

Shri Kishan Vs. the State

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Court : Rajasthan

Decided On : Feb-07-1974

Reported in : 1974WLN(UC)263

Judge : V.P. Tyagi and; J.P. Jain, JJ.

Appeal No. : D.B. Criminal Appeal No. 572 of 1970

Appellant : Shri Kishan

Respondent : The State

Judgement :

J.P. Jain, J.

1. This is an appeal by Shri Kishan who has been convicted Under Section 302 I.P.C. for committing the murder of Ramchanandra and sentenced to imprisonment for life by the judgment dated 22nd June, 1970, of the Addl. Sessions Judge, Baran.

2. In the after-noon of 11th August, 1969 Ramchandra was lying on a cot in the Chhapra of Haziri situated in village Khurai. District Kota, Hizari was preparing a rope in the Chhapra of the Nohra of Ramchandra which was just opposite to that of Hazari in the village. Mangilal s/o Ramchndra deceased was also in the Nohra near about the place where Hizari was working. Mishri chowkidar of the village

(P.W. 1) happened to pass that way. Ram Chandra called him and told him to bring Ram Singh and the accused Shri Kishan as he had some court notices to be served on them. After a while Mishri brought Ramsingh and Shri Kishan to the chhapra of Hazari. Shri Kishan and Ramsingh had lathies in their hands. Shri Kishan did not go to Ramchandra & he went to the house of Ratanlal nearby the chhapra. However, Ramsingh went and sat on the cot with Ramchandra and talked to him. After sometime there ensued an altercation and the two persons Ramchandra and Ramsingh grappled with each other. Ramchandra perhaps had the upper hand and as such Ramsingh shouted for help. It brought Shri Kishan to the place, who, soon after reaching, inflicted a lathi blow on Ramchandra while he was held by Ramsingh by waist. This blow struck Ramchandra on head. Shri Kishan gave further blows on the jaw, the legs & the hands of Ramchandra. Mangi Lal, who witnessed the incident cried and it attracted Banshi (P.W. 3) to the scene of occurrence. Kalyan and Balmukand came to the place of occurrence and they rescued Ramchandra and took away the two accused Ramsingh & Shri Kishan from that place, Chhoga and Mishri Lal (P.W. 8) brother of the deceased also came and they found Ramchandra lying injured and in an unconscious state. Maloom Singh (P.W. 6) mukhia of the village soon after reached the place of occurrence and found Ramchandra unconscious. He also noticed the injuries on his head, legs and the jaw, Misri Lal and the Chhoga covered Ramchandra by a quilt and removed him to his house. The same night Ramchandra succumbed to his injuries. Next morning, Maloomsingh (P.W. 6) called Mishri Chowkidar (P.W. 1) & asked him to lodge a report in the police. Mishri Chowkidar (P.W. 1) accompanied by Daula (P.W. 1) lodged the report at the police station Bapcha 29 miles from the village, at 12.00 on 12-8-1969. The report has been marked as Ex. P/1. Shri Kishan Singh (P.W. 10) S.H.O. of the police Station, Bapcha took the investigation in hand. He called Dr. T.R. Sikadar (P.W. 7) medical officer Chhabra to conduct the post mortem examination in the village itself. As a result of his examination, Dr. Sikadar found the following five external injuries on the person of the deceased:

1. Fracture of the right elbow joint.
2. Fracture of the left arm on the middle position.

3. Fracture of the left upper arm.

4. Fracture of the left parietal bone with lacerated wound on the scalp measuring 3' x 1' x bone deep.

5. Fracture of the left little toe.

3. On the opening of the dead body the Doctor also found the following internal injury:

1. Lacerated wound over the left side of the skull measuring 3' x 1' bone deep with comminuted type of fracture on the left parietal bone measuring 3 1/2' x 1/8'.

4. He noted that the membrane at the place of fracture was torn. The brain matter was congested with minute capillary haemorrhage. Blood and froth was coming from the mouth. Tongue was perforated.

