

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Cr. Appeal no. 07/2009
with Confirmation Ref. no.02/2009

Date of Decision: **19.08.2009**

Lochan Ram **vs.** *State*

CORAM:

**MR. JUSTICE NIRMAL SINGH, JUDGE.
MR. JUSTICE J. P. SINGH, JUDGE.**

Appearing counsel:

For Appellant(s) : Mr. Rameshwar P.Sharma, Advocate.

For Respondent(s) : Mr. A.H.Qazi, AAG.

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| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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J.P.Singh, J :

Sessions Judge, Rajouri has sentenced the appellant to imprisonment for life and fine of Rs.5000/-, convicting him under Section 302 RPC for committing the murder of Neelam Kumari alias Nima, his daughter-in-law after injuring her with an axe on February 10, 2001 at Village Lamberi, Tehsil Nowshera of District Rajouri in the State of Jammu and Kashmir.

The appellant has filed this appeal praying for his acquittal of the charge besides seeking setting aside of the judgment dated January 30, 2009 of learned Sessions Judge, Rajouri.

FACTS:

Facts giving rise to this Appeal and Confirmation Reference No. 02/2009 made by learned Sessions Judge, Rajouri may be stated thus:-

Jai Kumar, PW-1, was informed by the appellant on 10.02.2001 at about 3.00 p.m of having killed his daughter-in-law by hitting her with an axe, called "Tabar". He reported the matter to the concerned Police Post simultaneously informing, by telephone, Police Station, Nowshera too, about the occurrence.

FIR No.8/2001 was registered under Section 302 RPC, on his report, at the Police Station.

Investigation conducted into the FIR resulted in the filing of a Final Police Report with the Chief Judicial Magistrate, Rajouri who committed it to the Sessions Judge, Rajouri, hereinafter to be referred as "the trial Court", for short.

The prosecution story as indicated in the Final Police Report is, that the appellant had developed illicit relations with Neelam Kumari, his daughter-in-law, for the last two-three years and would not allow her to meet her relatives and parents. Mst. Sheela Wanti, his wife, too had come to know of it and had shown her anger, *inter alia*, by distancing her from the appellant, but the appellant would not budge from continuing his illicit relationship with the daughter-in-law.

Parents of the daughter-in-law also came to know of the appellant's illicit relationship. Neelama's husband too got scent of it. Although the deceased informed her husband that the appellant had been committing sexual intercourse with her against her consent but her husband instead gave her beating. It later became known to the Villagers that the appellant was forcibly having illicit relationship with his daughter-in-law. The appellant too, in the meanwhile, got the feeling that the daughter-in-law may land him in trouble as their illicit relationship had become the talk of the town.

It was on 10th of February, 2001 that the appellant's wife had gone to see off her daughter Sneha Devi when he called the deceased into his room for satisfying his lust. The daughter-in-law, however, refused to oblige him. The Appellant initially abused her; but, his innate tendency of lust became so much depraved that he hit the deceased with a 'Tabar' when she was sitting in the compound. Neelam Kumari, alias Nima, succumbed to the injuries on spot.

Finding sufficient ground to proceed against the appellant, the trial Court charged the appellant under Section 302 RPC on 19.09.2001.

Denying the charge, the appellant claimed to be tried.

The prosecution examined sixteen out of twenty two witnesses enlisted in the Final Police Report.

Responding to the incriminating circumstances, appearing in the prosecution evidence, the appellant stated that PW-9-Bhola Nath, the brother of the deceased, had manipulated a false case against him, because of his influence in the Police Department. He, however, opted not to lead any evidence in defence.

Relying, *inter alia*, on the statements of PW-2 Chandan Kumari Kesar, the minor daughter and PW-3 Umesh Kesar, the minor son, of the deceased, besides other evidence on the records, the trial court found the appellant guilty of committing the murder of his daughter-in-law by causing her fatal injuries with Tabar.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

Projecting appellant's innocence, his learned counsel submitted that there was no eye witness to the occurrence and the prosecution had failed to produce reliable evidence

indicating appellant's involvement in the commission of his daughter-in-law's murder.

