

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1902 OF 2014
(Arising out of SLP (Crl.) No. 1800 of 2014)

NARENDRA

....Appellant

Versus

STATE OF RAJASTHAN
Respondent

...

J U D G M E N T

R. BANUMATHI, J.

Delay condoned. Leave granted.

2. This appeal is directed against the judgment dated 9.11.2011 passed by the Jodhpur Bench of Rajasthan High Court in D.B. Crl. Appeal No. 950/2004 by which the High Court has confirmed conviction of the appellant under Sections 302 and 309 IPC and the sentence imposed upon him.

3. Briefly stated, the case of the prosecution is that Nathi, sister of PW-3 Naresh Salvi, got married to Magan Salvi. About two years prior to the incident, due to differences with her husband, Nathi left her matrimonial house and she was residing at her parents' house, Mauza Basti, District Udaipur. While staying at her parents' house, Mauza Basti, Nathi developed intimacy with Narendra- the accused. About three months prior to the incident, Nathi and the accused eloped and returned to the village after 10-15 days. On 19.03.2003, the parents of the deceased and the complainant went for work. PW-3 was also not at home and he was participating in some events pertaining to Holi festival and Nathi was all alone at home. At about 2.30 p.m., on returning home, PW-3 found the main gate closed, and despite calling, the gate was not opened from inside. Thereafter PW-3 entered into the interior open floor of the house through the outer wall, wherefrom he saw Nathi and Narendra standing in a room with closed door. From the peep-hole of the door, PW-3 saw the accused with a sword in his hand and the accused inflicted sword blows on the

deceased and caused stab injuries on the chest and the abdomen. On hearing the alarm raised by PW-3, neighbours Kalu Lal and Shankar Lal and others came to the place of occurrence and the door of the room was opened. Nathi was found on the floor with stab injuries bleeding all over and accused was also found having stab wounds in his abdomen.

4. On oral information given by PW 1- Shankar Lal, Sarpanch Kishan Singh had telephoned to police and FIR was registered against the accused. PW 7 - Dr. M.L. Purbia conducted autopsy on the body of the deceased Nathi and opined that the cause of death was due to shock and excessive bleeding in the chest. PW-7 examined the injuries on the person of accused and issued Exhibit P-12 Injury Certificate. After completion of investigation the accused was challaned for the offences punishable under Sections 302 and 309 IPC.

5. To bring home the guilt of the accused, prosecution examined PWs -1 to 17 and exhibited documents and material objects. The accused was

questioned under Section 313 Cr.P.C about the incriminating evidence and circumstances. The accused stated that he is innocent and he had not committed the offence. The accused further stated that himself and Nathi were in love which was not accepted by the villagers and hence they tried to commit suicide in which he survived and the deceased Nathi died.

6. The trial court, on consideration of evidence, convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life and imposed a fine of Rs.2,000/-, in default of payment of fine to further undergo three months simple imprisonment. The trial court also convicted the appellant under Section 309 IPC and sentenced him to undergo simple imprisonment for six months and a fine of Rs.500/- was imposed and both the sentences were ordered to run concurrently. On appeal, the High Court confirmed the conviction and sentence imposed on the appellant under Sections 302 and 309 IPC. Being aggrieved, the appellant has preferred this appeal.

7. The learned counsel for the appellant contended that as per the evidence of PW 3, the appellant and the deceased Nathi were in the closed room and PW 3 could not have viewed the occurrence inside the room and the site sketch does not make a mention about the peep-hole of the door and while so, the courts erred in placing reliance upon the evidence of PW-3 to convict the accused. It was contended that the accused and the deceased were in deep love and both belonged to the same caste and the villagers were not ready to accept the relationship of the accused and deceased and, therefore, both of them tried to commit suicide and only on the consent of the deceased, the accused inflicted injuries on the deceased and the offence committed by the accused attracts Exception 5 of Section 300 IPC punishable under Section 304 Part I IPC.

8. The learned counsel for the State took us through the evidence of PW 3 and submitted that PW 3 being reliable witness, based on his evidence, the courts below rightly held the appellant guilty of the offence. The learned counsel contended that the stab injuries inflicted in the chest and the

abdomen of the deceased clearly show that the accused intentionally inflicted the injuries to cause death of the deceased and the courts rightly disbelieved the defence version and convicted the appellant.

9. We have carefully considered the submissions of the learned counsel appearing for the parties. The explanation of the accused whether he acted in furtherance of the suicide pact and whether the homicide falls under Exception 5 of Section 300 IPC and whether the conviction of the appellant is to be modified under Section 304 Part I IPC are the points falling for our consideration.

10. The essential facts are not in dispute. That deceased Nathi after leaving her matrimonial house, while she was residing at her maternal home, she has developed love and intense relationship with the accused Narendra. There is adequate evidence which clearly show the love affair between the deceased and the accused. Since the deceased and the accused were of the same gotra, their relationship was not accepted by the villagers. PW-3 admits that Nathi and accused were in love and that Nathi and the

accused eloped and lived together for about 10-15 days. A panchayat was convened after Nathi returned home. In his evidence PW 3 stated that Nathi having left her previous husband, wanted to marry the accused; but to Gotra of both being one the marriage could not be held. As their desire of marriage was not accepted by the villagers, perhaps accused and the deceased were dejected.

