

Bansi Vs. State

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Court : Allahabad

Decided On : Mar-15-1956

Reported in : AIR1956All668; 1956CriLJ1272

Judge : Raghubar Dayal and ;James, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 400

Appeal No. : Criminal Appeal No. 89 of 1934

Appellant : Bansi

Respondent : State

Advocate for Def. : J.R. Bhatt, A.G.A.

Advocate for Pet/Ap. : S.N. Mulla and ;Harish Chandra Sharma, Advs.

Disposition : Appeal dismissed

Judgement :

B.R. James, J.

1.Bangi, a Taga Brahman, who has been sentenced to transportation for life under Section 302, I.P.C., and to rigorous imprisonment for three months under Section 426, I.P.C. has filed this appeal against his conviction and sentence.

2. The person of the murder of whom the appellant has been found guilty was Chameli, a Bhangi woman of the appellant's village, who was the wife of one Thanwarya. The evidence of the eye-witnesses Sukhdeo, Sm. Ram Dei, Nand Kishore, Sagar Singh and Kali Chran establishes the following. Chameli had a piglet three months old. On the morning of 7-5-1953 it entered the appellants' house and thereby defiled it. The appellant was infuriated, went up to Chameli's house and brought her over to identify the animal.

By then the animal had come out of the appellant's house and entered a neighbouring shed where a heap of arhar stalks was lying. No sooner had Chameli seized the animal and started dragging it out of the stalks then the appellant began hitting it with a lathi. Chameli beseeched him to spare the little animal, promising to see that it did not stray in future. Thereupon the appellant hit her a number of lathi blows. Both she and the piglet fell down on the spot and died.

3. The appellant's own version of the affair is to the following effect. When he seated beating the piglet Chameli entreated him to spare it. On his pointing out that it had spoiled his food and utensils the woman grappled with him, whereupon he struck her two lathi blows and removed her. She tried to rescue the piglet by placing herself in front of it so that the next lathi blows struck her. He caught hold of her, made her stand and asked her to leave the place, which she did. A short distance away she fell down on a large stone.

4. This story of the appellant is undoubtedly false. His learned counsel before us has declined to place any reliance on it; on the contrary he fully accepts the case set up by the prosecution witnesses. His contention is that on their testimony the conviction should be under Section 304, I.P.C. and not under Section 302, I.P.C.

5. In order to assess the force of this contention it is first of all necessary to be clear about the injuries suffered by the deceased woman. These appear from the testimony of the Civil Surgeon who conducted the post-mortem examination. He found a contusion 3' x 2' on the outer side of the left knee, and another contusion 1'X 1/2' over the back of the right knee. On cutting the skin of the back and sides of the chest there were found areas of deep congestion, areas which had also been noted under the chest and abdomen.

But owing to decomposition no external marks of injury over the skin were visible. Nor were there external marks of injury over the fore-head and left ear, though on cutting the skin deep congestion in an area 3' X 2' was discovered. On cutting open the walls of the chest very deep congestion was found present towards the right side in an area 4' X 1 1/2'. On the back there was a good deal of congealed blood in an area 5' X 3' adjacent to the spinal column, and the ninth and tenth ribs had become loosened from their joints.

All the tissues and ligaments were deeply bloodstained. Congestion was present in an area 4' X 3' on the left side of the chest in the line of the breast and the axilla. The right lung and its pleura were congested at the base. The left lung was congested to an even greater extent. The abdominal walls were deeply congested over an area 3' X 2' on the left side in the region of the spleen. Two points of blood and clots of blood were found in the abdominal cavity. There was congealed blood in the region of liver too.

The liver was lacerated 1 1/4' X 1/2' X 1/6' in the right lobe, and a part of its head was full of blood. The small intestines were congested and blood-stained. The large intestines were more congested on the left side. The spleen was full of blood, and a rupture 3/4' x 1/6' x 1/10' was present on the upper surface. The abdominal walls were deeply congested in an area. 10' X 6' towards the left. Death, in the Civil Surgeon's view, was due to shock and haemorrhage.--resulting from the lacerations of the liver and spleen. The injuries were by a blunt weapon like a lathi. The Civil Surgeon is clear that no fall could have caused the injuries aforesaid.

