

Rajinder Kumar Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Apr-03-2008

Reported in : 2008CriLJ2632,2008(2)SCALE235

Judge : Surjit Singh and; Surinder Singh, JJ.

Appellant : Rajinder Kumar

Respondent : State of H.P.

Disposition : Appeal dismissed

Judgement :

Surjit Singh, J.

1. Appellant has appealed against the judgment of Sessions Court (Fast Track Court, Chamba), whereby he has been convicted of offence, punishable under Section 302 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/-; in default of payment of fine to undergo rigorous imprisonment for a further period of two years.

2. Prosecution case, as it emerges from the evidence on record, may be summed up thus. Deceased Kamla was initially married to an employee of Public Works Department. Her husband died while in service. She was given appointment as a Class IV employee, on compassionate grounds. After some time she remarried the

appellant. The appellant, who is resident of Batala Town in Gurdaspur District of Punjab and works as a mechanic at Banikhet, started living with the deceased at her parental place in village Gurdial (Sudli). He was not happy with the marriage, because the deceased had not conceived even after about one year of the marriage. On 14th April, 2004, when the deceased was at home, appellant went there from his place of work and picked a quarrel with her, on the pretext that she had not cooked meals. He took the deceased forcibly to the kitchen and there he poured kerosene on her head from a plastic can and then lighted a match-stick and set her on fire. The deceased cried for help. Attracted by her cries. P.W. 1 Kesru Ram, her father's cousin, her sister-in-law P.W. 2 Bohtu Devi, brother P.W. 3 Puran and mother P.W. 4 Manglu Devi reached the spot. They extinguished the fire. Appellant also joined them in extinguishing the fire. P.W. 5 Jagdish Chand, the Pradhan of the Panchayat, was informed. He, in turn, arranged to send the deceased to Civil Hospital, Dalhousie, in a vehicle (Commander Jeep). As soon as the deceased reached the hospital, the doctor informed the police. P.W. 16 ASI Amar Singh rushed to the hospital. After ascertaining from the doctor, in writing, whether the deceased was fit to make statement and on doctor's certifying that she was fit for the purpose, he recorded her statement Ex. P.W. 13/C, under Section 154 of the Code of Criminal Procedure. The deceased stated that the appellant had poured kerosene on her head from a can and set her on fire by lighting a match-stick. The said statement was sent to the Police Station, through P.W. 10 Constable Yogeshwar Singh and the case was formally registered, on the basis of the said statement, vide FIR Ex. P.W. 13/B. Spot was inspected the same day by P.W. 16 ASI Amar Singh. He seized from the kitchen, among other things, a plastic can Ex. P-5 and a match-box Ex. P4. He also got the scene photographed. The photographs are Ex. P.W. 16/1 to Ex. P.W. 16/8. Site plan was also prepared, which is Ex. P.W. 16/E.

3. From Civil Hospital, Dalhousie, the deceased was referred to Zonal Hospital, Dharamshala, where she died on 19th April, 2004. Post-mortem was conducted by P.W. 20 Dr. Dinesh Sharma, who found that the cause of death was burn injuries on various parts of the body, to the extent of 65 per cent.

4. Trial Court charged the appellant with offences, punishable under Section 302 and 498-A of the Indian Penal Code. Appellant took the plea, during the course of trial, that this was a case of accidental fire, as the stove got burst and the deceased caught fire. Trial Court disbelieved the defence plea and on the basis of the evidence led by the prosecution, convicted and sentenced the appellant, as aforesaid.

5. We have been taken through the evidence by the learned Counsel for the appellant. Also, we have heard the learned defence counsel and the learned Deputy Advocate General.

6. P.W. 1 Kesru Ram, a cousin of the father of the deceased, testified, in no uncertain terms, that when he reached the house of the deceased he saw her on fire and that he was assisted by the appellant in extinguishing the fire. He stated that on enquiry the deceased told him that the appellant poured kerosene on her head and then set her on fire. He also stated that when he questioned the appellant, he stated that he happened to commit mistake. P.W. 2 Bohtu Devi, a sister-in-law of the deceased, stated that she heard cries of the deceased and on seeing her on fire, she herself fainted and later on when the deceased was brought back from Dalhousie hospital, for being taken to Dharamshala, she (the deceased) told, on enquiry, that she had been set on fire by the appellant. P.W. 3 Puran, brother of the deceased, stated that when he reached the spot, the fire had already been extinguished. He also stated that on enquiry the deceased told that she had been set on fire by the appellant by pouring kerosene on her. P.W. 4 Manglu Devi, the mother of the deceased, stated that she was at home when the appellant came from his place of work, around 12/1 p.m. and picked a quarrel with the deceased and then started beating her and forcibly pulled her to the kitchen and then poured kerosene on her head and set her on fire.

7. P.W. 16 ASI Amar Singh stated that on getting the information from a doctor of Civil Hospital, Dalhousie, that a lady, with burn injuries had been brought to the hospital, he went there and after getting it certified from the doctor that she was fit to make statement, he recorded her statement Ex. P.W. 13/C and that this statement was made by her in the presence of Dr. Man Singh (P.W. 14) and a lady

Constable. Prosecution did not examine the lady Constable. Dr. Man Singh did not say that the statement of the lady, Ex. P.W. 13/C, was recorded in his presence. However, P.W. 10 Yogeshwar Singh, a Constable, stated that the statement was recorded in his presence and that he was required by P.W. 16 ASI Amar Singh to carry the record of the statement to the Police Station, for the formal registration of the case.

