
(1997) 07 MP CK 0041

In the Madhya Pradesh High Court

Case No : Criminal Appeal No's. 676 and 924 of 1987

Amar Lal and Smt. Chameli Bai

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 14-07-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 304

Citation : (1998) 2 DMC 26

Hon'ble Judges : V.K. Agarwal, J;N.P. Singh, J

Bench : Division Bench

Advocate : Umesh Trivedi, for the Appellant; R.H. Robert, for the Respondent

Judgement

N.P. Singh, J.—These two appeals arise out of the same judgment, therefore, they are heard together and disposed of by this common judgment.

2. The appellant Rajendra Prasad was prosecuted u/s 302 of the Indian Penal Code for committing the murder of his wife Janki Bai. He was further prosecuted on the charge u/s 201 of the Indian Penal Code alongwith the other appellants for causing disappearance of the evidence of the offence. Additional Sessions Judge, Mandla, in Sessions Trial No. 30 of 1987 convicted appellant Rajendra and sentenced him to imprisonment for life u/s 302 of the Penal Code, but no separate sentence was awarded to him u/s 201 of the Penal Code while appellants Amarlal and Chameli Bai have been convicted and sentenced to RI for five years each u/s 201 of the Indian Penal Code.

3. The prosecution case briefly stated is that Janki Bai (since deceased) wife of appellant Rajendra suspected that her husband, appellant Rajendra had illicit relation with her cousin, wife of his elder brother Amarlal and for that reason she had made him tender apology by touching her feet. The appellant Rajendra felt humiliated and wanted to take revenge on his wife Janki Bai. Appellant Rajendra brought Janki Bai home and mercilessly assaulted her in the intervening night of 23% 24th of July, 1986 by means of umbrella rod and requisitioned the services

of a sorcerer Nanhelal for her treatment on the pretext that she was ill. The sorcerer found Janki Bai very feeble and advised to take her to the hospital for her treatment. Janki Bai was taken to Mandla hospital where Dr. Amit Shrivastava (PW 11), examined Janki Bai and declared her dead. He informed the police about the death of the deceased on the basis of which Merg No. 51/86 was registered and police arrived in the hospital and prepared Panchanama of the dead body of the deceased. Dr. Shrivastava (PW 11) conducted autopsy on the dead body of the deceased and found the following injuries on her person :

- (1) Contusion 4" x 3" on the Rt. temporal region.
- (2) Contusion 4" x 3" on the Lt. temporal region.
- (3) Diffuse contusion covering the whole of the Rt. scapular region and the Rt. shoulder.
- (4) Contusion covering the whole Lt. Scapular region and Lt. shoulder region.
- (5) Contusion covering the upper 1 /3 part of chest and ant. aspect of neck.
- (6) Contusion extending from the mid Lt. arm up to mid Lt. Forearm on the antero medial aspect.
- (7) Contusion extending from the middle 1 /3 of Rt. arm upto upper 1 /3 of Rt. Forearm on the postero lateral aspect.
- (8) Multiple contusions of different sizes spreading all over the back 5 in number.
- (9) Contusion covering upper outer part of the Rt. buttock.
- (10) Contusion covering the area extending from the Rt. knee upto middle 1/3 part of Rt. leg on anterior aspect. There is marked swelling over the Rt. knee joint.
- (11) Contusion over the area extending from the Lt. knee joint up to the middle of the Lt. leg on ant. aspect Lt. knee joint is markedly swollen.
- (12) The area of injury No. 11 is covered with extensive black surface.

In the opinion of the doctor, death was due to asphyxia on account of the injuries on the chest, as per post-mortem report Ex. P10.

4. The police after completing necessary formalities submitted charge-sheet against the accused/appellants.

5. The defence was of innocence and false implication.

6. The learned Trial Court on consideration of the evidence convicted and sentenced the appellants in the manner mentioned above.

7. Mr. Rajendra Singh, Senior Advocate, appearing for the appellants Rajendra contended that there is no legal evidence to sustain the conviction of the appellant u/s 302 of the Penal Code. There is no eye-witness to the incident and

the case rests on the circumstantial evidence that the deceased was mercilessly assaulted in the house of the appellant Rajendra. He however, fairly conceded that the offence of appellant Rajendra would at worst come u/s 304 Part-II of the Penal Code and not u/s 302 of the Indian Penal Code. He also placed reliance on the case of Molu and Others Vs. State of Haryana, .

8. In the instant case, it is evident that the deceased was mercilessly assaulted as a result of which she succumbed to her injuries. It is however evident from the medical evidence of Dr. Shrivastava (PW 11) that no injury was caused to the deceased on any vital part of the body, though appellant Rajendra assaulted the deceased so mercilessly (hat it was likely to cause death and in fact she died as a result of this assault. Therefore, the offence of appellant Rajendra would definitely come u/s 304 Part-II of the Penal Code, and not u/s 302, IPC.

9. In the case of Molu (supra) the Apex Court has held :

"Multiple injuries were received by the deceased persons which were caused by blunt weapons like lathis and were of minor character. Furthermore, the injuries were not on any vital part of the bod)" and even those which were on the scalp portion were very superficial. There was nothing to show that the accused intended to cause deliberate murder of the deceased persons. There was no evidence to show that any of the accused ordered the killing of the deceased persons or incited or in any way expressed a desire to kill the deceased persons at the spot.

10. Applying the principle laid down by the Apex Court in the case of Molu (supra) the conviction of appellant Rajendra Prasad u/s 302 of the Indian Penal Code cannot be sustained and the same is altered to one u/s 304 Part II, IPC and he is sentenced to undergo RI for ten years.

11. As regards the conviction of appellant, Rajendra Prasad and the remaining appellants u/s 201, IPC, it is evident that the deceased was taken to the hospital for her treatment where she was declared dead by Dr. Shrivastava (PW 11) and there is no evidence that these appellants made any effort to dispose of or to conceal the dead body for screening themselves from punishment of the offence of murder of the deceased. Therefore, the conviction of the appellants u/s 201 of the Indian Penal Code cannot be sustained. Accordingly, it is set aside.

12. In view of the above, the appeal succeeds and is allowed in part as mentioned above.