

(2019) 08 RAJ CK 0121

In the Rajasthan High Court

Case No : Criminal Appeal No. 578, 592 Of 2014

Jagdish And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 374(2), 437A

Indian Penal Code, 1860 — Section 34, 302, 307, 328, 341

Evidence Act, 1872 — Section 27

Citation : (2019) 08 RAJ CK 0121

Hon'ble Judges : Sandeep Mehta, J; Abhay Chaturvedi, J

Bench : Division Bench

Advocate : J.V.S. Deora, Deepak Menaria, N.S. Bhati

Final Decision : Dismissed

Judgement

Sandeep Mehta, J

1. The appellants herein have been convicted and sentenced as below vide judgment dated 01.07.2014 passed by the learned District and Sessions Judge, Pratapgarh in Sessions Case No.57/2009:

Offence Under Section

Sentences

Fine

Fine Default sentences

302/34 IPC

Life Imprisonment

Rs.10,000/

1 Year R.I.

2. Being aggrieved of their conviction and sentences, the appellants have preferred these appeals under Section 374(2) Cr.P.C.

3. Since both these appeals arise out of a common Judgment, the same are being decided together.

4. Brief facts relevant and essential for disposal of the appeal are noted herein below:

5. Bhagwan Singh, Ranger of Forest Department, Dhariyavad was on patrol duty in the night of 26.02.2009. He came across a woman in a severely injured condition on which, she was brought to the Police Station Dhariyavad, District Pratapgarh. There, the SHO, Dhariyavad Bhagwat Singh (PW-18), inquired from the woman regarding her condition on which, she disclosed her name to be Anju wife of Jagdish Menariya, resident of Kharsan, Police Station Kheroda, District Udaipur and further stated that her husband Jagdish and his two companions took her to the Dhariyavad Jungles in a Maruti Van No.RJ-27-UA-1418. When they reached a culvert inside the jungle near Aarampura, her husband and his companions, forcibly poured acid on her body with intention of killing her. After this, Anju could not speak any more and became unconscious. This statement of Anju (Ex.P/5) was treated to be the FIR and on the basis whereof, a formal FIR No.31/2009 (Ex.P/29) was chalked out at the Police Station Dhariyavad for the offence under Section 307 IPC. The I.O. issued a requisition to the Medical Officer, Dhariyavad for medical examination of injuries of Anju (Ex.P/18) and procured her Medico Legal Report (Ex.P/19). Smt. Anju could not be revived and she passed away at the hospital while undergoing treatment at about 02.30 pm. on 28.02.2009 whereupon, the offence under Section 302 IPC was added to the case.

6. The investigation was undertaken by the SHO Dhariyavad Shri Bhagwat Singh who proceeded to the scene of occurrence, conducted site inspection proceedings, seized the acid stained soil. A jersey and a chappal lying at the spot were also seized and sealed. An injection syringe found at the place of the incident was also seized. The clothes of the deceased were taken into possession. The statements of material witnesses were recorded. After the death of Anju, her Panchayatnama Lash (Ex.P/24) was prepared. The deadbody of Anju was got subjected to postmortem and the postmortem report (Ex.P/26) was received. The accused Jagdish was arrested vide arrest memo (Ex.P/7) dated 28.02.2009. He gave an information (Ex.P/30) under Section 27 of the Evidence Act to the I.O. in furtherance whereof, the place of the incident where the accused Jagdish, Babu Lal and Vishnu allegedly poured acid and administered a poisonous injection to the deceased was verified and the site verification memo (Ex.P/12) was prepared. The Maruti Van No.RJ-27-UA-1418 suspected to have been used in the incident was seized vide seizure memo (Ex.P/8) on 28.02.2009. The accused Babu Lal was arrested vide arrest memo (Ex.P/31) dated 16.03.2009. The I.O. claims to have verified the place of incident on the basis of the information supplied by Babu Lal as well. While Jagdish was being arrested and personal

search was taken, an affidavit of marriage executed between him and Anjali was recovered from his person. After concluding investigation, a charge-sheet was filed against the two accused appellants for the offences under Sections 302, 328 and 341 IPC whereas investigation was kept vacant qua the accused Vishnu Lohar. As the offence under Section 302 IPC was sessions triable, the case was committed to the Court of the learned Sessions Judge, Pratapgarh for trial. The trial court framed charges against the accused appellants for the offences under Section 328 read with Section 34 and Section 302 read with Section 34 IPC. The accused pleaded not guilty and claimed trial. The prosecution examined as many as 21 witnesses and exhibited 36 documents to prove its case. Upon being questioned under Section 313 Cr.P.C. and when confronted with the circumstances appearing against them in the prosecution evidence, the accused denied the same and claimed to have been falsely implicated. Two witnesses Mahesh (DW-1) and Mohanlal (DW-2) were examined in defence in an endeavour to establish that Jagdish was married to one Lalita and that he had no relation whatsoever with Anju.