According to the learned counsel, PW nos. 2 & 3 had been tutored to make false statement in the Court involving the appellant in the commission of offence when, as a matter of fact, both of them were at their School when the offence is stated by the prosecution, to have been committed. Buttressing his submission, reliance was placed on the statement of Mr. Abdul Hamid Choudhary, the Investigating Police Officer, who had indicated, while under cross-examination, that the children of the deceased were at their School at the time of the commission of offence. Learned counsel referred to some inconsistencies in the statements of other prosecution witnesses to project that the prosecution evidence was unreliable, besides being unnatural. Delay in receipt of the FIR by the Magistrate too has been projected to demonstrate belated fabrication of the prosecution case against the appellant. Alternatively, he submitted that the occurrence having taken place on the spur of moment, the appellant cannot be said to have committed the offence punishable under Section 302 RPC which, according to him, may, in the circumstance amount to an offence punishable under Section 304 Part II RPC.

STATE'S SUBMISSIONS:

The learned State Counsel submitted that the statements made by PWs-2 & 3 are natural, consistent and coherent which have been rightly believed by the trial court to convict the appellant.

Responding to the statement made by the Investigating Police Officer, that PWs-2 & 3 were in the School at the time of the occurrence, learned State Counsel submitted that in view of

the categoric statement of the Investigating Officer that he had proved the case against the appellant on the basis of the statements, *inter alia*, of PWs-2 & 3, the irresponsible and false statement of the Investigating Officer, in cross-examination, and that too contrary to the records maintained by him, may not warrant consideration to disbelieve the prosecution story which stood otherwise proved by the evidence which the prosecution had produced in the case.

We have considered the submissions of learned counsel for the parties and gone through the evidence and the material which the prosecution has produced in the case.

The trial court has given the resume of the prosecution witnesses in detail in its judgment; we would not, therefore, like to burden this judgment with reproduction of the statements of all the witnesses once again. We will, however, refer to the statements of the witnesses wherever found necessary to deal with the submissions made at the Bar.

DISCUSSION:

In order to deal with the appellant's submission that the statements of PW nos-2 & 3 were tutored and otherwise false as they were in the School rather than at the place of occurrence as indicated by the prosecution, reference to the statements of these two witnesses becomes necessary.

Perusal of the statement of PW-2 Chander Kumari reveals that because of the bad cold, her mother, had told her not to go to the School on the day of occurrence and it was because of this reason that the witness had stayed home. This statement of the witness gets support from the questions put to her in the cross-examination where she indicates that medicine too had been brought a day earlier in the house for her bad cold. Nothing has been put to the witness in the cross-

examination to suggest that she was not present in the house at the time of occurrence. All that was suggested to her in the cross-examination is that she had made the statement at the instance of her maternal uncle, which she categorically refuted. The witness has indicated the circumstances leading to the appellant's hitting her mother with an axe. She says that before the occurrence and when her paternal grandmother had gone to see off, Sneha Devi at the Bus stand, the appellant gave one rupee to her and her younger brother Sumesh whom she had brought home from the school at about 3 p.m, to purchase toffees, but their mother forbade them to go out. Appellant had a verbal dual with her mother and thereafter hit her with an axe at the neck. Her elder brother Umesh who came in the meanwhile, had hit the appellant with a stick in a bid to save their mother but she fell down. She is stated to have informed PW-6 Tulsi Singh, the appellant's brother, who resided nearby. The statement made by the witness about the manner in which the appellant had struck the deceased has not been seriously questioned in the cross-examination. The cross-examination of the witness does not project any such inconsistency or material on the basis whereof her presence at the time of the occurrence be doubted.

We will now refer to the statement of PW-2 Umesh Kesar.

According to the statement of this witness, being a Pay day for the teachers, the school went off early and he reached home at about 2.30 p.m. to find that the appellant was hitting his mother with an axe. Raising noise he tried to save her mother, but was pulled back by the appellant. He hit him with a stick but in the meanwhile, the appellant had struck his mother with an axe $\frac{3}{4}$ times at her back and face who died on spot. Holding him by the ear, the appellant told that he would make a

telephone call to his father and accordingly took him along towards the road. Leaving him there on the road, he boarded a Bus and went away.

In the cross-examination, he says that the occurrence was going on when he was just outside his house. He had seen the appellant running out of the house with an axe. His mother was sitting on the cot facing towards the staircase and had not seen the appellant. The appellant came from behind and hit the deceased $\frac{3}{4}$ times with an axe. Thereafter he hit the appellant recklessly.

