
(1986) 01 RAJ CK 0066

In the Rajasthan High Court

Case No : Criminal Jail Appeal and Criminal Appeal No's. 305 and 380 of 1978 respectively

Nagpal Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 28-01-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 174, 299
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (1987) RLW 424 : (1986) 1 WLN 196

Hon'ble Judges : G.M. Lodha, J;G.K. Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—Both these appeals, one from Jail, and the other one represented by an Advocate, filed by the accused-appellant Nagpal Singh against his conviction and sentence u/s 302, IPC, awarded by the Additional Sessions Judge, Dholpur, have been argued by Shri Sajjan Singh, the learned Amicus Curiae, who was appointed as Amicus Curiae, as the lawyers originally engaged by the accused, Shri S.K. Jain and P.K. Sharma did not appear, and Shri P.C. Jain learned Advocate appeared on 7-10-1985 but pleaded no instructions and withdrew his power.

2. Shri Sajjan Singh within two days have prepared the case with the help of the record of this Court and provided the real and substantial assistance to this Court in hearing this appeal.

3. Brief facts of the prosecution case are that on August 21, 1976, at 9.30 p.m. Smt. Ramshri was taken to Dholpur hospital by Roshan Kanwar, Nagpal Singh, Ishwari, Jandel, Dulla and Ors. and informed Dr. Johari (CW 1) that she sustained burns while cooking the food. The Duty Doctor at that hour informed the Medical Jurist Dr. M.L. Maru (PW 9) who reached the hospital and thereafter sent a memo (Ex. P. 8) to the SHO, Kotwali, Dholpur that a patient, namely

Ramshri aged 40 years admitted in the hospital had expired at 11.05 p.m. on account of the burn injuries. On this information received at the police station at 12. 30 a.m. on August 22, 1976, a case u/s 174, Cr. PC was taken down in the Roznamcha; and at 7 a.m. Sheo Dutt Mishra (PW 1) Head Constable was deputed for the preparation of the inquest report.

4. When the doctor prepared the post mortem report and sent it to the police, wherein it was opined the case to be one of strangulation, and thus a report (Ex. P5) was prepared by Sheo Dutt Sharma on August 28, 1976, by which the case was treated to be one of murder, and it was then that the SHO, on 29th August, 1976 forwarded the case to the police station, Bari under the jurisdiction of which the deceased was living at the time the alleged offence, if any, was committed, though the distance between Dholpur and Bari was not far off, yet, it took four days to travel the report to the police station Bari, where on September 1, 1976, a case was registered.

5. The accused was arrested on November 30, 1976, and the police also wanted to apprehend the brother of the appellant who has not been apprehended as yet and the police, therefore, singled out the appellant and submitted a challan for the offences under Sections 302 and 201, IPC, but this was done u/s 299, Cr. PC.

6. The case brought but by the Investigating Officer for submitting the charge-sheet was that the deceased Ramshri who lost her husband more than a score of years, had no issue and one Sukha was cultivating her field on share basis and one Ishwari (PW 2) used to assist her in this task. The deceased had a relation Mst. Roshankanwar who happened to be related as sister of her husband with two sons namely, Nagpal Singh accused and Hari Singh. The financial condition of the sister-in-law and nephews being weak, it is alleged that the latter offered to assist the former in cultivation instead of her being cultivated by Chamarans and Ramshri readily agreed as Ishwari did not object to it. This resulted in shifting of Roshankanwar and her sons transferring themselves to the place of the deceased and, it is further alleged that the newcomers did not like the visit of Ishwari as according to them he was an eye sore. On this, therefore, the accused told Ishwari that she should not visit Ramshri's place. Naturally, Ishwari protested to Ramshri and latter told her that she would pacify the accused, his brother and mother.

7. On 21st August, 1976 in the evening this Ishwari intended to go for natural call and went to collect tumbler, came across Mst. Roshankanwar who too was going to ease herself. When Ishwari was returning from natural call she heard a cry coming from Ramshri's house given by Roshankanwar that Ramshri is burning on hearing it Janak Singh (PW 3), Jhandel (PW 4), Valdev (PW 2) Dulla (PW 8), Ishwari (PW 2) and several other villagers assembled there. They found that Ramshri was made to lie on a cot with a bed-sheet. Only her two hands were visible which had some movements. Nagpal Singh, Harisingh along with Roshankanwar were present there, were reported that she caught fire. It is thereafter that she was removed to the hospital resulting in her succumbing to

injuries, subsequent reports, investigation so on and so forth, as indicated earlier.

8. When the accused was charge-sheeted, he was committed to Sessions for trial where he was charged for substantive offence u/s 302, IPC to which he denied. The accused denied the charge and claimed to be tried. His reply to the charge was that while cooking food she caught fire, and that he has been falsely implicated at the instance of Ishwari.

