

Chetan Ram Vs. State

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Court : Rajasthan Jodhpur

Decided On : Apr-21-2014

Appellant : Chetan Ram

Respondent : State

Judgement :

-1- IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Ramratan @ Bichia versus State of Rajasthan (1) DB Criminal Appeal No.991/2011 Chetanram versus State of Rajasthan (2) DB Criminal Appeal No.1054/2011 Appeals against the judgment dated 20.09.2011 passed by Sessions Judge, District Jodhpur, in Sessions Case No.14/2011.

Date of Judgment :: 21st April, 2014 P R E S E N T HON'BLE MR.JUSTICE GOVIND MATHUR HON'BLE MR.JUSTICE ATUL KUMAR JAIN Mr.Rajendra Choudhary].Mr.Girish Choudhary].Mr.N.K.Bohra].for the appellants.

Mr.Gokulesh Bohra].Mr.Vishnu Kachhawaha, Public Prosecutor, for the State...BY THE COURT : (PER HON'BLE MATHUR,J.) The judgment impugned in these appeals is dated September 29, 2011, passed by learned Sessions Judge District Jodhpur in Sessions Case No.14/2011.

By the judgment impugned learned Sessions Judge recorded conviction of accused Ramratan @ Bichia for the offence punishable under Section 302 Indian Penal Code and of accused Chetanram for an offence punishable under Section - 2- 323 Indian Penal Code.

Accused Ramratan has been sentenced to undergo life term imprisonment with a fine and default stipulation and accused Chetanram has been sentenced to undergo one year's simple imprisonment with a fine of Rs.500/- and further to undergo two months simple imprisonment in the event of default in payment of fine.

The facts relevant for adjudication of these appeals are that at 09:15 AM on September 3, 2009, a written report was submitted by Shri Premaram (PW-2) at Police Station Pipar City with assertion that in the night of September 2, 2009 at about 09:00 PM, Prakash, Mewaram and Hardevram, all sons of Jeevanram were quarrelling opposite their house.

At that time Jawanaram son of Bachnaram and Premaram advised them not to indulge in quarrel being real brothers. The quarrelling brothers treated that an unwarranted interference in their personal issues, thus, Jawanaram and Premaram proceeded on their way towards their house.

Immediately thereafter, Ramratan @ Bichia and Chetanram, other sons of Jeevanram obstructed the way and Ramratan who was armed with lathi gave a lathi blow on the temporal bone of Jawanaram.

Chetanram also gave a stone injury to Premaram.

Shri Jawanaram died at the spot as a consequent to lathi blow.

The investigating agency during the course of investigation arrested accused persons, subjected corpus of deceased Jawanaram to an autopsy and certain recoveries including the recovery of lathi were made.

After completing the investigation a charge sheet was filed before the court -3- competent and the case being sessions triable was committed to the court of

Sessions.

The Sessions Court after providing an opportunity of hearing to the accused framed a charge of committing offences punishable under Sections 302 and 323 Indian Penal Code against accused Ramratan @ Bichia.

Accused Chetanram was charged for the offence punishable under Sections 323 and 302/34 Indian Penal Code.

On denial of the charges, trial commenced as desired.

The prosecution supported its case with the aid of 20 witnesses out of whom Shri Premaram (PW-2).Smt.

Kanwarai (PW-8) and Smt.

Maina Devi (PW-19) were cited as eye witnesses.

Dr.

Jagat Narain Swami (PW-13) adduced medical evidence and Shri Virendra Singh (PW-20).the Investigating Officer, narrated about the steps taken by him during the couRs.of investigation.

29 documents were also exhibited to support the charges.

The accused persons availed opportunity as per Section 313 Code of Criminal Procedure to explain all the adveRs.and incriminating circumstances against them in prosecution evidence and while doing so stated that they were falsely implicated in the case.

In defence, testimony of Shri Harun (DW-1) and Shri Shankar (DW-2) was examined and three documents were exhibited.

The trial court after examining the entire material available on record held accused Ramratan guilty for the offence punishable under Section 302 Indian Penal Code and accused Chetanram for the offence punishable under Section 323 Indian Penal Code.

-4- In appeal, the only argument advanced by learned counsel for accused Ramratan is that even by accepting the prosecution case as it is, the offence said to be committed by Ramratan does not travel beyond an offence punishable under Section 304 part-II Indian Penal Code.

It is asserted that the case of accused Ramratan is an exception to the offence of murder as the entire incident occurred in the heat of moment due to sudden provocation and further no effort was made by him to take any undue advantage of the circumstances.

Counsel for accused Chetanram stated that no evidence is available on record to establish any participation of this accused in the entire incident.

Per contra, as per learned Public Prosecutor the fact about giving a single lathi blow on a vital part of the body of deceased Jawanaram is adequate to affirm the finding given by the trial court about commission of an offence of murder by accused Ramratan.

With regard to accused Chetanram, it is stated that in view of the evidence adduced by the eye witnesses it is apparent that this accused actively participated in commission of the crime.

Heard learned counsels for the appellants, learned Public Prosecutor and examined the record in lucid.

As per the medical evidence adduced by Dr.

Jagat Narain Swami (PW-13).deceased Jawanaram was having single injury in temporal region behind left ear i.e.of fracture -5- of the skull bone and clotting of blood in between skull and brain membrane.

The injury was sufficient to cause death in normal couRs.of life.

The medical evidence adduced clearly indicates homicidal death of Jawanaram.