6. The medical evidence thus makes it manifest that Chameli was the victim of a number of lathi blows in the region of the chest and abdomen and further that the blows must have been struck with considerable force, for otherwise the liver and the spleen would not have got lacerated, nor would extensive congestion have been found. The right lobe of the liver and the spleen are situated at almost opposite sides of the body, so that the laceration of these two organs was the result of a minimum of two lathi blows.

The injuries on the knees were of course the consequence of two other separate blows. It follows that the appellant struck the woman at least four lathi blows, and most likely more, and that the blows on delicate parts like the abdomen and chest were struck with great severity.

7. In judging the appellant's guilt we have also to take note of the circumstances in which he attacked Chameli. We are prepared to concede that he as a Taga Brahman felt denied at the entry of a piglet into his house and thereupon got extremely angry. Nevertheless several other factors have to be kept in mind. Whatever provocation had been given was from the side of the animal, and not from its owner, who was nowhere near.

The appellant actually went up to her house and brought her back with him so that she might identify her property. On arrival Chameli found that the piglet, had entered a neighbouring shed and she started dragging it away from there. Thus a fair amount of time elapsed between the animal's provocation and the attack on the woman. Even then, the attack was not occasioned by any objectionable attitude adopted by her or any hot words uttered; on the contrary she merely beseeched the appellant to spare her animal and promised that she would not let it stray again. It is therefore evident that the attack on her was without any just cause. The appellant aggravated his unlawful action by using a lathi and striking the woman with it with great vigour.

8. The Division Bench case of this Court in --'Behari v. The State : AIR1953 All203 is an authority for the distinction between offences under Sections 304 and 302, I.P.C. Their Lordships pointed out that Section 299 defines culpable homicide which is of two kinds: Culpable homicide amounting to murder and culpable homicide not amounting to murder; Section 299 cannot be taken to be the definition of culpable homicide not amounting to murder, as the section clearly speaks of culpable homicide simpliciter; the scheme of the Penal Code is that first the genus 'culpable homicide' is defined, and next is defined 'murder', which is a species of culpable homicide; what is left out of culpable homicide after the special characteristics of murder have been taken away from it, is culpable homicide not amounting to murder.

Their Lordships went on to state that Section 304 applies to the following three classes of cases; (i) where the case falls under one or the other of the clauses of Section 300 but it is covered by the Exceptions to that section; (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300; and (iii) when the act is done with the knowledge that death is likely to ensue but there is no intention to cause death or injury likely to cause death.

With regard to the important question of intention their Lordships laid down the true rule as that where the injury caused is not the result of accident or of negligence, a strong presumption arises that the injury caused was intended to be caused, though this presumption may be rebutted by other circumstances, e.g., the motive of the accused, the nature of the attack, the time and place of the attack, the position and condition of the deceased, the number of injuries, the force used, etc.

9. Applying these principles to the case before us we find it exceedingly hard to see how the appellant can escape liability under Section 302, I.P.C.

Exception 1 to Section 300 cannot help him, for by no stretch of imagination can Chameli be deemed to have given him 'grave and sudden provocation'; besides, by the time the attack was launched an appreciable amount of time had passed, thereby disentitling him to plead that he had been deprived of the power of self-control. Nor can he take advantage of Exception 4, for, even if we were to assume that he acted in the heat of passion and without premeditation, there was neither a sudden quarrel nor a sudden fight between him and the deceased woman; besides, he did take advantage and acted in a cruel or unusual manner by his unprovoked lathi attack.

