

Amar Singh Vs. State of Raj.

Amar Singh Vs. State of Raj.

SooperKanoon Citation : sooperkanoon.com/757369

Court : Rajasthan

Decided On : Feb-14-2006

Reported in : RLW2006(3)Raj1776; 2006(4)WLC375

Judge : Shiv Kumar Sharma and; R.S. Chauhan, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 302, 304, 307, 323 and 324

Appeal No. : D.B. Criminal Appeal No. 231 of 2003

Appellant : Amar Singh

Respondent : State of Raj.

Advocate for Def. : R.P. Kuldeep, Public Prosecutor

Advocate for Pet/Ap. : Prithviraj Singh Rajawat, Adv.

Judgement :

R.S. Chauhan, J.

1. The appellant has challenged the order dated 13.1.2003 whereby he has been convicted for offence under Section 302 IPC and has been sentenced to life imprisonment and imposed with a fine of Rs. 2,000/- and to further undergo a sentence of one year of rigorous imprisonment in default thereof.

2. The brief facts of the case are that on 17.3.2000 the injured, Radhey Shyam, had given a Parcha Bayan (Ex.P. 1) to the police wherein he had stated that in the evening around 8.00 P.M. Balchand and Vikaram son of Shri Bherulal and he were going towards the Bazar from his house. As soon as they reached near the house of Salagram Gurjar, Vikaram and Sardar son of Salagram Gurjar and Amar Singh came from behind and assaulted them. While Kripal hit over the head, Amar Singh hit Balchand's head with a 'Lakadi' (piece of wood), Sardar Singh hit Vikaram over the head and on the eyes with a 'Lakadi'. When they shouted, Kripal's wife came out of her house with a 'Lathi' and hit him over the left shoulder with the said 'Lathi'. Because of the hue and cry raised by them, Bhagatram, Gayarshiram, Peeru Darji and Karan Singh rushed to their rescue and saved him. He further claimed that they were assaulted because of an animosity had developed after breaking of some electricity wires. On the basis of the said Parcha Bayan, the police chalked out a former FIR (FIR No. 52/2000) for offences under Section 323 and 307 read with Section 34 of the IPC. However, with the death of Balchand, offence under Section 302 IPC was added. Consequently, the police filed a charge sheet against Amar Singh, Kripal Singh and Sardar Singh for offences under Section 323, 324, 307, 302 read with Section 34 of the IPC.

3. In order to prove its case, the prosecution examined as many as 18 witnesses and produced 30 documents. Although the defence did not produce any witness, it did submit two documents. During the course of the trial, after examining the oral and documentary evidence, the learned Trial Court was pleased to acquit Kripal Singh and Sardar Singh of all the offences. It was also pleased to acquit present appellant for offence under Section 307/34 and 323/34. However, as mentioned above it was pleased to convict him for offence under Section 302 IPC and sentenced him as aforesaid.

4. Mr. Prithviraj Singh Rajawat, learned Counsel for the appellant, has argued that according to the FIR, the appellant was attributed as carrying a 'Lakadi'. However, the complaint, Radhey Shyam, (P.W. 1) has changed his statement and has claimed that the appellant was carrying a 'Dhariya', which is a sharp edged weapon. However, according to the injury report of Balchand (Ex.P. 22), he had received only two injuries and that too by blunt weapon. According to the Post-

Mortem Report (Ex.P. 30), the cause of death is cranial hemorrhage. Thus, there is a grave contradiction between the ocular evidence and the medical one as the deceased has not received any injury on the head by a sharp edged weapon, He has further argued that although the complainant claimed that the appellant was carrying a 'Dhariya', but during the course of investigation only a 'Lathi' has been recovered at the instance of the appellant (Recovery Memo Ex.P. 11). He has also argued that the other injured Vikaram Singh (P.W.2) has not supported the case of the prosecution and has been declared hostile. Thus, the recovery does not corroborate the story of the prosecution. Moreover, the recovery has been denied by the recovery witness Bhanwar Lal (P.W.4). Even the independent witnesses like Jagdish (P.W.I 1), Peeru Lal (P.W.9) have not supported the case of the prosecution and have been declared as hostile witnesses. Thus, he has claimed that the appellant has wrongly been convicted for offence under Section 302 IPC

5. On the other hand, the learned Public Prosecutor, Mr. R.P. Kuldeep has supported the impugned judgment.

6. We have heard both the learned Counsel for the parties and have critically examined the record and scanned the impugned judgment.

7. Although Radhey Shyam (P.W.I) has claimed in his testimony that the appellant was armed with a 'Dhariya', the other witnesses Vikaram Singh (P.W. 2), Bhagatram (P.W. 15) and Bherulal (P.W. 17) all claimed that the appellant was armed with a 'Lathi'. Even during the course of investigation, a 'Lathi' was recovered from the appellant. According to the injury report of Balchand, he has sustained a head injury by blunt weapon. According fo the Post-Mortem Report (Ex.P 30) brain hemorrhage was caused because of the single injury received by the deceased. In fact, the deceased had died only because of cranial hemorrhage caused by the injury. Thus, the medical evidence corroborates the testimony of the witnesses, who have stated that the appellant was carrying a 'Lathi'. Although the prosecution has succeeded in proving that the head injury was caused by the appellant, it is still a case of single injury caused by the appellant. The appellant has not repeated the blow on the head. Therefore, his intention to cause death is not apparent. However, as a vital part was stuck with a Lathi, the appellant

certainly can be attributed with the knowledge that he is likely to cause death by such an action. Hence, the case does not travel beyond the scope of Section 304 Part-II IPC.

8. For the reasons mentioned hereinabove, we partly allow the appeal of the appellant and instead of Section 302 IPC convict him under Section 304 Part-11 and looking to the fact that the appellant has already undergone confinement for a period of more than five years and ten months, we sentence him to the period already undergone by him in confinement. Appellant Amar Singh, who is in jail, shall be set a liberty forthwith, if not required to be detained in any other case.

9. The impugned judgment of the learned Trial Court stands modified as indicated above.

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