
(2016) 01 RAJ CK 0025
In the Rajasthan High Court
Case No : Criminal Appeal No. 917 of 2008.

Laxman Lal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2016) 2 CriLR 804 : (2016) 3 RLW 2058

Hon'ble Judges : Gopal Krishan Vyas;P.K. Lohra, JJ.

Bench : Division Bench

Advocate : Ramesh Purohit, Advocate, for the Appellant; J.P.S. Choudhary, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

Gopal Krishan Vyas, J. - The instant criminal appeal has been filed under Section 374(2) Cr.P.C. to challenge the validity of the judgment dated 11.11.2008 passed by learned Addl. Sessions Judge-cum-Special Judge SC/ST Atrocities Cases, Pratapgarh in Sessions Case No. 39/2008 (4/2008) by which the appellant Laxman Lal was convicted for offence under Section 302 I.P.C. and appellants Smt. Bherki and Smt. Ambavi were convicted for offence under Section 302/34 I.P.C. and sentence for life imprisonment was imposed against the appellants with a fine of Rs. 1,000 each and in default of payment of fine to further undergo one month's R.I.

2. As per the facts of the case, a written complaint (Ex.P-28) was filed by the complainant PW-11 Rakba Meena before SHO, Police Station Devgarh at camp laddha. In the F.I.R. it was alleged that accused appellant Laxman Lal is having a joint land and well in the village with his family where every day for the purpose of irrigation of water to the crop quarrel took place in between the parties. Upon the boundary of both the agricultural field of complainant and accused party, the bamboos were fixed but a day before the occurrence Laxman Lal (appellant) cut

the bamboos and on the date of incident 4.10.2006 in the morning at 8 O'clock again he cut one bamboo fixed upon the boundary therefore, the deceased Rajabai raised objection but accused Laxman Lal run towards Raja Bai to cause injury by axe.

3. Due to fear Rajabai run away from the place of occurrence but as per the allegation made by the complainant appellant Smt. Bherki and Smt. Ambavi insisted appellant Laxman Lal to kill her because she was quarrelling every day. In the F.I.R., it is submitted by the complainant Rakba Meena (PW-11) that appellant Laxman thrown Raja Bai in the well, at that time, the son Sharwan and daughter Geeta of Rajabai cried and started weeping, at that time, Kesari and Keshu Ram also came on spot for rescue.

4. As per the allegation in the F.I.R. appellant Laxman Lal inflicted injury by axe upon the body of the deceased Raja Bai and pushed her in the well, due to the said incident, she died in the well. Upon above allegation the complainant prayed that action may be taken against Laxman Lal, Smt. Bherki and Smt. Ambavi for committing offence.

5. Upon receiving such complaint, the police went on spot and body of Raja Bai was taken out from the well, but she died on spot.

6. The F.I.R. No. 104 dated 4.10.2006 (Ex.P-4) was registered against the appellants for the offences under Sections 302, 201 and 34 I.P.C. and investigation was commenced.

7. In the investigation, first of all dead body of deceased Raja Bai was taken to the hospital for the purpose of post mortem and vide Ex.P-27 the Medical Jurist of the District Hospital, Pratapgarh gave post mortem report of the body of the deceased Raja Bai after examination of the body and gave opinion that the probable cause of death is asphyxia due to drowning. After post mortem body was handed over to the family members and site of occurrence was inspected by the Investigating Officer on 4.10.2006 itself and map of place of occurrence was prepared as Ex.P-1 and after post mortem body was handed over to the husband of the deceased Raja Bai vide Ex.P-3.

8. The appellants were arrested on 5.10.2006 in the morning vide Exs.P-4, P-5 and P-6 in front of two witnesses Deva and Devji. In the investigation, upon information given by the accused appellant Laxman Lal one axe was recovered vide Ex.P-7 on 6.10.2006.

9. The Investigating Officer after recording evidence of independent witnesses and other witnesses under Section 161 Cr.P.C. completed the investigation and filed challan in the Court of Civil Judge (Jr. Div.)-cum-Judicial Magistrate, Pratapgarh under Section 302/34 I.P.C. but the same was committed to the Court of Addl. Sessions Judge-cum-Special Judge SC/ST (Prevention of Atrocities) Cases, Pratapgarh for trial.

