

Uke Khan Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/850722

Court : Rajasthan

Decided On : Mar-03-2010

Judge : Govind Mathur and; C.M. Totla, JJ.

Appellant : Uke Khan

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Ashok Upadhyay

Disposition : Appeal dismissed

Judgement :

Govind Mathur, J.

1. Uke Khan son of Baje Khan has preferred this appeal against his conviction and sentence under Section 302 IPC to life imprisonment with a fine of Rs. 3000/- and in default of payment of fine two years' additional imprisonment under the order dated 20.2.2004 passed by learned Additional Sessions Judge (Fast Track), Jalore.

2. The prosecution case in brief is that Abu Khan on 10.8.2002 at 9:30 AM submitted a written report (Ex.P/6) with the facts that his sister Nasim Bano @ Laxmi wedded with Uke Khan in the year 1999 and at that time gold and silver ornaments and also other utensils were given in dowry, however, Baje Khan,

father of Uke Khan, and Mrs. Shanti, mother of Uke Khan used to torture Nasim Bano with a demand for dowry. Looking to beating given to Nasim Bano at about five months back from the date of incident she was taken to Balwada (parental place) by her father Askar Khan and then on 3.8.2002 Uke Khan himself, his father Baje Khan and his elder brother came to their village for negotiations in panchayat. Nasim Bano was apprehending her death, therefore, after panchayat Abu Khan took his sister and her husband Uke Khan to Modra where he was posted as a police constable. On 5.8.2002 Baje Khan came to Modra and told to Abu Khan's wife that the consequences of carrying Uke Khan and his wife to Modra shall be known within a period of ten days. On 10.8.2002 when Abu Khan was coming from his duties and his wife was coming after purchasing vegetables, on receiving information from their neighbour Durg Singh about hearing of loud cryings from their house, they went there and found that Uke Khan was riding on the chest of Nasim Bano and was strangulating her by giving a scarf knot. Abu Khan removed the scarf but after few minutes Nasim Bano @ Laxmi died.

3. On basis of the first information report a case was registered against Uke Khan, Baje Khan and Smt. Shanti wife of Baje Khan. Uke Khan was charged for commission of offences under Sections 302 and 498A IPC whereas Baje Khan and Smt. Shanti were charge sheeted for an offence under Section 498A IPC and committed to the court of Sessions and tried. They pleaded not guilty. To prove its case the prosecution in all examined 21 witnesses of whom PW-5 Abu Khan (husband of deceased), PW-7 Manjula (wife of Abu Khan) and PW-1 Durgpal Singh are the eye witnesses of the occurrence. They corroborated the prosecution story. PW-14 Dr. Rajumal was Head of Medical Board that had done autopsy on the dead body on 10.8.2002 and proved the postmortem report Ex.P/14, according to which the board noted the following:

EXTERNAL APPEARANCE:

1. Condition of subject-stout, emaciated, decomposed etc.: -fairly build, fairly nourished troathing present permouth nostrils, rigor, mortis present PM lividity present.

2. Wounds-position, size, nature:- 1.Abrasion 1' x 2' on left knee anteriorly; 2.Abrasion 1/2' x 1/2' on dorsum of right palm. 3.two linear abrasion 3' emparall on left leg. All injuries are antemortem.

3. Bruises-position, size, nature:

4. Marks of ligature on neck, dissection, etc.: slight faded impression present on left side of neck.

5. Condition of pupils:- Dilated, fixed, congested.

4. According to postmortem report, cause of death was asphyxia due to strangulation. PW-13 Hanumanram , PW-18 Gyan Chandra Yadav and PW-19 Gulab Singh, Station House Officer of Police Station Modra were the investigating officers and they deposed about various steps taken by them during the course of investigation. PW-6 Askar Khan (father of deceased Nasim Bano) and PW-16 Smt. Dholi (mother of deceased) narrated the other relevant facts those as per them existing on their reaching to Modra after receiving information regarding death of their daughter. The prosecution also supported its case by documents Ex.P/1 to Ex.P/29. The accused denied their participation in the crime alleged and urged for their false implication in the case. They did not adduce any oral evidence in defence but exhibited documents Ex.D/1 to Ex.D/4 to fail the prosecution case.

