

Phula Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-07-1990

Reported in : 1990(2)WLN208

Judge : Mohini Rapoor and; N.L. Tibrewal, JJ.

Appeal No. : D.B. Cr. Appeal No. 379 of 1984

Appellant : Phula

Respondent : State of Rajasthan

Judgement :

Mohini Kapoor, J.

1. The appellant has been convicted for the offence Under Section 302, IPC and sentenced to imprisonment for life and a fine of Rs. SCO/-. In default of payment of fine, he has been ordered undergo RI for three months. He has also convicted for the offence Under Section 449, IPC and sentenced to six months RI Both sentences have been ordered to run concurrently. Against this conviction and sentence he has preferred this appeal.

2. The facts of the case may be mentioned briefly because there is no much dispute about the same. The deceased in this case is Bhanwar Lal and he has three other brothers. The accused and the deceased and his brothers had some

money transactions and the dispute arose because accused-appellant demanded some money, which was not given to him. At 6.00 a.m. on May 12, 1983, the accused went to the house of the deceased Bhanwar Lal and while he was lying on the cot he inflicted injuries by knife. The brother of the deceased P.W. 5 Macgilal, lodged a report, while Bhanwar Lal was admitted in the Bhinmal Hospital. On the basis of this report a case was registered at Police Station, Bagoda. Even before the registration of the case, the accused himself reported at Police Station, Narsana, along the knife which he had used in causing injuries to Bhanwar Lal. Bhanwar Lal was examined by P.W. 7 Dr Mohan Lal at Bhinmal and he found the following injuries on the person of Bhanwarlal:

(1) 'Incised wound 1' x 1/2' x 1/2' on the middle of neck anteriorly directed transversely;

(2) Incised wound 1' x 1/3' x 1/3' on left forearm middle back;

(3) Abrasion 1' x 1' on the back of left elbow;

(4) Incised wound 1/10' x 1/2 x 1/10' on the left forearm posteriorly with 1/2' swelling around.

3. As there were no X-ray facilities at Bhinmal, Bhanwar Lal was referred to Jalore and P.W. 8 Kapur Choudhary took over the treatment and X-rayed the chest and he came to the conclusion that Trachea had shifted to the right side and this shifting was due to the injury on the neck, caused by the appellant. He has also stated that the result of shifting of Trachea is that there is difficulty in breathing.

4. The same day, i.e. May 12, 1983, Bhanwar Lal was shifted to Mahatma Gandhi Hospital, Jodhpur. He remained admitted as a patient at Jodhpur Hospital upto May 18, 1983. The doctors who treated him at Jodhpur have not been examined as witnesses by the prosecution. As the condition of Bhanwar Lal was not improving, his brother Mangi Lal took him to Bombay at his own request and on 18th May, 1983 he was admitted to HKL Hospital at Bombay. Here an operation was performed. Bhanwar Lal died on 19th May, 1983.

5. Post-mortem of the body of the deceased was conducted by Dr. Bhim Rao Pandali and the report prepared by him is Ex.P/17. In his opinion the cause of death was complication following the stab wound on the neck. He found multiple puss pockets in the anterior, superior, and inferior mediastinum of posterior aspects of pharynx reaching upto forearm-in cross-examination he admitted that the complications were due to Tracheotomy. He also admitted that the infections are possible due to; excessive loss of blood and that there could be a number of reasons for infection. It could be due to mishandling of the wound. The complications could, be due to infection also.

6. As in this case the main question to be decided is as to what offence can be said to have been committed by the appellant, It is necessary to look into the statement of the doctor once again.

7 The four injuries of Bhanwar Lai already referred to above, were examined by FW 7 Dr. Mohan Lal. In his statement he has stated that these injuries were simple but then he advised X-ray of injury No. 1s. He has given the opinion that the injury No. 1 was dangerous to life and according to him this injury was likely to cause death in the ordinary course of nature but it was not necessary that the death must have resulted on account, of this injury of stab wound on the neck, He has also stated that the trachea or the blood vessel was not cut by the injury, the opinion about injury being dangerous to life was also given after Bhanwar Lal had expired.

8. P.W. 8 Dr. Kapur Cloudberry conducted the X-ray and he found that the trachea had shifted to the right side. He has stated that this shifting was due to the injury on the neck. He further stated that this shifting is not possible due to any outside pressure or formation of gas.

