

Devilal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-22-2001

Reported in : 2002(1)WLC431; 2003(2)WLN293

Judge : N.N. Mathur and; Jagat Singh, JJ.

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

Appeal No. : D.B. Criminal Jail Appeal No. 469 of 1998

Appellant : Devilal

Respondent : State of Rajasthan

Advocate for Def. : Panney Singh, Public Prosecutor

Advocate for Pet/Ap. : Poonam Chand Solanki, Adv.

Disposition : Appeal dismissed

Judgement :

Mathur, J.

1. In the we hour of 24.2.1997 at about quarter to 12 an unfortunate incident took place, resulting in the commission of an offence of patricide. The killer is the appellant and the victim is the deceased father Hardev. The eye witness of the Incident is the unfortunate mother PW-2 Dhapu Bai. The heinous crime was

committed on a trivial issue. The headstrong son gave merciless beating to his father. He was tried for the charge of murder. The learned Additional Sessions Judge No. 2, Chittorgarh by judgment dated 30.6.1998 convicted him of offence under Section 302 I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-; in default of payment to further undergo six months rigorous imprisonment.

2. Briefly stated the prosecution case is that on 24.2.1997 PW- 7 Kastur Chand lodged an oral First Information Report Exhibit P- 11 at Police Station Parsoli stating inter alia that at about quarter to 12 while returning from village Umarthana reached near the temple of Piplad Mataji. He was attracted by the out cry of Hardev, priest of the temple of Mataji. He found that appellant Devilal was giving lathi blows on the head of his father Hardev, as a result thereof, he fell down and was fluttering. He also stated that PW-2 Dhapu Bai, wife of Hardev was also present on the spot. There was profuse bleeding from the head of Hardev. He parked the motorcycle and tried to apprehend Devilal. He ran away in the forest throwing the broken lathi. Hardev was beaten to death on the spot. Mst. Dhapu stayed back and he went to the village. He met there with PW-1 Ashok Kumar Upadhyay, PW-10 Prakash and PW-11 Satyaprakash etc. He gave them the information of the incident. On this information, police registered a case for offence under Section 302 I.P.C. and proceeded with investigation. Inquest report was prepared and dead body was sent for autopsy. The accused appellant was apprehended. After usual investigation police laid chargesheet against the accused appellant for offence under Section 302 I.P.C.

3. The appellant denied the charges and faced trial. The prosecution in order to bring home the case against the appellant examined 14 witnesses and produced certain documents. The appellant In his statement under Section 313 Cr.P.C. denied the correctness of the prosecution evidence appearing against him. He stated that he has been falsely implicated as the family members were not interested in giving share to him in the property. The trial court found the prosecution case proved and as such convicted and sentenced the appellant in the manner noticed above.

4. We have scanned, scrutinised and evaluated the prosecution evidence exhaustively and considered the rival contentions. The defence has not contested that the deceased Hardev died of homicidal death. This fact is otherwise proved by the medical evidence of PW-6 Dr. Goruram and the statements of PW-2 Smt. Dhapu Bai and PW-7 Kastur Chand.

5. The entire case rests on the unimpeachable testimony of PW-2 Dhapu Bai and PW-7 Kastur Chand.

6. PW-2 Mst. Dhapu Bai, wife of the deceased Hardev and the mother of appellant. She has stated that her husband deceased Hardev was priest of the temple of Mataji. He used to perform seva pooja of the temple of Mataji. Her son appellant Devilal asked her husband to part with the key of temple. Some oral altercations took place between them. The out cry of Hardev attracted her. She rushed to the spot and found that Devilal was giving lathi blows on her husband Hardev. She also stated that repeated lathi blows were given by the appellant. She further stated that PW-7 Kastur Chand who was passing through also arrived on the spot on call given by her. She asked her to take Hardev to the hospital on motorcycle. Before anything could be done. Hardev succumbed to injuries on the spot. In the cross- examination she admitted that Devilal was not doing any job and as such her deceased husband Hardev used to advise him to engage himself in some job. She denied the suggestion that the appellant was turned out from the house and he had heard abuses. Nothing has been elicited to discredit the testimony of this witness.

