State Of U.P vs Lakhmi on 12 February, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1007, 1998 AIR SCW 778, 1998 AIR SCW 1065, 1998 ALL. L. J. 680, 1998 ALL. L. J. 837, (1998) 1 EASTCRIC 889, (1998) 36 ALLCRIC 522, (1998) 2 MADLW(CRI) 422, (1998) 1 CURCRIR 303, (1998) 1 RECCRIR 754, (1998) 1 SCALE 590, (1998) 2 SUPREME 5, 1998 SCC (CRI) 929, 1998 CRILR(SC&MP) 527, 1998 CRILR(SC&MP) 578, 1998 ADSC 2 13, (1998) 14 OCR 358, 1998 (4) SCC 336, (1998) MAD LJ(CRI) 662, 1998 (1) ALLCRILR 808, 1998 CRILR(SC MAH GUJ) 527, 1998 CRILR(SC MAH GUJ) 578, (1998) 1 SCR 850 (SC), (1998) 2 JT 241 (SC), 1998 (36) ALLCRIC 647, 1998 (23) ALLCRIR 986, 1998 (1) CURCRIR 367, 1998 (2) SCALE 118, 1998 (2) ADSC 281, 1998 (2) SUPREME 284, 1998 (1) CRIMES 211, 1998 UP CRIR 418

Bench: Chief Justice, K.T. Thomas, M. Srinivasan

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
LAKHMI

DATE OF JUDGMENT: 12/02/1998

BENCH:
CJI, K.T. THOMAS, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Thomas, J.

In this case of uxoricide the husband was found guilty by the Sessions Court but the High Court found him not guilty and acquitted him. That judgment of the High Court is in challenge in this

appeal by special leave.

Prosecution case can be compendiously stated thus. The deceased "Omwati" was the young wife of the respondent- accused. They with their two little children were living together in the house of the respondent. Intermittent skirmishes used to erupt between them as the wife was accusing the husband for dissipating his money on alcoholic drinks. During the wee hours of 8.2.1970 respondent inflicted blows with a Phali (a spade like agricultural implement) on the head of the deceased. Her skull was smashed and she died on the spot. PW2 (Ramey) who was working in the adjacent field, on hearing the screams of the deceased, rushed up and peeped through the window and witnessed respondent thrashing his wife with the said weapon. PW2 made a hue and cry and some of the neighbours who heard the noise, ran to the place or occurrence. As the door of the room was bolted from inside they broke it open, over-powered the berserk assailant and trussed him up on a pole with a rope.

FIR was lodged by PW1 Baljeet who was one of the persons rushed to the place of occurrence on hearing the noise of PW2 (Ramey). Police after registering the case, reached the place of occurrence and took the tethered assailant into custody and proceeded to conduct investigation.

As the respondent too did not dispute the fact that his wife (deceased) was murdered by inflicting blows on her head it is unnecessary to further consider the question whether death of the deceased was a case of homicide.

Learned Sessions Judge, on evaluation of the prosecution evidence, found that the accused had killed the deceased and then considered whether he did the act without knowing the nature of it by reason of any unsoundness of mind. Though the trial Judge felt that accused was not quite a normal person it was not possible to conclude that his cognitive faculties were as impaired as to deprive him of the capacity to know the nature of his acts. Accordingly, learned Sessions Judge convicted him under Section 302, IPC and sentenced him to imprisonment for life.

But a Division Bench of the Allahabad High Court which heard his appeal felt that the evidence of PW2 (Ramey), which is of crucial importance in this case, was not credit- worthy and at any rate it was not supported by other reliable evidence. The Division Bench did not attach any importance to the statement of the respondent which he made while being examined under Section 313 of the Code of Criminal Procedure (`Code' for short) wherein he practically admitted that he murdered his wife. Learned Judges took the view that the prosecution cannot succeed on the strength of what the accused said during examination under Section 313 of the code. Accordingly, the High Court sent the verdict of acquittal.

This being an appeal against acquittal we heard learned counsel for both sides in detail and scrutinised the evidence. In our considered opinion the High Court has gone wrong in holding that prosecution has failed to prove that the deceased was murdered by the accused. High Court has not given due regard to the cogent circumstances leading to the only conclusion that deceased was slashed to death by the accused.

As a legal proposition we cannot agree with the High Court that statement of an accused recorded under Section 313 of the code does not deserve any value or utility if it contains inculpatory admission. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial nor is it a mere formality. It has a salutary purpose. It enables the Court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases accused would offer some explanations to incriminating circumstances. In very rare instances accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised defences. In all such cases the Court gets the advantage of knowing his version about those aspects and it helps the Court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.

Sub-Section (4) of Section 313 of the Code contains necessary support o the legal position that answers given by the accused during such examination are intended to be considered by the Court. The words "may be taken into consideration in such enquiry or trial" in sub-Section (4) would amount to a legislative guideline for the Court to give due weight to such answers, though it does not mean that such answers could be made the sole basis of any finding.

Time and again, this Court has pointed out that such answer of the accused can well be taken into consideration in deciding whether the prosecution evidence can be relied on, and whether the accused is liable to be convicted of the offences charged against him; vide: Sampath Singh V. The State of Rajasthan (1969 (1) SCC 367) Jethamal Pithaji V. The Assistant Collector of Customs. Bombay and another (1974) 3 SCC 393); Rattan singh Vs. State of Himachal Pradesh (1997) 4 SCC 161.

We make it clear that answers of the accused, when they contain admission of circumstances against him are not by themselves, delinked from the evidence be used for arriving at a finding that the accused had committed the offence.

