



[2024:RJ-JD:31896-DB]

RAJASTHAN HIGH COURT  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Criminal Appeal No. 719/2016

Amar Chand

----Appellant

Versus

State

----Respondent

For Appellant(s) : Mr. B.S. Rathore  
For Respondent(s) : Mr. B.R. Bishnoi, Public Prosecutor

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI  
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

**Judgment**

**Reserved on 01/08/2024**

**Pronounced on 22/08/2024**

**Per Dr. Pushpendra Singh Bhati, J:**

1. This criminal appeal under Section 374(2) Cr.P.C. has been preferred claiming the following relief:

*"It is, therefore, respectfully prayed that this appeal of the accused appellant may kindly be allowed and accused appellant may be acquitted under section 302 of IPC and he be set at liberty."*

2. The accused-appellant laid a challenge to the judgment of conviction and order of sentence dated 12.08.2016 passed by the learned Additional Sessions Judge, Raisinghnagar, District Sriganganagar ('Trial Court') in Sessions Case No.08/2014 (Computer e.no. 97/2014) (State of Rajasthan Vs. Amarchand),



whereby the accused-appellant has been convicted and sentenced as below:

Offence under Section	Sentence	Fine
302 IPC	Life Imprisonment	Rs.20,000/-, in default of which, was ordered to undergo further 6 months S.I.

3. Brief facts of the case, as placed before this Court by learned counsel for the accused-appellant, are that on 20.05.2014 at around 6:30 p.m., complainant Jagmal Ram submitted a written report (Ex.P/1) before the SHO (S.I.), *Aarakshi* Kendra, Sameja Kothi, CHS, Raisinghnagar stating that his pregnant daughter Roshni Devi was murdered (throttled her to death) by her husband (present accused-appellant) and in-laws (Father-in-law and mother-in-law – Mulchand & Mohini Devi respectively) at a School, that was near their house, owing to some altercation which had taken place between them; afterwards, accused-appellant Amarchand had presented himself in the Police Station while the other two had gone back home.

3.1. In pursuance of report-Ex.P/1, an FIR bearing no.115/2014 was registered at the aforementioned police station, and accordingly, the *Naksha Mauka* (Ex.P/27) was prepared along with the *Surat haal Laash* (Ex.P/27A) and photographs of the place of incident were also taken. Thereafter, the accused-appellant was taken into custody and as per the information provided by him, verification of the place of incident was done and a green coloured



*Gamcha* was recovered; after conducting investigation in the matter, a chargesheet was filed under Section 302 IPC against the accused-appellant before the learned Judicial Magistrate, Raisinghnagar, and owing to the nature of the offence, the case was committed to the learned Trial Court for conducting the trial.

3.2. The learned Trial Court framed the charges against the accused-appellant under the aforementioned provision of law, and the trial accordingly commenced thereafter.

3.3. During the course of trial, the evidence of 20 prosecution witnesses were recorded and documents from Ex.P/1 – Ex.P/57-A were exhibited on behalf of the prosecution; whereafter, the accused-appellant was examined under Section 313 Cr.P.C., in which the accused-appellant pleaded innocence and his false implication in the criminal case in question.

3.4. Thereafter, upon hearing the contentions of both the parties as well as considering the material and evidence placed on record, the learned Trial Court, convicted and sentenced the accused-appellant, as above, vide the impugned judgment of conviction and order of sentence dated 12.08.2016, against which the present appeal has been preferred on behalf of the accused-appellant.

4. Learned counsel for the accused-appellant submitted that the learned Trial Court erred in not taking into consideration the fact that the entire prosecution story was based on circumstantial evidence and 10 out of 20 prosecution witnesses who had supposedly seen the accused-appellant with the deceased have turned hostile during recording of statement before the concerned



Magistrate, and thus, the evidence of last seen theory became otiose.

4.1. It was further submitted that the narration of the entire incident (Ex.P/38 A) providing the location of the place of incident among other things, as given by the accused-appellant was made before the Police and even after receiving of such information, no FIR was registered by them nor any arrest was made; in furtherance, the said statements given before the Police were inadmissible in a Court of Law as per Section 25 of Indian Evidence Act, 1872.

4.2. It was also submitted that the recovery of the green coloured *Gamcha* so made upon the information provided by the accused-appellant was also not fruitful, since as per the FSL Report, the blood found upon the *Gamcha* was of 'B' group, however there was no report as to the blood group of the deceased herself, in order to verify the blood found on the *Gamcha*.

4.3. It was further submitted that as per the postmortem report (Ex.P/32) and the statement of P.W. 17 Dr. Devkant Sharma, the cause of death of the deceased was the injury received on her neck, which was a result of asphyxiation due to throttling, thus it was clear that though the recovery of *Gamcha* was made, however the said *Gamcha* was clearly not the weapon used to murder the deceased, since if the same had been used, the postmortem report would have revealed strangulation and not throttling as the cause of death in the present case.



4.4. It was also submitted that the accused-appellant had no intention to commit the crime in question, and he is already behind the bars for last about 10 years.

4.5. Learned counsel in order to fortify his submissions has placed reliance on the following judgments:

(a) *Khatri Hemraj Amulakh Vs. The State of Gujarat (1972) 3 SCC 671; and*

(b) *Ravishankar Tandon Vs. State of Chhattisgarh (Criminal Appeal No. 3869 of 2023 decided by the Hon'ble Apex Court on 10.04.2024).*

5. On the other hand, learned Public Prosecutor, while opposing the aforesaid submissions made on behalf of the accused-appellant, submitted that the information regarding location of the incident in question, was given by the accused-appellant himself.