7. PW-7 Kastur Chand has stated that at about 11.30 or 11.45 AM while he was passing through the Piplad Temple, he heard the out cry of Mst. Dhapu Bai. On reaching the spot, he found that appellant giving repeated 5 to 7 lathi blows on the head of deceased Hardev. He parked the motorcycle and tried to apprehend Devilal. He ran away towards forest throwing the broken lathi. He also stated that lathi was broken because of severe beating given by the appellant. He also stated that Hardev died on the spot. He went to the Police Station for lodging First Information Report. He also stated that he informed the persons of village sitting on the 'well'. Nothing has been elicited to discredit the testimony of this witness.

8. PW-3 Ratanlal is the son of deceased and brother of the appellant. He has stated that on return to home, he came to know that his father Hardev was done to death by his elder brother Devilal. He stated that Devilal wanted to take keys of the temple from his father to receive the offerings at temple. Nothing has been elicited to discredit the testimony of this witness. PW-1 Ashok Kumar, PW-9 Anil Kumar, PW-10 Prakash and PW-11 Satyaprakash are witnesses who reached on the spot on receiving the information about the incident. They have stated that on hearing the news that Hardev has been killed by his son Devilal, they reached on the spot and found that PW-2 Dhapu Bai was sitting with the dead body of her husband Hardev.

9. Appellant was arrested vide Exhibit P-7. A lathi was also recovered vide Exhibit P-3. Cloths of the accused were also seized and sealed vide Exhibit P-6. However, it is not necessary to deal with in this regard as admittedly the report of the Forensic Science Laboratory has not been placed on record. Thus, the evidence of recovery of cloths and lathi is of no use in the absence of report of Forensic Science Laboratory. However, the ocular testimony corroborated by the prompt F.I.R. and the medical evidence proves beyond any manner of doubt that appellant committed the murder of his father Hardev.

10. It is vehemently argued by Mr. P.C. Solanki, learned counsel for the appellant that no intention can be attributed to appellant to commit the murder of his father. It can also be not said that he intended to inflict the fatal injuries No. 8 and 11. It is submitted that the incident took place on a trivial issue. According to Mr. Solanki, at the most it can be said that appellant inflicted injuries on the body of deceased Hardev which he knew to be likely to cause death and as such the case falls under Section 304 Part II and not in 302F I.P.C. The learned counsel in support of the contention has placed reliance on the various decisions of the Apex Court viz., Inder Singh Bagga Singh v. State of Pepsu (1), State of U.P. v. Indrajeet @ Sukhatha (2), Jagtar Singh and Anr. v. State of Punjab (3), Ramaotar v. State of Madhya Pradesh (4), Kulwant Rai v. State of Punjab (5), Randhir Singh @ Dhire v. State of Punjab (6), Kapoora Ram and Anr. v. State of Rajasthan (7). We shall deal with all the cases as far as possible.

11. The learned counsel has referred to Inder Singh Bagga's case to show that in spite of the fact that there were six injuries, the court considered it to be a case of culpable homicidal not amounting to murder punishable under Section 304 Part II I.P.C. We have carefully gone through the said judgment. In the said case, the incident took place on 13.3.1952 in which the deceased sustained six injuries, out of which one was found to be fatal. Deceased died about 20 days after the incident i.e., on 2.4.1952. In the said case the court considering that deceased survived for three weeks held that on the facts it was not possible to draw inference that appellant intended to cause such bodily injury as was likely to cause death and, therefore, the offence will fall under Section 304 Part II I.P.C. and not in 302 I.P.C. The case is clearly distinguishable, as in the incident case, there are as many as 17 injuries and on account of the injuries, deceased died on the spot.

12. In State of U.P. v. Indrajeet Single injury was caused by a weapon known as 'rukhani' which is usually used by carpenters, the caste to which accused belong. Looking to the nature of injury on the fact that weapon of offence was picked up from the spot, no intention to cause death with lack of knowledge that death would be inevitably caused such injury could be inferred and, therefore, it was held to be a case falling under Section 304 Part II I.P.C. instead of 302 I.P.C. This authority does not advance the case of the appellant.

13. In Ramaotar v. State of Madhya Pradesh (supra), there were more than one accused. The appellant Ramaotar was armed with lathi whereas the other accused were armed with sharp cutting weapon. On facts the court found the injuries caused by Ramaotar were not inflicted with the sole intention to cause death of the deceased but only inference could be drawn that he had the knowledge that such an injury is likely to cause death. On the peculiar facts of the case, the conviction of the appellant was converted to offence under Section 304 Part II I.P.C.

