Ramla Vs. State

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Court : Rajasthan

Decided On : Sep-01-1961

Reported in : 1963CriLJ387

Judge : D.S. Dave, J.

Appellant : Ramla

Respondent : State

Judgement :

D.S. Dave, J.

1. This is an appeal by accused, Ramla, against the judgment of the learned Additional Sessions Judge, Jalore, dated the 27th March, 1961, whereby he has been convicted under Section 307, Indian Penal Code, and sentenced to five years' R.I.

2. The case relates to an incident, which took place at village Sanghana on the night between the 1st and 2nd June, 1960. The first information report about the occurrence was lodged on the next day by P.W. Khubla at police station, Bhawatra.

3. The prosecution story in this case was that the appellant had illicit intimacy with Mst. Chunki, widow of Fatta, who was uncle of P.W. Kastura P.W. Kastura

resented the appellant's illicit connection with Mst. Chunki and, therefore, he used to reprimand, him from time to time. The story goes that three days before the occurrence, Kastura again reprimanded the appellant and asked him to stop his visits to Mst. Chunki and, thereupon, the appellant told him that he should not meddle in the affair, otherwise he would be killed.

The prosecution story further is, that on the night between 1st and 2nd June, 1960, P.W. Kastura was sleeping on a cot outside his Jhumpa. His brother P.W. Khubla was also sleeping on a separate cot by his side. When both of them were asleep, the appellant came armed with a spear and caused injuries on the neck of P.W. Kastura with the intention of murdering him. On receiving the spear blow, Kastura was aroused from his sleep and he raised a cry, on account of which his brother Khubla also woke up. According to the prosecution, both of them saw the appellant when he was running away,

4. The first information report about this occurrence was written by P.W. Bhur Singh, Sarpanch of village-Sanghana at the dictation of Kastura himself. That report was presented, by his brother Khubla at police station, Bhawatra. Kastura was also taken by his brother in a cart to the police station and therefore the Station House Officer recorded the statement of Kastura on the back of his written report. Thereafter, he sent Kastura for his, medical examination to the Medical Officer incharge, General Hospital, Jalore. The Sub Inspector also recovered one dagger (Chhuri) from the house of Ramla appellant. It may be noted here that the said recovery is of no avail, because according to Kastura, it was not the weapon with which he was struck. Moreover that weapon 'was not sent to the chemical examiner for the presence of blood.

After investigation, the police challaned the appellant in the Court of the Magistrate First Class, Jalore, for offences under Sections 307 and 326, Indian Penal Code. The accused pleaded not guilty in the committing magistrate's Court, but on preliminary inquiry the Magistrate came to the conclusion that a prima facie case was made out against the accused and so he was committed to the Court of the Additional Sessions Judge, Jalore, for his trial in respect of the said offences. In the trial Court also, the accused pleaded innocence. He did not take up any

specific plea In his statement which was recorded under Section 342, Cr.P.C. He, however, examined Mst. Chunk! in his defence.

5. Mst. Chunki's version was that on the night of occurrence she had gone to Kastura's house in order to grind corn, since her own grinding-mill (Ghatti) was out of order. She had sought Kastura's permission on the -preceding day and he had told her that she could come to his house and use his mill (Ghatti). She, therefore, went to Kastura's house. She found that the door of his hoirse was closed from inside. She, therefore, called out Kastura to open the door. Kastura opened the door and she then went in. When she was about to grind the corn, Kasjura approached him and made an attempt to have sexual intercourse with her. She, therefore, ran away from his house, but he pursued her and at that time he dashed against the door of his house and got the injuries, on account of some sharpe nails which were Piercing out of the shutters.

6. The prosecution examined 8 witnesses to prove the case against the accused. The learned Additional Sessions Judge did not believe the version put forward by Mst. Chunki and relying upon the prosecution evidence, he convicted and sentenced the accused as mentioned above.

7. Learned Counsel for the appellant has strenuously urged that his client was innocent and that the trial Court has committed, an error in conviction him of the offence under Section 307, Indian Penal Code. Learned Counsel has raised two-fold contentions.

It is urged by him that, in the first instance, it is not proved by the prosecution beyond doubt if the injuries received by Kastura were caused to him by the appellant, It is contended that the occurrence took place in the night and neither Kastura nor his brother Khubla could be certain about the identity of the assailant.

His next argument is that even if this Court comes to the conclusion that Kastura was injured at the hands of the appellant, the appellant's act did not come within the ambit of Section 307, I.P.C. that the injuries received by Kastura were of simple nature and therefore the appellant could, at the most, be held guilty of an offence under Section 324, I.P.C.

