

Nania Vs. State of Rajasthan

Nania Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/756721

Court : Rajasthan

Decided On : Feb-10-1978

Reported in : 1978WLN(UC)213

Judge : M.L. Joshi and; R.L. Gupta, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 456 of 1972

Appellant : Nania

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

R.L. Gupta, J.

1. Mania his preferred the appeal through jail against the judgment of the learned Sessions Judge, Udaipur, passed on 26th May, 1972, by which he convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life for the murder of his own wife Mst. Khimi on 7-2-1971.

2. The prosecution case, in brief, is that on 7-2-1971 Mst. Khimi (wife, of the accused) along with Mst. Jumli and Mst. Panchli had gone to the jungle of Magra for collecting the fuel-wood. Mst. Jumli is Khimi's brother's wife and Mst. Panchli is Khimi's sister. The deceased Mst. Khimi was the wife of the accused appellant.

After collecting the fuel Khimi, Jumli and Panchli were returning home with bundles of fuel wood on their heads. When they reached near the temple of Asha Puri Mata, the appellant Mania reached there. He threw the bundle of fuel from Mst. Khimi's head and Ruled her to some distance and then gave a severe blow with an axe on her head, as a result of which Mst. Khimi fell down unconscious & was bleeding. Thereafter the appellant ran away along with the axe. Mst. Panchli then went to the village and informed Lala PW 2, maternal uncle of Khimi, who along with some other persons came on the spot and found Mst. Khimi lying injured and unconscious. They carried her on a cot to the police station Bikarni, where Lala lodged the report. The First Infirmitation Report is Ex. P.4 Mst. Khimi was sent to the hospital (PHC) Kotra, where Dr Sunderlal PW 1 examined her on 8-2-1971 and found an incised wound on her head with a fracture of the frontal bone, the brain matter had come out. She was unconscious He prepared the injury report Ex P1. He referred her to the General Hospital, Udaipur, where Dr. S.S Baxi P.W. 9, examined her on 9.2.1971 and prepared the injury report Ex. P.2, She was admitted to the hospital where she succumbed to the injury on 15.2.1971. Buxi performed the autopsy of the dead body of Mst. Khimi. The post mortem report is Ex. P.3. The appellant was arrested on 8.2.1971. On the same day, after his arrest, the appellant furnished information to Mohan Lal S.H.O P.W. 10, regarding the concealment of the axe. This information was reduced in the writing which is Ex. P.10. In consequence of the information, the axe Art Ex. 1, was recovered for on the house of the appellant The recovery memo for the same Ex. P1 was prepared. The axe was covered and sealed and later on sent for chemical examination. It was found to be stated with human blood. The report of the Chemical Examiner is Ex. P.13 and the report of the Serologic is Ex. P.15. After completing the investigation, the police put up a challan against the appellant under Section 302 IPC.

3. The appellant was charged under Section 302 IPC and was tried by iff learned Sessions Judge, Udaipur. The prosecution examined as many as ten witnesses. Mst. Jumli P.W. 3, and Mst. Panrhli PW 4 are the eye-witness PW 2 Lala is the person who along with some other persons went on the head soon after the occurrence, on the information given to him by Mst. Panchli PW 4, that it was the appellant who had inflicted an axe blow on the head of Mst. Khimi. Dr. Surderlal

PW 1 and Dr. S.S. Baxi PW 9 are the medical witnesses who examined Mst. Khimi for her injury. Dr. S.S. Baxi also performed the autopsy of the dead body of Mst. Khimi. Mohan Lal KHO PW 10 is the Investigating Officer. PW 5 to PW 8 are the witnesses to prove that the axe Art Ex. 1 was duly sealed and it was handed over in the office of the Chemical Examiner in the same condition. They have been produced to show that the axe reached to the Chemical Examiner in the same condition in which it was recovered and sealed and there were no chances for tampering with it till it reached the Chemical Examiner.

4. The appellant pleaded not guilty to the charge. In his statement before the Committing Court, he had denied having inflicted any kulhari blow on Mst. Khimi. He has however, stated that his mother was ill and his wife i.e. Mst. Khimi was at her father's house, so he went to fetch her but she was refused to be sent with him, thereafter he does not know what happened. In his statement under Section 342 Cr.P.C. (1898), the appellant denied the prosecution story and pleaded that he has been falsely implicated by Lala with whom he was not on good terms. He also stated that one Hansia had illicit intimacy with Mst. Khimi and he wanted to take her away but Mst. Khimi was not prepared to go with him Hansia threatened Mst. Khimi that he would kill her if she does not accompany him (Hansia). Lala is said to be the nephew of Hansia. The appellant has not produced any witness in his defence.

5. We have heard the Public Prosecutor for the State and the Amicus Curiae for the appellant and gone through the record of the case.