10. In the trial, after framing charge under Section 302 I.P.C. against all the

accused appellants the learned Trial Court commenced the trial.

11. In the trial, statements of 18 prosecution witnesses including 4 eyewitnesses were recorded and after that statement of accused appellants were recorded under Section 313 Cr.P.C. in the trial.

12. In the statement recorded under Section 313 Cr.P.C. all the accused appellants denied allegations levelled against them by the witnesses during trial. The accused appellant Laxman Lal made statement that Raju Bai herself jumped in the well and died but due to quarrel false case has been registered against him.

13. The learned Trial Court granted an opportunity to lead evidence to the appellants in defence, but no evidence was produced by them in defence. The only statement of Smt. Hurki were exhibited as Ex.D-3.

14. The learned Trial Court after hearing arguments finally convicted the accused appellant Laxman Lal for offence under Section 302 I.P.C. and convicted appellants Smt. Bherki and Smt. Ambavi for the offence under Section 302/34 I.P.C. and sentenced them for life imprisonment along with fine of Rs. 1,000/- vide judgment dated 11.11.2008.

15. The learned Counsel for the appellants submits that the finding given by the learned Trial Court for conviction of the appellants are totally erroneous and contrary to the evidence on record because it was the duty of the prosecution to prove its case beyond reasonable doubt, but the material eye-witnesses Keshu Ram and Kesari Bai PW-8 and PW-9 turned hostile and specifically said in their statements that accused appellant Laxman Lal is not guilty for throwing deceased in the well whereas in the F.I.R. (Ex.P-28) they were shown as eyewitnesses, therefore, it is a case in which a false and fabricated story has been concocted by the prosecution so as to involve the appellant in the alleged crime. As per the appellant, learned Trial Court committed an error while not considering this important aspect of the matter, therefore, the judgment impugned is not sustainable in law.

16. While inviting attention towards statement of two witnesses PW-11 Sharwan and PW-12 Sita son and daughter of the deceased who were said to be eye-witnesses of the incident it is submitted that PW-12 Sharwan admitted in his cross-examination that his mother herself fell down in the well, likewise PW-13 Sita stated in her statement that Laxman Lal inflicted injuries to the deceased by axe whereas no such injuries found upon the body of the deceased. Therefore, it is submitted that as per evidence on record deceased herself fell down in the well and to implicate the appellants falsely for the alleged offence, a fabricated story was concocted by the prosecution but not proved in the trial.

17. The learned Counsel for the appellants invited our attention towards the post mortem report and submits that there is allegation in the F.I.R. and in the statement of the witnesses that injuries were caused by Laxman Lal to the deceased Raju Bai by axe but no such injury found which can be caused by axe

upon the body of the deceased. More so, as per the doctor's opinion the deceased died due to drowning, therefore, it is a case in which all the accused appellants have been implicated upon fabricated story in spite of the fact that there is no evidence on record to prove the allegation.

18. Lastly it is argued by the learned Counsel for the appellants that there was dispute in between the complainant and accused appellants with regard to boundary of land and water for irrigation from well, therefore, the accused appellants were implicated on the basis of baseless and unreliable evidence, which is evident from the fact that there is no specific allegation against Smt. Bherki and Smt. Ambavi. More so, all the eye witnesses said that both these appellants reached at the place of occurrence after the deceased fallen into the well, therefore, on the basis of material contradiction in the statements of prosecution witnesses, the judgment impugned deserves to be quashed and accused appellants are entitled for acquittal.

19. Per contra, learned Public Prosecutor submits that although no injury caused by axe was found upon the body of the deceased in the post mortem, but the evidence on record loudly speaks that the incident took place on 4.10.2006 in between the field of both the parties because accused appellant Laxman Lal cut bamboos at the place of occurrence for which an objection was raised by the deceased Raja Bai, therefore in the quarrel the accused Laxman Lal run behind he deceased Raja Bai and after inflicting injury pushed her in the well where she lied. With regard to participation of Smt. Bherki and Smt. Ambavi it is stated hat both these accused appellant insisted accused appellant Laxman Lal to kill Raja Bai because she was objecting for utilising water from the well. While inviting attention towards the statement of complainant PW-11 Rakba it is submitted that the F.I.R. was filed by her soon after the occurrence in which specific allegations were levelled against the appellants, therefore, learned Trial Court rightly relied upon the evidence of prosecution witnesses so as to convict the appellant Laxman Lal for offence under Section 302 I.P.C. and appellants smt. Bherki and Smt. Ambavi for the offence under Section 302/34 I.P.C.