8. Learned Assistant Government Advocate has, on Hue other hand, tried to support the judgment of the trial Sourt.

9. Before proceeding to examine the arguments raised by teamed counsel on either side, it may be observed that the correctness of the fact that Kastura received two injuries on his neck on the night between 1st and 2nd June, 1960, has not been challenged by learned Counsel for the appellant.

Dr. Kishan Singh (P.W. 2) has stated that he was medical officer incharge of the General Hospital at Jalore and that he had conducted the medical examination of Kastura on the 3rd June, 1960. He has proved his report Ex. P-2, which he had recorded after the said examination. He has further stated that he found two incised wounds on Kastura's neck. The first one was on the left side of his neck and it measured 2' x 3/4'; x 1'. The second injury was also an incised wound measuring 1 1/2 x 3/4' x 1', below and away from the first injury. In the opinion of the witness, these injuries were not sufficient in the ordinary course of nature to cause death, nor were they likely to cause death.

He was also of the opinion that these injuries appeared to have been caused by a sharp weapon like a 'Chhuri'. According to the witness, both the injuries were grievous, because they were caused on a vital part and they were so close to the carotid artery that if it were cut, the life of the injured would have been in danger.

10. It has already been pointed out above that learned Counsel for the appellant has not challenged the correctness of the statement of this witness so far as he noticed the injuries, on the person of Kastura, but he has challenged the correctness of the opinion of the witness inasmuch as he says that the said injuries were of grievous nature, It is contended by learned Counsel that both the injuries were not covered by the definition of 'grievous hurt' given in Section 320 of I.P.C.

It has been very candidly conceded by the learned Assistant Government Advocate that the injuries describe by P.W. 2 Dr. Kishan Singh are not covered by the first seven clauses of Section 320, I.P.C. It was suggested that the doctor had perhaps given his opinion about the nature of the injuries being grievous on

account of the eighth clause in the said section. That clause runs as follows

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

11. I have carefully gone into the statement of P.W. 2 and find that he has not stated if the injuries received by Kastura had caused him to be in severe bodily pain during the space of twenty days or that he was unable to follow his ordinary pursuits during that time. It appears that no such question was put to him. He seems to have given his opinion on the ground and if the injuries had damaged the carotid artery, they would have proved dangerous to the life of the injured.

It may be pointed out that the perusal of the very definition given above shows that an injury may be called grievous only If it 'endangers life'. This means that the injury which is actually found should itself be such that it may put the life of the injured in danger. A simple injury cannot be called grievous simply because it happens to be caused on a vital part of the body, unless the nature and dimensions of the injury or its effect are such that in the opinion of the doctor it actually endangers the life of the victim.

I agree with learned Counsel for the appellant that the witness (P.W. 2) was not correct in stating that the injuries received by Kastura were grievous, because he did not depose that the injuries received by Kastura were as such dangerous to his life. If the carotid artery were cut, it would have been a different matter, but the witness does hot say that the said artery was even touched.

He himself observed in the earlier part of his statement that both the injuries were not sufficient in the ordinary course of nature to cause death, nor were they likely to cause death and in the face of that observation, it was not proper for him to give an opinion that the said injuries were grievous. He ought to have given his opinion on the basis of the injuries as they were actually found by him and not on what the condition of the injuries would have been if they were caused with a little greater force or if they had damaged a particular vital part of the body. Both the injuries are held to be of simple nature.

12. The next two questions which arise for determination are:

(1) whether the said injuries were caused by the appellant, and

(2) whether the act of the appellant was covered by the provisions of Section 307, I.P.C.

13-14. (His Lordship considered the evidenca and upon the nature and value of the tracker's evidence his Lordship observed;)

It appears that a tracker was requested to reach the site with the purpose that he might also see the footprints of the assailant and he may be able to corroborate the statements of Khubla and his brother Kastura. It is significant that even Bhur Singh, who has tried to oblige the appellant, has stated that when the tracker went to the site, he expressed his opinion that footprints looked like that of appellant Ramla. I may make it clear at this stage that I am not referring to the evidence of P.W. Bhur Singh in order to utilize the opinion which is said to have been expressed by the tracker at that time, but I have referred it in order to repel the argument that an adverse inference should be drawn on account of the non-production of the tracker by the prosecution. This Court has held in more than one cases that the evidence of a tracker is of little importance and, under these circumstances, no adverse inference can be drawn, simply because he was not examined by the prosecution. It may be further observed that there could be no good reason for Kastura or his brother to leave out the real assailant if he was somebody other than the appellant and name him if they were in any doubt. By naming the appellant in the first information report, they were consciously excluding the chance of any other assailant being detected. Therefore, the fact that the assailant's name was mentioned in the first information report lends very strong corroboration to the statements of P.Ws. Kastura end Khubla. The trial Court, which had the additional advantage of judging their veracity by their demeanour, has found both these witnesses trustworthy and I do not find any good ground to differ with the opinion of the trial Court. In my opinion, it is established beyond any manner of doubt that the injuries received by P.W. Kastura were caused by the appellant and nobody else.

