

Chatra Vs. State

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Court : Madhya Pradesh

Decided On : Mar-20-1957

Reported in : AIR1957MP217

Judge : Dixit and ;Samvatsar, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 300, 301, 302, 304 and 452

Appeal No. : Criminal Appeal No. 88 of 1956

Appellant : Chatra

Respondent : State

Advocate for Def. : J.D. Patel, Dy. Govt. Adv.

Advocate for Pet/Ap. : W.Y. Pande, Adv.

Disposition : Appeal allowed

Judgement :

Dixit, J.

1. The appellant was tried by the learned Sessions Judge of Dhar on charges under Sections 452 and 302 read with Section 148, I. P. C. At the end of the trial, the learned Sessions Judge found the appellant Cha-tra guilty of the offences. The appellant was sentenced to life imprisonment for the offence under Section 302

read with Section 301, I. P. C. and to two years' rigorous imprisonment for the offence under Section 452 and to one year's rigorous imprisonment for the offence under Section 148, I. P. C.

2. The case for the prosecution was, briefly, this. The appellant Chatra lived with his wife Moti-,bai in village Fiplia. A month before the occurrence Chatra and his wife Motibai came to village Padunia where Chatra's step-daughter Rukhma was living with her husband, Sonia. Chatra stayed at Rukhma's house for about ten days. He then went to Bulgara to see his cousins. He, however, returned to Padunia after a few days and took away his wife's ornaments from her possession. According to the prosecution, there was some quarrel between Motibai and Chatra, and Motibai did not wish to return to Chatra's house. The appellant came again to Padunia some ten or twelve days later on 4th May, 1955, at about 9 p.m.

This time he was accompanied by Dhulia, Bhera, Pratap and Bhagirath. The appellant's companions were armed with lathis and the appellant him-self carried a dagger. It was alleged by the prosecution that when Chatra persuaded his wife to return with him and when she refused, he wanted to take his wife forcibly and that in order to force her to accompany him he took out a dagger and aimed at her. Seeing her mother being attacked, Rukhma intervened in the struggle. The appellant thereafter struck the dagger in the abdomen of Rukhma and she received serious injuries in the abdomen. She, however, survived for some time but ultimately succumbed to the injuries on the evening of 5th May, 1955, in Badnawar hospital.

The first information report was lodged on 5th May, 1955, at about 1.2 noon in Police Station Badnawar by Sonia (P. W. 8). In the report Sonia narrated the details of the incident and stated that his wife was lying seriously injured and that his mother-in-law had also received injuries. The appellant absconded after the occurrence. He was, however, arrested by the police on 16th October, 1955. The post-mortem examination of the body of Rukhma was conducted by Dr. Shukla on 6th May, 1955. The doctor found that Rukhma had an incised wound on the chest, left lateral side, $1\frac{3}{8}$ ' x $\frac{5}{8}$ ' deep in the region of seventh and eighth ribs. He also found the stomach punctured. According to the medical opinion, Rukhma's death

was due to the wound on the chest and the stomach. On these allegations the accused was charged under Section 302, I. P. C., for the murder of his step-daughter. He was also charged for rioting with deadly weapons and for the offence of house trespass after having made a preparation for an assault on Motibai. The appellant denied having committed the crimes. He pleaded alibi and suggested that his wife Motibai had illicit connections with Sonia, her son-in-law.

3. At the trial the prosecution sought to prove the guilt of the accused by the evidence of the eye-witnesses P. W. 5 Motibai. P. W. 6 Bhuribai and P. W. 7 Puna; and by the dying declarations said to have been made by the deceased Rukhma to P. W. 8 Sonia and to Dr. Shukla. The dying declaration made to Dr. Shukla was in writing (Ex. P-13). The prosecution also relied on the evidence of P.W. 9 Mangu and P. W. 8 Sonia who stated that they saw the appellant and his companions running away from the house of Sonia after the incident on the night of 4th May, 1955. The learned Sessions Judge did not rely on the dying declarations. He thought that Rukhma could not have been in a position to make any statement as to the person 'who attacked her.

In regard to the dying declaration recorded by Dr. Shukla, the learned Sessions Judge came to the conclusion that before it was recorded Rukhma had possibly been tutored by the persons who took her to the hospital. The evidence of Sonia and Mangu as to their having seen, the accused and his companions running away after the occurrence was rejected by the learned Sessions Judge as, in his opinion, it was not possible for these witnesses to see the accused persons from the place where they were at about 9 p.m. in the dark. The learned Sessions Judge found the appellant guilty mainly on the evidence of the eye-witnesses Motibai, Bhuribai and Puna. Motibai is the wife of the appellant and Bhuribai is the mother Of Sonia, and Puna is a nephew of Sonia.