7. Upon hearing the arguments advanced by the Prosecutor and the defence and, after appreciating the evidence available on record, the learned trial court, proceeded to convict and sentence the appellants as above. Hence these appeals.

8. Shri J.V.S. Deora, Advocate representing the appellant Jagdish, vehemently and fervently contended that the entire prosecution case is false and fabricated. There is a grave discrepancy regarding the manner in which the FIR came to be registered. He drew the Court's attention to the statement of Smt. Anju (Ex.P/5) allegedly recorded by the I.O. at the Police Station Dhariyavad at 11.15 pm. and urged that the said statement should have been treated to be the FIR. Rather than registering the FIR on the basis of statement of Anju, the I.O. undertook a very strange exercise and instead, took the victim to the hospital, got her admitted there and then, he proceeded to register the FIR (Ex.P/29) at his own behest. He further contended that the statement of Anju (Ex.P/5) does not bear the number of the Maruti Van whereas the SHO mentioned the said number in the FIR claiming that Anju disclosed this number to him at a later point of time whereas, it is an admitted position that Anju never regained consciousness after giving the initial statement. He submitted that the inclusion of the car number in the FIR makes it clear that the FIR is a post-investigation document. As per him, the claim of the I.O. that Anju initially gave the statement (Ex.P/5), thereafter, she was taken to the hospital and that on the way, she regained her senses for a while and disclosed the vehicle number, is absolutely unbelievable. It was his contention that the FIR is a post investigation document which was created by the I.O. at a later stage with the malafide motive so as to somehow implicate the accused in this case. He submitted that the prosecution has placed much reliance on the marriage affidavit (Article-1) for portraying that the deceased was married to the accused Jagdish. However, no family member of Anju was examined by the prosecution so as to prove that the deceased was in any kind of relationship with Jagdish. He further submitted that even if it is assumed for a moment that

the deceased and the appellant Jagdish were married to each other, then also, there is no evidence on the entire record to prove that the appellant had any motive to kill Smt. Anju. Shri Deora further urged that there is grave contradiction in the statements of the officials of the Forest Department Madan Lal (PW-1) and Bhagwan Singh (PW-2). As per him, both the witnesses admitted that the deceased had been made to drink acid. He submitted that while Madanlal claimed in his evidence that Anju was speaking during the period while she was being taken to the police station, whereas Bhagwan Singh denied this fact. He submitted that the entire prosecution case is false and fabricated and hence, the accused appellant Jagdish deserves to be acquitted of the charges.

9. Shri Deepak Menaria, Advocate representing the appellant Babu Lal, vehemently and fervently urged that there is no evidence whatsoever on the record of the case so as to connect the appellant Babu Lal with the alleged crime. He drew the Court's attention to para Nos.68 to 70 of the impugned judgment and urged that the learned trial court relied upon the interrogation note of the accused Babu Lal and drew corroboration to the confession made by the accused to the investigating officer from the evidence of Udailal (PW-20) who stated that he gave the car in question to Babu Lal either in the month of February, 2009 or in the month of March, 2009. Shri Menaria submitted that the interrogation note of the accused recorded by a police officer cannot be used for any purpose whatsoever in a criminal case and the approach of the trial court in this regard is deprecable. In addition thereto, Shri Deepak Menaria pointed out that the car in question was owned by Sushil Kothari. The power of attorney on the basis whereof, Shri Udailal claims to have purchased the same from Sushil Kothari, was executed on 23.03.2009 i.e. after nearly a month of the incident. Thus, as per Shri Menaria, there is no evidence on the record of the case to connect the appellant Babu Lal with the offence and he deserves to be acquitted while setting aside the impugned judgment.

