

**Roopa Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Dec-13-1983

**Reported in :** 1983WLN(UC)413

**Judge :** S.S. Vyas, J.

**Appeal No. :** S.B. Criminal Appeal No. 357/83

**Appellant :** Roopa

**Respondent :** The State of Rajasthan

**Judgement :**

**S.S. Vyas, J.**

1. This is appeal by accused Roopa against the judgment of the learned Sessions Judge, Pratapgarh dated August 27, 1983 convicting the appellant Under Sections 447, 32/34 and 334, Part I, IPC and sentencing him to one month's rigorous imprisonment with a fine of Rs. 50/-, under the first two counts and seven years rigorous imprisonment with a fine of Rs. 100/- under the third count.

2. Briefly stated, the prosecution case is that deceased-victim Kalu was the real brother of PW 4 Chatra. Chatra owed a sum of Rs. 40 to the accused-appellant. In the afternoon of 7-11-81, Chatra and Kalu were ploughing their field situate an Manja Borkheri P.S. Dholapani district Chittorgarh. The accused-appellant

accompanied with his father, brother, mother, wife and brother's wife came there. He had an axe in his hand and the others had Lathies and stones. Accused Roopa asked Chatra to make the payment of the money he owed. Chatra told that he would soon make the payment. This did not satisfy the accused-appellant and his companions. Accused Roopa struck a blow with his axe on the head of Kalu. Kalu fell down and there was profuse bleeding from his wound. The father and brother of the accused-appellant struck blows with Lathies to Chatra. Chatra raised cries. The accused-appellant and his companions thereupon went away. Chatra went to Police Station Dholapani and lodged report Ex. P 1 of the occurrence at about 10.30 AM on 8-11-81. The police registered a case under Sections 147, 447 & 336, IPC. The investigation ensued, Kalu was taken first to Government Dispensary, Chhoti Sadri and from there to Government Hospital, Chittorgarh where his injuries were examined by the Medical Jurist Dr. R.D. Bhatt (PW 7). The doctor found the following injuries:

(1) Incised wound 4' x 0.3' x 1/2' on the left forehead obliquely.

(2) Swelling and bruise 2' x 1' on the right lower lid.

He was admitted for treatment but he did not survive and passed-away at about 8.30 A.M. on 9-11-81. The postmortem examination of the victim's dead body was conducted by the Medical Jurist on 10-11-81. He found the following injuries:

External:

A stitched incise wound having six stitches Anti mortem on left side of forehead 4' x 1/2' x 1/2' shape obliquely-lower most end of wound is 1' above left eye-brow in middle. Right eye is swollen and blue lids.

Enternal:

Scalp is incised on left side of forehead exposing brain matter. There is a haematoma present on left side in frontal region obliquely fracturing frontal bone extending from medial end of right orbit to left temporal region.

In the opinion of doctor Bhatt, the cause of the victim's death was come due to injury to brain tissues. The postmortem examination report prepared by him is Ex. P. 7. Due to dean of Kalu the police added Section 302, IPC during investigation. The site was inspected and the blood smeared soil was taken into possession. Chatra produced the Lathi and axe to the Investi gating Officer, which the accused-appellant and his companions left at the place of occurrence while running away. On the completion of investigation, the police submitted a challan against the accused-appellant and five others in the Court of Munsif and Judicial Magistrate, Chhoti Sadri. The Magistrate committed the case for trial to the Court of Sessions Judge, Pratapgarh. The learned Sessions Judge framed charges under Sections 302, 148, 323 and 447 against accused Roopa and under Sections 323, 447, 148 and 302/149, IPC against the remaining five. The accused pleaded not guilty and faced the trial. During trial, the prosecution examined 15 witnesses and filed some documents. In defence, no evidence was led in. On the conclusion of trial, Mst. Nathuri and Mst. Sunder were acquitted. Veniya and Puriya were convicted under Sections 323 and 447 IPC and sentenced to one month's rigorous imprisonment with a fine of Rs. 50/-under each count. They were also acquitted of the offences under Sections 148 & 302/149, IPC. Accused Roopa was convicted under Section 304 Part I, 447 and 323/34, IPC and was sentenced as mentioned at the very out-set. Aggrieved against his convictions and sentences, the accused appellant has taken this appeal.

3. I have heard the learned Counsel appearing for the accused-appellant and the learned Public Prosecutor. I have also gone through the case file carefully.

4. In assailing the conviction, the first contention raised by the learned counsel is that there was no reliable evidence to support the prosecution version that the accused-appellant inflicted blow of axe on the head of deceased victim Kalu. It was argued that the alleged eye witnesses PW 1 Lalki, P W 2 Hakri, PW 4 Chatra, PW 8 Rodki and PW 9 Mst. Nawli were the close relatives of the deceased-victim. They were naturally interested persons. The learned Judge committed an error in putting implicit faith on what they testified. It was further argued that PW 5 Babu, who is also alleged to have seen the occurrence, lent no support to the prosecution. In these circumstances, the case does not travel beyond the orbit of

reasonable doubt. The benefit of doubt should, therefore, go to the accused-appellant. In reply, the learned Public Prosecutor supported the view taken by the trial judge and contended that the evidence of the eye witnesses cannot be discarded merely due to their relationship with the deceased-victim. PW 5 Babu, though did not support the prosecution case, yet admitted the presence of the accused-appellant on the spot. I have taken the respective contentions into consideration.