20. The learned Public Prosecutor further argued that prosecution has led trustworthy evidence to prove the case beyond reasonable doubt and to substantiate the aforesaid "argument, it is submitted that two child witnesses PW-12 Sharwan and PW-13 Sita son and daughter of deceased specifically stated before the Court that accused Laxman Lal caused injury by axe and pushed their mother in the well, therefore, it cannot be said that any error has been committed by the learned Trial Court to hold accused appellants guilty for offence. While inviting attention towards the statement of PW-3 Dhanna it is submitted that the axe was recovered in the presence of two witnesses, According to learned Public Prosecutor it is a case in which the learned Trial Court gave finding of guilt against the appellants on the basis of trustworthy and reliable oral evidence, therefore, this appeal deserves to be dismissed.

21. After hearing the learned Counsel for the parties, first of all we have perused

the statement of PW-11 Rakba, author of the F.I.R. The said witness stated before the Court that incident was reported to him by the witness Kesu Ram. The relevant part of the statement of PW-11 Rakba reads as under:

"vkt ls lky Hkj igys dh ckr gSaA eSa vuqiiqjk x;k gqvK FkkA esjk edku ogha ij gh gSA eq>s ds"qjke us ckr crkbZ Fkh] eq>s lhrk o Jo.k us Hkh ckr crkbZ FkhA mUgksaus crk;k fd 8 cts lqcg dh ckr crkbZ FkhA ds"qjke us crk;k fd Hksjdh] vEckoh] y{e.k us >xM+k djds jktwckbZ dks dq,a esa Mky fn;k FkkA dq,a ij ckal gSA ckal y{e.k dkVus ds fy, x;k Fkk] rks jktqckbZ us euk fd;k FkkA Hksjdh] y{e.k vEckoh us dgk fd jktqckbZ ckj and ckj >xM+k djrh gS] blfy, mls dq,a, esa Mky nksA ml le; jktwckbZ ds lkFk Jo.k o lhrk FksA ;g ?kVuk ds"qjke] dsljh] lhrk o Jo.k us ns[kh FkhA fQj eSa ekSds ij vk;k FkkA ?kVuk dh fjiksVZ eSaus dh Fkh] tks izn"KZ ih0 28 gS] ftl ij , ls ch esjs gLrk{kj gSaA"

22. Upon perusal of above statement it is abundantly clear that author of the F.I.R. was not present when occurrence took place and incident was reported by witness Kesu Ram PW-8 but said independent witness turned hostile and did not support the prosecution case, moreover, it is stated by him that he was not present at the time of incident took place. Similarly, PW-9 Kesar Bai whose name was mentioned by the complainant in the F.I.R. turned hostile and did not support the prosecution case. In view of the above, it is obvious that both the independent witnesses PW-8 Kesu Ram and PW-9 Kesar Bai did not support the prosecution case.

23. We have examined the statements of two child witnesses PW-12 Sharwan and PW-13 Sita. As per prosecution case, they are eye-witnesses, but upon perusal of statement of PW-12 Sharwan it emerges that a specific question was put to him "who has pushed his mother in the well", no reply written statement given by him, but to the reply of second question, it is stated by him that "Laxman Lal pushed his mother". In the cross-examination it is stated by the said witness that my mother made quarrel with Laxman Lal and due to the said quarrel, Laxman Lal run behind her and inflicted injury by axe. The following statement was made by the witness PW-12 Sharwan in cross-examination, which reads as under:

"fQj y{e.k dqYgkM+h ysdj esjh ekWa ds ihNs nkSM+k Fkk] fQj mlus dqYgkM+h dh esjh ekWa ds ekjh Hkh FkhA fQj esjh ekWa us dgk fd lkjs fnu >xM+k djrs gSa o fQj og dq,a, esa fxj xbZA ds"qjke esjs dkdk jdck dks cqykus x;k FkkA jdck o ds"qjke fQj iqfylokyksa ds lkFk gh vk;s FksA tc esjh ekWa y{e.k dks ckal dkVus ds fy, yM+h Fkh] rc esjh cfgu Hkh esjs ikl ?kj ij FkhA ;g lgh gS fd jdck ls iqfylokyksa ds vkus ls iwoZ esjh dksbZ ckr ugha gqbZ FkhA"

24. Similarly, PW-13 Sita made allegation in the examination-in-chief that accused Laxman Lal inflicted injury to the deceased and thrown her in the well, but in the cross-examination it is stated by her that "ckal dkVdj y{e.k ?kj yk;k FkkA esjh ekWa us tkdj y{e.k dks idM+k Fkk vkSj dgk Fkk] fd ckal dkVdj D;ksa yk;k FkkA fQj nksuksa yM+s FksA fQj y{e.k dqYgkM+h ysdj esjh ekWa ds ihNs

nkSM+k FkkA mlus dqYgkM+h ls esjh ekWa ds ekjh FkhA ftlls esjh ekWa ds [kwu Hkh vk;s FksA

;g xyr gSa fd esjh ekWa nksM+dj xbZ gksA tcfd esjh ekWa dks mBkdj dq, esa Qsadk FkkA dqYgkM+h dh yxus ls esjh ekWa ogh ij fxj xbZ Fkh] fQj mls rksd dj ys x;s FksA ?kj ls dqa, dksVZ ls IM+d ftruk nwj fLFkr gSA esjs gYyk gksus ij HkSjdh o vEckoh vkbZ FkhA vkSj lcls ckn esa ds"qjke o dsljh vkbZ FkhA"

25. Upon perusal of above statement it is clear that both these witnesses alleged that accused-appellant caused injury by axe to their mother deceased Raja Bai but in the post mortem report there is no such injury which can be caused by axe. Upon above fact it is clear that there is no corroboration of the allegation levelled by both the witness with regard to causing injury by axe to the deceased. Upon assessment of entire evidence, we are of the opinion that there is no evidence on record to prove the allegation against the accused appellants Smt. Bherki and Smt. Ambavi but it emerges from the statement of PW-12 Sharwan and PW-13 Sita that incident took place in the morning at about 8 O'clock on 4.10.2006 in between the agricultural field of both the parties for using water from well and cutting of bamboo by the appellant Laxman Lal.

26. In view of the fact that no injury which alleged to be caused by axe is found upon the body of the deceased Raja Bai, it cannot be said that prosecution has proved its case beyond reasonable doubt. With regard to intention of accused-appellant Laxman Lal to commit murder, it appears that from the facts that fear of causing death was created by the accused-appellant Laxman Lal upon quarrel took place at the place of occurrence, therefore, the deceased while running jumped in the well where she died and her body was found.

27. In our opinion, on the basis of such evidence although the prosecution has failed to prove its case for offence under Section 302 I.P.C. against accused appellant Laxman but has successfully proved the case for offence under Section 304 Part II I.P.C. against accused appellant Laxman Lal. In the judgment reported in 2012 (2) RAF (Suppl.) 30 Abdul Nawaz v. State of West Bengal in identical circumstances, the Hon'ble Supreme Court while considering the evidence converted the offence from Section 302 to Section 304 Part II of the I.P.C. The paras Nos. 15, 16 and 17 of the said judgment of Abdul Nawaz (supra) are relevant, which reads as under:

"15. The contention urged by Mr. Jaspal Singh is not wholly without merit to be lightly brushed aside. The prosecution case clearly is that the appellant and his companions had returned to the place of occurrence only to recover the second dinghy which they had left behind while they had escaped from the spot in the other dinghy. It is not the case of the prosecution that there was any pre-meditation to commit the murder of the deceased. It is also common ground that the appellant was not armed with any weapon. The weapon allegedly used by him to assault the deceased was even according to the prosecution case lying in the said dinghy. The nature of the injury inflicted upon the victim has not been

