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Court : Rajasthan

Decided On : Nov-09-2011

Judge : Govind Mathur & Narendra Kumar Jain

Appeal No. : D.B. Criminal Appeal No. 950 of 2004

Appellant : Narendra

Respondent : State of Rajasthan

Judgement :

The judgment under challenge is dated 3.9.2004 passed by learned Additional Sessions Judge (Fast Track) No.3, Udaipur Camp Salumber convicting and sentencing the accused-appellant as under:-

1. U/s 302 IPC : Imprisonment for life and a fine of Rs.2000/-. In default of the payment of fine to further undergo 3 months simple imprisonment.
2. U/s 309 IPC : Simple imprisonment for 6 months and a fine of Rs.500/-. In default of the payment of fine to further undergo 7 days simple imprisonment. (Both the sentences were ordered to run concurrently)

The factual matrix necessary for adjudication of the appeal are that at the stance of an oral information given by Naresh Salvi (PW-3), a criminal case was registered at Police Station Salumber, District Udaipur. As per the information recorded deceased Nathi, sister of Naresh Salvi was residing at her maternal

home from last 2 years being having disputes with her husband Magan Salvi. While staying at maternal home, Smt. Nathi fled away with Naresh Salvi about 3 months earlier and returned after 10-15 days. On 19.3.2003, the parents of the deceased and the complainant went to avail work of famine relief and Smt. Nathi was all alone at home. The complainant too was not at home as he was participating in some events pertaining to Holi festival. At about 2.30 p.m., on returning home, he found the main gate closed. Smt. Rudi Bai, grand mother of the deceased and complainant was sitting at a nearby house. Despite calling, the gate was not opened from inside, thereafter, the complainant entered into the interior open floor of the house through outer wall, wherefrom he saw that Smt. Nathi and Narendra were standing in a room with closed door. Narendra was carrying a sword in his hand and Smt. Nathi was shouting for not killing her. On making alarm, the neighbours Shankar Ji, Laxman Ji etc. came at the place of occurrence and Naresh Salvi proceeded to call his parents. At about 4.00 p.m., on reaching of the parents, the door of the room was opened. Smt. Nathi was found lying down therein bleeding all over. Narendra Salvi too was found there having serious wounds. A sword and a knife were lying there. As per the information given Narendra and Nathi were having a love affair, however, being belonging to same sub-caste, their marriage was not possible, hence, Narendra killed Nathi by giving sword blows.

After regular investigation, a charge-sheet was filed before the Court of Additional Chief Judicial Magistrate, Salumber. The case was committed to the court of Sessions and the court of Sessions framed charges against the accused-appellant for the offences punishable under Sections 302 and 309 IPC. On denial of the charges regular trial was conducted.

The prosecution supported its case with the aid of witnesses PW-1 to PW-17, several documents too were also exhibited in support of prosecution case, and an opportunity was given to the accused-appellant to explain the adverse circumstance existing in the prosecution evidence. The accused denied all the allegations and alleged his false implication in criminal case. He also stated that he and deceased solemnized marriage, but the society and villagers were having objections for that, thus, they tried to commit for suicide, in which Nathi died and

he remained alive. Learned trial court considering the entire material evidence on record, held the accused guilty for offences punishable under Sections 302 and 309 IPC, thus, convicted and sentenced him accordingly.

In appeal the basic argument of learned counsel for the accused-appellant is that the offence punishable under Section 302 IPC, on basis of the evidence available cannot be made out against the accused and whatever evidence available indicates about death by consent (euthanasia). It is asserted by learned counsel for the accused-appellant that in the present case Exception-5 of Section 300 IPC is required to be invoked. To substantiate the allegation, it is urged that as per PW-3 Naresh Salvi, accused Narendra and deceased Smt. Nathi both were in the room, Narendra borrowed sword from the room itself and then gave a blow to his sister. This witness nowhere states that his sister quarreled with Narendra or made any alarm or objected with Narendra for giving her sword blows. It is asserted by learned counsel that the accused too was found seriously injured by stab wound, therefore, much chances of giving multiple injuries to each other by deceased Smt. Nathi and accused Narendra exists in view of the fact that they were in deep love and were not in a position to marry being belonging to same sub-caste.

Per contra, learned Public Prosecutor opposed the proposition advanced by learned counsel for the appellant with the submission that there is no material available on record to substantiate that the accused and deceased had any meeting of agreement about committing suicide and further that deceased insisted for killing her.

Heard learned counsel for the appellant and Public Prosecutor.