The participation of the accused in the crime in question is based on the evidence adduced by the eye witnesses and recovery of lathi at his instance.

The eye witness Premaram (PW-2) also received an injury and his injury report too is available on record.

As per this witness, on 2.9.2009 at about 09:00 PM he was sitting outside the house of Jawanaram.

At that time, Mewaram, Prakashram and Devaram, all the three brothers were quarrelling opposite their house.

This witness and Jawanaram tried to intervene among the brothers to compose the situation, but they did not like it.

Looking to their attitude, Jawanaram and this witness proceeded towards their own house.

Chetanram and Ramratan then obstructed their way and objected their intervention in others personal matters. At that time other brothers of Ramratan and Premratan also arrived at the spot and encircled Jawanaram and Premaram.

Ramratan was armed with lathi, from that he gave a lathi blow on the temporal bone of Jawanaram.

After some time Jawanaram died at the spot.

During the course of incident Chetanram gave an injury with stone to this witness.

In cross examination also the factual aspects noticed above were maintained.

-6- The other eye witness Smt.

Kanwarai (PW-8) is widow of deceased Jawanaram.

As per this witness on the fateful day she was at her house and heard loud noise of Hardevram, Mewaram and Prakash residing in neighbourhood.

She and her daughter Maina came out and found that Shri Jawanaram, her husband and Premaram were making efforts to compose down the quarrelling brothers. The intervention made by Shri Jawanaram and Premaram was not

accepted by the quarrelling brothers. thus, they moved from the spot, however, accused Ramratan and Chetanram obstructed their way.

Ramratan was armed with lathi from that he gave a blow on the head of Jawanaram.

Shri Jawanaram died at the spot after some time.

This witness also stated about participation of Chetanram in the entire incident by causing an injury to Premaram.

Smt.

Maina Devi (PW-19) is daughter of deceased Jawanaram.

As per this witness, she and her mother Smt.

Kanwarai while sitting in their house heard loud noise of the quarrel between Hardevram and Mewaram.

They came out from the house and saw that Premaram and Jawanaram were making efforts to compose the quarrelling brothers. At that time few slaps were given by Shri Mewaram to Jawanaram.

Being failed to calm down the situation, Jawanaram and Premaram moved for their own place, but at that time Ramratan gave a lathi blow to Jawanaram.

Shri Jawanaram died at the spot after some time.

This witness also disclose that Chetanram also caused an injury to Premaram.

-7- The narration of facts by all the three eye witnesses adequately establishes involvement of Ramratan and Chetanram in the incident concerned.

There is no reason to disbelieve testimony of these three witnesses.

Whatever facts stated by them are quite obvious looking to the circumstances then existing.

In addition to whatever stated by the eye witnesses, suffice to mention here that Shri Virendra Singh (PW-20).the Investigating Officer, also stated that he received a telephonic information at police station that few persons were quarrelling at Setho Ki Riya.

On arriving at the spot it was informed to him by few ladies that Hardevram, Mewaram etc.were quarrelling.

Jawanaram and Premaram tried to calm down them but that was not liked.

Ramratan then gave a single lathi blow resulting into death of Jawanaram.

Precisely the question now deserves consideration is that whether the trial court was right in convicting accused Ramratan for an offence punishable under Section 302 Indian Penal code in present set of facts?.

It is not in dispute that the accused and their other brothers were not having any grudge or enmity with deceased.

As a matter of fact they were having normal relations with deceased being a neighbour.

As per the prosecution witnesses also the deceased and Premaram were making efforts to calm down the quarrelling brothers but their efforts were not liked, hence accused Ramratan gave a -8- lathi blow to Jawanaram.

The entire evidence discloses an action by the accused in passion of moment and provocation due to undesired interference by the deceased in their family issue.

The accused was not at all intending to cause death of deceased Jawanaram, but was showing his disliking for interference in his family matter.

If he would have any intention to kill Jawanaram, then he would have caused more than one injury to the deceased.

Relevant to notice here is that the death of Jawanaram occurred after passing some time and not immediately after the fiRs.blow.

The accused, as such, has not taken undue advantage of the circumstances.

The factual position clearly indicates that the death of Shri Jawanaram was not a murder but a homicidal death due to the single injury given by Ramratan under provocation.

The accused would have been having knowledge that grievous injury caused by him in the temporal region may cause death, but no evidence is available to establish his intention to do so.

In such circumstances the offence committed by Shri Ramratan @ Bichia is an offence punishable under Section 304 part-II Indian Penal code.

So far as accused Chetanram is concerned, his participation in the crime in question to the extent of committing an offence punishable under Section 323 Indian Penal Code is concerned, that has been established beyond any doubt in view of the statements given by the eye witnesses.

-9- Looking to the discussions made above, we deem it appropriate to allow these appeals in part by substituting conviction of Shri Ramratan @ Bichia from the offence punishable under Section 302 Indian Penal Code to an offence punishable under Section 304 part-II Indian Penal Code.

The sentence awarded to him for life term imprisonment with a fine of Rs.2000/- with default stipulation is also modified by rigorous imprisonment for a term of eight years with a fine of Rs.2000/- and further to undergo one month's rigorous imprisonment in the event of default in payment of fine.

The conviction of accused Chetanram for the offence punishable under Section 323 Indian Penal code is maintained.

However, his sentence is reduced for the period he has already undergone.

Accused Chetanram is availing suspension of sentence, therefore, the bail bonds and sureties furnished by him stand discharged.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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