

Jeeva and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-15-1984

Reported in : 1984WLN(UC)33

Judge : D.L. Mehta and; S.S. Byas, JJ.

Appeal No. : D.B. Criminal Jail Appeal Nos. 502 to 504/79

Appellant : Jeeva and ors.

Respondent : State of Rajasthan

Judgement :

S.S. Byas, J.

1. Since these three jail, appeals arise out of one and the same judgment of the learned Sessions Judge, Doongarpur dated May 21, 1979, they were heard together and are disposed for by a common judgment'. By the said judgment, the learned Sessions Judge convicted the appellants under Section 302/34, I.P.C. and sentenced each of them to imprisonment for life with a fine of Rs. 100/-, in default of the payment of fine to further under go seven days simple imprisonment.

2. At about 2.30 P.M. on March 19,1978, PW. 2 Balji Meena of village Odapal district Doongarpur appeared at police Station, Bichiwara and verbally lodged report Ex. P 2. It was stated therein that in the preceding night he was participating

in a Bhajan Mandli at the house of one Kuber Meena in his village Odapal. The accused Deoji came there and told the persons sitting there that a thief had entered his house. Thereupon he and the other persons went to the house of accused Deoji. There they found Hanjiya Meena of their village lying on the floor of a room His hands and feet were tied and a quilt was spreading over him. He and other persons removed the quilt and noticed multiple injuries on the body of Hanjiya. On being asked, Hanjiya (the deceased-victim) told them that he and accused Deoji were return together from Doongarpur. On the way he was jointly assaulted & belaboured by the appellants The appellants thereafter brought him to the house of accused Deoji. There also they belaboured him with shoes, stones and fists. The appellants asked them to take away Hanjiya from there. At first they declined but when they were threatened with dire consequences, they agreed to take Hanjiya. Hanjiya was placed on a cot and was taken to the house of PW. 13 leeva who happens to be a near relative of the victim. From there the party went to the home Kuber Meena to participate in the Bhajan Mandli. Early in the morning they were informed by PW. 12 Jeeva that Hanjiya was no more alive. On being so informed, he and other persons of the village proceeded to the Police Station with the victim's dead body on a cot. The police registered a case under Section 302, LP. on the basis of Ex.P. 2 and took up the investigation. Since the Station House Officer was out, the inquest report of the victim's dead body was prepared by Head Police Constable Himmat Singh (PW. 16). Later on the investigation was taken by the Station House Officer Fateh Singh (PW. 15), The autopsy of the victim's deadbody was conducted at about 5.20. P.M. on March 26, 1979 by Or. S.K. Vig (PW. 17), the then Medical Officer Incharge, Primary Health Centre, Bichiwara. The doctor noticed the following ante mortem injuries:

- (1) Lacerated wound 1/2' x 1/2' x 1/3' on medial aspect of right toe
- (2) Contusion 3' x 3' on the left side of face
- (3) Contusion 3' x 3 on anterior aspect of left Knee.
- (4) Contusion 1' x 1' below it (sic)
- (5) Contusion 1' x 1' below left eye

- (6) Abrasion 3' x 2' on (sic) side of right shoulder joint
- (7) Abrasion 4' x 4' on left side of the neck
- (8) Contusion 6' x 2' on anterior aspect, of the abdomen near umbilicus
- (9) Contusion 3' x 3' on right side of the chest at twelfth rib
- (10) Contusion 2' x 2' on the left side of chest eleventh rib
- (11) Contusion 4' x 4' on posterior side of the back on the right r scapula
- (12) Contusion 3' x 3' on the posterior side of left scapula
- (13) Haematoma 6' x 4' x 1' on inner side of the left side of hip > back at third lumbar vertbrae
- (14) Haematoma 5' x 4' x 3/4' at inner side of the left chest wall just, above the left lung
- (15) Contusion 3' x 7' at middle of back
- (16) Haematoma 5' x 3' x 3/4' just below the scapula posterior side of head

Almost whole of the anterior abdominal wall and chest wall and back are covered by multiple injuries caused by blunt object. Pupil both dialated. Scalp-Contusion 6' x 4' on upper of the scalp. There are large number of B injuries on the wall of the chest Contusion on left side of pleura, left lung H collapsed. Large haematoma prefect on left lung.

