
(2017) 11 RAJ CK 0054
In the Rajasthan High Court
Case No : 268 of 1991

Madan Singh S/o Sh. Dina Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 374\(2\)](#) - Power to examine the accused - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 302](#)

Citation : (2017) 11 RAJ CK 0054

Hon'ble Judges : Gopal Krishan Vyas, Manoj Kumar Garg

Bench : DIVISION BENCH

Advocate : H.S. Sandhu, Vishnu Kachhawaha

Judgement

1. The instant criminal appeal has been filed by accused appellant- Madan Singh under Section 374 (2) Cr.P.C . against the judgment dated 7th of August, 1991 passed by learned Sessions Judge, Merta in Session Case No.37/1989, whereby the accused appellant was convicted for offence under Sections 302 and 201 and following sentence was passed against him:

302 of IPC -: Imprisonment for life along with fine of Rs.50/- with default stipulation to further undergo seven days" additional imprisonment.

201 of IPC -: Four Years" Rigorous Imprisonment along with fine of Rs.5/- with default stipulation to further undergo seven days" imprisonment.

2. Succinctly stated the facts of the case are that complainant-

Arjun Ram S/o Kunaram, resident of Nimbari, submitted a written

report (Ex.P/1) at Police Station- Parbatsar, on 22.03.1989 under his thumb impression, in which following allegations were levelled against the appellant:

"VERNACULAR MATTER OMITTED"

3. In pursuance to the aforesaid written complaint, F.I.R. No.36/1989 was registered at Police Station- Parbatsar, and investigation was commenced by the S.H.O., Police Station Parbatsar. The accused appellant was arrested on 23.03.1989 and site plan (Ex.P/4) of the house of Madan Singh, where occurrence took place was prepared in the presence of two witnesses, namely, Jairam and Arjun Ram. Accused appellant, Madan Singh, husband of deceased Ratni was arrested and after thorough investigation, charge sheet was filed against the accused appellant Madan Singh in the court of Civil Judge-cum-Addl. Chief Judicial Magistrate, Parbatsar, under Section 302 IPC.

4. The learned Magistrate committed the case for trial to the court of Sessions Judge, Merta. The learned trial court after framing charges under Sections 302, 176, 201 & 498A of IPC proceeded with trial.

5. In the trial, statements of 13 prosecution witnesses were recorded and thereafter, statements of accused appellant Madan Singh were recorded under Section 313 Cr.P.C., in which following explanation for his innocence was given by him: -

"VERNACULAR MATTER OMITTED"

6. In defence, statements of six witnesses were recorded and thereafter final arguments were heard by the learned trial court.

7. The learned trial court after hearing the arguments of both the sides finally acquitted the accused appellant from the charge under Sections 176 and 498A of IPC but convicted him for offence under Sections 302 and 201 of IPC vide judgment dated

07.08.1991 and passed sentence mentioned above, which is under challenge in this appeal.

8. Learned counsel for the appellant vehemently submitted that the appellant, Madan Singh, has been falsely implicated in this case inspite of the fact that his wife, Smt. Ratni died due to natural death and after giving information to the in-laws, she was cremated. It is very strange that after cremation, a false FIR was lodged by the brother of the deceased on the basis of false allegations and the learned trial court failed to consider the prosecution evidence and erroneously held the accused appellant guilty inspite of the fact that no offences under Sections 302 or 201 IPC are made out.

9. Learned counsel for the appellant further argued that wife of the appellant, Smt. Ratni, died in the night due to vomiting and this fact was well within the knowledge of the parents of the deceased, but after five days of the death of Smt. Ratni, written report was submitted by the complainant at Police Station- Parbatsar, for registration of FIR without explaining the delay in filing the same, therefore, on this count alone, the finding of guilt recorded for offence under Sections 302 and 201 of IPC deserves to be quashed. Learned counsel for the appellant further submitted that the trial court has erred in disbelieving the testimony of six defence witnesses without discussing and considering the fact that defence witnesses are neighbourers of the appellant, and according to their statements, Ratni died due to natural death and number of persons of the village participated in the cremation proceedings and before cremation information was also sent to the parents of the deceased, but none of the family members of the deceased attended cremation. Therefore, it is obvious that on the one hand, the complainant party did not

participate in the cremation proceedings despite having information but on the other hand filed false complaint after five days without any explanation of delay

While inviting our attention towards the statements of Smt.

