

(2007) 07 RAJ CK 0123

In the Rajasthan High Court

Case No : DB Cri. Murder Ref. No. 01 of 2007 and DB Cri. Appeal No. 243 of 2007

State

APPELLANT

Vs

Kunal Majumdar
 Kunal Majumdar Vs State

RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 376, 511

Citation : (2007) 07 RAJ CK 0123

Hon'ble Judges : Raghuvendra S. Rathore, J; Bhagwati Prasad, J

Bench : Division Bench

Advocate : J.P.S. Choudhary, P.P, for the Appellant; Sandeep Mehta for accused Kunal Majumdar, for the Respondent

Judgement

Bhagwati Prasad, J.—The accused appellant Kunal Majumdar has filed the present appeal being aggrieved by the decision of the learned Additional Sessions Judge, (Fast Track) No. 1, Jodhpur in Sessions case No. 02/2006 dated 09.03.2007 whereby the accused appellant Kunal Majumdar has been convicted 302 and 376 read with Section 511 IPC and has been sentenced to death u/s 302 IPC to seven years R.I. and a fine of Rs. 25,000/- u/s 376 /511 IPC. In this matter we are seized of two criminal appeals and a criminal reference sent by the Court of Sessions for confirmation of sentence of death passed by it against the accused appellant. The accused appellant has been convicted u/s 302 and 376 read with Section 511 IPC and has been sentenced to death u/s 302 IPC and to seven years R.I. and a fine of Rs. 25,000/- u/s 376 /511 IPC.

2. The learned counsel for the appellant, at the outset submitted that looking to the facts and circumstances of the case, he may not be able to persuade this Court to set aside the conviction of the accused appellant which has been recorded against him as aforesaid. His further case was that looking to the post mortem report the death of the deceased was because of an injury on neck. This is a blunt weapon injury which has been found on dissection to be anti-mortem

and reddish dark haemotoma was present. Thyroid bone and cricoid cartilages were found in tact. Thus the nature of injury suggest that it was not a case where the injury to neck could be one for which such cruelty can be attributed to the accused that he was obsessed to cause death of the deceased. The other injuries found on the person of the deceased were all simple in nature which may be suggestive of an assault in the nature of an offence punishable u/s 376, read with Section 511 IPC.

3. The accused is a person enrolled in Armed Forces. As and when a person is enrolled in Armed Forces he has a feeling that some day he may be drafted to go to the frontiers and may suffer the worst. Thus, mentally a man is always under an unconfirmed apprehension. Therefore, award of death sentence in such circumstances does not appear to be a corollary which could be the necessary derivative of the circumstances, and in that view of the matter, the learned counsel has prayed that this court may sympathetically consider the case of the accused for commuting the death sentence into a sentence of life. No seriousness has been attached to the challenge to the sentences passed for offence u/s 376 /511 IPC, as the accused has prayed to be sentenced for life imprisonment under the principal offence.

4. The learned public prosecutor has fairly submitted that in the circumstances narrated herein above, the Court may consider the case of the appellant sympathetically.

5. We have given our thoughtful consideration and thoroughly perused the material on record.

6. Where the convictions have not been challenged by the accused, the sentence part is the only aspect on which we have to seriously consider. The brutality seen in the act of the accused relates to the violation of the person of the deceased, for satisfaction of evil desires. The injuries sustained resulting into death is not suggestive of a use of force of the severe nature which can take us to the conclusion that it was brutal and in-human.

7. In that view of the matter, and specifically in the background when the public prosecutor has also not seriously adverted to support the reference, we are of the opinion that the reference for confirmation of death sentence should be answered in negative and accordingly the reference is rejected. Consequently, the appeal of the accused appellant is partly allowed. His convictions u/s 302, 376 read with Section 511 IPC are maintained. However the sentence awarded u/s 376 read with Section 511 IPC is maintained, and the sentence awarded u/s 302 IPC is altered to one of life imprisonment instead of death. Jail appeal is also decided in the aforesaid manner.