8. Learned Counsel representing the appellant argued that P.W. 1 Kesru, P.W. 2 Bohtu Devi, P.W. 3 Puran and P.W. 4 Manglu Devi had falsely implicated the appellant, because they were opposed to the marriage of the deceased with the appellant. No suggestion was put to these witnesses in the course of their cross-examination that they were opposed to the marriage of the deceased with the appellant and because of that they had falsely implicated him. Even in his statement, under Section 313 of the Code of Criminal Procedure, the appellant did not say that the abovenamed four witnesses were opposed to his marriage with the deceased. Therefore, the submission requires outright rejection.

9. It was then argued by the learned Counsel for the appellant that statement of P.W. 16 ASI Amar Singh about the dying declaration, Ex. P.W. 13/C (statement under Section 154 of the Code of Criminal Procedure), was not believable, inasmuch as he stated that he recorded the statement in the presence of P.W. 14 Dr. Man Singh and a lady Constable, but P.W. 14 Dr. Man Singh did not say so and the lady Constable was not examined. He also says that P.W. 10 Constable Yogeshwar Singh cannot be believed, when P.W. 16 ASI Amar Singh himself does not say that he was present at the time of recording the statement.

10. It is true that P.W. 14 Dr. Man Singh has not testified that statement Ex. P.W. 13/C was recorded in his presence but that does not mean that the statement of P.W. 16 ASI Amar Singh that he was present, when the said statement was recorded, is incorrect or that it is not to be believed. P.W. 14 Dr. Man Singh's presence is proved by the fact of his having certified on application, Ex. P.W. 16/B, by the recording of the certificate that the deceased remained fully conscious and fit throughout the recording of her statement. He has also recorded the time below this certificate as 4.45 p.m. which corresponds with the time of completion of the

recording of the statement noted by P.W. 16 ASI Amar Singh, below his signature. P.W. 10 Constable Yogeshwar Singh's presence is also proved by the fact that the record of statement Ex. P.W. 13/C was handed over to him for being taken to the Police station and this fact is not only testified by P.W. 10 Yogeshwar Singh, but is also proved by the endorsement made at the foot of this statement, by P.W. 16 ASI Amar Singh, as also the mention to this effect in the FIR, Ex. P.W. 13/B. Therefore, we see no reason to disbelieve the testimony of P.W. 16 ASI Amar Singh that statement Ex. P.W. 13/C was made by the deceased in the presence of P.W. 14 Dr. Man Singh.

11. As per statement Ex. P.W. 13/C, the deceased told that she had been set on fire by the appellant, after pouring kerosene on her head. No suggestion was put to P.W. 16 ASI Amar Singh, who recorded this statement, that such a statement was not made by the deceased or that he has manipulated the record of this statement. Assurance to the effect that the aforesaid fact recorded in Ex. P.W. 13/C was correctly recorded is lent by the testimony of P.W. 1 Kesru Ram, P.W. 2 Bohtu Devi and P.W. 3 Puran, who all have stated that the deceased told that she had been set on fire by the appellant after sprinkling kerosene on her body. Another piece of evidence, which lends corroboration to the dying declaration and its genuineness, is the testimony of P.W. 4 Manglu Devi, the mother of the deceased, who says that she saw the appellant pouring kerosene on the deceased and setting her on fire.

12. Defence plea that this was a case of accidental fire, on account of the bursting of the stove, is falsified by the evidence collected on the spot by the Investigating Officer, P.W. 16 ASI Amar Singh, who, among other things, got the scene photographed, on the very day of the occurrence. One of the photographs is Ex. P.W. 16/4, in which the stove is shown to be intact and several items of kitchen are also shown to be lying in order near the stove.

13. It has also been submitted that the appellant himself tried to extinguish the fire and this circumstance negates the prosecution story of his having set the deceased on fire. Our attention was drawn to the medico legal certificate Ex. P.W. 14/B, in respect of the appellant, per which he sustained 8 per cent burn injuries

on his hands. Also, our attention was drawn to the testimony of P.W. 1 Kesru Ram that the appellant assisted in extinguishing the fire. The mere fact that the appellant tried to extinguish the fire would not prove his innocence. Every person, who happens to commit an act in a fit of rage hopes, wishes and tries to minimize the effect of his wrongful act, as soon as it is committed. That is the normal human conduct. Taking into consideration the entire evidence, as also the falsity of the defence plea, we are of the considered view that the appellant set the deceased on fire.

14. It was also submitted on behalf of the appellant that the act of the appellant does not fall within the purview of murder, as he did not have any intention to kill the deceased. We do not agree with the submission. It is not always the intention of the perpetrator of the offence of homicide, which is a determining factor whether the act amounts to murder or homicide not amounting to murder. A combined reading of all the four clauses of Section 300 of the Indian Penal Code shows that the act would fall within the mischief of Section 302 of the Indian Penal Code even if there may not be any intention on the part of the perpetrator of the crime to cause the death of the victim or to cause any bodily injury, which he knows is likely to cause death or which is sufficient, in the ordinary course of nature, to cause death, but also if he knows that the act is so imminently dangerous that it must, in all probability, cause the death or such bodily injury as is likely to cause death. The act of the appellant was so imminently dangerous that it was bound to cause death and the appellant, by the very nature of the act, can be presumed to be in the know of consequences of his act, at the time when he committed it.'

15. For the foregoing reasons, we see no merit in the present appeal. The same is, therefore, dismissed. Conviction as also the sentence awarded by the trial Court are upheld.