The description of the occurrence by the witness, while under cross-examination reveals contradictions besides exaggeration and puts us at guard in believing the version of the incident he reflects in his examination-in-chief in having witnessed the occurrence.

We will deal with the statement of this witness a little later, after referring to the other evidence of the prosecution.

PW-1 Jai Ram, a member of the village panchyat is the appellant's neighbour who had informed the police about the occurrence. According to him he was in the bathroom when the appellant told him that he had committed the murder of his daughter-in-law and was going to lodge report with the Police. He went on spot and found that the deceased was in a pool of blood having four injuries on her person. He thereafter went to the Police Post and subsequently telephoned the Station House Officer, Nowshera to narrate the occurrence. The Appellant had by that time run away. During investigation of the case the police seized the appellant's clothes and the weapon of offence from his house.

The statement made by the witness that the appellant had told him of having committed the murder of his

daughter-in-law was not, however, found recorded in the statement which he had made to the police under Section 161 Cr.P.C.

PW-5 Baldev Singh, too is a neighbour of the appellant. He was proceeding towards the house of PW-Tulsi Singh when he heard the noise of the children. On inquiry Tulsi Singh told him that the appellant had committed murder of his daughter-in-law. He along with Tulsi Singh went on spot where the dead body of the deceased was lying. Identifying his signatures on EXPW5-A, EXPW5-B, EXPW5/C and EXPWJ/1 he admits the contents thereof pertaining to the seizure of the dead body and other articles from the place of occurrence. According to him, the police had come on spot after about half an hour of the occurrence. Indicating the purpose of his visit to Tulsi Singh he says that he had gone to him for getting a jack.

PW-6 Tulsi Singh, is the neighbour of the appellant. He was working at his place when the appellant's grand-daughter informed him that the appellant had murdered her mother. He went on spot and found the deceased lying on the ground. Seeing this he lost senses and on regaining he found that the deceased had died. According to him PW- Chandan Kumari had come to him at 3 p.m. PW Bhola Nath had given thrashing to the appellant and there were many community meetings to settle the dispute. He had, however, refused to intervene into the matter. According to him PW-Baldev Singh had not visited him either at the time of the occurrence or after the occurrence.

PW-9 Bhola Nath, is the brother of the deceased who testifies to his sister's marriage with the appellant's son in the year 1987 saying that two sons and two daughters were born out of the wedlock. According to him, in the absence of her brother-in-law, who was posted at Srinagar, the appellant would

misbehave with his sister and trouble her in the night hours. He had advised the appellant not to indulge in such activities but the appellant would not stop. Narrating an incident of a night when he visited her sister, he says that he had enquired as to why had his sister kept an iron rod by the side of the door of her room to which she responded that it was to ward off the forcible attempt of the appellant to enter her room during night hours. It was during this visit that there was exchange of hot words between the appellant and the witness. Even the brother of the appellant had told him to refrain from intruding into the privacy of the deceased. His sister would even thereafter tell him that the appellant had been threatening her to kill her.

PW-20, Dr. R.K. Dhar, on conducting the Post-Mortem examination of the deceased on 11.2.2001 found the following injuries on her person:-

- “1. On posterior side of left supra scapular region incised wound lying horizontally measuring 4” in length 1.5” in width and 7” depth. Left cervical fractured Lt C.Carotid artery and regular veins torn Apex of left lung showed incised wound.
2. On posterior side of right supra scapular region incised wound lying horizontally measuring 3.5 inch in length and 1.5 in width.
3. On posterior side of right supra Gluteal region, incised wound of 4.5 inch in length.”

According to the witness, the cause of death was excessive hemorrhage leading to shock and Cardio respiratory failure. Duration of death before the autopsy is indicated as between four to twenty four hours. The witness admitted to have issued EXPW-20, the Post Mortem report of the deceased.