5. In the opinion of the doctor, all these injuries were ante-mortem. External injury No. 4 was reported to be fatal and it was sufficient in the ordinary course of nature to cause death. The doctor proved the postmortem report Ex. P/9. As a result of the investigation accused Shri Kishan and Ramsingh were charge-sheeted in the court of Munsiff Magistrate, Baran. The learned Magistrate did the preliminary inquiry and committed both of them to stand trial, Shri Kishan Under Section 302 and Ramsingh Under Section 302 read with 109 I.P.C. The Additional Sessions Judge, Baran tried the case. He adopted the same charges against the accused persons. Both the accused pleaded not guilty and claimed trial. On behalf of the prosecution 11 witnesses were examined, out of them P.W. 2 Hazari, P.W. 3 Banshi, P.W. 4 Mangi Lal have been examined as eye witnesses. P.W. 6 Maloom Singh and P.W. 8 Mishri Lal were examined as supporting witnesses. On behalf of the defence, Daula (D.W. 1), Ishwar Lal (D.W. 2) and Shri Lal Sahib (D.W. 3) have been examined. Though the accused in his statement Under Section 342 Cr.P.C. did not take up any specific plea in defence but by the defence witnesses he tried to establish that Ramchandra was addicted to liquor. He was intoxicated on the day of occurrence and found lying on the stones in front of the chhapra of Hazari. The dead body of Ramchandra was carried to the police station on a camel's back,

but, on way Ramchandra's body fell down and it sustained injuries on the head and other parts of the body. The learned trial Judge did not accept the defence story as set up by the defence witnesses. He placed reliance on the eye witness account stated by Hazari, Banshi & Mangilal and found Shri Kishan responsible for causing injuries to Ram Chandra. He, however, did not believe the case against Ram Singh and gave him the benefit of doubt. Accordingly, he convicted Shri Kishan Under Section 302 I.P.C. and acquitted Ram Singh. It is this conviction and sentence of Shri Kishan which has been challenged in this appeal.

6. learned Counsel appearing on behalf of the accused appellant has not been able to point out any cogent reason as to why the statements of Hazari, Banshi and Mangi Lal be not believed. The only criticism that has been levelled against the statement of Hazari (P.W. 2) is that he, in his statement, stated that Shri Kishan gave four lathi blows on the head of Ramchandra. The submission of Mr. Porlad is that according to the medical evidence there was only one injury on the head of the deceased. His argument is based on the statement as typed out in the paper book. To us, there appeared to be some mistake and we verified the fact from the Hindi version of the statement recorded by the trial Judge. We find from the Hindi version that according to the witness Shri Kishan gave one lathi blow on the head of Ramchandra. The witness further deposed that Shri Kishan gave four lathi blows and while explaining further stated that one on the head, one on the leg, and others on the shoulders. The witness meant that in all four lathi blows were given by Shri Kishan. The contention of the learned Counsel has, therefore, no substance. As regards the witness P.W. 4 Mangi Lal, it has been pointed out by the learned Counsel that according to the witness the first blow was given on the right side of the head whereas according to the medical evidence the injury was on the left side of the head fracturing left parietal bone. The witness was 11 years old on the day the incident took place. Sometimes it becomes difficult for a man to distinguish left from the right and right from the opposite side. Having regard to the age of the boy, we are not prepared to attach much importance to this contradiction. Mangi Lal stated that Shri Kishan came with lathi and he gave a lathi blow on the head of his father and repeated other blows on the upper side of the right ear, jaw, hands and feet. From the scrutiny of the medical evidence, the injuries found on the body of the deceased are on his head, his jaw, hands and the

feet. We cannot discard the statement of this witness on account of the discrepancy pointed out above. P.W. 3 Banshi's statement has been criticised only on the ground that he deposed only about one blow on the shoulder. According to this witness he was at his house. He came to the place of occurrence after Mangi Lal cried out. He saw accused Shri Kishan inflicting a blow on the shoulder of the deceased. From the statement of this witness it is not borne out that he saw the entire incident. He appears to have come at the scene of occurrence at the last stage of the incident and since he did not see the blows given by the accused earlier than he reached the place, he only spoke about the one blow which he himself witnessed. We find no infirmity in this statement. That apart, Maloom Singh (P.W. 6) and Mishri Lal (P.W. 8) reached the place of occurrence soon after the accused had gone away from that place. These witnesses stated that they saw Ramchandra lying injured and in an unconscious state. Mangi Lal (P.W. 4) told them about the incident. Their testimony therefore fully lends assurance to the statements made by the eye witnesses. Medical evidence of Dr. Sikadar (P.W. 7) again affords corroboration to the eye witness account stated by P.W. 3 Banshi, and P.W. 4 Mangi Lal.

