

**Guptar Vs. Rex.**

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**Court :** Allahabad

**Decided On :** Jul-15-1948

**Reported in :** 1949CriLJ127

**Judge :** Agarwalla, J.

**Appellant :** Guptar

**Respondent :** Rex.

**Judgement :**

**Agarwalla, J.**

1. Guptar Ahir, Dalsingar Ahir and Kanhaiya Misir were prosecuted under Section 304 read with S. Si, Penal Code, for having caused the death of Mt. Sumaria on 18th July 1946, in village Malaon, police station Bansaon, three hour after sunrise. Dalsingar Ahir and Kanhaiya Misir have been acquitted and Guptar Ahir has been convicted and sentenced to four years' rigorous imprisonment by the learned Sessions Judge of Gorakhpur. Guptar Ahir has come up in appeal to this Court.

2. The prosecution case was as follows: One Rambali was a ploughman of Rajan Babu, zamindar of the village. He had given up the service of Rajan Babu about two months prior to the incident. Fifteen days prior to the incident the accused, Guptar Ahir and Kanhaiya Misir servants of Rajan Babu, forcibly took away a bullock belonging to Rambali. When this did not induce Eambali to resume service

at the place of the zamindar, Guptar, Kanhaiya and Dalsingar went to Rambali's house on 13th July 1946, and asked him to go with them to do the work of the zamindar. Rambali refused. Thereupon the three accused untied a cow of Rambali which was standing outside his door and carried it away. Rambali stopped them from doing so. Upon this the three accused give lathi blows to Rambali. His mother came out from inside the house. She was also beaten. She received a blow on the liver and as a result of that blow she died after an hour. When the woman fell down unconscious the accused fled away.

3. The first information report of this incident was made at the police station Bansaon, which is at a distance of nine miles from the village, at about 3-so F. M. The occurrence is said to have occurred at about three hour after sun-rise.

4. The post-mortem report showed that Mt. Sumaria had received four injuries, one of them being on the bridge of the nose, another on the right fore-arm, one on the left shoulder and one below the right nipple. This last injury ruptured the liver and caused her death.

5. The case of Guptar Abir accused was that no doubt he went to Bambali's house to ask him to resume service with the zamindar but that when he repeated his request Rambali got annoyed and struck him with a lathi. His mother came from inside the house and struck him with a gadasa. He got injuries and in self-defence he inflicted injuries on Rambali and his mother.

6. The case of Dalsingar and Eanhaiya Misir, the other two accused, was that they were not present at the place of occurrence and they did not take part in any marpit. The learned Sessions Judge has acquitted these two accused and I am no longer concerned with their Case.

7. In support of the prosecution case five eye-witnesses were examined-Rambali, p. w. 4; Mangru, p. w. 5; Ramharakh, p. W. 6; Ram-chander, p. W. 7; and Modi, P. W. 8. All these witnesses support the prosecution case. They Bay that the accused went to the house of Rambali and asked him to go to the place of Rajan Babu, zamindar, to serve him, that Rambali refused, and that thereupon Guptar untied the cow and wanted to take it away when Rambali interfered. Upon this

Guptar gave lathi blows to Rambali. Sumaria, the mother of Rambali, came from inside the house and when she protested against their taking away the cow she was also given lathi blows.

8. The learned Counsel, appearing for the accused, points out that all these witnesses, excepting the last man, Modi, are related to each other. Mangru, Bamharakh and Ram-chander are no doubt uncles of Rambali. The mere fact that these persons are relations of Rambali does not, in my opinion, detract from the value of their evidence. The fact that they were relations shows that they were the most likely persons to be present at the place of the incident at the time of the marpit. They would be the persons who would come out of their neighbouring houses and see the marpit. The prosecution case, in my opinion, is borne out by the probabilities of the case. It is not disputed that Rambali refused to serve the zamindar and that the zamindar sent Guptar to him to persuade him to resume service. It may be that the story about the bullock having been taken away by Guptar 16 days prior to this incident is not true. That hardly affects the question that I have to determine. On the day of occurrence certain it is, that Guptar was trying to force Rambali to go with him to serve the zamindar and that Rambali was refusing to do so. It is obvious that there was marpit. This marpit must have started upon some aggressive act done by Guptar appellant, and as such Guptar could not plead the right of self-defence as against Rambali and his mother I am convinced that the prosecution case in substance is true.

9. It has been argued that the offence committed could not fall under Section 804, Penal Code. It has been pointed out that the injury, which caused the death of Mt. Sumaria, was a simple injury below the right nipple. Superficially observed it was simple, but the medical evidence showed that it was a serious blow causing rupture of the liver. If an injury is given on the region of the liver I would presume that the person who caused the injury had knowledge that death might be caused if liver was ruptured. In that view of the matter the case would clearly fall within the second part of 8,804, Penal Code.

