Kalu Ram vs State Of Rajasthan on 28 July, 1999

Equivalent citations: AIR2000SC3630, (2000)10SCC324, AIR 2000 SUPREME COURT 3630, 2000 CRILR(SC&MP) 18, 2000 CRILR(SC MAH GUJ) 18, 2000 (10) SCC 324, 2000 SCC(CRI) 86

Bench: K.T. Thomas, A.P. Misra

JUDGMENT

1.Appellant Kalu Ram had taken the risk of keeping two wives at the same time and later realised that it was costly for him and one of the wives (Vimla) had died of burn injuries. Appellant was charge-sheeted for murder of Vimla and the trial Court as well as the High Court found him guilty of the said offence and convicted and sentenced him to imprisonment for life. Hence this appeal by special leave.

2. The first wife of the appellant is Baby who was put up in his own house situated at different place. Subsequently he came across deceased-Vimla who herself was a widow having a daughter by name Pooja (P.W. 6) from her first marriage. Then appellant married Vimla and they were living together in a house different from the house where first wife Baby was residing.

3. It all happened without any premeditation, when appellant ablaze Vimla on the evening of 23-3-93. According to the prosecution version, he asked Vimla to spare her ornaments presumably for raising some more money for buying liquor. He was then also drunk. But Vimla refused to part with her ornaments and that infuriated the appellant. He doused her with kerosene and wanted her to die and supplied a box of match-sticks to her. As she failed to ignite the match-stick appellant collected the match-box and lit one match-stick and set her ablaze. When the flames were up he brought water in a frantic effort to save her from death. She was later removed to the hospital. A statement was recorded from her by the police which became the basis for the FIR. Subsequently the Munsif Magistrate (P.W. 7) recorded her dying declaration. Later she succumbed to her burn injuries.

4. Both the trial Court and the High Court relied on the two dying declarations proved in this case and came to the conclusion that it was appellant who set her on blaze and caused her death. He was, there fore, convicted under Section 302 of the I.P.C.

5. Learned Counsel for the appellant contended that the contents in the dying declaration are contrary to the testimony of all the witnesses who rushed to the scene on hearing the wailings of the dying lady. It is true that all those witnesses have said that the deceased told her that she herself committed the act of lighting the match-stick but all those witnesses were confronted with their earlier version recorded by the Investigating Officer under Section 161 of the CrPC. The version of those witnesses in Court stands discredited by such earlier statements and the two Courts below have rightly declined to place any reliance on the testimony of those witnesses. Out of those

witnesses PW-5 Indu was not declared hostile formally. But that does not matter because she too was confronted with her first version recorded by the police and thereby her testimony in Court was contradicted by the prosecution.

6. We find no good reason to discard the two dying declarations given by the deceased regarding the actual occurrence. The Courts below have rightly acted on such dying declarations.

7. But then, what is the nature of the offence proved against him. It is an admitted case that appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him. When she refused to oblige he poured kerosene on her and wanted her to lit the match-stick. When she failed to do so he collected the match box and ignited one match-stick but when flames were up he suddenly and frantically poured water to save her from the tongues of flames. This conduct cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all what the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore, we are persuaded to bring down the offence from the first degree murder to culpable homicide not amounting to murder.

8. We, therefore, alter the conviction from Section 302, I.P.C. to Section 304, Part II of the I.P.C. Both sides conceded that appellant is continuing in jail. We impose a sentence of rigorous imprisonment for seven years on him. It is for the jail authorities to count whether the period he had already undergone would be sufficient to complete the period of sentence imposed by us and if so, the jail authorities shall release him from jail. Otherwise he will continue in jail until completion of the period of seven years of imprisonment. The appeal is disposed of accordingly.