6. It has not been disputed that Mst. Khimi died due to homicidal violence. From the statements of Mst. Jumli P.W. 3 and Mst. Panchli PW 4 it is clear that Mst. Khimi was inflicted a kulhari blow on her forehead, resulting in profuse bleeding and the brain matter came out. This fact finds corroboration from the testimony of Lala PW 2 who had reached the spot on having received information of the incident from Mst. Panch's PW 4. Lala has also stated that when he reached the spot he found Mst. Khimi lying injured and profusely bleeding. She had injury on the forehead and the brain matter was out. Besides this direct evidence, there is the evidence of Dr. Skinrieral PW 1 and Dr. S.S. Baxi PW 9. Mst. Khimi was

examined on 8.2.1971 by Dr. Sunderlal and he found an incised wound oblique in direction 5' x 2' x 1' on the frontal bone of the head. The injury was grievous by a sharp edged weapon. It has caused a fracture of the frontal bone and the brain matter has come out. When she was referred to General Hospital, Udaipur, Dr. S.S. Baxi examined her on 9-2-1971. He found an incised wound about 5' x 1' x' bone deep on the forehead right side, cutting the frontal bone, membrane and the brain According to him the injury was by a sharp edged weapon and was grievous in nature. After the death of Mst. Khimi on 15-2-1971, this witness also performed autopsy of her dead body. Apart from the injury already stated above, on opening the dead body, lie found the same wound on the frontal bone, the membranes were found cut under the wound and there was laceration of the right side anterior with liquidation of the brain. He also found fracture of the frontal bone. In his opinion the cause of death was the injury on the brain which was sufficient in the ordinary course of nature to cause death. Thus the prosecution evidence has clearly established that Mst. Khimi died of homicidal violence.

7. The question that calls for consideration is whether the appellant was the author of the fatal injury on the person of Mst. Khimi. On this point the prosecution has produced three main witnesses. Mst. Jumli P.W. 3 & Mst. Panchli PW 4 who are the eye-witnesses of the occurrence. These two ladies that goes with Mst. Khimi is the judge for collecting fuel wood & were returning back with bundles of fuel on their heads when the appellant committed this ghastly act. Mst. Jumli is the brother's wife of Mst. Khtmi and Mst. Panchli is her sister. Their going together to collect fuel is, therefore, natural. It can, the file, be safety said (hat he presence of these two witnesses at the time of incident is, quite natural. Both these witnesses have stated that when they were returning after collecting the fuel-wood, accused Nania came there and threw away the bundle of wood which Vfst Khimi had on her head and pulled her away to some distance. These witnesses asked the appellant to take Mst. Khimi to his house after she had taken meals but the appellant declined and he struck an axe blow on the forehead of Mst. Khimi. Khimi fell down injured and the appellant ran away along with the axe. However, Mst. Jumli staved with Khimi, while Mst. Panchli went to the village to inform Lala PW 2. Mst. Panchli informed Lala that it was the appellant who had inflicted the axe blow on the fore head of Mst. Khimi, Lala PW 2 along with some others soon reached the spot and

found Mst. Khimi lying injured on the ground. She had injury on her fore head & the brain matter was out. Thus Lala has also corroborated the testimony of Mst. Jumli and Mst. Panchli. Their statements further find corroboration from the medical evidence of Dr Sunderlal PW 1 & Dr. S.S. Baxi PW. 9 The learned Sessions Judge has held the evidence of the eye-witnesses to be wholly reliable. We have the perused the evidence of these witnesses. We do not find any such infirmity in their evidence which may cast doubt on their credibility. On the other hand we are satisfied that their testimony is quite cogent & convincing and wholly credible. The learned Amicus Curiae has not been able to point out any infirmity in their statements so as to discredit their testimony. Besides this evidence, there is the circumstantial evidence of the recovery of the axe Article Ex. 1 from the possession of the appellant. The appellant was arrested on 8.2.1971 and while he was in police custody, he furnished the information on the same day regarding the concealment of the axe-the weapon of the offence and on the basis of this information and at his instance the axe Article Ex. 1 was recovered from his house. This axe was found positive for human blood as reported by the Chemical Examiner and the Serologist. Thus this recovery of blood stained axe from the possession of the accused further connects him with the crime and lends support to the direct evidence. Thus the prosecution had left no doubt in our mind that it was the appellant Nania who irradiated the fatal blow by axe on the head of Mst. Khimi.

8. The learned Amicus Curiae has contended that the offence committed by the appellant falls under Section 304 IPC and not under Section 302 IPC as there was no intention to commit murder of Khimi. He has relied upon *Virsa Singh v. State of Punjab* (1).

9. It has been painted out by their Lordships in this case that in order to bring a case under the clause 'thirdly' of Section 300, the prosecution must establish the following facts before it can bring a case Under Section 300 'thirdly':

(i) It must be established, quite objectively, that the bodily injury is present.

(ii) The nature of the injury must be proved.

(iii) It must be proved that there was intention to inflict a particular bodily injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended.

(iv) It must be proved that the injury of the type just described, made up of the three elements set out above, would be sufficient to cause death in the ordinary course of nature.

10. It was further observed by their Lordships that once these four elements are established the offence of murder under Section 300 'thirdly' is made out and it does not matter that there was no intention to cause death or that there was intention even to cause an injury of a kind that is sufficient to cause the death in the ordinary course of nature or even that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder if they inflict injury of that kind, they must face the consequences and they can only escape if it can be shown or reasonably deduced that the injury was accidental or otherwise unintentional.

11. In the present case the injury caused was the result of an axe blow on the vital part like forehead and it was given with such force that it caused an incised wound of 5' x 2' x 1' and the brain matter came out. According to the medical evidence the injury was sufficient in the ordinary course of nature to cause death. There is total absence of any circumstances to show that the injury was caused accidentally or unintentionally. It is, therefore, to be presumed that the appellant had intended to cause the inflicted injury and the conditions of clause 'thirdly' of Section 300 IPC are satisfied, we are, therefore, of the opinion that the appellant has been rightly convicted for the offence under Section 302 IPC.

12. The appeal has, therefore, no force and is dismissed, The conviction and sentence passed by the learned Sessions Judge, Udaipur, against the appellant

are maintained.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com