We have perused the statements of all the prosecution witnesses and do not find it safe to accept the statement made by PW-22 Abdul Hameed Choudhary, the Investigating Police officer when he says that PW-2 Chandan Kumari was at her

school at the time of the occurrence and the only person who had witnessed the occurrence was PW-7 Sheela Wanti, the wife of the appellant, for the following reasons:-

1. The statement of the Investigating Police Officer that the children of the deceased were in their school at the time of the occurrence, is not found recorded anywhere in the Case Diaries which were produced by the learned State counsel for our examination to test the veracity of the statement of the Investigating Police Officer.
2. The statement of the Police Officer that Sheela Wanti, the wife of the appellant was the only eye witness to the occurrence as reported to him on the day of the occurrence too is found to be incorrect as Sheela Wanti's statement recorded by the Investigating Police Officer himself does not indicate her to be the eye witness. Her statement, on the other hand, indicates her to have reached home from the road where she had gone to see off her daughter, hearing noise of her grand-children from the house. On reaching there she found the deceased in a pool of blood and the children telling her that the appellant had killed their mother with a 'Tabar'.
3. Indicating in the Final Police Report, drawn and signed by him in his capacity as Station House Officer of Police Station, Nowshera that the children of the deceased were the eye witnesses to the occurrence, the Investigating Police Officer had sought appropriate punishment for the appellant saying that the investigation into the offence had proved the appellant

to have committed the offence of murder on the basis of the evidence and material collected during investigation of the case which, *inter alia*, included the statements of the children of the deceased as eye witnesses to the occurrence.

The presence of PW-1 Chandan Kumari in the house at the time of the occurrence, is supported by the statement of PW-6 Tulsi Singh, the appellant's brother and a neighbour too. We find her statement acceptable, being natural, coherent and consistent. She has stood the test of the cross-examination and no such material has been elicited from her cross-examination which may make her statement improbable, or otherwise unworthy of credence and acceptability.

We, therefore, do not find any ground to reject her statement on the basis of the statement of PW-22 Abdul Hamid Chowdhary, the Investigating Police Officer of the case, whose statement, negating the presence of PW-1 in the house at the time of the occurrence, has been found to be false, on the basis of the official records and records maintained by him.

At the same time, we do not consider it safe to rely on the statement of PW-3 Omesh Keser, in view of the contradictory version appearing in his cross-examination.

We further find from the records that the appellant has failed to give any explanation of the presence of blood, of group "O" on his clothes, seized from his house and on the weapon of offence recovered at his instance pursuant to the disclosure made by him in this behalf, which in terms of the Report of the Scientific Officer and the Scientific Assistant of the Forensic Science Laboratory, Jammu was the blood group of the deceased.

Appellant's running away from the house immediately after the occurrence is yet another circumstance which has remained unexplained by the appellant.

We do not find any substance in the appellant's learned counsel's submission that delay in sending the Special Report under Section 157 Cr. P. C. has resulted in fabrication of a false case against the appellant, for, the evidence and material produced by the prosecution in the case, notwithstanding two days' delay in sending the Report, sufficiently proves the appellant responsible for his daughter-in-law's death because of the injuries she received with a 'Tabar' at the hands of the appellant.

For all what has been said above and on thorough examination of the evidence on the records, we do not find any ground to take a view different from the one which the trial court has taken in finding the appellant guilty.

Keeping in view the number of injuries inflicted by the appellant with a sharp edged weapon called 'Tabar', hitting her on various parts of the body including vital parts, ensuring her death because of the injuries, we do not find the offence committed by the appellant to be Culpable Homicide not amounting to Murder as suggested by the appellant's learned counsel, for, the intention of the appellant to cause injuries on the person of Neelam Kumari, with intention to commit murder, is writ large from the evidence produced by the prosecution.

Accordingly, accepting the Confirmation Reference, and confirming the sentence proposed by the trial court, we dismiss the appellant's appeal directing the Registry to send a copy of the judgment to the trial court in terms of Section 379 Cr. P. C.

Before parting, we consider it appropriate to direct issuance of notice to Abdul Hamid Chowdhary, the then

Station House Officer, Nowshera to show cause as to why proceedings for making a false statement in the court of Sessions Judge, Rajouri, in the case during his cross-examination, be not initiated against him.

A copy of the judgment shall be sent to the Director General, Jammu and Kashmir Police, Srinagar too for taking appropriate action against the then Station House Officer, Police Station, Nowshera for making statement in the Court contrary to the official records maintained by him while discharging his official and statutory duties as Investigating Officer and Officer-in-charge of the Police Station.

(J. P. Singh) (Nirmal Singh)
Judge Judge

JAMMU
19.08.2009
Tilak, Secy.