10. Per contra, the learned Public Prosecutor vehemently and fervently opposed the submissions advanced by the appellants' counsel. He contended that the evidence of officials of the Forest Department Madan Lal (PW-1) and Bhagwan Singh (PW-2), who were on patrol duty on the fateful night and who took Smt. Anju to the Police Station in an injured condition is full-proof and creditworthy establishing the guilt of the accused Jagdish beyond all manner of doubt. He submitted that both these witnesses clearly stated that the injured woman who was in badly burnt condition, came across them shouting that her husband had killed her. They took her to the police station in their vehicle. As soon as the lady had been brought to the police station by these witnesses, her statement (Ex.P/5) was recorded by the SHO Shri Bhagwat Singh at 11.15 pm. in which, she identified herself to be Anju and alleged that her husband Jagdish Menaria, took her to the Dhariyavad Jungles near Aarampura and poured acid on her body. He submitted that these two forest officials are absolutely independent persons. Their evidence is natural and convincing. The statement (Ex.P/5) is a creditworthy dying declaration. He submitted that even if the addition of the car

number by the SHO in the FIR is ignored then also, the evidence of Madan Lal (PW-1) and Bhagwan Singh (PW-2) is sufficient to affirm the conviction of the appellant Jagdish. He further drew the Court's attention to the statements of PW-13 Sumli and PW-14 Rajaram who categorically and affirmatively stated that their daughter Anju was married to Jagdish. He contended that no cross-examination whatsoever was conducted from these two witnesses on this aspect. He further submitted that though Jagdish tried to put-forth a defence theory through the defence witnesses Mahesh (DW-1) and Mohanlal (DW-2) that he was never married to Anju, however, as per the learned Public Prosecutor, the accused himself never took any such plea in his statement under Section 313 Cr.P.C. However, regarding the conviction of the accused Babu Lal, learned Public Prosecutor candidly conceded that other than the interrogation note of the accused himself which was relied upon by the trial court in an absolute perverse and illegal manner for convicting the said accused, there is no material whatsoever which can be considered as implicating the accused for the charges attributed to him.

11. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and have threadbare re-appreciated the evidence available on the record.

12. The fact that Anju had contracted marriage with the appellant Jagdish is clearly born out from the agreement (Article-1) recovered during the personal search of Jagdish (when he was arrested) as well as from the evidence of Sumli (PW-13) and Rajaram (PW-14) being the parents of Anju.

13. The prosecution story regarding the ill-fated incident emanates from the evidence of Madan Lal (PW-1) and Bhagwan Singh (PW-2), the forest officials, who were on patrolling duty when they came across the woman in a severely burnt condition. Madan Lal (PW-1) in his sworn testimony, clearly stated that the woman came across their vehicle near Aarampura in a totally burnt condition. Her face was burnt and she was crying out that her husband was assaulting her. She was brought to the Police Station Dhariyavad in the government vehicle where, she spoke that she was Anju Menaria, her husband's name was Jagdish Menaria resident of Kharsan and that her husband and two more persons took her to the Dhariyavad Jungles in the Maruti Van and there, they poured acid on her body. Nothing was elicited in the cross-examination of these witnesses which can impeach their evidentiary worth. The minor and trivial contradictions pointed out by the defence counsel from the cross-examination of these two witnesses regarding the words spoken by the woman during transit are far too insignificant so as to carry much weight. Apparently, these two witnesses are government officials and were proceeding on their patrol duty in a routine manner when they came across the injured woman. It cannot be believed by any stretch of imagination as to why they would make an effort of taking the name of the appellant as the assailant without any justification.

14. The statement of Anju recorded by the SHO at the Police Station on

26.02.2009 at about 11.15 pm. (Ex.P/5) bears the signatures of Madan Lal as well as Bhagwan Singh. It is faithfully recorded in this statement that Anju became unconscious after giving this statement. Thus, the evidence of Madan Lal (PW-1) and Bhagwan Singh (PW-2) gets significantly corroborated; is totally reliable and it has been well and duly established therefrom that the accused Jagdish poured acid on Smt. Anju.

15. At the same time, we are satisfied with the contention of Shri Deora that the FIR (Ex.P/29) appears to be a post investigation document and as a matter of fact, the I.O. should have registered the case on the basis of the first statement of Anju (Ex.P/5). There are strong reasons for us to hold so. The SHO mentioned the number of the vehicle in the FIR (Ex.P/29). By no stretch of imagination, can we be convinced that the deceased who had been burnt so badly by acid, would be in a position to disclose the vehicle number to the SHO. The FIR after being chalked out at the Police Station, was received in the court of the concerned Magistrate as late as on 28.02.2009 i.e. after a delay of more than 24 hours.

16. In this background, we are of the firm opinion that the explanation given by the I.O. in the cross-examination that Anju regained consciousness while on the way to the hospital and divulged the number of the Maruti Van is a totally cooked up story. It seems that the I.O. made investigation, came to know of the car number and registered the FIR later by ante-timing it. This entire exercise appears to be in an endeavour to ensure the success of the case. However, it is our considered view that merely because the SHO acted in an overzealous manner and ante-timed the FIR which is a post investigation document, the creditworthiness of the statements of Madan Lal (PW-1) and Bhagwan Singh (PW-2) cannot be affected adversely.