Their evidence is to the effect that on the night of 4th May 1955, at about 9 p.m., the accused who carried a dagger and his companions who were armed with lathis came to Sonia's house and began forcibly taking away Motibai; that when she refused to accompany the appellant, the appellant took out a dagger to cut her nose; that at this time Rukhma intervened and then the appellant struck the

dagger in the abdomen of Rukhma; and that thereafter when a hue and cry was raised, the appellant and his companions ran away. None of these three witnesses have been alleged to have any motive to perjure against the appellant and there is no particular motive for any one to implicate the appellant leaving out the real culprit, when the eye-witnesses were in a position to identify the real culprit.

Mr. Pande, learned counsel for the appellant frankly admitted that he had no effective criticism to offer against the testimony of these witnesses. Before the learned Sessions Judge also nothing substantial was said against the evidence of these witnesses. On the statements of Puna, Motibai and Bhuribai, the fact that it was the appellant Chatra who plunged a dagger in the abdomen of Rukhma on the night of 4th May, 1955, at about 9 p.m., is amply established. The injury received by Rukhma on her chest and abdomen was found by Dr. Shukla sufficient in the ordinary course of nature to cause her death. But this fact by itself is not sufficient to hold the appellant guilty of the offence of murder.

To establish the offence of murder it is not sufficient that the injury inflicted was in the ordinary course of nature sufficient to cause death; it must further be proved that the assailant intended to cause an injury of this kind. There is no evidence of this intention. The appellant can, therefore, be held guilty of the offence of culpable homicide not amounting to murder under para 1 of Section 304, I. P. C. and not of murder under Section 302, I. P. C. There is no doubt evidence that the appellant intended to strike a blow at Motibai but that it struck Rukhma instead when she intervened in the quarrel. But even if the blow was not aimed at Rukhma but at Motibai, the appellant would still be guilty of the offence of culpable homicide not amounting to murder by virtue of Section 301, I. P. G.

4. The appellant's convictions under Section 148 and Section 452, I. P. C., cannot be sustained. The learned Sessions Judge of Dhar has not discussed the evidence on which he has based the conviction of Cha-tra under Section 148, I. P. C. Nor has he given any finding whether there was an assembly of five or more persons; whether the assembly was unlawful when it was convened or whether it became unlawful subsequently and that the assembly had one of the objects specified in Section 141, I. P. C.; that the appellant or any member of the unlawful

assembly used force or violence; that such force or violence was used in prosecution of the common object of the assembly and that the appellant was armed with a deadly weapon or with something which was likely to cause death when used as a deadly weapon.

On the other hand, the learned Sessions Judge expressly stated that as the other companions of the appellant were not before him for trial it would not be proper for him to express any opinion as to their acts or whether when Rukhma was attacked the appellant's companions held her fast or whether Rukhma was stabbed when she was standing alone. In following this course, the learned Sessions Judge was clearly wrong. When the appellant was charged under Section 148, I. P. C., it was imperative for the learned Sessions Judge to consider the evidence as to the acts of the appellant and of his companions on which the charge under Section 148, I. P. C. was sought to be established.

There is, however, no evidence whatever to show that the appellant is guilty under Section 148, I. P. C. There is also no evidence to indicate that the appellant entered the house of his son-in-law Sonia with the intention necessary to constitute a criminal trespass and that he entered the house after having made a preparation to assault his wife Motibai. The evidence which the appellant produced in his defence does not at all indicate that at the material time the appellant was not at the scene of the occurrence but somewhere else,

5. For all these reasons, we are of the opinion that the appellant must be acquitted of the offences under Sections 148 and 452, I. P. C. and that his conviction under Section 302, I. P. C. must be altered to one for culpable homicide not amounting to murder. In our judgment for the offence of culpable homicide not amounting to murder, the appellant should be sentenced to ten years' rigorous imprisonment. In the result, this appeal is allowed to the extent that the convictions and sentences of the appellant under Sections 148 and 452, I. P. C., are set aside. His conviction under Section 302 and the sentence of life imprisonment for that offence are also set aside and the appellant is sentenced to ten years' rigorous imprisonment under the first para of Section 304, I. P. C.

Samvatsar, J.

6. I agree.

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