

Sita Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-25-1997

Reported in : 1998CriLJ287; 1997(3)WLC750

Judge : G.L. Gupta and; S.C. Mital, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 80, 302, 304A and 307; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Criminal Appeal No. 281/1984

Appellant : Sita Ram

Respondent : State of Rajasthan

Advocate for Def. : Ashok Upadhyaya, Public Prosecutor

Advocate for Pet/Ap. : Doongar Singh, Adv.

Judgement :

G.L. Gupta, J.

1. Sita Ram has preferred this appeal against the judgment and order passed by the learned Additional Sessions Judge, Nagaur Camp Deedwana on 31-7-1984, whereby he was convicted under Section 302, I.P.C. and sentenced to imprisonment for life and pay a fine of Rupees 100/-.

2. The case relates to an incident which took place on 27th September, 1983 in Village Kuchera in which Bhika Ram, a labourer, sustained injuries. He succumbed to the injuries on 17-10-83, at Bikaner hospital. The case was registered on the basis of the statement of injured Bhika Ram dated 27-9-83 recorded by Ram Chandra, S. I. in which he stated that Sita Ram had inflicted injuries to him by spade. On this statement, a case under Section 307 I.P.C. was registered. After the death of Bhika Ram the case was converted into Section 302 I.P.C. The injuries of Bhika Ram were seen by Dr. Shiv Narayan (P. W. 6) on 27-9-83 and he prepared the injury report Ex. P2. The autopsy was held by Dr. P. N. Mathur (P. W. 13) on 18-10-83, and he prepared the post mortem report Ex. P17. During investigation, the police inspected the site, interrogated the witnesses and arrested the accused. On the information of the accused a spade was recovered, which was sent for chemical examination. The report received from Forensic Science Laboratory indicated that the spade was sustained with human blood. The group of blood found on the spade tallied with the blood group of the deceased. After completion of the investigation, the police challaned the accused.

3. A charge under Section 302 I.P.C. was framed against the accused, who pleaded not guilty. The prosecution examined 14 witnesses. Out of them P. W. 1 Jeetu Ram, P. W. 2 Poona Ram, P. W. 3 Dhula Ram, P. W. 4 Rameshwar, P. W. 5 Ram Prasad, P. W. 7 Hari Ram P. W. 8 Hans Raj, are eye witnesses. P. W..6 Dr. Shiv Narayan and P. W. 13 Dr. P. N. Mathur, as already stated, are the Medical Officers who had seen the injury of Bhika and had held autopsy. P. W. 11 Ramu was associated as 'motbir' during investigation. P. W. 9 Ramsukh had taken sealed packets to the Forensic Science Laboratory. P. W. 14 Bhanwar Singh and P. W. 10 Ram Chandra are the police officials, who had taken part in the investigation. The accused in his statement under Section 313 Cr.P.C. denied the accusation. He, however, admitted that the deceased had sustained one injury at his hands. He came out with the case that when he was digging, earth all of a sudden deceased Bhika Ram came in between the spade and the ground and he suffered one injury. He did not examine any witness in defence.

4. The learned Sessions Judge held that Bhika Ram had met homicidal death. He further held that the accused had caused injuries to Bhika Ram. According to him,

the accused had caused the injuries intentionally and, therefore, he convicted the appellant under Section 302 I.P.C. as stated above.

5. We have heard the arguments of Mr. Doongar Singh, learned counsel for the appellant and the learned Public Prosecutor appearing for the State and have gone through the record of the case.

6. The contention of Mr. Singh was that the dying declaration could not be read against the accused as the Medical Officer does not testify that the deceased was in fit state of mind. He pointed out that the witnesses have made improvement during trial that the accused had used abusive language against the deceased. He also brought to our notice that there is variance in the injuries found on 27-9-83 and 18-10-83. According to Mr. Singh the deceased had suffered only one injury accidentally and, therefore, the accused could not be convicted as the case falls under Section 80 of the Indian Penal Code.

7. Mr. Upadhyaya learned Public Prosecutor, on the other hand, tried to support the judgment of the trial Court.

8. We have considered the entire evidence on record. The dying declaration Ex. P7, does not bear a certificate that the deceased was in fit state of mind and, therefore, there is merit in the contention of Mr. Singh that this dying declaration could not be made basis of conviction. We have gone through the judgment of the trial Court. The trial Court has not used this evidence against the accused and, therefore, there nothing is required to be said on the point.

9. There is clear evidence in the statements of P. W. 1 Jeetu Ram, P. W. 2 Poona Ram, P. W. 3 Dhula Ram, P. W. 4 Rameshwar, P. W. 5 Ram Prasad, P. W. 7 Hari Ram and P. W. 8 Hans Raj that the deceased had sustained one injury on his head at the hands of the accused which was caused by spade. There is absolutely no reason to disbelieve the witnesses in this regard. It is significant to point out that even the accused has admitted in his statement under Section 313 Cr.P.C. that the deceased had suffered one spade injury at his hands.

10. Now, the only question for consideration is that what offence was committed by the accused when one injury was caused to Bhika Ram.

