ex. P/7, Injury No. 4 is on the head. The cause of death as per the post-mortem report Ex. P/8 is rapture of lung and liver. Thus, there appears no direct nexus between the injury sustained on the vital part i.e. head with the injuries resulting in death i.e., the injuries on lung and liver. It appears, on account of some quarrel between husband and wife, the accused might have inflicted injury with the aid of brick or by some other blunt object. It can, thus, be said that the accused had no knowledge that by inflicting those injuries the deceased would die. It can also be inferred from the nature of injuries that the accused in heat of passion has assaulted the deceased and then ran away from the place of incident. The learned Trial Court, at Page 16 of the judgment in Para 33, has admitted that on carefully examining the circumstances of the case, it seems that had there been any intention of the accused to cause death then the deceased would have been done to death but it appears that some quarrel took place between deceased and the accused for some reason and accused inflicted brick blows on the face, legs and other parts of the body of deceased, and, therefore, it can be presumed that the accused had the intention to cause bodily injuries. The learned Court then further stated that looking to the manner in which the injuries are inflicted, the accused had the knowledge that by inflicting such injuries deceased would die. This appears to be contradictory stand. A perusal of Para 33 of the impugned judgment is clearly indicative of the fact that the injuries apparently were not such which were sufficient in the ordinary course of nature to cause death. The deceased had sustained injuries on 15th May, 1999 and died on 19th May, 1999. It further appears that had there been proper treatment and medical care of the deceased she would have survived. It is further born out from

the evidence that she was referred for further treatment to Jaipur hospital but was brought back by her brother at her house as he was having no money for the treatment. It has also come in evidence that P.W. 1 Prem Singh asked the in-laws to arrange some money for her treatment but they also showed their inability. Be that as it may, the injuries mentioned in Ex. P/7 as per P.W. 5 Dr. Ashish Saxena were caused by blunt object and in his opinion injury No. 4 was on the vital part.

29. After carefully examining the nature of the injuries and the cause of death, I am of the opinion that accused was having intention only to cause bodily injuries to the deceased and it cannot be inferred from the evidence available on record that he had the knowledge that by inflicting such injuries she would die. Therefore, in the present case, the conviction of the accused was required to be recorded under Section 304 Part II of the Indian Penal Code and not under Section 304 Part I.

30. I, accordingly, after the conviction of accused-appellant from Section 304 Part I to one under Section 304 Part II and further taking into consideration the overall facts and circumstances of the case and also the fact that the accused has remained in jail for approximately 2 years and 9 months, the sentence awarded to the accused is reduced to the period already undergone by him.

31. In the result, the appeal partly succeeds. The judgment of conviction and order of sentence dated 27.2.2004 passed by learned Addl. Sessions Judge, Sojat camp Jaitaran in Sessions Case No. 35/2003 against accused-appellant is modified to the extent stated above.

32. Accused-appellant Loomb Singh is in jail. He be set at liberty forthwith, if not required in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com