3. In the opinion of Dr. Vig, the cause of the death of the victim was shock and syncope caused by multiple injuries, haematooma and collapse of left lung. The post mortem examination report prepared by him is Ex. P.21. The site was inspected. The accused persons were arrested. The clothes of the victim were seized and sealed. On the information furnished by the accused, sticks were recovered from various places. On the completion of investigation, the police submitted a challan against the three appellants in the Court of the Additional Munsifand Judicial Magistrate, Doongarpur, who in his turn committed the case for

trial to the Court of Sessions. The learned Sessions Judge framed a charge under Section 302/34, IPC against HL all of them, to which they pleaded not guilty and faced the trial-During trial, the prosecution examined 17 witnesses and filed some documents. In defence, the accused adduced no evidence. On the conclusion of trial, the learned Sessions Judge found the charge duly brought home to the accused. They were consequently convicted and sentenced as mentioned above. Aggrieved against their conviction and sentence, the accused have come up in appeals.

4. We have heard the learned Amicus Curiae Shri N.K. Soni and the learned Public Prosecutor Shri L.S. Udawat. We have also gone through the case file carefully.

5. It can be said without any hesitation that the death of victim Hanjiya was not natural but homicidal. The opinion of Dr. Vig (PW 17) B' about the cause of death of the victim is not open to any challenge.

6. Before proceeding further, we may point out that the prosecution adduced both direct and circumstantial evidence. The direct evidence consists of PW. 6 Nathu and PW. 9 Sabji alias Suraj Mal. The circumstantial evidence consists of the dying declaration made by the deceased-victim before PW. 2 Balji and many other persons.

7. In challenging the conviction of the appellants the first contention raised by the learned Amicus Curiae is that the Court below wrongly relied upon the direct testimony of PW. 6 Nathu and PW. 9 Sabji. It was argued that the names of both these witnesses have not been mentioned in the First Information Report. The occurrence is said to have taken place in the mid night. As such there was no occasion for these two witnesses to reach the spot and see the incident. In reply, it was argued that the house of PW. 6 Nathu is situated nearby the place of occurrence. PW. 9 Sabji happens to be the nephew of PW. 6 Nathu. Sabji in the night was sleeping at the house of Nathu as Nathu was alone. We have taken the respective submissions into consideration.

8. PW. 6 Nathu is an Adiwasi. His house is situated not far away from the house of the appellants. He deposed that in the mid night of the day of incident he heard the cries of Hanjiya raised from the back side of the court yard of accused Deoji. He and Sabji went there. They saw that the appellants were beating Hanjiya with sticks, shoes and stones, Hanjiya was raising cries and entreating the appellants not to beat him. The same facts were deposed by PW. 9 Sabji He also stated that he saw the appellants beating Hanjiya with shoes, stones and sticks. It was a full moon night and the visibility was clear. Both these witnesses were cross-examined at length but nothing could be extracted from them so as to make their testimony unworthy of belief or credence Both these witnesses do not belong to the caste of the accused-appellants or the deceased-victim. These witnesses are Adiwasis whereas the deceased-victim as well as the appellants are Meenas. In cross examination no suggestion was put to these witnesses that they bear any enmity with the appellants or were otherwise interested in the victim. In our opinion the testimony of these two witnesses does not stand shattered or shaken in any manner. It can be safely said on the basis of what they testified, that appellants gave a beating to Hanjiya with sticks, stones and shoes in the back court-yard of accused Deoji.