Bajudi (PW.1) sister of the deceased, who was married with cousin brother of the accused submitted that at the time of incident she was pregnant, therefore, as per prevailing tradition/customs, she was not permitted to see the body of the deceased on the pretext

that if she would be allowed to see the dead body of deceased, Smt. Ratni, there was danger to her life. Due aforesaid fear, the

husband of Bajudi (PW.1) real sister of the deceased was not allowed to go in the house of the deceased, where dead body of Ratni was lying. Learned counsel for the appellant argued that as per evidence, appellant informed his uncle Udaram, and brother Dayalaram also, about the death of Ratni but the learned trial court failed to consider the entire evidence produced in defence, therefore, it is apparent that prosecution has failed to prove its case beyond doubt.

10. Learned counsel for the accused appellant invited our attention towards the fact that deceased died in the night and early morning she was taken for cremation, therefore, there was no question for postmortem as she died natural death, however, the learned trial court observed in the judgment that it was the duty of the accused appellant to carry out postmortem of body of Smt. Ratni, without considering the fact that deceased died due to natural death. Therefore, on this ground also the judgment impugned deserves to be quashed and set aside.

11. Learned counsel for the appellant further argued that wife of the accused appellant died due to natural death and before cremation, although information was given to the in-laws, but

none of the family members of deceased came at the time of cremation, however, after five days, a false written report was submitted by Arjun Ram (complainant), upon which FIR was registered and investigation whereof culminated into the submission of a charge sheet against the accused appellant. It is also argued that "Muklawar" was solemnized six years ago and elder sister of deceased- Ratni, viz. Bajudi was also married to

Dayal Ram S/o Uda Ram (cousin brother of the appellant), but no grievance was raised by her and on the date of incident, accused appellant went to the house of Udaram and asked him about the death of Ratni, but Uda Ram (uncle of the appellant) did not send her daughter-in-law i.e. Bajudi to see the face of her sister, Ratni, the deceased, but the fact remains that information was given by the accused appellant to his uncle, where real sister of deceased was present in the house. But later on FIR was filed upon information given by her which is totally concocted one.

12. Learned counsel for the appellant apprised this Court that as per prosecution case, not only accused Madan Singh, but his mother, Smt. Bhanari and brother Jawana Ram were present in the house but police filed charge sheet only against Madan Singh under Section 302, 201, 176 & 498A of IPC, and after trial the learned trial court acquitted the accused appellant from the charge levelled under Section 176 and 498A of IPC, because no evidence came on record for demand of dowry, nor any evidence of motive has come on record for committing murder of his own wife. The accused appellant was in army and posted Asam, and the day on which incident took place, he came on leave. According to learned counsel for the appellant, the entire prosecution case is based upon false and concocted story of the complainant because his wife died due to illness and before cremation information was

already given to her family members. Learned counsel for the appellant further submits that due to cremation upon natural death, no postmortem was conducted but bone and ashes of the deceased were taken from the cremation place and the same were sent for examination to the FSL but in the FSL report, neither opinion was given about sex, age and metallic poison by FSL, nor any other opinion was given, therefore, it is a case of no evidence, but only on the basis of presumption, the accused appellant has been convicted for offences under Sections 302 & 201 of IPC. Learned counsel for appellants submitted that an affidavit (Ex.D/1) was given by Bajudi (PW.1) real sister of the deceased, wherein it is stated by her that no one has murdered his sister, and she died due to illness. However, the learned trial court disbelieved the affidavit (Ex.D/1) of Bajudi without any reason, therefore, the finding of learned trial court deserves to be quashed and set aside.

13. Lastly it is argued that six independent witnesses of defence categorically gave statements before the court that deceased Ratni died due to natural death and information was given to the father and brother of deceased, but none of them attended the funeral, but their testimony has also been discredited without assigning any reason, therefore, the judgment impugned based upon wrong finding deserves to be quashed.

14. In support of his arguments, learned counsel for the appellant invited our attention towards following judgments:

1. Murlidhar & Ors. Vs. State of Rajasthan, reported in (2005) 11 SCC 133.
2. Babu S/o Reveendran Vs. Babu S/o Bahuleyan & Anr. reported in (2003) 7 SCC 37.
3. State of Punjab Vs. Karnail Singh, reported in (2003) 11 SCC 271.
4. State of West Bengal Vs. Mir Mohammad Omar, reported in (2000) 8 SCC 382.

