

Thakuri Vs. State of U.P.

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SooperKanoon Citation : sooperkanoon.com/468231

Court : Allahabad

Decided On : Jul-31-1992

Reported in : 1993CriLJ2860

Judge : P.P. Gupta and ;S.K. Varma, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304, 323, 325 and 506;
Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 399 of 1979

Appellant : Thakuri

Respondent : State of U.P.

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : Bhagwat Prasad Gupta and ;R.B. Sahai, Adv.

Judgement :

1. This is a criminal appeal filed by Thakuri against the order of the then Sessions Judge, Shahjahanpur dated 30th November, 1978 in sessions trial No. 288 of 1978, State v. Thakuri convicting the appellant under Section 302, I.P.C. and sentencing him to imprisonment for life.

2. Briefly stated the facts of the case are that the deceased Bishanpal was the only son of the accused Thakuri. On 25th day of July, 1977, at about 7 p.m.,

Bishanpal's mother had upbraided his wife and when the accused Thakuri started upbraiding Bishanpal, the latter objected to it. On Bishanpal's so objecting, Thakuri started hitting him with lathi blows saying that he would not be given any share in the family property. Thakuri also asked Bishanpal to get out of the house. Bishanpal was saved by the intervention of Budhpal, Shyam Sunder and Rajendra Singh, who had reached there on hearing Bishanpal's cries. Next day Bishanpal went with his cousins Meharban and Ram Bharose to the police Station at Kalan and 2.30 p.m. that day lodged a report of the incident. The report was lodged as a non cognizable case for the offences punishable under Sections 323/506, I.P.C. After lodging the report Bishanpal returned to his house. He died on 27th July, 1977.

3. Information of Bishanpal's death was given at the Police Station Kalan by Meharban's son Rampal at 5 p.m. on 27th July, 1977. Then the case registered against the accused was altered to one under Section 304, I.P.C. Investigation followed and after completion of the investigation the accused Thakuri was charge-sheeted. At the trial before the Sessions Judge, the accused Thakuri did not plead guilty to the charge under Section 302, I.P.C. and claimed to be tried. To prove the charge against the accused Thakuri the prosecution examined five witnesses and relied on the dying declaration by Bishanpal in the report which he allegedly lodged at the Kalan on 26-7-77 of the five witnesses, P. W. 1 Rajendra Singh is a witness of fact. P.W. 2 Dr. N. P. Singh is the Medical Officer who had performed autopsy on the dead body of Bishanpal. Section 1. Sri Krishnapal (P.W. 3) investigated the case. P. W. 4 constable 717 Ram Bharose Lai is a formal witness who had taken the dead body of Bishanpal for post-mortem, P.W. 5 Constable 364 Shyam Lai had scribed the report lodged by the deceased Bishanpal against the accused.

4. After the prosecution closed its case, the accused Thakuri was examined under Section 313, Cr.P.C. He denied the prosecution story and claimed to have been falsely implicated at the instance of Rajendra Singh who had long been inimical to him. He also examined one Sri Ram as a defence witness.

5. After assessing the entire prosecution evidence, oral as well as documentary, the learned Sessions Judge held the charge under Section 302, I.P.C. against Thakuri fully proved and convicted and sentenced him as above.

6. Feeling aggrieved, the accused Thakuri has filed the present appeal against his conviction and sentence.

7. Sri R. B. Sahai, learned counsel for the appellant and the learned AG A were heard at length and the record of the case was perused.

8. It was submitted on behalf of the appellant that although three witnesses were named in the FIR, only one of them Rajendra Singh was examined. It was pointed out that the too had not actually seen the occurrence. He reached the place of occurrence only after the alleged 'Marpit' between the accused and the deceased had come to an end. No 'Marpit' took place in his presence.

9. P.W. 1 Rajendra Singh has stated that on the date of occurrence, in the evening at about 7 O'clock when there was still some day light, he saw the accused Thakuri and his son Bishanpal coming out of their house. When they came out of their house, they were engaged in an altercation and were abusing each other. He had also heard these abuses prior to their emerging out from their house. He has further stated that when he saw Bishanpal coming out of his house he was holding his head in both his hands and was also weeping. He rebuked Thakuri for quarrelling with each other. Thus rebuked the accused Thakuri ran away in the north while Bishanpal returned to his house. He next deposed that while weeping Bishanpal said that his father had beaten him. It is of course true that this witness did not see the accused Thakuri assaulting his son Bishanpal with his own eyes. It is, however, significant that he had heard both of them abusing each other which continued even after they came out of their house. At that time the deceased was holding his head in both his hands. It shows that, since he had received injuries on his temple, neck etc. he was holding head in his hands. He was also weeping when he came out of his house. More significant is his statement made to the witnesses that his father had beaten him. Since this statement was made by the deceased immediately after the occurrence, it has to be believed as correct. The deceased Bishanpal had himself lodged a report gainst his father which was