10. The learned Counsel has referred me to the case of Bhanjan Das and Ors. v. Emperor A.I.R. (II) 1924 Lah. 218:(24 Cr. L. J. 421). That was a case of diseased

spleen. It was held that an injury, caused by the accused as a result of which a diseased spleen, was ruptured and death ensued, would not bring the case within the purview of Section 804, Penal Code.

11. The learned Counsel then cited the case of Public Prosecutor v. Ramaswami Nadar A.I.R. (27) 1940 Mad. 745 : (41 Cr. L. J. 900), That was a case in which there was a stab with a knife on the leg and certain arteries were cut as a result of which the injured man died. It was held that an ordinary person of ordinary intelligence could not be presumed to have the knowledge that if a stab wound was given on the leg arteries would be ripped open so as to cause death and it was held that the offence would fall under Section 328 or Section 825, Penal Code. The present case is quite different. In the present case the injury is on a vital part of the body, namely, liver. I would assume knowledge in every normal person of the fact that if injury is caused on the liver with such force that the liver is ruptured death would ensue. The opinion expressed in A.I.R. (27) 1910 Mad. 745 : 41 Cr.L.J, 900), would not apply to the facts of the present case.

12. In Wazira v. Emperor : AIR1940 All118 , there were injuries on the head which did not result in death. The lower Court had sentenced the accused under Section 807, Penal Code. The evidence of the doctor showed that the injuries were simple but that they might be classified as dangerous. In cross-examination the doctor stated that the injuries were not likely to be fatal as they were. Ismail J, held that upon the evidence on the record the accused could not be convicted under Section 807, Penal Code, because the intention of the assailants was not to cause death of the person injured. 'Every injury on the head,' observed Ismail J..

cannot be considered capable of causing death not does every lathi blow on the head be considered fatal. From the conduct of the assailants it cannot be inferred that the assailants had the intention of causing the death of Jagdish Chander, In my opinion, the liability of an accused must be limited to the act which he in act did and should not be extended so as to embrace the consequences of another act which he might have done but did not.

In the result the conviction was altered from Section 307 to Section 325, Penal Code, Obviously upon a consideration of the nature of injuries inflicted in that case

it could not be said that the accused had knowledge that the death of the person, who was injured, was likely to be caused. Therefore, the conviction under Section 307, Penal Code, was rightly set aside, if I may say so with all respect. If in that case the blow on the head had been so severe that the skull was fractured, and even then the injured man had survived, the offence committed would have fallen under Section 307, Penal Code, and not under Section 325, Penal Code. It should be remembered that a blow which fractures the skull is one act and a blow which does not fracture the skull is quite a different act do the eye of law though the difference between the two be one of degree only. In the present case injury was caused on a vital organ of the human body with such force that it was captured and resulted in death soon after. In a case of this kind I think it should be assumed J that the accused had knowledge that by his act lie was likely to cause death.

13. The cases reported in *Empress of India V. Indu Beg*, 3 all. 776 : 1881 A. 'W. N. 132) and *Empress of India v. O'Brien* 2 all. 766, were also cited before me, but I do not think they apply to the facts of the present caae.

14. In *Emperor v. Mt. Dhirajia* : AIR1940 All486 , the facts were that a woman was pursued by her husband and she jumped into a well along with a child which she was holding in her arms. The child died. She was prosecuted for murder under Section 302, Penal Code, and convicted for that offence by the Sessions Judge. Their Lordships altered the sentence from one under Section 302, Penal Code, to one under Section 304, Penal Code. The learned Counsel relies upon an observation to the following effect:

the degree of knowledge which any particular person can be assumed to possess must vary. For instance, we cannot attribute the same degree of knowledge to an uneducated as to an educated person.

This observation is immediately followed by the following sentence:

But we think that to some extent knowledge must be attributed to every one who is sane.

Then their Lordships say:

however primitive a man or woman may be, and however frightened he or she may be, knowledge of the likely consequence of so imminently dangerous an act (of jumping into a well with a baby in her arms) must be supposed to have remained with him or her.

I do not think that this case helps the accused in any way. However primitive or uneducated a man or a woman may be, I think he or she must be presumed to have the knowledge that a severe injury on the liver sufficient to rupture it, is likely to result in death.

15. The learned Counsel then says that in this case the sentence of four years' rigorous imprisonment is too severe. Having regard to the fact that the quarrel was a sudden quarrel and not a premeditated one, and having regard to the fact that the injury on the face of it was superficially slight, though inwardly it caused rupture of the liver, I am disposed to take a lenient view of the offence committed by the appellant. In my opinion a sentence of three years' rigorous imprisonment would be sufficient for the ends of justice.

16. In the result, therefore, I dismiss this appeal with this modification that instead of a sentence of four years' rigorous imprisonment I substitute a sentence of three years' rigorous imprisonment, The accused is on bail. He shall surrender to his bail and 'serve out the sentence