5. PW 4 Chatra deposed that he owed a sum of Rs. 40/- to accused-appellant Roopa. In the afternoon of the day of occurrence, he and his deceased-brother Kalu were ploughing their field. The accused-appellant, his father and other miscreants came there in the field and started abusing him. Accused Roopa demanded the payment of Rs. 40/-. He told that he would soon arrange for the money. Accused Roopa had an axe with him. He struck a blow with his axe on the head of Kalu. Thereafter those who were with the accused-appellant struck blows to him (witness) with lathies. He raised cries. PW 1 Lalki, PW 2 Hakri and others came there. Seeing them, the accused-appellant and his companions went away. PW 1 Lalki gave the same version of the incident. She deposed that at the time of occurrence, she was working at her field situate nearby the place of incident. Kalu and Chatra were ploughing their field. Accused Roopa, his father and other persons including women went to Kalu and Chatra. Accused Roopa had an axe. He struck a blow with his axe on the head of Kalu. Kalu fell down. The other miscreants struck blows with Lathies to Chatra. Hearing the out cries, she and others rushed to the spot and seeing them the accused went away. The account of incident was narrated by PW 2 Hakri. She deposed that accused Roopa struck a blow of axe on the head of Kalu. The other miscreants struck blows to Chatra with Lathies. PW 8 Rodki deposed that on the day of occurrence she was working in her field. Chatra and Kalu were ploughing their field. Accused Roopa and others went to them. Accused Roopa had an axe with him, with which he struck a blow on the head of Kalu. Kalu fell down. The miscreants also struck blows to Chatra with Lathies. Hearing the out cries, she and many other persons reached to the spot. Seeing them the accused-appellant and his companions went away. She further deposed that her field is situate nearby the place of occurrence. Nawli (PW 9) She was also working in her field situate nearby the place of occurrence. She deposed

that Kalu and Chatra were ploughing their field. In the afternoon of the day of occurrence, accused Roopa, his father and other persons went to Kalu and Chatra. Accused Roopa struck a blow with his axe on the head of Kalu. Kalu tried to run away and but fell down nearby in the field of Babura, Hearing the cries, she and other persons rushed towards the place of occurrence. Seeing them the accused-appellant and his associates went away.

6. All these witnesses were cross-examined at length but nothing could be elicited with may make their testimony unworthy of belief. It is true that Chatra is the real brother of the deceased-victim. The deceased victim was the real brother of the husband of PW 1 Lalki. Chatra and Kalu are the uncles-in-law of PW 2 Hakri. Thus, they are close relatives of deceased-victim Kalu. But the testimony of a witness cannot be discarded only on the ground of his or her close relationship with the deceased-victim. PW 8 Rodki and PW 9 Nawli did not appear to be the relatives of the deceased-victim. The fields of these witnesses are situate near the site of the occurrence. Their presence at their field is, therefore, quite natural. These witnesses are not an enmical terms with the accused-appellant. It has not been shown so to why they would falsely implicate the accused-appellant. Learned counsel for the accused-appellant could not subscribe any good reasons as to why the testimony of the witnesses should not be acted upon and accepted as true. The learned Sessions Judge accepted the evidence of these witnesses so far as it relates to the role played by the accused-appellant. more over, only one injury was caused to the deceased-victim by the accusedappellant. Accused Roopa alone had the axe with him. Therefore, there cannot be any confusion among the eye witnesses as regards the author of injury to deceased-victim Kalu. The prosecution has satisfactorily established that it is accused Roopa who had inflicted the blow on the head of deceased-victim Kalu with his axe. The first contention raised by the learned Counsel, thus, holds no ground.

7. It was next contended that the offence made out is not covered by Part I of Section 304, IPC. It was argued that admittedly there was no enmity between accused Roopa and the deceased-victim Kalu. Kalu owned 110 money to the accused-appellant. It was the brother of the deceased who owed money to him. In these circumstances there was no intention on the part of the accused-appellant to

cause the death of Kalu. It was argued that in these circumstances the offence made out would be covered by II Part of Section 304, IPC. In reply, it was argued by the learned Public Prosecutor that the accused used the formidable weapon like axe and struck a blow on the vital part of the body like head. In these circumstance the learned Sessions Judge was right in applying the I part of Section 304 IPC against the accused-appellant.

8. I have taken the respective contentions into consideration. Admittedly, the accused-appellant struck only one blow with an axe on the head of the deceased-victim. There was no bad-blood between the accused-appellant and the deceased-victim. The deceased-victim owed no debt to accused Roopa. In these circumstances it is not possible to hold that the act of the accused is covered by Part I of Section 304, IPC. A reference to Section 304 will show that in Part I, there is intention while in Part II there is only knowledge and intention is expressly excluded. In Para 24 of the judgment, the learned Sessions Judge himself has held that the accused had no intention to cause the death nor knowledge can be attributed to him that the bodily injury caused by him was likely to cause death. He has used the words 'Gyan' and 'Neeyat', meaning thereby the requisite knowledge or intention. The death of the victim did not take place a tonce. But he died in the hospital in the morning on 9-11-81, i e. nearly after two days of the occurrence. In these circumstance the intention mentioned in Section 304, Part I, IPC cannot be attributed to the accused.

9. However, the accused did cause the death. He had an axe in his hand and struck a blow with it an the head of the victim. As such, the requisite knowledge that is mentioned in II part of Section 304, IPC can be easily attributed to him. The act, which was done by him, must be presumed to have been done with the knowledge that the death of the victim (Kalu) was likely to be caused by his act. The case is, therefore, covered by Part III of Section 299 and the offence made out is punishable under II part of Section 304, IPC.

10. In the result, the appeal of accused Roopa is partly allowed. His conviction and sentence under Part I of Section 304 are set-aside and instead he is convicted under II part of Section 304, IPC and is sentenced to six years rigorous

imprisonment. With this modification the appeal shall stand dismissed.

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