10. We are ready to concede that in attacking the woman the appellant did not intend to cause her death. We might even agree that he did not intend to cause such bodily injury as he knew was likely to cause death within the meaning of Clause (2) or Section 300. But in view of the circumstances in which the attack

was made the use of a dangerous weapon like a lathi for it, the ferocity with which the blows were struck, the fact that the victim was a woman, the delicate parts of her body which were hit, and the presumption that in the absence of accident or negligence every person must be presumed to intend the natural consequences of his acts, leave no room for doubt in our minds that the appellant intended to cause bodily injuries sufficient in the ordinary course of nature to cause Chameli's death.

Since her death was due to the laceration of her liver and the rupture of her spleen, which were the direct result of his lathi blows, he must, by virtue of the 3rd Clause of Section 300, I.P.C., be held liable for culpable homicide amounting to murder.

11. His learned counsel argues that when a man uses a lathi against another he should not be credited with the intention or knowledge contemplated by one or the other of the four clauses of Section 300, and attempts to support his argument by the fact that often lathi blows are struck without causing any injury more serious than simple hurt. The fallacy of the argument becomes evident when we consider the case of a pistol shot; pistols are often fired without resulting in death, for instance, where the bullet enters a non-vital part of the body, or where through medical skill death is prevented; yet no one would dare to contend that when a man fires a pistol at another his intention was some other than that of causing death or causing such bodily injury as in the ordinary course of nature would cause death.

Learned counsel also claims to receive support for his view-point from the decisions in -- 'Emperor v. Damullya Molla' : AIR1931 Cal261 and-- 'Kripal v. State of Uttar Pradesh : AIR 1954 SC706 . In the first case the deceased was hit on the head by a water-pot and died as a result of a fracture of the left parietal bone. The case was tried with a Jury, who held the accused guilty under the second Part of Section 304, I.P.C. on the ground that he had hit the deceased with the water-pot not knowing that the injury he was causing would be likely to cause death and that the injury which he intended was not sufficient in the ordinary course of nature to cause death.

In affirming the jury's verdict the special Bench pointed out that the jury were quite entitled to find what they did find regarding the knowledge and intention of the accused, and for our part we might emphasise that the jury were the sole judges of questions of fact and that the view of a reasonable body of men like them on a question of fact cannot be brushed aside unless it is manifestly perverse. In the second case the facts were that the three accused persons began to beat a man, two of them with the handles of spears and the third with a lathi; another man came up to intervene, whereupon the accused who was armed with the lathi hit him on the leg with it, while another accused who was armed with a spear killed him with that weapon.

On examining the facts and circumstances of the assault their Lordships came to the conclusion that a common intention that could be attributed to all the three was to produce grievous injuries; only the persons who actually killed the deceased with the spear was held guilty of murder. It should be noted that the lathi had not caused death or any injury likely to cause death; indeed it had caused only a simple injury. It is obvious that if murder had been the common intention the attack would initially have been with the handles of the spears and not merely with their handles. Neither of the two cases therefore, gives any help to the present appellant.

12. On the other hand -- 'Piare v. Emperor', 17 All. LJ 366: (AIR 1919 All. 389) (D), -- 'Parshadi v. Emperor : AIR1929 All160 and -- 'Parshottam v. State : AIR1953 All356 are cases decided by this Court in which the accused striking his victim with a lathi and causing his death was held guilty under Section 302, I.P.C., and it is noteworthy that in Piare's case, (D) only one lathi blow was struck, while in that of Parshottam (P). there were only two lathi blows.

13. In the circumstances we have no doubt that the appellant is guilty under Section 302, I.P.C, Since the learned trial Judge has himself awarded him the lesser sentence for this offence, no re-consideration of the sentence is possible.

14. No suggestion has been made before us that his conviction under Section 426, I.P.C. for killing the piglet is incorrect, or the sentence of three months' rigorous imprisonment thereunder unreasonable in any way.

15. In the result we affirm the appellant's conviction under Sections 302 and 426, I.P.C. and the sentences passed on him for these offences. His appeals therefore dismissed.

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