

Karim Khan Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-29-1971

Reported in : 1971WLN142

Judge : L.S. Mehta, J.

Appeal No. : S.B. Criminal Appeal No. 634 of 1970

Appellant : Karim Khan

Respondent : The State of Rajasthan

Judgement :

L.S. Mehta, J.

1. Succinctly put, the prosecution story is that Karim Shah and Rahim Shah Fakirs of village Udai-Kalan, Thesil Gangapur City, collected some clay required for repairing their buildings. The clay was put on the lane, abutting the houses of Munir Khan and the accused Karim Khan. This material blocked the passage. Munir Khan and Karim Khan remonstrated Karim Shah and Rahim Shah against what they did. Karim Shah paid no heed to the protest. This led to rupture of relation between the two parties. Munir Khan and Karim Khan on the one hand and Karim Shah and Rahim Shah on the other. In the morn of April 29, 1970, whan Karim Shah was returning from the village mosque, Munir Khan hurled abuses at him. Rahim Shah, P.W. 2, interyened. In the mf-an-time the accused

Karim Khan appeared on the scene. He flung a stone towards Rahim Shah. Rahim Shah; however, escaped its impact. Karim Khan then threw another stone, which hit the left hand of Karim Shah. He cast a third stone at Rahim Shah's wife. Soon after the deceased Subhan Shah arrived at the spot. He enquired of Munir Khan as to why he was beating the destitutes of the 'Mohalla' Karim Khan got enraged at it. He picked-up a stone and dashed it towards Subhan Shah's chest. The moment Subhan Shah received the stroke on his chest, he fell down and breathed his last within a short time. First Information Report of the occurrence was lodged by P.W. 4 Sardar with the police station, Gangapur City, that very day at 11 a.m. The police registered a case under Section 302, I.P.C., and set the investigation in motion. Karim Shah Was examined by Dr. Section 1 Agrawal. Medical Officer, Gangapur City. He found the following injury on his person:

Swelling '1 X 1' on the left hand dorsum near wrist. It was simple in nature and was caused by a blunt object.

Dr. Agrawal, also conducted autopsy of the dead body of Subhan Shah, aged about 65 years. He did not find any external mark of injury on the person of the deceased. His heart was, however, found ruptured. In the opinion of the Doctor, Subhan Shah died of the rupture of heart, resulting in heart-failure. After investigation was conducted, the police put up a challan in the court of the Munsiff Magistrate, Gangapur City. The said Magistrate conducted preliminary inquiry in accordance with the provisions of Section 207-A., Cr.P.C. and committed the accused to the court of the Additional Sessions Judge, Gangapur City. The accused was indicated for crime under S 304, I.P.C., to which he pleaded not guilty. In support of its case the prosecution examined 6 witnesses. In his statement, recorded under Section 342, Cr.P.C. the accused showed total ignorance of the offence. He further stated that the Prosecution witnesses indulged in deliberate falsehood Munir Khan and the Fakirs exchanged hot words in connection with putting clay on the lane. He also reached the place. He did not see Subban Shah there, nor was he beaten by him. Subhan Shah was an old man. Hi, the accused added, might have died of heart-failure. The accused did not adduce one evidence in his defence. The trial court by its judgment, dated September 22, 1970, convicted the appellant Karim Khan of tin offence under

Section 301, Part II, I.P.C., and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs. 1000/-, in default of payment of which to further undergo one year's rigorous imprisonment.

2. Aggrieved by the above judgment, Karim Khan has taken the present appeal. The contention of learned Counsel for the appellant is that the trial court went wrong in the application of Section 304, (Part 11, I.P.C. to the present case. The learned Counsel for the State supported the judgment of the court below.

3. The only question that arises for the disposal of this appeal is whether the accused Karim Khan is guilty under Section 304. Part II. I.P.C. Section 325, or Section 323, I.P.C.

4. Dr. S.L. Agrawal, Medical officer, Gangapur City, states that Subhan Shah was an old man of 65 years of age. There was no external mark of injury on his person. The left circle was ruptured with an opening of 1' X 1' irregular on its upper surface. The doctor expressed the view that the cause of death of Subhan Shah was the rupture of heart, resulting in heart-failure. The heart-failure could be caused by forceful collision of the stone. In the cross-examination the Doctor states that rupture of heart could be natural accidental or homicidal and that no clinical data was available to distinguish whether the death of the victim was natural or otherwise. The Doctor further deposed that the heart is located below the skin, bones, muscles, and pericardium cavity. None of the out fibrous and the inner serous layers was found' injured. Had the stone been hit on the chest, the above mentioned parts of the body should have been damaged.

5. The trial court observed:

So far as the international causing of the death is concerned there is no charge against the accused about it and looking from the circumstances of the case whether the striking of the stone was done on the spur of the moment, it negatives any pre-meditation or intention and I think it is proper that no charge was framed against the accused for such offence.... As regards the knowledge I think there are good grounds to infer that the accused had knowledge that if such injury is caused to the deceased it might have caused his death because it is well known to him

that the deceased was suffering from heart disease as is revealed by his statement before the court. In view of this, I think the accused has committed the offence punishable under Section 304, Part II I.P.C.

6. I am unable to agree with the trial court that the accused was posted with the knowledge that the death was likely to result in the circumstances the stone was thrown at him. The Doctor is precisely of the opinion that that he could not say with certainty whether heart rupture of Subhan Shah was natural, accidental or homicidal. None of the outer fibrous membrane or the skin, bones, muscles or pericardium cavity, covering the heart, tamed any injury. Had the stone been thrown at the heart, these layers the Doctor opines, should have been injured. As has been observed in Taylor's Principles and Land Practice of Medical Jurisprudence, Twelfth Edition, Vol. 1 page 250 'the only natural cause of rupture of the heart is softening or thinning by infraction, but violent emotional disturbances such as anger, fight, approximations of passion, sudden muscular effects, or violent physical exertions in constrained positions can precipitate such a rupture of unhealthy muscle.' In Lyon's Medical Jurisprudence, Tenth Edition, page 243, it is mentioned:

Death may take place from shock, or from embarrassment of the action of the heart by blood accumulated in the pericardial sac.

Keeping in view the opinion of Doctor Agrawal, and the medical authorities cited above, it is possible to conclude that the victim's rupture of the heart was not necessarily homicidal. In that context, it is difficult to impute knowledge to the accused that the death was likely to result by the stone which he is alleged to have flung. The injury alleged to have been caused by the accused WES neither such as was likely to cause death, nor such as would endanger the life under ordinary conditions. There being no mark of injury, external or internal, it is difficult to conclude that the appellant intended or knew that he was likely to endanger the life of his victim. To put the matter in alternative words, it is not made out in the case that the death of the deceased resulted from the injury. The conviction under Section 304, Part II. I.P.C. is therefore, unsustainable. It is further clear that the case would not properly fall under any of the 8 clauses of Section 302. I.P.C., as

no grievous injury was inflicted by the accused: vide *Jani Gulab Shaikh v. State of Maharashtra* Cr. Appeal No. 13 of 1968, decided on 29-8-69. Therefore, the accused also cannot be convicted under Section 325, I.P.C. He, keeping in view the prosecution can only be convicted under Section 323, I.P.C.

7. In the result, the appeal is partly allowed, the conviction entered and the sentence given by the trial court are altered and the accused is convicted under Section 323, I.P.C. instead of under Section 304, Part II, I.P.C., and is sentenced to six months rigorous imprisonment. The District Magistrate, Bharatpur, is directed to take necessary steps for the arrest of the accused and him to jail to undergo the sentence awarded to him. The amount of fine, if paid, shall be refunded to the accused.

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