17. PW-11 Dr. Asharam Soni gave evidence regarding having conducted medical examination of Anju on the basis of the requisition (Ex.P/18) issued by the SHO, Police Station Dhariyavad. The Medico Legal Report (Ex.P/19) issued by this doctor clearly portrays that the victim Smt. Anju was suffering from corrosive acid burns extending to nearly 60% of the body surface. The fact that Anju must have made the statement Ex.P/5 is also corroborated from the Medico Legal Report (Ex.P/19) prepared on 26.02.2009 because in this report, it is mentioned that the lady was Anju wife of Jagdish, by caste Menaria, resident of Kharsan. These facts could not have been mentioned in the Medico Legal Report unless the deceased herself had made this disclosure.

18. Dr. Anish Ahmed (PW-17) was one of the members of the Medical Board which conducted postmortem upon the body of Smt. Anju and issued the postmortem report (Ex.P/26). In his evidence, doctor clearly stated that the deceased received corrosive poisonous burns which led to her death by shock as well as by the effect of burns themselves. The doctor clearly stated that neither the lips nor the teeth of the deceased were burnt and even her mouth i.e. the buccal cavity was intact. Thus, from the evidence of this witness also, it is clear that the deceased must have been in a position to speak because her mouth had

not been burnt by acid. The acid burn injuries were stated as having been caused between 24 to 36 hours of the autopsy and were opined as sufficient to cause death in the ordinary course of nature. Nothing was elicited in the cross-examination of these medical experts which can impeach their creditworthiness. Thus, we are duly satisfied that the acid burn injuries caused by the appellant to Smt. Anju were fatal and led to her death.

19. Having carefully gone through the evidence of the officials of the Forest Department Madan Lal (PW-1) and Bhagwan Singh (PW-2), we are duly satisfied that from their testimony, it has been established beyond all manner of doubt that Anju made a statement before them which was recorded as Ex.P/5. The said statement amounts to a dying declaration and is itself, sufficient to establish the guilt of the accused appellant Jagdish for the charge of murdering Anju.

20. Now coming to the case of the accused Babu Lal. As has been discussed above, other than the interrogation note of Babu Lal which the trial court referred to in its judgment as mark 'B', there is nothing on the entire record which can connect the said accused with the alleged offence. The prosecution has tried to portray that Babu Lal took the Maruti Van No.RJ-27-UA-1418 from Udailal Mali (PW-20) and that the deceased was taken to the Jungle in the car and attacked with acid. However, from the evidence of Udailal, nothing can be elicited to satisfy the Court that the van was taken by the accused from Udailal on 26.02.2009. The witness vaguely stated that Babu Lal took the car either in the month of February or in the month of March, 2009. Furthermore, the car was registered in the name of Sushil Kothari. The power of attorney through which the car came to be transferred to Udailal, was prepared on 27.03.2009 and thus, there is a serious doubt regarding the fact that the car recovered by the I.O. was used for transporting the deceased to the Jungle where she was burnt by pouring acid.

21. In this background, we find no evidence worth the name on the entire record so as to connect the accused appellant Babu Lal with the crime. The findings recorded by the trial court in the impugned judgment while convicting and sentencing Babu Lal are perverse on the face of the record.

22. In view of the discussion made herein above, we find no merit in the appeal of the appellant Jagdish. Thus, the impugned judgment dated 01.07.2014 passed by the learned District and Sessions Judge, Pratapgarh is affirmed to his extent. The appeal filed by the appellant Jagdish is dismissed as such.

23. However, the impugned judgment dated 01.07.2014 passed by the learned District and Sessions Judge, Pratapgarh cannot be sustained qua the accused appellant Babu Lal and is hereby quashed and set aside to his extent and the appeal filed on his behalf is accepted. The appellant Babu Lal is acquitted of the charges. He is on bail. His bail bonds stand discharged.

24. However, keeping in view the provisions of Section 437-A Cr.P.C., the acquitted appellant Babu Lal shall furnish a personal bond in the sum of

Rs.40,000/- and a surety bond in the like amount before the learned Trial Court, which shall be effective for a period of six months to the effect that in the event of filing of a Special Leave Petition against the present judgment on receipt of notice thereof, he shall appear before the Supreme Court.

25. Record be returned to the trial court forthwith.