5. Sharad Birdhi Chand Sardha Vs. State, reported in Cr.L.R. (SC) 1984 P. 296.
6. Suresh & Anr. Vs. State of Haryana reported in (2015) 2 SCC 227.
7. Prithipal Singh & Ors. Vs. State of Punjab & Anr. reported in (2012) 1 SCC 10.

15. Per contra, learned Public Prosecutor vehemently argued that is a case in which trustworthy and reliable evidence was produced before the court to establish the fact that when any without giving information to the father and other family members of the deceased, the dead body of Ratni was cremated in early morning while giving it colour that it was natural death. As per statements of Bajudi, real sister of the deceased, till 9"O clock in the night they were singing song outside their house, but in the night, she (Bajudi) heard hue and cry of her sister, when she tried to go at her residence, she was not allowed to go by the accused appellant, Madan Singh. Meaning thereby, real sister of the deceased was very much available just behind the house of deceased because she was also married with cousin brother of the accused appellant. As per statements of the accused appellant himself, he went to the house of his uncle Udaram, to inform him that his wife has died and at that time Bajudi, real sister of the deceased, was present, but she was not permitted to go to the house of the deceased and in the morning, Bajudi received information that body of her sister has already been cremated without any information to the parents.

16. Learned Public Prosecutor further argued that the accused was army personnel and he came on leave from Asam, therefore, it is obvious that appellant was educated person, therefore, it was his duty to first inform his in-laws about the death of Ratni, and to wait for them for cremation, but as per evidence on record, a story was concocted by him to prove the fact that information was given by him but father-in-law was not available and no other

member came at the time of cremation. It is further submitted that as and when wife of any person dies, either homicidal or natural death, it is the duty of the family members to first give information about death to the in-laws so as to satisfy them that their daughter died due to natural death. However, in this case, a story was fabricated by the accused appellant that information was given to father-in-law but he was not available in the house, but no such specific name is disclosed by the appellant to whom he sent to give information to the parents of the deceased. Therefore, the learned trial court gave finding that dead body was cremated in hurry to destroy the evidence as to how deceased Ratni died.

17. It is also argued that as per statements of PW.1- Bajudi and so-called affidavit (Ex.D/1), deceased Ratni, wife of the appellant died in the night but without awaiting for the members of in-laws family, the dead body was cremated and this fact itself is sufficient to presume that Ratni was murdered by her husband, because she died in the house of the accused appellant. Learned Public Prosecutor further submitted that there is no error in the finding given by the learned trial court so as to convict the accused appellant for alleged offence of murder and to hold accused appellant guilty for offence under Sections 302 and 201 IPC. Learned Public Prosecutor invited our attention towards the recent judgment in the case of Jamnadas Vs. State of M.P. reported in AIR 2016 (SC) 3270, in which the Hon"ble Apex Court held that it is duty of the husband to explain as to how his wife died due to natural death. Lastly, the learned Public Prosecutor submits that there is no force in the appeal and, therefore, the same may kindly be dismissed.

18. After hearing the learned counsel for the parties, we have

perused the statements of 13 prosecution witnesses and statements of accused appellant recorded under Section 313 Cr.P.C. and the statements of six defence witnesses.

19. Admittedly, the witness PW.1- Smt. Bajudi, real sister of the deceased, was married with cousin brother of the appellant, and she was residing just behind the house of the accused appellant. The witness, PW.-1 Bajudi, gave following statement:

"VERNACULAR MATTER OMITTED"

20. The appellant come out with the plea that information was given by him to his uncle Uda Ram about natural death of Ratni, however, his uncle did not allow Smt. Bajudi, to visit his house so as to know the cause of death or see her body. It is beyond imagination that cousin brother of the appellant will compel his wife i.e. Bajudi (PW.1) not to see the dead body of his sister, more so, it was the duty of brother-in-law to first inform the sister of his wife about her death or to bring her to see the body of her sister. But in this case, although a plea has been taken by the accused appellant that information was given to Uda Ram (uncle of the deceased), father-in-law of PW.-1 Bajudi, but Udaram did not allow her to visit the house of appellant for the reason that she was pregnant. In our opinion, such type of plea is dishonest plea because if the real sister who was available in the family and residing just behind the house of the appellant, then it was the duty of the appellant to first satisfy deceased's sister Bajudi, that your sister died due to natural death but it has not been done in this case.

