

State Vs. Babar Ali

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Court : Guwahati

Decided On : Feb-26-1952

Judge : Thadani, C.J. and Deka, J.

Appellant : State

Respondent : Babar Ali

Judgement :

Thadani, C.J.

1. This is a reference made by the learned Deputy Commissioner of Garo Hills District in the case of 'The State v. Babar Ali', under Rule 16 of the rules framed for the administration of justice in the Garo Hills for confirmation of the sentence of 7 years' R.I. passed upon Babar Ali under Section 304, I.P.C. Mr. Sarma appears for Babar Ali.

2. The case for the prosecution was that on 17.2.51 at about 2 or 2-30 p.m. Babar Ali was annoyed with his wife, Mariam Bibi, for delay in cooking his food; he beat her with a bamboo 'lathi' and caused two injuries on her back. There were no eye-witnesses to the occurrence. Bogo the younger sister of Babar Ali, arrived shortly afterwards; she saw Mariam Bibi sitting in an uncomfortable posture; Mariam Bibi asked for a drink of water, which Bogo gave her; shortly after drinking water she became restless and unconscious. Bogo massaged her chest and poured water on her head but Mariam did not revive and died shortly afterwards. A report of the

occurrence was in due course made to the Police, and on completion of the investigation. Babar Ali was sent up for trial under Section 304, I. P. C.

3. The first question which Mr. Sarma has raised for the appellant is that the learned Deputy Commissioner has misapplied Section 304, I.P.C. to the facts of this case. He has referred to the medical evidence which shows that there were only 2 abrasions on the back of the deceased one abrasion 3' x 1' on the left side of the back of the body, and another abrasion 1'x ' on the left side of the back of the body. His contention is that as the deceased died as a result of the rupture of the spleen, brought about by the injuries caused on her back, a rupture which would not have taken place if the spleen had not been weak & enlarged-Section 304, I.P.C. has no application. Section 304, I.P.C., is in these terms:

Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

Culpable homicide is defined in Section 299, I.P.C. which says:

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

4. Mr. Sarma contends that as the act of Babar Ali consisted in inflicting 2 injuries with a bamboo stick on the back of the deceased's body, it cannot be said that the injuries, being mere abrasions, were caused with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death.

5. We think the contention is sound and must prevail. The medical officer who examined the dead body has not been asked whether the two injuries caused to the deceased were likely to cause death. We ourselves do not think those the two injuries were likely to cause death. What caused the death of the deceased was the rupture of the enlarged spleen. It is settled law that where the injuries caused to a person are not such as are likely to cause death, it is not a case of culpable homicide. Babar Ali beat his wife without intending to cause her death or without intending to cause such bodily injury as was likely to cause her death. It is true that the deceased's spleen was ruptured as a result of the injuries inflicted upon the back of her body, but there is no evidence that the accused knew that his wife had an enlarged spleen. If there were evidence that the accused knew that his wife had an enlarged spleen and notwithstanding that knowledge, he caused injuries to her body which he ought to have known might result in her death on account of the enlarged spleen, it would be a different matter. Mr. Medhi concedes that there is no evidence that the accused knew of the state of the spleen of his wife. In these circumstances, we do not think we can sustain the conviction under Section 304, I.P.C. The offence must be reduced to one of simple hurt an offence punishable under Section 323, I.P.C. The maximum sentence prescribed by Section 323, I.P.C. is one of 12 months. We think the ends of justice will be served if Babar Ali is sentenced to 6 months' R.I. under Section 323, I.P.C. Accordingly we set aside the conviction and sentence under Section 304, I.P.C. and substitute in its place a conviction under Section 323, I.P.C. and sentence Babar Ali to undergo R. I. for 6 (six) months. With this modification in the conviction and sentence, the appeal is dismissed. Mr. Sarma has not addressed us on the merits of the case.

DEKA, J.

I agree.

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