

Pabuda Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-13-1990

Reported in : 1990(2)WLN140

Judge : Kanta Bhatnagar and; Y.R. Meena, JJ.

Appeal No. : D.B. Cr. Appeal No. 114 of 1986

Appellant : Pabuda

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. M. K. Garg

Judgement :

1. This appeal is directed against the judgment dated 4-4-1986 passed by the learned Sessions Judge, Merta by which appellants Pabuda was convicted Under Section 302, IPC and sentenced to imprisonment for life and fine of Rs. 2000/-, in default to undergo six months' rigorous imprisonment.

2. Briefly stated, the prosecution case giving rise to the trial and appeal of the present appellant is that there was Gangoj' ceremony on the death of wife of Ladhu Babri at village Akhwas on 1-8-1984. Deceased Madhu, appellant Pabuda and accused Birma Ram, Choutha Ram, Prabhu, Devida, Motida (since acquitted by the trial court) and the prosecution witnesses Bhaawru, Prahlad, Pukhraj and Laduram attended the dinner. After dinner the appellant and a few others left the

village in a tractor driven by appellant Pabuda. Madhu deceased was owing money from Prabhu and on his demanding money quarrel ensued. Accused Moti is said to have inflicted lathi blow on the partial region of Madhu. Madhu fell down, thereafter there was a scuffle and the co-accused asked Pabuda to drive the tractor over Madhu. Pabuda did accordingly. Injured Madhu' was taken to Riyan Hospital in the cart of Ladhu. He was injected there and taken to Ajmer Hospital. He breathed him last the way. Bhanwaru, who was standing near the tractor lodged the report Ex. P. 6 at Police Station, Thanwala on 1-8-84 at 7.30 p.m. Case Under Section 302, 307, 34 IPC was registered. Shaktidan (PW 14) SHO, Police Station, Thanwala went to the site and proceeded with the investigation. He prepared the necessary memos. Dr. Ram Pratap.Soni conducted the post-mortem examination of the dead body of Madhu on 2-8-1984 and noted ten abrasions on his body. On internal examination fractures of the jaw and the ribs were noted.

3. Upon completion of necessary investigation charge sheet against the appellant and five others was filled in the Court of Munsif Magistrate, Nagaur. The case was committed to the Court of Sessions Judge, Merta. The learned Sessions Judge charge-sheeted the appellant and the co-accused. All of them denied charges and claimed to be tried. Prosecution examined fourteen witnesses in all. In their statements Under Section 313, Cr.PC, Birma Ram, Choutha Ram and Devida denied the allegation. Prabhu and Motida stated that they were not at the site at all nor did they attend the function. Pabuda stated that he did not even know driving and has been falsely implicated. The learned Judge did not believe the prosecution case about six persons including the appellant forming an unlawful assembly and giving and giving a beating to Madhu deceased. He also did not believe the story of Prabhu or any other person instigating the appellant and on that instigation the appellant passing the tractor over Madhu. He, however, believed the version on Ladhu that Madhu got injured by the tractor driven by Pabuda and succumbed to the injuries sustained by him. In view of his finding, the learned Judge acquitted five persons However, Pabuda was held responsible for the death of Madhu and the judgment under appeal was passed. Feeling dissatisfied by his conviction and sentence, Pabuda has preferred this appeal.

4. We heard Mr. M. K. Garg, learned Counsel for the appellant and K.L. Jasmatiya, learned Public Prosecutor for the State and perused the record of the case.

5. The learned Counsel strenuously contended that Pabuda had no enmity with Madhu and if prosecution witness Bhanwaru is disbelieved regarding Madhu taking out Prabhu from the vehicle and for that reason Prabhu giving a beating to Madhu then on the same evidence, Prabhu should not have been held guilty for the charge of murder of Madhu. The learned Counsel contended that even if prosecution case about Madhu meeting his death because of the incident with the tractor is believed, still the case would fall Under Section 304A, IPC.

6. The learned Public Prosecutor admitted that the prosecution evidence is not believed for the origin of the quarrel or co-accused instigating Pabuda but if Madhu being on the ground be drove the vehicle, his intention to commit murder can be inferred and he has rightly been convicted Under Section 302 IPC.

7. At the very outset it may be observed that the quarrel is said to be between Madhu and Prabhu. It is alleged that Prabhu has been taken down from the vehicle by Madhu and upon his insisting for payment of money, Prabhu and his four companions, the accused acquitted by the trial court) gave a beating to him. The learned Judge disbelieved the testimony of Bhanwru (PW 5), Pukhraj (PW 3) Ladu (PW 6), Ladhu (PW 7) and Prahlad (PW 8) regarding this part of the prosecution case They have also been disbelieved for the allegation of the assailants forming unlawful assembly with a common object to give a beating to Madhu. There is no evidence about Pabuda participating to Madhu. There is also no evidence that Prabhu was in any way interested in Prabhu or inimical to Madhu. Pabuda was not even related to Prabhu. The prosecution witnesses have been disbelieved by the learned trial Judge for their version that at the instigation of Prabhu or any of his companions Prabhu tried to drive the vehicle over Madhu. The learned Counsel for the appellant has as such argued that even if the vehicle moved, Pabuda being inside could not have noticed that Madhu was lying in such a position that there was possibility of his being crushed by the wheels of the vehicle. The learned Judge has disbelieve the prosecution case in toto regarding

the five co-accused specially Prabhu with whom Madhu had enmity and on demand of money from him quarrel ensued. The prosecution witnesses have also been disbelieved about Pabuda being asked by Prabhu and others to crush Madhu.

8. This being the position, the ingredient of intention to commit murder on the part of Pabuda is missing in the case. We, therefore, do not feel inclined to agree with the learned trial Judge that Pabuda had the intention to commit the murder and intentionally drove the vehicle over the body of Madhu. However, Pabuda's negligence in driving the vehicle is apparent on the face of the record and therefore he is held guilty Under Section 304A IPC.

9. Consequently, the appeal of Pabuda is partly allowed. His conviction and sentence Under Section 302, IPC are set aside. He is, however, convicted Under Section 304A, IPC and sentence to rigorous imprisonment for two years. He is in jail since 3-8-1984 and has thus suffered the sentence awarded to him by this Judgment. He shall be set at liberty forthwith if not required in any other case.