

Dhanna Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-11-1990

Reported in : 1990(2)WLN122

Judge : G.K. Sharma, J.

Appeal No. : S.B. Cr. Appeal No. 197 of 1982

Appellant : Dhanna

Respondent : State of Rajasthan

Judgement :

G.K. Sharma, J.

1. This appeal is directed against the judgment dated 28th May 1982. By which, the appellant has been found guilty of the offence Under Section 304-II, IPC and sentenced to three years' RI and a fine of Rs. 300/-, in default of payment of fine, to further undergo three months' SI.

2. A written report was submitted on 20-9-1981 by Kajod alleging that Ram Ratan Meena was grazing his sheep on the Hesolai Nadi. His sheep entered into the field of Dhanna Jat who obstructed to it and made a protest to Ram Ratan. 'While taking out the sheep from the field, Dhanna inflicted a Lathi blow on the back side of the legs, gave a push and slap as a result of which Ram Ratan fell down. He

was brought to the village by Ram Chandra. He got his stomach disorder and could not pass stool or urine. When the condition became serious a report was lodged at the Police Station Mend was. On this report the SHO directed Head Constable Bhanwar Lal to reach at the spot and also directed to admit the injured at the Hospital and after receiving report from the Hospital the case will be registered. Then the Head Constable Bhanwar Lal reached at the spot and recorded the statement Ex.P 10 of Ram Ratan. Ram Ratan was sent to the Hospital and at 3.15 p.m. an information was received at the Police Control Room that Ram Ratan had died in the Hospital. The the Police registered the case Under Section 302, IPC. After completing the usual investigation the Police submitted challan against the accused.

3. The trial Court framed charge against the accused Under Section 302, IPC who pleaded not guilty and claimed d trial.

4. After recording the evidence and hearing both the parties the learned trial Courtt found that no case is made out Under Section 302, IPC and he acquitted the accused from that charge. How ever, the trial Court found him guilty of the offence Under Section 304-II, IPC and sentenced him as mentioned above.

5. The learned Counsel for the appellant argued that he does not dispute about this fact Dhanna accused inflicted Lathi blow on the back of the legs of Ram Ratan. This fact is also not disputed that Dhanna gave a slap and a blow on the stomach. Hence, so far as the in infliction of blow is concerned, the fact is not disputed. The argument is that the learned trial Court itself found that the case Under Section 302, IPC is not made out but a case Under Section 304-II, IPC is only made out, but in view of the statement of doctor V.D. Sharma the case could not travel beyond Section 323, IPC. A case Under Section 304-II, IPC is also not made out. If a person commits culpable homicide not amounting to murder shall be punished with imprisonment Under Section 304-II, IPC if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury at is likely to cause death. This ingredient of the offence is missing in the present case. From the evidence on record it cannot be inferred that Dhanna inflicted the blow with the knowledge that it is likely to

cause death. The blow on the legs are not the result of the death. The cause of death is the rupture of the colon. Another blow was of a Lathi on the stomach and whether this blow is sufficient to cause the rupture of colon. If this fact is established by the evidence then certainly case Under Section 304-II, IPC can be made out. In this respect the statement of Dr. V.D. Sharma is the sole statement and a material evidence, which would prove what offence has been committed in the present case.

6. Dr. V.D. Sharma (PW 4) conducted the post-mortem on body of Ram Ratan and in his opinion the cause of death was gangrening of the large intestines leading to electrolyte imbalance, dehydration, toxemia, shock and death. So the doctor had mentioned the cause in the post-mortem report. Whether this is the result of the blow inflicted by Dhanna accused in this. regard the doctor has been cross-examined at length. He has stated that the external injury was not sufficient in the ordinary course of nature to cause death, According to him when there is a cut in the blood supply the gangrening develops in the body. The external injury may have led to haematoma in the mesentery which may have obstructed the supply of blood to larger intestines, where the gangrening developed. In the present case the haematoma could be the result of external injury. The rupture was on the descending colon. The doctor has stated that there was no rupture of the mesentery. Colon is the large intestine. The rupture of the left colon was not on the point of bruise. There was no rupture of the skin externally. There was no rupture of the peritoneum. Large intestine may burst if there is intestinal obstruction. This is correct to suggest the possibility that if there is an old man, who has not passed the urine & stool due to obstruction for 3 days & if he is given purgative then the colon may burst. The doctor has further stated that this external injury did not cause the rupture of the colon. He has also stated that in the present case the rupture of the left colon was not direct result of the external injury though he has stated that it was that it was the indirect result. In the re-cross examination the doctor has stated that intestinal obstructions is itself a disease and there was no intestinal obstruction in this case. The colon was sent to Chemical examiner to find out whether it was having any ailments or any disease but no report was received from the Chemical examiner. So the important result was not before the doctor or the court and whatever statement given by the doctor shows that the left colon

was rupture and which was not the direct result of the external injury i.e. the lathi blow which was given by Dhanna on the stomach. It is on the record that before taking Ram Ratan to Hospital he was treated by two three persons at the village. Amongst them two were laymen and one was Vaidhya. They gave some medicines to him also because he reported them about pain in the stomach. What medicine was given to him by those persons is not known and those persons have not been examined. The Vaidhya should have been examined who could say what was the pain in the stomach. It might be possible that on account of not passing urine or stool for the last 2-3 days he might be getting this pain. It might be possible that on account of blow he might be having this pain though external injury was not the direct result of the rupture of colon. But all these facts are to be proved by the prosecution. Ram Ratan being an old man might be having intestinal trouble. So what I feel that the prosecution could not establish this fact that the rupture of colon was due to injury, which was caused by Dhanna. Therefore, from the statement of the doctor the conclusion arrived is that Ram Ratan died not on account of the blow given by Dhanna but he died on account of rupture of left colon which according to the doctor not the direct result of the external injury. Therefore, case Under Section 304-II, IPC is also not made out. From the admission of the accused-appellant that he inflicted lathi blow on the leg of Dhanna, one blow on the stomach and also a slap on the face, a case Under Section 323 IPC is clearly made out which is held accordingly.

7. The accused at the time of this incident was about 45 years of age. This incident has taken place in the year 1981. The appellant had already been in jail for about 8 months and for an offence Under Section 323 IPC this punishment is sufficient.

8. As a result, the appeal is partly accepted. The accused is not found guilty of the offence Under Section 304-II, IPC and he is acquitted from this charge. He is found guilty of the offence Under Section 323 IPC and is sentenced to the sentence already undergone by him. The appellant is on bail. His bail-bonds are cancelled and he need not surrender.