

Dallu Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-22-1984

Reported in : 1984WLN(UC)61

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

Appeal No. : D.B. Criminal Jail Appeal No. 518/79

Appellant : Dallu Ram

Respondent : State of Rajasthan

Judgement :

S.S. Byas, J.

1. By his judgment dated September 25, 1979 the learned Sessions Judge, Churu convicted and sentenced the accused Dallu Ram as under:

S.No. Offence u/s Sentence awarded

(1) 302, IPC Imprisonment for life with a fine of Rs. 250/-,

in default of the payment of fine to further

undergo two months' rigorous imprisonment.

(2) 354, IPC Six months rigorous imprisonment.

(3) 452, IPC One year's rigorous imprisonment with a fine of

Rs, 100/-, in default of payment of fine to

further undergo one month's Rule 1.

Substantive sentences were directed to run concurrently while those in default of the payment of fine consecutively. The accused has come up in appeal to challenge his conviction and sentence.

2. Briefly stated, the prosecution case is that PW. 7 Mst. Vidhya, who was a young girl of 15-16 years in age was sleeping in her Kotha situate in village Niyangal Badi district Churu with two girls of tender age. She had bolted the door of the Kotha from in side. In the mid night, the accused came, removed the bolt, opened the door, went to Mst. Vidhya and caught hold her hands. Vidhya resisted. The accused threatened to stab her in case she raised cries. Mst. Vidhya did not yield to the threat of the accused and raised cries. Hearing her cries, her uncle Ghadsi came to help her from his house. The accused tried to escape. Ghadsi caught hold of him in his arms. The accused had a dagger with him. He inflicted an injury with his dagger on the neck of Ghadsi. The injury proved fatal Ghadsi fell down and passed away instantaneously on the spot. Hearing the out-cries of PW. 7 Mst. Vidhya, many persons viz., PW. 2 Dariya Singh, PW. 4 Deo Karan, PW. 5 Chandgi, PW. 8 Shanti, PW. 6 Mahendra and PW. 3 Amar Singh also came there. But the accused made good his escape. PW. 1 Ram Kumar had gone to some Hi other village. PW. 3 Amar Singh was sent to inform him. PW. 1 Ram Karan. on being informed of the murder, came there on the spot & gathered the facts. He thereafter went to Police Station, Rajgarh and verbally lodged report Ex. P.1 of the occurrence at about 11.00 A.M. on February 22,1979. The police registered a case and proceeded with investigation. The Station House Officer Prahlad Ram

Meena (PW. 12) arrived on the spot on the same day and prepared the inquest report of the victim's dead body. He also inspected the site, prepared the site plan and collected the blood lying there. The post mortem examination of the victim's dead body was conducted on the same day by Dr. Megh Singh (PW. 10), the then Medical Officer In-charge, Government Dispensary, Rajgarh. He found the following injury on the victim's deadbody.

'1. A stab wound 1/8' x 1/10'. It is on left lateral aspect of root of the neck. It is 1-1.5' lateral to medial end of left clavical bone just above the upper border of the left clavical bone. It is semi circular in shape and edges are clean-cut. It is directed towards left pleural cavity. Blood was coming by pressing on the left side chest. On opening the chest the left pleural cavity was full of clotted and fluid blood. Upper lobe of left side lung is punctured up to 2' deep from top of it. Above injury was ante-mortem.