15. It was contended by learned Counsel for the appellant that the weapon recovered by the police in this case was only a Chhuri and not a spear and this shows that the investigating officer did not proceed In the matter with clean hands. In this connection., it would suffice to say that if the police were able to recover the real weapon which was used by the appellant, it would have certainly given further strength to the prosecution case, but the mere absence of its recovery does not weaken the prosecution case or cast any doubt on the veracity of the statements of P.Ws. Kastura and Khubla. On the contrary, it may be pointed out that P.W. Kastura was honest enough to say that the weapon recovered by the police was not the one which he had seen in the hand of the appellant.

16. Now coming to the second point, it is contended by learned Counsel that P.W. Kastura had received only two simple Injuries on his neck and therefore the only inference, which the trial Court ought to have drawn, should have been that the appellant intended to cause simple Injuries with a sharp weapon and thus he should have been convicted only under Section 324 and not under Section 307, I.P.C.

According to learned Counsel, if no injury is received by the victlm, the Court may consider the question whether it is proved by the prosecution evidence that the assailant had the intention to commit murder or that he had the knowledge that his act was likely to kill the victim, but if an injury is caused, then the intention or knowledge should be inferred only from the injury and other evidence should be excluded.

In support of the argument, he has referred to jeetmat v. State AIR 1950 Madh-Bha 21. In that case one Sidhanath and his brother Jeetmal had a scuffle and Sidhanath received four simple injuries on his head and threat. It was observed that

to sustain a conviction under Section 307, Penal Code, it is necessary that there must be an 'act done under such circumstances as death might becaused if the act took effect. The act must be capable of causing death in the natural and ordinary course of things; and if the act complained of is not of that description, the assailant cannot be convicted of an attempt to commit murder under Section 307,

Penal Code.

It may be pointed out that in view of the fact that the injuries received by Sidhanath were simple, the learned Judges thought that the accused could not have the intention of causing the murder of his brother, nor had he knowledge that he was likely to cause death. In that case (1) the learned Judges did not go to the length of laying down that if simple injuries are received in a certain case, an intention to commit murder can never be inferred. The learned Judges themselves observed that 'for the purpose of Section 307, what is material Is the Intertion or knowledge, not the consequence of the actual act done for the purpose of carrying out the intention'. It is thus obvious that Jeetmal's case AIR 1950 Maon-Bna 21, does not support the argument which the appellant's learned Counsel has tried to develop in this Court.

17. Learned Counsel has next referred to Sukra Oram v. State : AIR1959 Ori21 . In that case, a learned Single Judge of the Orissa High Court had certainly observed that 'causing injuries, though with the Intention of causing death but which do not result in death, does not come, in my opinion, under Section 307'. With great respect, I find myself unable to agree with this view. Since the discussion in the present case turns upon the interpretation of Section 307, I.P.C. it would be proper to reproduce it at this stage:

Whoever does any act with such intention or knowledge, and, under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.

It would appear from the perusal of the said section that it may be divided into three parts. The first part says that whoever does any act with such intention or knowledge and under such circumstances that if he had by that act caused death,

he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. It is clear that stress is laid on the intention or knowledge of the accused and secondly on the circumstances. This part of the section does not even contemplate that it must be necessary that the victim should receive even a simple hurt. All that is necessary is that the accused should have the intention to commit murder of the victim or he should have knowledge that he is likely to cause his death. If he commits a certain act with that intention or knowledge and there are circumstances to show that if he by that act caused the death of the victim, he would be guilty of murder. He may be punished under this section even though the victim may not be hurt at all.

This would be further clear from the second part of the section which says that if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned. It is obvious that if no hurt is caused a lighter punishment is provided in the first part, but if hurt is caused, then the second part of the section would come into play and the offender would be liable to enhanced punishment provided by that section.