9. The prosecution examined 11 witnesses in support of its case. The accused in his explanation denied the correctness of the statements of the prosecution witnesses, who led no oral evidence except that he produced an affidavit of Roshan Kanwar dated 25th April, 1977. The learned Judge there after felt the necessity of examining the Doctor who had admitted her in the hospital and thereafter summoned Dr. Johri as a court-witness.

10. The learned Judge, though agreed that there had been several latches in the investigation of the case and the medical reports, yet, convicted the accused for a substantive offence u/s 302, IPC and sentenced him to imprisonment for life.

11. Having heard Shri Sajjansingh, the learned Amicus Curiae, and the Public Prosecutor at length, we are of the opinion that it would not be possible to affirm the findings arrived at by the learned trial court, of the conviction to the appellant in the present appeal. We feel that the circumstantial evidence produced in the case in no way leads to the only conclusion of the guilt of the present accused, Nagpalsingh, because several other hypothesis are possible even if it is accepted.

12. A very surprising and curious feature of this case is that the testimony of the prosecution witness Smt. Roshan Kanwar was not challenged by the cross-examination or by putting leading question or by obtaining permission for confronting her due to the alleged hostility. Smt. Roshan Kanwar (PW 10) has demolished the entire prosecution case, and given unceremonious burial to it.

13. Roshankanwar (PW 10) has stated that accused Nagpalsingh was at his field when she came back and saw that the deceased, Ramshri was lying on the ground, and the flames of fire were coming out of her clothes. As she sent a message to Nagpalsingh at the field, he came, and then he took her to the hospital. She further stated that she and her son Nagpalsingh were living with the deceased, because the deceased was all alone and wanted help for cultivating her field. She further stated that her husband has also come to help the deceased.

14. It is surprising and shocking that the learned Public Prosecutor before the trial court conducted the above examination-in-chief and did not make any attempt to cross-examine this witness. We cannot look into this statement u/s 161, Cr.PC to find out that she has given a different version and was hostile. Undoubtedly, the possibility of hostility is inherent because, she is mother of the accused-Nagpal, but for that it was the duty of the learned Public Prosecutor

before the trial court not to examine her or to let her declared hostile by putting some questions in the cross-examination.

15. Be that as it may, we find that Roshankawar (PW 10) has provided last nail in prosecution case's coffin.

16. Shri Sajjansingh curiously and rightly so pointed out that the string which was recovered and suspected to have been used for strangulation, was of different size than one alleged to have been used, as per the testimony of the medical evidence.

17. We further find that the prosecution case, as a whole, created strong suspicion that it was not a case of accidental death but it was a case of homicide as there were six injuries apart from the extensive burns.

18. Dr. M.L. Maru (PW 9) also found that there were signs of strangulation at the neck of the deceased. The doctor stated that the width of the string presented in the court is 1-1/2", and in his opinion, the strangulation of Ramshri was not done by this string.

19. In our opinion, we have got strong suspicion that Nagpalsingh committed the murder of Ramshri and the story of her mother that she was in the field, may be incorrect. However, even according to the prosecution case there were four persons in the house when the alleged incident took place. Nagpalsingh was suspected because of the motive to create propriety of the deceased further because she was reluctant to see the deceased after removing the chadder (bed-sheet). Nagpalsingh was also reluctant to take her to the hospital according to the prosecution witness Roshankanwar. According to the witnesses, two brother. Nagpalsingh and Harisingh who is still absconding did not even weep although their mother Roshankanwar did weep.

20. Taking the prosecution evidence at its best we feel that all that is proved is that Nagpalsingh might have either himself committed the murder or abetted or instigated the murder but the difference between "might" & "must" has not been made up by the unimpeachable evidence in this case. The evidence of Dr. Johari (CW 1) and Dr. Maru (PW 9) both, taken together, only create suspicion that it may be a case of homicide. But, the fact that it took about a week for the doctors to come to this conclusion is itself a circumstance which throws serious doubts. We are also convinced that the version of Ishwari may be true but it leaves much to be traversed and he is certainly interested in removing the accused from the scene because he is interested in the property of the deceased and this interest is obvious.

21. The prosecution case, itself is not certain because, what part was played by Nagpalsingh and what part was played by Harisingh, were not made specific and cannot be made specific. We feel that the present one is a case where all circumstantial evidence were of very weak and sleepy so also doubtful nature, and obviously the benefit of doubt should go to the accused. We may make it

clear that the judgment of this Court need not be stretched to provide umbrella of protection for acquittal to the absconding accused Harisingh, who if he is arrested would be tried on the evidence which may be adduced in that case.

22. Consequently this appeal is accepted and the judgment of the trial court dated the 19th March, 1978, is set aside and the accused Nagpalsingh is acquitted of the offence u/s 302, IPC. He is already on bail and need not surrender; his bail bonds are discharged.