proved to be sufficient in the ordinary course of nature to cause death. The blow given by the appellant to the deceased had not caused any fracture on the skull. The two Courts below have, all the same, accepted the prosecution story that after the deceased was given a dao blow, the appellant pushed him into the sea. That finding has been affirmed by us in the earlier part of this judgment. The question, however, is whether this act of pushing the deceased into the sea after he was given a blow on the head, no matter the blow was not proved to be severe enough to cause death by itself, would be suggestive of an intention to kill. According to Mr. Jaspal Singh the answer is in the negative. That is so because, the main purpose of the appellant returning to the place of occurrence was not to kill any one, but only to have the dinghy back. The obstruction caused in the accomplishment of that object could be removed by pushing the deceased who was resisting the attempt made by the appellant into the sea. The fact that the deceased was pushed into the sea, should not, therefore, be seen as indication of an intention to kill the deceased.

16. The appellant was interested only in having the dinghy back. That could be done only by removing the obstruction caused by the deceased who was resisting the attempt. Pushing the deceased into the sea could be one way of removing the obstruction not necessarily by killing the deceased. Having said that we cannot ignore the fact that the deceased had sustained a head injury and was bleeding. Pushing a person into" the sea, with a bleeding head injury may not have been with the intention to kill, but it would certainly show the "intention of causing a bodily injury as was likely to cause death", within the meaning of Sections 300 and secondly 304 Part I of the I.P.C.

The appellant having assaulted the deceased with a dao and having thereby disabled him sufficiently ought to have known that pushing him into the sea was likely to cause his death. Pushing the deceased into the sea was in the circumstances itself tantamount to inflicting an injury which was likely to cause the death of the deceased. The High Court has gone into the question whether the deceased knew or did not know swimming. But that issue may have assumed importance if the deceased was not disabled by the assault on a vital part of his body. In the case at hand he was assaulted with a sharp edged weapon on the head and was bleeding. His ability to swim, assuming he knew how to swim, was not, therefore, of any use to him. The injury on the head and the push into the sea have, therefore, to be construed as one single act which the appellant ought to have known was likely to cause death of the deceased. Even so Exception 4 to Section 300 of the I.P.C. would come to the rescue of appellant inasmuch as the act of the appellant even when tantamount to commission of culpable homicide will not amount to murder as the same was committed without any pre-meditation and in a sudden fight, in the heat of passion, in the course of a sudden quarrel without the offender taking undue advantage or acting in a cruel or unusual manner. The prosecution evidence sufficiently suggests that a scuffle had indeed taken place on the dinghy where the appellant and his companions were trying to recover the dinghy while the deceased was preventing them from

doing so. In the course of this sudden fight and in the heat of passion the appellant assaulted the deceased and pushed him into the sea eventually resulting in his death. The act of the appellant is more appropriately punishable under Section 304 (I) of the I.P.C. instead of Section 302 of the Code invoked by the Courts below. The appeal must to that extent succeed.

17. In the result, we allow this appeal in part and to the extent that while setting aside the conviction of the appellant for the offence of murder under Section 302 of the I.P.C., we convict him for culpable homicide not amounting to murder punishable under Section 304 (I) of the I.P.C. and sentence him to undergo imprisonment for a period of eight years. Sentence of fine and imprisonment in default of payment of fine is, however, affirmed."

28. As per the evidence of the present case the occurrence took place suddenly when deceased raised objection and made quarrel with the accused appellant Laxman Lal and due to the quarrel made by the deceased, the accused appellant ran behind the deceased and due to fear deceased jumped in the well and died therefore, upon evidence on record it is a fit case to convert the conviction from offence under Section 302 to 304 Part II I.P.C. in the light of the judgment in the case of Abdul Nawaz (supra).

29. In view of the above discussion, this criminal appeal is partly allowed and the judgment impugned dated 11.11.2008 for conviction and sentence against the accused appellants Smt. Bherki and Smt. Ambavi for the offence under Section 302/34 I.P.C. is hereby quashed and set aside and they are acquitted from the charges levelled against them. However, the conviction of the accused-appellant Laxman Lal is hereby converted from offence under Section 302 I.P.C. to offence under Section 304 Part II I.P.C. and the sentence of life imprisonment imposed upon him is hereby reduced to 10 years imprisonment while maintaining the fine imposed by the learned Trial Court.