Then, the third part of the section provides that If the offender is already under sentence of transportation for life and if hurt is caused, he may be punished with death.

The illustrations which are given under Section 307 further make it clear that it is not necessary that the person whose murder is attempted must be hurt by the offender. Illustration (a) to the section says that if A shoots at Z with intention to kill him, under such circumstances that if death ensued, A would be guilty of murder, then A would be liable to punishment under this section. It is clear from the said illustration that it was not laid down that Z must have received some injuries at the hands of A in order to punish him for the offence provided under this section.

In Wasudeo Balwant v. Emperor AIR 1932 Bom 279, the accused had fired at the Acting Governor of Bombay two shots from a revolver which was later taken away from him and was found to be a powerful weapon of.380 calibre. Both the shots were fired at point blank range but in spite of that the Governor was not hurt and

the two bullets were found in the lining of his coat. In those circumstances, it was argued before a Division Bench of the Court on the basis of the view taken in Reg v. Cassidy 4 Bom. H.C.Cr. 17, on which reliance has been placed by learned Counsel for the appellant as well, that a case under Section 307, Indian Penal Code, was not made out. Repelling this contention, it was observed by Beaumont C.J. as follows:

If the reasoning of the learned Judges in that case be right as to the construction of Section 307, and if the act committed by the accused must be an act capable of causing death in the ordinary course, it seems to me that logically the section could never have any effect at all. If an act is done which in fact does not cause death, It is impossible to say that that precise act might have caused death. If however Section 307 does not cover the case of a man who fires a gun at his enemy with intent to kill him but misses his aim, it is difficult to see how the section can ever have any operation. think that what Section 307 really means is that the accused must do an act With such a guilty intention and knowledge and in such circumstances that but for some intervening fact the act would have amounted to murder In the normal course of events.

I respectfully agree with the said observation made by the learned judge.

In Bharat Dube v. Emperor AIR 1941 Pat 51 it was observed as follows;

In order that an act shall amount to an attempt to murder all that it is necessary to prove is that if the act had caused death it would have amounted to murder provided that it was done with such intention or knowledge as would be necessary to be proved in the case of murder, The fact that an act results in minor injuries or even in no injuries at all is not relevant for the purpose of deciding whether it amounted to an attempt to murder or not,. The illustrations to the section are themselves quite clear that the section provides different punishment far cases where the act results in hurt being caused and where no such result follows;

Similar view was taken in Parcho Kewalram v. Emperor AIR 1944 Sind 83, Emperor v. Mr. Gangoo AIR 1941 Nag 302 and Badshah Singh v. State : AIR1958 All677 .

In view of these authorities, there is no force in the argument raised by learned Counsel for the appellant to the effect that an intention to commit murder on the part of the appellant should not be inferred simply because the injuries received by Kastura were of a simple nature.

It is true that there is no other evidence direct or circumstantial against the accused to show his intention and if his intention is to be inferred only from the injuries, then he should ordinarily be deemed to have intended to cause only that kind of injury which has been actually caused by him. In other words, if the injury found on the person of the victim is simple, then it should be inferred that the accused intended to cause simple injury and if the injury caused is grievous, he should be credited with the intention of causing grievous injury. Even a grievous hurt of each and every type caused by the accused cannot give rise to an inference that he had made an attempt to cause murder of the injured.

In order to determine the question whether the accused had committed an attempt to commit murder, the Court will have to find out if he intended to commit murder or whether he knew that his act was likely to cause death of the person assaulted by him and if there are circumstances to show that in the event of the death of the victim, the accused would have been held guilty of murder, then he may be held guilty of an attempt to commit murder, because the victim happens to remain alive. It is the intention or knowledge of the accused and the circumstances in which he commits the offence which are material in a case under Section 307 I.P.C. and if there is other evidence direct or circumstantial to indicate his intention or knowledge, then the fact that the injury caused is simple or grievous or that no injury is caused does not matter.

Now, in order to see whether the appellant had an intention to commit Kastura's murder, we will have to look to the circumstances in which Kastura was Injured.

18. (His Lordship considered the circumstances and proceeded;) In view of these circumstances, the learned Additional Sessions Judge, in my opinion, committed no mistake in holding the appellant guilty of an attempt to commit murder. His conviction under Section 307, Indian Penal Code, is fully justified.

19. Lastly, it is urged by learned Counsel that the sentence awarded to the appellant is excessive, but I think that the sentence is not harsh in view of the circumstances In which the offence was committed.

20. There is no forte in this appeal and it is hereby dismissed.