9. The dying declaration is oral. The witnesses speaking about it are PW. 2 Balji, PW. 4 Kaliya & PW. 5 Poonja. These witnesses stated that they and many other persons had assembled at the house of Kuber Meena to participate in Bhajan iandli. The accused Deoji came there and told them that a thief had entered his house and he required their help, There upon these witnesses and many other persons went to the house of accused Deoji. There they found the victim Hanjiya lying down on the floor with quilt on his body. His hands and feet were tied. Hanjiya told them that the appellants had brought him there and beat him. These three witnesses were cross-examined without any success. The learned Sessions Judge held that the deceased-victim Hanjiya made an oral dying declaration before these witnesses and others that he was assaulted and belaboured by the appellants. On a careful scrutiny of what these witnesses deposed, we are unable to take a view different from that taken by the learned Sessions Judge. There is convincing evidence of these three witnesses that the accused Deoji came to them at the house of Kuber Meena and (sic) took them to his house. There they found

Hanjiya lying down with mult pre injuries on his person.

10. Hanjiya told them that he was assaulted and be laboured by the Ratna, Jeeva & Deoji. The value of dying declaration depend, on the veracity of the witnesses who come forward to speak about it It was not suggested that these three witnesses have any strained relations with the appellants so as to falsely depose against them Thus, we find no force in the contention of the learned amicus curiae that the dying declaration was falsely introduced. It may be noticed that in First Information Report it has been clearly mentioned that Hanjiya made a dying declaration before these witnesses and others. As such we find no force is the submission of the learned Amicus Curiae.

11. Lastly, it was argued that the offence made out is not that under Section 302, IPC It was argued that offence made out is that of causing hurt punishable under Section 323,IPC. It was contended that there was no previous enmity between the deceased-victim and the appellants. Since the victim entered the house of accused Deoji to commit theft, the appellants had a right to forcibly detain him. In that process if injuries were inflicted by shoes and sticks or stones, the offence would not be covered by any Clauses of Section 300, IPC. It was also argued that according to Dr. Vig (PW. 17) none of the injuries was sufficient in the ordinary course of nature to cause death. In reply, it was argued by the learned Public Prosecutor that the deceased-victim sustained multiple injuries. According to Dr. Vig (PW 17) these injuries were collectively sufficient in the ordinary course of nature to cause the death. As such the appellants were rightly convicted under Section 302, IPC, because the offence made out is that of murder. We have taken the respective submissions into consideration. The prosecution has not alleged any motive for the murder of the victim Hanjiya. It has also not been suggested that the appellants had any enmity with him. NO strained relations between the victim and the appellants have been averred. In these circumstances, the intention to cause murder cannot be presumed. The injuries were caused by shoes, ordinary sticks and stones. None of the injuries was on any vital art of victim's body except that one found internally on the left lung, Again, none of the injuries was found sufficient in the ordinary course of nature to cause the death. It was the cumulative effect of the injuries which ultimately resulted in the death of the victim.

The cause of death, as stated by Dr. Vig, shock and syncope caused by multiple injuries. In the facts and circumstances of the case we are unable to agree with the learned Sessions Judge that the appellants intended to cause the death of the victim. Though the injuries were multiple, none was serious. No fractures of the bone were detected. We are, therefore, of the opinion that none of the Clauses of Section 300, IPC, covers the case. However, in as much as death has been caused the matters must still come at least within the meaning of culpable homicide not amounting to murder. The appellants did the act with the knowledge that by their act they were likely to cause the death of the victim. The case is, thus, covered by 3rd, Part of Section 299 and is, therefore, punishable under Part II of Section 304, IPC as culpable homicide not amounting to murder. Reference in this connection may be made to *Laxman Kala Nikalji v. The State of Maharashtra* : 1968 CriLJ1647 which furnishes a very near analogy to the present case in hand. The conviction of the appellants under Section 302/34, IPC cannot be, therefore, maintained. They should be convicted under Section 304, Part II, IPC.

12. In the result, the appeals of accused (1) Jeeva, (2) Ratna and (3) Deoj are partly allowed. Their conviction and sentence under Section 302/34 IPC are set-aside. Instead they are convicted under Section 304 Part II, IPC and each of them is sentenced to EIGHT years rigorous imprisonment. The appeals shall stand accordingly disposed of.