5.1. It was further submitted that even recovery (Ex.P/26) of green coloured *Gamcha* was done on the basis of the information so provided by the accused-appellant from the bathroom of the School which was the place of incident in question, as per Ex.P/26.

5.2. It was also submitted that the accused-appellant had a clear motive with regard to commission of the crime in question, since he had asked the deceased to file a case against the father of the deceased to which she had refused resulting in the commission of the crime by the accused-appellant and the same is apparent from the statements of the P.W. 1 father of the deceased as well as P.W.2 Papuram @ Pannaram.

5.3. It was also submitted that on a bare perusal of the documents i.e. Ex.P/38 A and the written report (Ex.P/1), it is





evident that there had been an extra judicial confession and that the body of the deceased had been discovered on the information of the accused-appellant himself.

5.4. It was further submitted that since the body of the deceased was discovered on the basis of the information provided by the accused-appellant, thus even if no report was written, still the said information can be taken as information given under Section 27 of the Indian Evidence Act, 1872, to be considered as a strong circumstance for convicting the accused-appellant, and thus, the impugned judgment of conviction and order of sentence warrant no interference in the instant appeal.

5.5. Learned Public Prosecutor in order to fortify his submissions placed reliance on the following judgments:

- (a) *State of Uttar Pradesh Vs. Deoman Upadhayay AIR 1960 SC 1125;*
- (b) *State of Uttar Pradesh Vs. Gangula Satyamurthy AIR 1997 SC 1588;*
- (c) *Mohd. Arif e Ashfaq Vs. State of NCT of Delhi (2011) 12 SCC 621; and*
- (d) *Ranjit Kumar Vs. State of Sikkim (2019) 7 SCC 684.*

6. Heard learned counsel for the parties as well as perused the record of the case alongwith the judgments cited at the Bar.

7. This Court observes that P.W.1 Jagmal Ram gave a written report on 20.05.2014 stating that his pregnant daughter had been murdered by her-in-laws and the accused-appellant (husband) at the School that was near the house of the accused-appellant, since some altercation had taken place between them, and





afterwards, the accused-appellant Amarchand had presented himself in the Police Station, while the other two had gone back home.

8. This Court further observes that the prosecution, on the strength of all evidence and circumstance, has been able to establish that the appellant-accused had committed the crime in question and recovery of the *Gamcha*, which was used for committing the murder and dead body of the deceased, was made, on the basis of the information given by the accused-appellant.

9. This Court also observes that on the question of intention of the accused-appellant, as per the testimonies of PW.1- Jagmal Ram and PW. 2- Pappu Ram @ Pana Ram, the accused-appellant had asked the deceased to lodge a case against her father but when she refused to do so, the accused-appellant committed the crime in question.

10. This Court further observes that apart from the other prosecution witnesses, PW. 3, PW.4, PW.5, PW.6, PW.7, PW.9, PW.10, PW.11, PW.13, and PW.15 had turned hostile during the trial.

11. This Court also observes that the appellant-accused himself confessed the crime in question, which was recorded in Ex.P/38A (Page No.139 of the paper-book) by the concerned police authority; in the said confession, the accused-appellant stated that he lost his temper and murdered deceased.

12. Looking into the entire record, this Court observes that the accused-appellant had committed the crime in question without





any premeditation, but the same was committed owing to a sudden fight preceded by a sudden altercation, and thus, the same falls under the Exception 4 of Section 300 IPC and the same deserves to be considered as culpable homicide, instead of murder. This Court also observes that the entire incident in question shows that there was no prior preparation for committing the murder of the deceased and therefore, the lack of the prior preparation to commit the murder does not fulfil the essential ingredients of Section 300 of the IPC, thus, the conviction of the accused under Section 302 IPC seems to be not appropriate.

13. This Court further observes that in the present case, though the accused-appellant might have had the knowledge that the said act would likely to cause death, but the probability of death was not such, which could show that the accused-appellant was having the intention to cause death of the deceased. The incident in question had happened without premeditation, but due to sudden fight and in a heat of passion and that there was no prior preparation on the part of the accused-appellant for committing the murder of the deceased. Since the component of intention on the part of the accused-appellant is clearly absent in the present case, therefore, the same falls within the definition of Culpable Homicide as provided under Section 299 IPC.

14. This Court also observes that the accused-appellant is behind the bars for last about 10 years and serving out the sentence awarded to him vide the impugned judgment of conviction and order of sentence.





15. In view of the above, the present appeal is **partly allowed**. Accordingly, the conviction of the accused-appellant, as made vide the impugned judgment, is altered from Section 302 I.P.C. to Section 304 Part-II IPC. The period of sentence of the accused-appellant is reduced to the period, he has undergone till now, which in the opinion of this Court, is sufficient to meet the ends of justice in the peculiar facts and circumstances of this case. The appellant is in jail; he shall be released, subject to deposition of the fine amount, as imposed vide the impugned judgment of conviction and order of sentence. It is further stipulated that immediately after deposition of the fine amount, the accused-appellant shall be released, if his custody is not required in any other case. The record of the learned Trial Court be sent back forthwith. All pending applications stand disposed of.

**(MUNNURI LAXMAN),J**      **(DR. PUSHPENDRA SINGH BHATI),J.**

SKant/-