5. Learned trial Judge believed the prosecution evidence to the extent of allegation against Uke Khan for commission of an offence under Section 302 IPC, accordingly he was convicted and sentenced. The prosecution case relating to the offence under Section 498A IPC failed, thus, accused Bajje Khan, Shanti and also Uke Khan were acquitted from the allegations for commission of an offence under Section 498A IPC. In appeal it has been argued that the prosecution evidence on record was highly suspicious and not worthy of credence, therefore, the conviction and sentence of the appellant could not be sustained.

6. Shri Ashok Upadhyay, learned Counsel for the appellant supported his stand by various folds of arguments and those are:

(1) the accused was alleged to have strangled neck of deceased by his hands but in the postmortem report there are no impression of fingers or thumb on the neck and as such the story of the prosecution regarding strangulation suffers from suspicion;

(2) the scarf which was said to be tied on neck of deceased was having knots more than one, thus, that could have not been a cause of strangulation, consequent to which Nasim Bano @ Laxmi died.

(3) As per prosecution, accused Uke Khan while strangulating deceased Nasim Bano @ Laxmi was riding on her chest but no fracture in her ribs was found, thus, the statements of eye witnesses do not depicts the correct version;

(4) the accused was under control of the police since morning but his arrest is shown at 07:00 PM and for such delayed arrest no explanation is available.

(5) The conduct of PW-1 Durg Singh is highly dubious and, therefore, conviction relying upon his testimony is erroneous;

(6) the contradiction in the statements of eye witnesses and other witnesses specially PW-16 Smt. Dholi and PW-6 Askar Khan creates doubt about truth of the incident and as such accused appellant deserves acquittal; and

(7) in the alternative while placing reliance upon the judgment of Hon'ble Supreme Court in Budhi Lal v. State of Uttarakhand : 2009 Cr.L.J. 360, it is urged that there is no evidence available on record to establish that the accused was having any intention to kill Nasim Bano @ Laxmi, therefore, his case at the most may fall under part-II of Section 304 IPC.

7. Learned Public Prosecutor and Shri Manoj Kumar Garg, learned Counsel for the complainant, while defending the conviction recorded and sentence awarded urged that the prosecution had established its case beyond shadow of doubt and, thus, the appeal deserves dismissal. As per Shri Manoj Kumar Garg, learned Counsel for the complainant the prosecution version is in absolute collaboration with medical evidence, the eye witnesses without any contradiction supported the prosecution case and also looking to the fact that at the time of arrest accused

was having certain marks of injuries and those were certainly due to scuffle taken place, therefore, the trial court was justified in holding the appellant accused guilty.

8. The argument advanced by learned Counsel for the appellant that the cause of death as noted by the Medical Board is asphyxia due to strangulation and that cannot be doubted, but non-availability of finger or thumb impression on the neck of the deceased creates doubt about prosecution story relating to participation of the appellant. It is asserted by learned Counsel that if the strangulation was made after 08:00 AM in morning, then finger and thumb impression should have been available on the neck of the deceased at the time of postmortem which was made on the same day at 01:15 PM. The contention is substantiated by citing Modi's Medical Jurisprudence (22nd Edition) according to which in postmortem appearance in the case of strangulation finger and thumb impressions are usual.

9. In the instant case we found that strangulation is alleged to be made by covering a 'dupatta' (scarf) and as per medical report slight faded impressions were present in side of the neck. As per Modi's Medical Jurisprudence, the ligature mark may be slight, if there is intervention of thick and long beard or cloth on the neck. In the case in hand, the slight faded impression as a mark of ligature on the neck as a matter of fact fails the defence sought to be advanced by learned Counsel. In the same line the contention of counsel for the appellant that the scarf was having more than one knot is also of no consequence. It is nowhere case of the prosecution that the strangulation was made by scarf but it is that scarf was tidden on the neck and then strangulation was made. In very specific terms, as a matter of fact in Ex.P/6 itself the assertion is 'NASIM BANO URF LAXMI KO ODNA KA FANDA DALKAR (TOOPA) DIYE HUYE CHHATI PAR BAITHA HUA THA'. The same stand is maintained by PW-5 Abu Khan by saying that 'USKI CHUNNI KA FANDA BANAKAR GALE ME TOOPA LAGA RAKKHA THA'. PW-1 Durg Singh stated that 'ADALAT MULJIM UKE KHAN APNI AURAT KI CHHATI PAR BAITHA GALE ME FANDA LAGA RAHA THA JO FANDA CHUNDRI SE LAGA RAHA THA'.