11. In the incident, the accused had inflicted injuries with the sword on the chest and the abdomen and from Ex.P.13-post mortem report, it is seen that the deceased had sustained the following injuries:

"External Injuries:

- (1) Stab wound with one end (edge) is sharp and other is rounded 4.5 cm. X 2cm. X intra thorax deep on left breast in 5 the inter coastal space going obliquely postero medially piercing right ventricle of heart of apex.*
- (2) Stab wound 4.5 x 2cm. x intra abdominal Horizontal - on Supra pubic region 6cm. below umbilicus in mid low piercing peritoneum and intestine one and is sharp.*
- (3) Stab wound 4.5 cm x 2cm x abdominal deep on right side abdomen 6 cm lateral to umbilicus piece of intestine come out.*
- (4) Incised wound 6cm x 3cm x bone deep on middle 1/3 of left forearm, muscles and blood vessels cut down.*
- (5) Incised wound 3.5cm x 2cm x muscles deep x 3cm proximal to 4th injury.*
- (6) Incised wound 2.5cm x 0.2cm x skin deep right elbow.*
- (7) Bruise 5 cm. x 4cm on right hand posteriorly."*

PW-7 Dr. M.L. Purbia opined that the death was due to shock and haemorrhage and injury No.1 was sufficient to cause the death.

12. The accused also had the following stab injuries.

- “1. Stab wound- 2cm x 1cm. x intra abdominal deep- near umbilicus – reserved sharp.
2. Stab wound- 1.5cm x 1 cm x deep intra abdominal- on umbilicus 1 cm away from injury No.1- reverse sharp.
3. Stab wound- 2 cm. x 1 cm x intra abdominal – near umbilicus 1.5 cm below injury No.2 -reverse sharp.”

The accused self inflicted the above injuries and tried to commit suicide.

13. The trial court and the High Court recorded concurrent findings that the accused caused the death of Nathi and he also attempted to commit suicide and the said findings are unassailable. While explaining the circumstances in which he caused the death of the deceased, the appellant stated that he and deceased, Nathi were in love and they also solemnized their marriage and since the appellant and deceased belonged to the same sub-caste, the villagers had objections for their relationship

and therefore both himself and Nathi tried to commit suicide. The defence version is that acting on the consent of Nathi, appellant inflicted sword injuries on Nathi and Nathi died but before however the appellant could kill himself, there was intervention and therefore he could not kill himself and the act of the accused causing death of Nathi falls under Exception 5 of Section 300 IPC punishable under Section 304 Part I IPC. Reliance is placed upon the circumstance that the accused had also sustained stab injuries.

14. The High Court disbelieved the defence version by saying that to bring the accused within the four corners of Exception 5 of Section 300 IPC, there must be cogent evidence to show that the deceased had given such consent and there is no material on record to establish such free and voluntary consent of the deceased for her death. The High Court also observed that there was no evidence to show that the deceased was experiencing intolerable mental sufferings with no prospect of improvement and that she took the decision that death was the only resort.

15. Under Exception 5 to Section 300 IPC *“culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent.”* To attract Exception 5 to Section 300 IPC, there must have been free and voluntary consent of the deceased person. The onus of proving consent of the deceased person is on the accused. Exception 5 of Section 300 IPC must receive a strict and not a liberal interpretation. In applying the said Exception, the act alleged to be consented to or authorized by the victim must be considered by a close scrutiny. The court must in each case consider the evidence and the surrounding circumstances while considering the question of consent.

16. In the present case, in our view, there are formidable circumstances discernible from the evidence which probablise the defence version which are as under:

- (a) Deceased Nathi and the accused were in love and they were intending to get married. Since they belonged to the same gotra, their relationship was not accepted by the villagers and they objected to the same;
- (b) About three months prior to the incident, Nathi and accused left the village and lived

- together for about 10-15 days and thereafter Nathi returned to her matrimonial house;
- (c) On 19.3.2003, the parents of the deceased went for work and PW-3 was also engaged in some events pertaining to Holi festival and Nathi was alone in the house;
 - (d) When the accused came to the house of the deceased, he was not armed; he had taken the sword from inside the room of the house;
 - (e) PW-3, nowhere stated that at the time of the incident his sister quarrelled with the accused. When the accused inflicted sword blows, deceased Nathi had not raised any alarm nor shouted for help;
 - (f) the accused was also having the stab injuries on his person.

17. In the present case, the accused has taken the defence plea of suicide pact even in the trial court while being questioned under Section 313 Cr.P.C. The defence version is probabalized by the above facts and circumstances of the case. The death of deceased was not premeditated and the act of the accused causing death of Nathi, in our view, appears to be in furtherance of the understanding between them to commit suicide and the consent of the deceased and the act of the accused falls under Exception 5 of Section 300 IPC. Since the accused intentionally caused the death; the appellant is found guilty under Section 304

Part I IPC. The appellant is stated to be in custody for more than 10 years.

18. In the light of the foregoing discussion, the conviction of the appellant under Section 302 IPC is modified and the appellant is convicted under Section 304 Part I IPC and sentenced to undergo imprisonment for the period already undergone by him and the appeal is allowed in part. The sentence of imprisonment for conviction under Section 309 IPC is ordered to run concurrently. The appellant is in jail, and he be released forthwith if not required in any other case.



.....J
(T.S. Thakur)

JUDGMENT

.....J
(R. Banumathi)

New Delhi;
September 2, 2014