In the opinion of Dr. Megh Singh, cause of the victim's death was internal haemorrhage and shock. He was also of the opinion that the said injury to the victim could be caused by dagger (Article 4). He was also of the opinion that the injury was sufficient in the ordinary course of nature to cause the death. The post mortem report prepared by him is Ex. P.13. The accused was arrested on March 21, 1979. In consequence of the information furnished by him on March 25, 1979 whilst under police custody, dagger and his blood-Bf v stained clothes were recovered from his possession. On the completion of Bp investigation, the police submitted a challan against the accused in the court of the Chief Judicial Magistrate, Churu, who in his turn committed the case for trial to the Court of Sessions. The learned Sessions Judge framed charges under Sections 452, 302 and 354, IPC against the accused, to which he pleaded not guilty. He pleaded alibi and alleged that he has been falsely implicated due to his strained relations with the family of Mst. Vidhya (PW. 7). SKI During trial, the prosecution examined 12 witnesses and filed some documents. In defence, the accused adduced no evidence. On the conclusion of trial, the learned Sessions Judge found the prosecution case substantially true. The version put in defence was rejected as false and unfounded. The accused Hp was consequently convicted and sentenced as mentioned above. Aggrieved against his conviction and sentence, the accused

had taken this appeal.

3. We have heard the learned Amicus Curiae and the learned Public Prosecutor. We have also gone through the case file carefully.

4. The cause of death of the victim Ghadsi Ram was not challenged before us nor could it be challenged in view of the opinion of Dr. Meghsingh (PW. 10), We have gone through his statement and find no good and cogent reasons to distrust his opinion. It, therefore, stands proved that the death of victim Ghadsi was not natural but homicidal.

5. In assailing the conviction of the appellant it was vehemently contended by the learned amicus curiae that the evidence adduced by the prosecution does not positively point out the guilt of the accused. The evidence produced by the prosecution was not so formidable as to warrant his conviction. It was argued that the witnesses had made considerable improvement in their statements. During investigation none of them claimed to have seen the accused causing the below to the victim. But during trial, they stated so. This improvement is fatal and destroys the entire fabric of the prosecution case. In reply, the learned Public Prosecutor submitted that the presence of PW. 7 Mst. Vidhya is not open to any challenge or doubt. The murder was committed just out-side the Kotha wherein she was sleeping. The deceased-victim had come to help her when she raised the cries. As such she must have seen the occurrence. Her testimony is free from suspicion and the court below was perfectly justified in putting reliance on what she deposed.

6. We have taken the respective submissions into consideration. PW. 7 Mst. Vidhya is the star witness of the prosecution. She was a young girl of 15-16 years at the time of the occurrence. She deposed that in the night of the day of incident, she was sleeping in her Kotha. She had bolted the door from inside. In the mid-night the accused came inside the Kotha after removing the bolt and caught her hand. He threatened to stab her in case she raised the cries or resisted his advance. She did not yield to the threat of the accused and raised cries for help. Hearing her cries, her uncle Ghadsi Ram (victim) came for his house. The accused tried to escape but Ghadsi Ram caught hold of him in his arms. the

accused there upon struck a blow of his dagger on the neck of Ghadsi Ram. Ghadsi Ram raised cries three times that he had been killed by the appellant Dallu Ram. Ghidsi Ram fell down, there was profuse bleeding from his wound and the clothes he was wearing got drenched with it. Many other persons including PW. 3 Amarasingh, PW. 4 Deo Karan, PW. 2 Dariyab Singh, PW. 5 Chandgi PW. 6 Mahendra and PW. 8 Shanti (wife of the vic im) came there to the spot. They saw the accused running away Ghadsi Ram passed away instantaneously on the spot. She was cross examined at length but nothing could be elicited from her which may be of any help to the accused. She is a close relative of the accused. We are, therefore, unable to imagine that she would falsely dispose against him for no apparent reason. It is true that in her police statement Ex. D.7, she did not state that she had actually seen the inflicting of blow to the victim by the appellant, but from her aforesaid statement Ex. D.7 it can be safely gathered that the blow was inflicted in her presence. We find no discrepancy or contradiction between what she stated during investigation in Ex. D.7 and in her statement during trial The testimony of Mst. Vidhya (PW. 7) is free from suspicion and can be safely relied upon for convicting the appellant. Her testimony is natural, plain and dependable. The learned Judge of the trial Court accepted her testimony as true and in our opinion rightly so. Her testimony is not open to any criticism.

