

Ramjas Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-17-1990

Reported in : 1990(2)WLN46

Judge : N.C. Sharma, J.

Appeal No. : S.B. Cr. Appeal No. 376 of 1982

Appellant : Ramjas

Respondent : State of Rajasthan

Judgement :

N.C Sharma, J.

1. Shri Ramjas s/o Birdha, by caste Gujar R/o village Jhundwa, Police Station Aligarh (District Tonk) was brought to Sadat Hospital, Tonk September 13, 1981 in an injured condition. He was a stoat person while he was examined by the Medical Jurist and had lacerated wound on the scalp on left temporal region 1/4' x 1/4' touching the bone. There was fracture left temporal bone of the skull. He had also lacerated wound on right forcatm in center with fracture of Ulna shaft of right fore arm just below the injury. His eyes were closed and pupils dilated. Internal examination showed that Ramjas had haemorrhage over the vault of the skull on left temporal region with blood deposited in the muscles on left side of skull, clotted blood presenting from the fractured piece of the skull. The skull on left

temporal region was having fracture 3' long with multiple bone fragments presents. On the brain there was subarachnoid haemorrhage present on the temporal lobe. So far as the right fore arm was concerned, there was fracture of ulna shaft. The medical jurist in his report Ex. P. 16 opined that the cause of death was sub aruchrioid cerabral haemorrhage with fracture of akull of left temporal bone. The report of the incident was lodged by Ramnatn, Patwari Circle Jhundwa an September 13, 1981 where in it was mentioned that there had been a quarrel between She ram and his brothers two or three days in which She Ram sustained injuries. It was also mentioned that the family members of She Ram bad taken him to the hospital for treatment where She Ram died on September 12, 1981 in the evening. Upon this report, Investigating Officer choose to proceed on the spot. The Station House Officer, Police Station went to the place of incident on September 13,1981 and prepar-ed the site plan Ex. P. 10. He prepared the inquest report Ex. P. 9. Post-mortem of the dead body of Shri She Ram was also conducted and the dead body was handed over to Gajanand brother of She Ram. The appellant and Kailash were arrested on that very day by arrest memo Exhibit P. 12 and Exhibit P. 13. The bloodstained cloths of She Ram were siezed. Statements of the witnesses examined Under Section 161 Cr. PC by the Investigating Officer were recorded and after necessary investigation, a charge-sheet was filed in the court of Chief Judicial Magistrate, Tonk for offence Under Section 302 IPC. The ease was committed to the Court of Sessions Judge, Tonk by Chief Judicial Magistrate on November 13,1981. The Sessions Judge held the trial and after consideration of the evidence produced, held him guilty for offence Under Section 304, Part-II, IPC and passed the sentence against him for a term of 5 years and with fine of Rs. 500/-. So far as Kailash was concerned, he was acquitted Ramjas has come up in appeal to this Court against his conviction and sentence.

2. The learned Counsel for the appellant contended that from the facts and circumstances of the case, no offence was made out against the appellant. Apart from that, the appellant was below 21 years of age and the trial court should have given him benefit under the Probation of Offenders Act. Even the Investigation Officer was not examined by the prosecution and there were no blood stains on the lathi. The learned Public Prosecutor has supported the prosecution case.

3. The arrest memo of appellant Ramjas Ex. P. 12 mentioned his age as 20 years. In his examination Under Section 313, Cr. PC recorded by the Sessions Judge on August 27, 1982, the appellant gave his age as 19 but it was estimated by the Sessions Judge to be 22 years. Kalyan P.W. 5 has stated in his cross-examination that the age of Ramjas appellant was 18 and 19 years. It will thus appear that the age of the appellant at the time of the commission of the offence was less than 21 years. The appellant was found guilty Under Section 304, Part II, IPC So far as the sentence for the offence Under Section 304, Part-II, IPC is concerned, it is punishable with imprisonment by either description for a term which may extent to 10 years with fine or with both. Section 6 of the Probation of Offenders Act, 1958 provides that if any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender that it would not be desirable to deal with him Under Section 3 or Section 4, and if the Court passes any sentence of imprisonment of the offender it shall record its reasons for doing so.

4. For the purpose of satisfying it self whether it would not be desirable to deal Under Section 3 or Section 4 with an offender referred to in Sub-section (1), the Court shall call for a report from the Probation Officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

5. In the instant case, the learned Sessions Judge, Tonk has not at all taken into consideration the circumstances of the case, including the nature of the offence and the character of the offender in determining whether the appellant was entitled to benefit of the Act. He also did not call for a report from the Probation Officer and did not consider any report. He also did not refer to any other information available to him relating to the character and physical and mental condition of the appellant. Lastly, no reason have been recorded in passing the sentence instead of giving to the appellant benefit under the Probation of Offenders Act. Thus the trial court has totally ignored the provisions contained in Section 6 of the said Act.

6. So far as the merits of the incident are concerned, even the hostile witness have deposed that it was appellant who inflicted injury on the head of deceased She Ram which resulted in his death. There is evidence of She ji P.W. 1, Gulaba P.W. 2, Sua P.W. 3, Ram Nath P.W. 4, Kalyan P.W. 5, and it finds corroboration from the medical report and evidence.

7. So far as the appellant is concerned, the incident has not been denied by him. However, he has set-up in his examination Under Section 313 Cr. PC the right of private defence of his person. The version of the appellant is that the deceased had asked him as to how the latter has dismantled the water course of the field. The appellant denied having done so. Thereupon out of anger, the deceased inflicted Lathi blow on his shoulder. He wanted to repeat the blow but in the mean while the appellant inflicted lathi blow on the deceased. As already stated, there is consistent evidence that it was the appellant who dealt with the first blow on the head of the deceased. There is no injury report of the appellant which could indicate that any injury what so ever was sustained by the appellant in the incident. It is also not in evidence that it was the deceased who first attempted to inflict any lathi blow upon the body of the appellant. No defence has been led by the appellant and he has failed to substantiate the right of private defence. It is true that the Investigating Officer has not been examined but that hardly affects the truth of the prosecution case and more so, when the incident was admitted by the appellant and only private defence of person was set up as his defence, which he failed to substantiate. The conviction of the appellant for offence Under Section 304, Part-II, IPC was, therefore, correctly recorded by the Sessions Judge and I confirm the conviction.

8. As to the sentence I have already referred to the provisions contained in Section 6 of the Probation of Offenders Act, 1958. The appellant was admittedly under 21, years of age at the time of the commission of the offence. The offence, which was not punishable with imprisonment of life. There is nothing to show that the appellant was a man of bad character. As a matter of fact, the appellant was related to the deceased. The incident occurred on account of a petty quarrel on the dismantling of the water course. In such circumstances, it was desirable that the appellant should have been given the benefit of probation.

9. I, therefore, while, upholding the conviction of the appellant for offence Under Section 304, Part-II, IPC instead of sentencing him do here by direct that the appellant upon entering a personal bond in the sum of Rs. 6,000/- with two sueties in the sum of Rs. 3000/- each to maintain peace and be of good behaviour for a period of two years from the date of this order, be released on probation of good conduct and good behaviour. The appellant would file the required person as bond and surety binds before the Sessions Judge, Tonk within three months from the date of this judgement.

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