7. After having scrutinised the evidence we have no cogent reason to disagree with the view taken by the learned trial Judge of the prosecution evidence and we are inclined to hold that Shri Kishan was rightly found responsible for causing the injuries on the body of Ram Chandra.

8. Regarding the defence case, we have already noticed above that the accused did not take any specific plea in his statement Under Section 342 Cr.P.C. But that would not matter if the evidence makes out a case which is sought to have been taken up by the defence evidence. Daula (D.W. 1) admits to have gone with Mishri Chowkidar (P.W. 1) to lodge the report. He, however, stated that the Sub-Inspector of Police asked them to bring the dead body of Ramchandra to the police station for postmortem. According to him the dead body of Ramchandra was being brought on the camel's back but it fell down on the way and it sustained certain injuries. The case as set up by this witness is completely negated by the medical evidence. Dr. Sikadar stated that the injuries found on the body of the deceased Ramchandra were ante-mortem. He also deposed that the injuries as

were found could not have been caused on account of a fall even from a height. Ishwar Lal (D.W. 2) and Lal Sahib (D.W. 3) attempted to prove that Ramchandra was used to take liquor. He was drunk on the day of the occurrence and they saw him lying on the stones in front of Hazari's chhapra, and they removed him to the chhapra of Hazari. Ishwar Lal (D.W. 2) admitted that Banshi and Hazari were there. It has also been deposed that a doctor of Keriahat had come there and a Vaidya gave Ramchandra some medicine and even an injection. Neither the doctor nor the Vaidya has been produced by the defence to prove this story. The witness did not even depose the name of the Vaidya, or the doctor. In our opinion, the learned trial Judge was right in the appraisal of the defence evidence and we agree with his conclusion that the defence case as set up, was wholly false and without any basis.

9. The next question that arises for our consideration is as to whether the offence committed by Shri Kishan accused was a culpable homicide amounting to murder or culpable homicide not amounting to murder. The learned trial Judge has taken pains and dealt with this matter elaborately. He held that it was a case of murder. The learned Judge observed as follows in his judgment:

In the present case on the totality of evidence there could be no other view about the intent of the accused Shri Kishan when he repeated lathi blows on the vital parts of the body. That he did intend to cause injuries with intention of committing murder.

10. We do not agree with him on this point. The first blow was inflicted on the head of the deceased. This was definitely a vital part of the body and according to the medical evidence this was the main injury responsible to cause death. The other blows inflicted by the accused were on the jaw, the hands, and the legs. This is also borne out from the medical evidence. We are not unable to accept the view taken by the learned trial Judge that the jaw, the hands and the legs are the vital parts of the body. He is obviously wrong on this point. Shri Kishan did not, in the first instance, go to Ramchandra. According to the prosecution evidence, he had gone to the house of one Ratanlal, nearby the chhapra of Hazari. He went to the place of occurrence when he was called out by Ramsingh for help in the

circumstances, we are unable to hold that Shri Kishan had gone there with an intention to commit murder. In our considered opinion the act of the accused does not fall under any of the clauses of Section 300 I.P.C. The nearest clause thirdly of Section 300 I.P.C. does not, as well, apply. This clause requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This is in two parts the first part is subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that, looking at the injury to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. For the applicability of this clause the intention must be to cause a precise injury likely to cause death. Looking to the nature of the injuries and the subsequent infliction of the blows by Shri Krishan on the hands & the feet, which are not the vital parts of the body, we do not feel persuaded to find that it is culpable homicide amounting to murder within the meaning of this clause. We are, however, of the opinion that the act of the accused was to cause such bodily injuries as was likely to cause death and this falls squarely Under Section 304 part I. On the material available on record we are unable to sustain the conviction of the appellant Under Section 302 I.P.C. and are inclined to alter the conviction of the accused appellant from Section 302 to 304 part I I.P.C.

11. In the result, the appeal is partly allowed. The conviction of the accused appellant Shri Kishan is altered from Section 302 to Section 304 part I, I.P.C. and accordingly we reduce the sentence from life imprisonment to seven years rigorous imprisonment only.

12. This judgment disposes of the D.B. Criminal (Jail) Appeal No. 442/1971 also.

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