9. Bhanwar Lai remained admitted at the hospital at Jodhpur for six days but the doctors who treated him have not been examined, though they have been cited as witnesses, The report made by them have not been exhibited but we have looked into the same and we find that the main difficulty with the patient was that he developed hoarseness of voice and difficulty, in swallowing His left vocal cord was not moving. As there was no improvement, Bhanwar Lal was taken to Bombay. The treating doctors of Bombay have not been examined and the admission ticket

prepared by them contained the report that the patient was breathless and unable to talk and was not giving proper response, tracheotomy was performed on him and when he died on 19-5-1983 the treating doctor gave the cause of death as peripheral circulatory failure and brochettas.

10. On the basis of this material, the learned Counsel for the appellant has contended that the injuries inflicted by the appellant were simple in nature and the offence committed by him cannot travel beyond Section 324, IPC. According to him, the patient Bhanwar Lal died on account of the negligence of the doctors, as there was puss formation and the blame for the same cannot be passed on to the appellant. It is contended that none of the injuries was grievous in nature, hence the appellant cannot be said to have the intention of causing death of the deceased.

11. The learned Counsel for the complainant and the learned Public Prosecutor for the State, have supported the decision of the learned Sessions Judge. According to them, the repeated blows by knife go to show that the appellant intended to cause such injuries which would result in the death of Bhanwarlal or atleast he had the knowledge that the injuries were likely to cause death.

12. We have perused the record and considered the contentions, which have been advanced on behalf of both the sides. A look at the injuries which have been caused by the appellant would go to show that one simple injury by knife blow was inflicted on the middle of the neck, which is a vital part while the others were on the forearm. The size of the injuries is also very small and is that of 1/3" and it cannot be said to be such on the basis of which some intention of causing death on the part of the appellant could be drawn. It is the injury No. 1 which has to be considered in order to find out what offence can be said to have been committed by the appellant. So far as the dimensions of the injury are conceded it may be said that it is a simple injury and the direct consequence of this injury was that the Trachea had shifted and this came out in the X-ray conducted on the injury. This shifting of the trachea becomes dangerous to life because it causes difficulty in breathing. This is, therefore, the direct result of the injury and even if it may be said that the doctors did not treat Bhanwar Lal properly and allowed some

infection, which resulted in puss formation, the injury remains one which would be said to be dangerous to life Under Section 320(8), IPC, Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits, has been included in the category of grievous hurt.

13. The injury caused by the appellant falls in this category and hence the injury becomes grievous.

14. It is to be seen whether the injuries caused by the appellant can be said to be falling within the Section 299, 1FC. For purposes of these offences it is to be seen that a person who has caused the death, did so by doing an act with knife intention of Causing death or with the intention of such bodily as is likely to cause death or with the knowledge' that he is likely by such action, would cause death. Looking to the injuries which were inflicted, as has been seen above, we cannot arrive at an inference that the appellant acted with the intention of causing death. In the present case' it is difficult to decide whether the appellant had the knowledge that he is likely, by his act, to cause death because death has been due to a number of circumstances, other than the injuries which has been inflicted by him. The fact there were multiple pus pockets and the doctor who conducted postmortem has given the opinion that the deceased died due to complications on account of neck injury, does not make the picture very clear The direct result of the injury was the shifting of the trachea and whether the other complications were on account of the doctors who treated the deceased, or for some other person it cannot be said In a positive manner P.W. 10 Dr. Bhim Rao Pundali has stated (that these are so many reasons for the infection; If there is surgical manipulation or mis handling of the wound, the infection may be caused. Considering this position, the appellant cannot be said to be having the knowledge that the act done by him was likely, in the ordinary course of nature, to cause death of Bhanwar Lal.

15. In the result, we accepted this appeal as far as the offence committed by the appellant is concerned. His conviction and sentence Under Section 302, IPC is set aside, He is convicted Under Section 326, IPC. His conviction Under Section 449, IPC is maintained. The appellant has remained in custody for over six years and

this sentence is sufficient for the offence which he has committed. He is released on the sentence already undergone by him. He shall be released forth with, if not wanted in any other case.

16. For the offence Under Section 326, IPC he shall deposit a fine of Rs. 500/- within a period of two months. In case fine is not deposited, he shall undergo RI for three months.

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