registered as a non cognizable report under Sections 323, 506, I.P.C. as has been stated by P.W. 5 constable Shyamlal. Shyamlal has stated that he found Bishanpal injured. The injuries which were noticed by him on his person were noted down by him in the General Diary at Rapat No. 12 and 16, copies of which are Ex.Ka9 and Ka10 respectively. The copy of the report is Ex.Ka8. It is mentioned in the report lodged by the deceased Bishanpal that it was his father who had assaulted him with lathi. The places where he had received lathi blows were also mentioned by P.W. 5 Shyamlal in the General Diary. Compared with the post mortem report, Ex.Ka6, no discrepancy regarding the places where the deceased had received lathi blows are noticed. It is also mentioned in the report Ex.Ka 8 that he had danger to his life from his father. It cannot be believed that the deceased had lodged a false report against his father. It is not borne out from the evidence on record that the terms between the father and son were strained. There was, therefore, no reason for the son to have falsely implicated his father. In any case, the deceased even if he had motive to falsely implicate his father for his assault would not have spared the real culprits. The authenticity of this report cannot, therefore, be doubted. Constable Miyamlal (P.W. 5) who scribed this report is an independent witness. He has stated that the report was lodged by the deceased Bishanpal himself. The fact that he had also noted down the injuries sustained by Bishanpal further proves that the report was lodged by Bishanpal himself. This report coupled with the statement of P.W. 1 Rajendra Singh leaves no room for doubt that Bishanpal was assaulted with lathi by the present accused.

10. It was argued on behalf of the appellant that the condition of Bishanpal was not such as to make a dying declaration or to go to the Police Station for lodging the FIR in this connection a reference may be made, to the statement of P.W. 2 Dr. N. P. Singh., He has stated that the deceased would have remained alive for minimum four hours up to 1 1/2 days, the probability of his having been able to speak after receiving injury No. 1 was just as much as the probability of his not being able to speak after receipt of that injury. Thus there is no categorical opinion of the Doctor that after external injury No. 1, the deceased could not speak. There is evidence of P.W. 1 Rajendra Singh and P.W. 5 Shyamlal that Bishanpal did speak after his assault. According to the Doctor also, there was possibility of his speaking even after having received injury No. 1. Therefore, the argument that

after the receipt of injury No. 1, the deceased Bishanpal could not speak, cannot be accepted as correct.

11. Learned counsel for the appellant drew our attention to the statement of P.W. 1 Rajendra Singh that he had seen Thakuri bare handed when he emerged after Bishanpal from the house. He, therefore, argued that the prosecution story that Bishanpal was beaten with lathi is belied from the statement of this witness. If really Thakuri had been giving lathi blows to Bishanpal immediately before the latter emerged followed by Thakuri, the lathi should still have been in Thakuri's hand and would have been noticed by P.W. 1 Rajendra Singh. We are unable to agree with this argument. The nature and dimensions of external injuries found on the dead body of Bishanpal show that all the injuries had been caused by lathi. It is in the FIR Ex.Ka 8, that Thakuri asked Bishanpal to get out of the house. It appears that in a fit of rage he tried to push out Bishanpal from the house and in the process dropped the lathi. Had the witness Rajendra Singh was to speak falsely he could have said that he saw Thakuri with a lathi in his hand when he emerged from his house following Bishanpal.

12. It was next pointed out that P.W. 1 Rajendra Singh was inimical to the accused for the reason that he wanted to purchase Thakuri's land which the latter refused. By no stretch of imagination this can be a motive for Rajendra Singh to depose falsely against the accused.

13. Thus we find that the evidence of assault by the accused Thakuri on the deceased is conclusive and unblemished. The learned Sessions Judge has rightly placed reliance on the evidence and held that it was the accused Thakuri who had assaulted his son Bishanpal.

14. It was lastly argued that in the circumstances of the case, no offence under Section 302, I.P.C. was made out. At best the offence committed by the accused would fall under Section 325, I.P.C. We have considered this argument and find force in it. The accused is the father of the deceased Bishanpal who was his only son. It cannot, therefore be imagined that the deceased intended to kill his only son or that he intended to cause such bodily injury as was likely to cause his death. If he hit his own son, he did so in a fit of rage, possibly on account of his

intervention in the quarrel between the two ladies. All the six injuries, found on the body of the deceased Bishanpal were contusions. Only injury No. 1 was grievous. P.W. 2 Dr. N. P. Singh deposed that on internal examination he had found fracture of the left parietal bone of the skull under injury No. 1 fractured. Looking to the nature of injuries it cannot be said, in the circumstances of the case, that the accused had knowledge that such injuries would result the death of the deceased Bishanpal. In our opinion the accused gave lathi blows to the deceased which caused his death two days later, without any intention to kill or to inflict bodily injury likely to cause death, or with the knowledge that the death must be the possible result. As such the accused was neither guilty of murder nor of an offence under Section 304, I.P.C. but was merely guilty of voluntarily causing grievous hurt. Therefore, the offence made out against the accused is under Section 325, I.P.C.

15. It was submitted before us that the accused had already undergone imprisonment for about two years. His wife is dead. He is maintaining his son's widow and grand children. In these circumstances a prayer was made that the sentenced awarded to the appellant may be set off against the period of imprisonment already undergone.

16. Consequently the appeal is allowed in part. The conviction of the appellant under Section 302, I.P.C. and his sentence of imprisonment for life thereunder are set aside. Instead he is convicted under Section 325, I.P.C. and sentenced to the period already undergone and also to pay a fine of Rs. 6,000/- within two months from today. Out of the fine, Rs. 5,000/- shall be paid to the widow of the deceased. In case the fine is not paid, the appellant shall undergo further rigorous imprisonment for one year more. The appellant is on bail. He need not surrender. In case is not paid within the time allowed the appellant shall be taken into custody to serve out the sentence awarded to him.