14. In Randhir Singh vs. State of Punjab (supra), solitary injury was caused which was found to be not sufficient in ordinary course of nature to cause death. The deceased died six days after the incident. In these circumstances, it cannot be said that appellant intended to inflict particular injury which is in ordinary course of

nature sufficient to cause death. This case is also of no help to the appellant.

15. In *Kulwant Rai v. State of Punjab (supra)*, there was no prior enmity and the assault preceded a short quarrel. The single injury was found to be fatal. This case is also of no help to the appellant.

16. *Kapoor Ram and Anr. v. State of Rajasthan (supra)*, is a judgment of the Division Bench of this court. In the said case, on a petty matter a sudden quarrel flared up. There were more than one accused. Injuries attributed to appellant were only two contusions. On the facts of the case it was found to be a case of culpable homicide not amounting to murder punishable under Section 304 Part II I.P.C. In the instant case, it is evident from the Post Mortem Report Exhibit P-10 proved by PW-6 Dr. Goruram that deceased received as many as 17 injuries. The injuries are extracted as follows:-

1. Laceration 2cm x 1/2 cm x muscle deep on right temporal region.
2. Multiple abrasions and lacerations on outer surface of left ear pinna on its upper 2/3 part so that ear pinna is divided in three pieces irregular margins with clotted blood present.
3. Laceration left preauricular area 2cm x 1cm x muscle deep.
4. Lacerations three in number each 2-1/2 x 1-1/2 cm x bone deep on left 1/2 of forehead upper part.
5. Laceration 3cm x 1cm x bone deep on right 1/2 of forehead horizontally placed.
6. Laceration 2cm x 1/2cm x muscle deep on left 1/2 of forehead just above left eye brow.
7. Lacerations 5 in number size 3cm x 1cm x muscle deep each. On anterior 1/2 of superior surface of scalp.
8. Laceration 8cm x 4cm x bone exposed on left occipital parietal area of scalp. Left occipital as well as left parietal both the bones show 4cm size linear fracture in continuation. There is sub dural hematoma of 5cm x 5cm size under the site of

fracture. The meninges and brain in surrounding area are congested.

9. Laceration 7cm x 1cm x muscle deep on left occipital (lateral) area of scalp.

10. Laceration 3cm x 1/2cm x muscle deep on left post auricular area of scalp.

11. Laceration 5cm x 2cm x bone deep on top of mid of scalp. Right parietal bone show depression fracture 3cm x 2cm size with subdural hematoma 3-1/2 x 3-1/2 cm size under fracture site, surrounding brain and meninges are congested.

12. Lacerations 4 in number, each 4cm x 1/2cm x muscle deep on superior occipital area (mid).

13. Fresh amputated right index finger. Amputated at the junction of its proximal 2/3 with its distal 1/3 part. Margins are irregular, clotted blood present at the wound.

14. Laceration 1cm x 1/2 cm x bone deep on dorsum of left middle finger on its proximal 1/3rd along with open fracture of the first phalanx of left middle finger.

15. Abrasion 3cm x 1cm at posterior surface of left fore arm on its middle 1/3 rd).

16. Abrasion 2cm x 1/2cm on posterior surface of right elbow.

17. Abrasion 1cm x 1cm on dorsum of left wrist.

In the opinion of Doctor, the cause of death was multiple injuries specially injury No. 8 and 11. The injury No. 13 and 14 were also found to be grievous.

17. It has been stated by both the eye witnesses PW-2 Dhapu Bai and PW-7 Kastur Chand that appellant gave 5 to 7 lathi blows to the deceased Hardev. The large number, of injuries on the person of deceased clearly shows that the appellant gave a merciless beating causing multiple injuries. Thus, it cannot be said to be a case of 'hit and run'. It is well settled that culpable homicide is not murder when case is brought within five exceptions to Section 300 I.P.C. Even if any of the five exceptions is not established, the prosecution is still required under the law to bring the case under any of the four clauses. The repeated lathi blows

and the multiple injuries on the body clearly brings the case of appellant within para 3 of Section 300 I.P.C. as it clearly leads to intention to inflict particular injury sufficient in ordinary course of nature to cause death. In view of this we find it difficult to hold that in the circumstances herein set out, does not bring the case against the appellant in para 3 of Section 300 I.P.C. The appellant has been rightly convicted for offence under Section 302 I.P.C. by the trial Court.

18. Consequently, we find no merit in this appeal and the same is dismissed. The conviction and sentence of the appellant for offence under Section 302 I.P.C. is upheld. Appellant is in jail. He will serve out the remaining part of the sentence.

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