7. The other witnesses PW. 2 Dariyabsingh, PW. 3 Amarsing, PW. 4 Deo Karan, PW. 5 Chandgi, PW. 6 Mahendra and PW. 8 Smt. Shanti stated that on hearing the crifs, they arrived on the spot and saw the accused running away. Guandsi Ram was lying fatally wounded. The only discrepancy pointed out by the learned amicus curiae is that in their police statement these witnesses stated that they heard the cries of Mst. Vidhya(PW. 1) & there after came there. But during trial they changed the version and stated that they reached the spot on hearing the cries of Ghadsi Ram. In our opinion, this discrepancy is insignificant and no notice can be taken of that. All these witnesses stated during investigation that they had seen the accused running away from the place of occurrence. They struck to their version during trial. No departure is there on the essential fact. We may also point out that most of these witnesses are the close relatives of the accuse. It is, therefore, beyond comprehension that they would finely deposed against the accused. Taking the evidence of the aforesaid witnesses, it can be safely said that

Ghadsai Ram was done to death by the accused-appellant and none else.

8. It was next contended by the learned amicus curiae that even if the prosecution story is taken as true, the accused had a right of private defence to protect his person. It was argued that Ghadsai Ram had no authority to arrest or detain him. As such if he was illegally detained or arrested or confined, he had every right to use force against Ghadsai Ram. As such he is protected by the right of private defence and no offence can be said to have been committed by him. In reply, the learned Public Prosecutor stated that the accused had committed criminal trespass in the house of Mst. Vidhya and that too in the mid-night. He was armed with a dagger. He had thus, committed the offence under Section 452, IPC, for which he was also convicted. Any citizen can arrest a person who is committing an offence in his presence. Section 43 of the Code of Criminal Procedure given this right to a citizen to arrest a person in the particular circumstances of the case. As the accused had committed the offence of trespass having made preparation to cause hurt and the offence is covered by Section 452, IPC Ghadsai Ram was authorised in law to detain or arrest the accused. We have given our anxious consideration to the contentions raised before us.

9. Section 43 of the Code of Criminal Procedure lays down that any person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence. The language employed in Section 43, Cr. P.C. leaves no ambiguity. On reading it, we are of the view that when anyone commits a non-bailable and cognizable offence and then tries to escape, both the acts constitute one single transaction and any private person who either sees him committing the offence or finds him running away immediately after the commission of offence, is entitled to arrest him. Under the Section. A similar view was taken in *Nazir v. Rex* : AIR1951 All3 . A full Bench of the Allahabad High Court held in the aforesaid case that the chasers had a right to attempt to arrest the dacoits and the dacoits have no right to shoot them in self-defence.

10. In the instant case, the accused tried to escape and run away after committing the offence under Section 452, IPC. Ghadsai Ram, who reached the spot on hearing the cries of PW. 7 Mst. Vidhya, had, therefore, a right to arrest or detain

the accused. When Ghadsi Ram caught hold of the accused's arms, it was then that the accused stabbed him on the neck with the dagger. These facts and circumstances do not permit us to hold that a right of private defence was available to the accused. The above facts and circumstances also do not permit us to conceive that Ghadsi Ram had no right or authority to arrest or detain the appellant. The sequence of events impel us to conclude that no right of private defence was available to the accused-appellant.