10. The factual position aforesaid clearly establishes that the entire process of committing crime was in two steps, one is of tiding of scarf and then strangulation,

as such the availability of knots, even if it is accepted as urged, is also of no consequence and that in no manner supports the defence to create any doubt about the occurrence.

11. True it is, that the arrest of accused Uke Khan was made at 07:00 PM though he was under control of the police since morning, but that in no way dismantles the prosecution case. An effort is made by counsel for the appellant to fail the prosecution case by urging that delay in arrest was made with a view to provide sufficient time to real culprits to save themselves and to implicate the present appellant falsely with the crime concerned. We do not find any force in the argument advanced. The Investigating Officer PW-19 Gulab Singh in a very specific terms stated that the accused was under control since morning and some time consumed in making necessary interrogation and in completion of other necessary investigation. The same is the position with statements of PW-18 Gyan Singh, Deputy Superintendent of Police, who as a matter of fact arrested accused Uke Khan. On basis of delay in present circumstances, it cannot be inferred that it was intentional or to provide time to escape any other person from the scene of crime.

12. Learned Counsel for the appellant also pointed out some contradictions in the statements of PW-16 Smt. Dholi with the statements of the eye witnesses. It is urged by counsel for the appellant that all the eye witnesses stated that the scarf tidden on the neck was removed immediately on reaching at the spot of occurrence but Smt. Dholi who reached at the spot at 01:00 PM, stated that when she saw dead body of her daughter Nasim @ Laxmi the scarf was around her neck and she also saw the knots therein. On minute examination of the statements we found that Smt. Dholi stated that she saw dead body of Laxmi and also knots in scarf. She nowhere stated that when she saw the dead body, scarf was around the neck with knots. In view of it, the contradiction sought to be pointed out is non-existent.

13. The last argument advanced by learned Counsel for the appellant that the prosecution failed to establish an intention on part of the accused to inflict that particular bodily injury, which in ordinary course of nature was sufficient to cause

death and as such offence of the accused does not travel beyond Section 304 part-II IPC. To substantiate the argument, counsel for the appellant also placed reliance upon the judgment of Budhi Lal (supra). We do not find any force in the argument advanced. In the instance case it is the position admitted that accused Uke Khan and his other family members were not at cordial relationship with deceased Nasim. Nasim was residing with his father at Balwada upto 3.8.2002 and only thereafter after intervention of panchayat she alongwith her husband Uke Khan came to her brother's place at Modra. This change was also not liked by family members of Uke Khan as it is apparent from the statements of PW-5 Abu Khan and PW-7 Manjula, according to whom the Baje Khan came to them on 5.8.2002 and stated to see the consequences in next coming days. Beside the above, tidening of scarf at the time of incident and then to strangle itself to fatal extent establishes intention of the accused.

14. It is also an important aspect of the matter that at the time of arrest accused Uke Khan was having certain injuries and apparently those are of the nature depicting scuffle. The explanation given by Uke Khan while his examination under Section 313 Cr.P.C. for these injuries is apparently unsatisfactory.

15. On an conspectus of above facts and circumstances of the case we are satisfied that the prosecution adequately established that the appellant committed murder of Smt. Nasim Bano @ Laxmi on 10.8.2002. No error is committed by the trial court in convicting him for an offence punishable under Section 302 IPC. Accordingly the judgment and order impugned dated 20.2.2004 is confirmed and the appeal is dismissed.