21. We have also considered the fact of affidavit, which is said to be submitted in defence by the accused appellant. In our opinion, there was no occasion for PW.1- Bajudi, to executed such type of affidavit, in which though it is accepted by her that Ratni died in

the house of Madan Singh, therefore, it was the duty of the accused appellant to satisfy the in-laws/parents of deceased Ratni first before cremation of the body of Ratni but without waiting for them, the dead body was cremated in the early morning and this fact is established from the prosecution evidence, therefore, it cannot be said that the trial court has committed any error so as to convict the accused appellant for the alleged offence of murder.

22. The circumstantial evidence of this case loudly speaks that the prosecution has established complete chain of circumstances so as to presume that in absence of in-laws, the body of Ratni was cremated in the early morning and it is also established by evidence that in the night at 9''O clock, Ratni was singing songs, therefore, we are of the opinion that argument of the learned counsel for the appellant that Ratni died due to natural death, is not sustainable in law.

23. With regard to delay in filing the FIR, we are of the opinion that this is a case in which it is proved by the prosecution that body of young wife was cremated without waiting for the family members of the deceased, therefore, after receiving the information it was felt necessary due to relationship to first ascertain the truth about the death of Smt. Ratni. Thus, after meeting Bajudi and receiving information that cremation took place in the early morning itself, necessary inquiry was made by the complainant and thereafter written report was submitted at the police station. In our opinion, in such type of cases, delay for registration of the FIR cannot destroy the prosecution case. It is true that in the FSL report, the sex, age and other facts were not ascertained/proved, but it also true that bones and ashes were taken from the place of cremation and sent to FSL for chemical examination, therefore, probably it might not be possible for FSL

to ascertain the cause of death, but this fact cannot be treated as an evidence to support the contention of the accused appellant for his innocence.

24. Upon consideration of entire evidence, it is true that six witnesses viz. Kishnaram (DW1.), Babulal (DW.2), Pusaram (DW.3), Nathu (DW.4), Uda Ram (DW.5) and Ganga Ram (DW.6) were produced as defence witness so as to support the case of the appellant that deceased was suffering from disease but in absence of any documentary evidence of treatment, how it can be presumed that deceased was suffering from any ailment or disease. None of the prosecution witness or even Bajudi (PW.1) real sister of the deceased gave any statement that Smt. Ratni (deceased) was suffering from any ailment/disease. The other witnesses PW.2- Arjun Ram, PW.3- Jairam (uncle of deceased), PW.5- Chhotu Ram (uncle of deceased), PW.6- Shrawan (real brother of deceased) and PW.7- Kishnaram (uncle of deceased) gave statements before the court in support of prosecution case, but it is nowhere stated by them that deceased was suffering from any disease.

25. The witness PW.8- Dhannaram, PW.9- Bhanwar Singh, PW.10 Ugmaram, said that cremation took place in the early morning on 18.03.1989 and that none of the family members of the deceased were there but they received information in the night that due to vomiting Ratni died. In our opinion, there is no question to disbelieve the testimony of prosecution witnesses or to accept the statements of defence witnesses and to accept the fact that deceased Ratni, was suffering from any ailment/disease or she died due to natural death.

26. The judgments relied upon by the learned counsel for the appellant to discredit the fact that presumption under Section 106

of Evidence Act will not apply in this case, because in the statements of the appellant recorded under Section 313 Cr.P.C., accused appellant accepted that Ratni died in front of him and said that she died due to vomiting, but it is nowhere said that any efforts were made by him for her treatment, therefore, such type of plea taken by the accused appellant in his statements recorded under Section 313 Cr.P.C. cannot be treated to be evidence so as to acquit him from the alleged offence of murder of his own wife. The learned trial court minutely examined the entire facts and evidence of both the parties and held that the accused appellant is guilty for committing offence under Sections 302 and 201 of IPC, therefore, no interference is warranted in this case.

27. In view of above, the conviction and sentence passed by learned Sessions Judge, Merta against the accused appellant Madan Singh vide judgment dated 07th of August, 1991 in Session Case No.37/1989 is hereby upheld and this criminal appeal is hereby dismissed.

28. The accused appellant is on bail, therefore, his bail bonds are hereby forfeited and the learned trial court is directed to issue warrant of arrest against accused appellant and lodge him in custody to serve the sentence passed by learned Sessions Judge, Merta, vide its judgment dated 07.08.1991 in Session Case No.37/1989.