11. It was next argued by the learned amicus curiae that the offence made out is not covered by Section 302, IPC. The accused had no previous enmity with the victim. It was the mid-night. The circumstances do not permit to infer that the accused intended to kill the victim. Only one blow was caused by the accused-appellant. In these circumstances when the intention to kill is missing, the conviction under Section 302, IPC is not proper. The offence made out from the facts and circumstances - falls under Section 304 Part II, IPC. Reliance in support of the contention was placed on *Laxman Kalu v. State of Maharashtra* : 1968 CriLJ1647 , *Harjiadarsingh v. Delhi Administration* AIR 1969 SC 86, *Hardeosingh v. The State of Punjab* : 1975 CriLJ243 . *Gokul Parasram Patil v. The State of Maharashtra* : 1981 CriLJ1033 , *Bihadursingh v. State of Madhya Pradesh* 1984(1) : 'Crimes' 370. The learned Public Prosecutor submitted that the injury found on the victim's neck has been stated by the doctor to be sufficient in the ordinary course of nature to cause death. The case is, therefore, squarely covered by Clause 3rdly of Section 300 and the offence is punishable under Section 302, IPC.

12. The Supreme Court authorities of 1968 (supra) have been noticed by their Lordships of the Supreme Court in : 1981 CriLJ1033 . In this case the blow was a solitary blow on the left clavical. Since the intention was missing, the offence was taken to be that under Section 304 Part II, IPC. In the case of *Harder Singh* (supra) in which the two earlier authorities were noticed, their Lordships observed that it cannot be said with any definiteness that the accused had aim to blow at the particular part of the body of the victim knowing that it would cut the artery. In the case of *Bahadursingh*, the injury was a stab 3' x 1-1/2' x 5' at left super-clavicle region parallel to left clavicle extending deep down, wards in the left thoracic cavity. Since the intention was missing to cause a particular injury, the offence was

taken to be that the under Section 304 Part II, and not under Section 302, IPC.

13. Though not cited at the Bar, we are aware of the observations of their Lordships of the Supreme Court in *Kulwant Rai v. State of Punjab* : AIR 1982 SC126 . In that case though the injury was sufficient in the ordinary course of nature to cause the death, the intention was missing. There were no strained relations between the accused and the victim. The absence of prior enmity was taken as a strong ground to negative the intention to cause murder. Their Lordships further held that their being no intention on the part of the accused to cause injury in question, Clause 3rdly of Section 302, IPC would not be attracted. The offence was taken to be that under Section 304, Part II, IPC.

14. The learned Public Prosecutor drew our attention to *Surat Singh v. State of Rajasthan* 1983 Cr. LR. (SC and Raj) 300 and contended that the offence is covered by Section 302, IPC because the injury was sufficient in the ordinary course of nature to cause death. As such Clause 3rdly of Section 300, IPC would be attracted. In the case of *Surat Singh*, a Division Bench of this Court, on the consideration of the facts and circumstances, had arrived at a conclusion that there was an intention on the part of the accused to cause a particular injury to the victim which ultimately resulted in her instantaneous death.

15. Adverting to the facts and circumstances of the case, now, we may say that the deceased-victim was a close relative of the accused. There was no previous enmity between them. It was a mid-night. The accused pled only one blow and that too in order to escape and run away. The victim in one sense was intervenor. The accused caused the stab wound to victim in an attempt to run away and escape. In these circumstances are unable to hold that there was an intention on the part of the accused to cause that particular injury on the neck of the victim which ultimately resulted in his death. The sequence of the events do not permit us to say that the accused had intended to cause the particular injury in question on the part of the victim. As such Clause 3rdly of Section 300, IPC can not be used into service, in view of the observation made by their lordships of the former Court in the authorities referred to above.

16. In as much as the death has been caused, we can attribute knowledge to the accused that by his act he was likely to cause the death of the victim. As such, in our opinion, the offence made out is covered by Section 304, Part II, IPC.

17. Coming to the question of sentence, it was submitted by the learned amicus curiae that the accused is a young man and as such a lenient sentence in the matter of sentence should be taken.

18. In the result, we partly allow the appeal of accused Dattu Ram. His conviction and sentence under Section 302 are set aside and instead he is convicted under Section 304 Part II, IPC and is sentenced to eight years' rigorous imprisonment. His conviction and sentence under Section and Brand 452 IPC are maintained. All the substantive sentences shall run concurrently.

19. The appeal shall stand accordingly disposed of.

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