As per the medical evidence available, there is no doubt about homicidal death of Smt. Nathi. Her person was having following ante-mortem injuries:-

“External Injuries :(1)- Stab wound with one end (edge) is sharp and other is rounded 4.5 cm. X 2 cm. X intra thorax deep on left breast in 5th inter coastal space going obliquely postero - medially piercing right ventricle of heart of apex.

(2)- Stab wound 4.5 x 2 cm. x Intra Abdominal Horizontal - on Supra pubic region 6cm. below umbilicus in mid low piercing peritoneum and intestine one and is sharp.

(3)- Stab wound 4.5 cm. x 2 cm. x abdominal deep on right side abdomen 6 cm. lateral to umbilicus piece of intestine come out.

(4)- Incised wound 6 cm.x 3 cm. x bone deep on middle 1/3 of left forearm, muscles and blood vessels cut down.

(5)- Incised wound 3.5 cm.x 2 cm. x muscles deep x 3 cm. proximal to 4th injury.

(6)- Incised wound 2.5 cm. x 0.2 cm. x skin deep right elbow.

(7)- Bruise 5 cm. x 4cm. on right hand posteriorly.”

The injury No.1 was found sufficient to cause death and the cause of death given is massive haemorrhage in thorax. The accused too was found at the spot with following injuries :-

“1- Stab wound - 2cm. X 1cm. X intra abdominal deep - Near umbilicus - reserved sharp.

2- Stab wound - 1.5cm. X 1cm. X deep intra abdominal - on umbilicus 1cm. away from Injury No.1 - reserved sharp.

3- Stab wound - 2cm. X 1cm. X intra abdominal - Near umbilicus 1.5cm. below Injury No.2 - reserved sharp.”

The accused while explaining the circumstance adverse to him tried to explain that he and Smt. Nathi made an attempt to commit suicide as the Society and villagers were objecting their marriage. So far as intimacy between the accused and deceased is concerned, that has been stated and emphasized by several prosecution witnesses also. With this background, certain facts emerging are:-

(1)- Smt. Nathi and accused were members of a same sub-caste.

(2)- Smt. Nathi and accused were having intense relationship.

(3)- Smt. Nathi and accused remained together independently out of their home and village for a period of about 15 days.

(4)- The affair of Smt. Nathi and accused was acceptable to the villagers and Society, both being belonging to same sub-caste.

In view of the accepted facts above, the argument to bring the case within the Exception-5 of Section 300 IPC is advanced. The emphasis given is that the accused and Smt. Nathi decided to commit suicide, hence, the accused too was having injuries. The eye-witness PW-3 Naresh Salvi while narrating the entire incident, nowhere stated that any objection was made by Smt. Nathi while receiving sword blow, therefore, the natural assumption is that she volunteered herself for death.

The argument advanced by learned counsel certainly appears to be catching, but on examination of the evidence, it loses the entire force. To bring a case within the fore-corners of the Exception-5 of Section 300 IPC there must be cogent evidence that a request for voluntary death was made by the deceased, the request so made was considered and persistent, the deceased was experiencing intolerable suffering-may that be mental, emotional, physical or otherwise with no prospect of improvement and voluntary death was the only and last resort.

In the case in hand, no such evidence is available on record. PW-3 Naresh Salvi stated that the accused and deceased were standing in the same room, Narendra was carrying a sword in his hand and he gave blow from that to the deceased. This witness has certainly not stated that any objection or opposition was made by the deceased, but mere absence of opposition is not sufficient to establish free and voluntary desire for euthanasia. We are having no doubt that adequate evidence is available on record about love affair between the deceased and the accused, the objection made by the family members, society and villagers for such affair, the desire of the deceased and accused to live together and also that no material is available to establish any opposition made by the deceased when the accused was giving sword blows, but acceptance of these facts is not sufficient to invoke the Exception-5.

To bring the case an Exception-5 of Section 300 IPC there should have been material on record to establish a free and voluntary desire of the deceased for her death and that should have been well considered and persistent. The evidence should have been there that the deceased was experiencing intolerable mental suffering with no prospect of improvement and the death was the only resort. In absence of such material, the case of the accused-appellant cannot be brought into the Exception-5 of Section 300 IPC. The ingredients noticed by the Court as above are absolutely missing in present case and therefore, we do not find any merit in the argument advanced, even by accepting all the facts emphasized by learned counsel for the appellant.

On the other hand, the statements given by PW-3 Naresh Salvi and the nature of injuries suffered by the deceased, as a matter of fact, are sufficient to affirm the guilty of the accused-appellant for an offences punishable under Sections 302 and 309 IPC.

As such, we do not find any ground to interfere with the conviction recorded by the trial court, thus, the appeal is having no merit and the same is hereby dismissed.

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