11. Some of the witnesses have deposed that the accused had first abused the deceased and thereafter he landed a blow to the head of the deceased. However, these witnesses had not stated this important fact in their statements recorded under Section 161 Cr.P.C. Obviously the witnesses have made improvements in this regard. The fact remains that the prosecution witnesses have not been able to state as to in what circumstances the accused had inflicted a blow to the deceased.

12. As already stated, the case of the accused is that he was digging the earth, and all of a sudden the deceased came in between the spade and the earth and he suffered the injury. This explanation appears to be correct. P. W. 7 Hari Ram has clearly deposed that immediately after Bhika Ram sustained injury, the labourers were telling that Bhika Ram had suffered injury by the spade of the accused. In his own words [^]^yksxks us dgk Fkk fd lhrkjke ds QkoM+ dh Hkhdkjke ds yx xbZ Fkh**

He has further stated that there was neither any exchange of hot words between the deceased and the accused nor abusive language was used by the accused. The statement of Hari Ram clearly indicates that there was no cause for the accused to have inflicted a blow to the deceased. The defence version that when the accused was digging the earth, the deceased went there and as the accused did not see him he worked the spade which hit Bhika Ram.

13. In our opinion, on the facts proved, it can be said with certainty that the act of the accused neither comes within the net of Section 302 or even 304 I.P.C. It is relevant to state that according to Dr. Shiv Narayan, who had examined the injuries of the Bhikaram immediately after the occurrence, the injuries suffered by him were simple in nature. He has of course stated on the basis of the report Ex. P3 that there were fractures of left parietal and left temporal bones, but this report Ex. P3 has not been proved by the prosecution by examining Dr. Choudhary who had X-rayed the skull. Dr. Shiv Narayan has not deposed that the report Ex. P. 3 was written and signed by Dr. Choudhary and he was conversant with his hand

writing. The fact remains that according to the medical evidence produced in simple in nature. The injury report Ex. P2 indicates that Bhikaram had suffered three injuries - two incised wounds and one abrasion, whereas the eye witnesses are unanimous that only one blow was caused to the deceased. It seems that the deceased had suffered abrasion at any other place and the Medical Officer did not carefully see the head injury and he mentioned two separate injuries, whereas the injury was only one. It is relevant to state that the post mortem report clearly indicates that there was only one healed wound on the head.

14. It is true that when the autopsy was held, fractures of parietal, temporal and frontal occipital bones were noticed, but it is in evidence that Bhikaram was taken from one place to another place on tractor. It is difficult to hold that the deceased had suffered the fracture of skull at the spot. It is relevant to state that Dr. Shiv Narayan has categorically stated that the injuries found on the person of Bhika Ram were not likely to cause death and that the injuries were not such which could cause death, and there was nothing to worry at that time. In these circumstances only it can be found that the deceased, had suffered only simple injuries at the hands of the accused.

15. This argument of Mr. Singh cannot be accepted that the act of the accused comes under the provisions of Section 80 of the Indian Penal Code. Section 80 reads as under :-

80. Accident in doing a lawful act:-Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

A reading of the section makes it clear that when an act is done with proper care and caution and the victim suffers injuries by accident or misfortune the offence is not committed by the accused. The illustration below Section 80 indicates that the injury is caused accidentally when-so-ever it is neither wilfully nor negligently caused.

16. In the instant case, the facts are that the accused was digging earth by spade. It was in his knowledge that the labourers would be there to collect the earth dug

by him. It is obvious that the accused did not take proper care and caution when he worked the spade on the earth. The facts of the case clearly reveal that the accused was acting negligently. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused to have adopted. It was the duty of the accused to be vigilant that no body came in between the spade and the earth when he was digging the earth. It was all more necessary when the accused knew that the labourers were coming nearer him to collect the earth dug by him. In our opinion, the act of the accused constitutes criminal negligence, and the case comes under Section 304A I.P.C. Though a separate charge under Section 304A I.P.C. has not been framed against the appellant, but there is no legal impediment in convicting him under Section, 304A I.P.C. See *Sadhu Singh v. State of Pepsu* AIR 1954 SC 271 : 1954 Cri LJ 727, *State of Gujrat v. Haidar Ali* 1976 SCC (Cri) 211 : 1976 Cri LJ 732, and *Chhinder Singh v. State of Rajasthan* 1986 R.L.W. 161.

17. Consequently we hold that the conviction of the appellant under Section 302 I.P.C. is not sustainable. His conviction is altered to Section 304A I.P.C.

18. Coming to the point of sentence, it may be stated that the appellant has already remained in custody for about 31/2 months. Taking all the facts and circumstances of the case into consideration, we think that the period already undergone by the accused is sufficient for the offence under Section 304A I.P.C.

19. Consequently, we accept the appeal in part, vacate the conviction of the appellant under Section 302 I.P.C. and instead convict him under Section 304A I.P.C. and sentence him to the period already undergone by him. The appellant is on bail. He shall not surrender to the bail bonds, which stand cancelled.