In this case, PW2 (Ramey) said that while he was working in the field he heard a loud cry from inside the house of the deceased and when he peeped through the window he witnessed accused thrashing his wife with Phali. PW3 (Bhudia) and PW4 (Raje) have stated in their evidence that they too heard the sound of cry and rushed to the scene and then they saw the accused standing with Phali and Kunda near the deceased who was lying on her bed with bleeding head injury and that the room was bolted from inside.

One answer which the accused gave to the following question put to him in the examination under Section 313 of the Code is said to contain his admission of a very vital circumstance against him.

The question was this:

> "What have you to say about the evidence of Ramey (PW2) that he peeped through the window and saw you standing near her bed and you killed her with Phali (Ex.Ka1) and Kunda (Ex.Ka2)?"

The answer of the accused to the said question was this:

> "It was not like that. I murdered her with kunda and not with Phali."

The above answer would certainly help in appreciating the statement of the prosecution witnesses who saw the accused standing near the bed of the deceased with a Phali and Kunda and that the deceased was bleeding with injuries then. We are not disposed to by-pass the impact of the aforesaid answer of the accused in determining as to who would have caused the death of the deceased.

Learned counsel for the respondent however, pointed out that as the doctor who conducted post-mortem examination on the dead body was not put in the witness box in this case and it was argued on its strength that in the absence of legally proved medical evidence no finding can be reached that the deceased died due to blows inflicted with "Phali." No reason is seen noted by the trial court or the High Court for the non-examination of the doctor who conducted the autopsy No doubt it is the duty of the prosecution to prove post-mortem findings in murder cases, if they are available. Absence of such proof in the prosecution evidence in a murder case is a drawback for prosecution. However, we are not disposed to allow this case to be visited with fatal consequences on account of such a lapse because the accused has admitted that death of the deceased was a case of homicide.

From the above circumstances, there is no escape from the conclusion that deceased had died at the hands of the accused. Still, that finding is not enough to dispose of this appeal. Accused attempted for a defence presumably under Section 84 of the Indian Penal Code by examining DW2, his mother to show that he was of unsound mind. But the trial judge had, according to us rightly, repelled the said defence since he did not succeed in making out that he had such a mental case when he committed the act and further that he did not know the nature of the acts committed by him by reason of such mental impairment. However, we have noticed that accused had adopted another alternative defence which has been suggested during cross-examination of prosecution witnesses i.e. his wife and PW2 (Ramey) were together on the bed during the early hours of the date of occurrence. If that suggestion reserves consideration we have to turn to the question whether the benefit of Exception I to Section 300 of the IPC should be extended to him?

The law is that burden of proving such an exception is on the accused. But the mere fact that accused adopted another alternative defence during his examination under Section 313 of the IPC without referring to Exception No. 1 of Section 300 of IPC is not enough to deny him of the benefit of the Exception, if the Court can cull out materials from evidence pointing to the Existence of circumstances leading to that exception. It is not the law that failure to set up such a defence would foreclose the right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability.

In the above context, we deem it useful to ascertain what possibly would have prompted the accused to kill his wife. The prosecution case as noted above, is that the accused was not well-disposed to his wife as she was always speaking against his drinking habits. we are inclined to think that, while considering the manner in which he had suddenly pounced upon his young wife who bore two children to him and smashed her head during the early hours, he would have had some other strong cause which probably would have taken place within a short time prior to the murder. Certain broad features looming large in evidence help us in that line of thinking.

The defence counsel put a definite suggestion to PW-2 (Ramey), during cross-examination, that the incident was preceded by a liaison between Omvati, the deceased, and Ramey (PW-2). The suggestion was, of course, rebuffed by the witness. One of the defence witnesses (DW-1) was examined to say that the accused was working in his field till 4 A.M. on the night in question. As that version was not inconsistent with the prosecution story, the aforesaid evidence of DW-1 was not rejected by the trial court. If that version is correct, he would have gone back to his bedroom some time thereafter, In this connection, we refer to the evidence of PW-3 who said even during chief examination itself that when he saw the accused standing near the bed side of his wife, the witness asked him what did he do, to which he snorted out that he would not spare Ramey (PW-2) also. That evidence of PW-3 (Bhondia) was binding on the prosecution which has a very significant impact on the plea based on the First Exception to Section 300. It indicates that the motive for the accused to murder his wife had some nexus with Ramey (PW-2). According to PW-4 (Raje), he rushed to the house of the accused and saw PW-2 scampering away and then saw the accused inside the bedroom muttering that Ramey had done foul acts with his wife and that he would murder him. Though the Public Prosecutor challenged that part of the witness's testimony, he did not treat the witness as hostile for the prosecution.

The above features positively suggest that the accused would have seen something lascivious between his wife and PW2 just when he entered the house from the field.

There can be little doubt that if the accused had witnessed any such scene, his mind would have become suddenly deranged. It is not necessary that a husband should have been hot-tempered or hypersensitive to lose his equanimity by witnessing such scenes. Any ordinary man with normal senses or even sangfroid would be outraged at such a scene.

We are therefore, inclined to afford to the respondent accused benefit of Exception I to Section 300 IPC. As the corollary, we find the respondent guilty only under Section 304 (Part I), IPC.

In the result, we allow this appeal and set aside the judgment of the High Court, but in alteration of the conviction passed by the Sessions Court, we convict him under Section 304 (Part I), IPC. We sentence him to undergo rigorous imprisonment for a period of six years. We direct the Sessions Judge, Meerut to take steps to put the accused in jail for undergoing the remaining portion of the imprisonment term in accordance with the sentence imposed on him now.