

Bheema Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Dec-13-1983

Reported in : 1983WLN(UC)448

Judge : K.S. Lodha and; S.S. Vyas, J.

Appeal No. : D.B. Criminal Jail Appeal No. 177/78

Appellant : Bheema

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

S.S. Vysa, J.

1. This is an appeal by accused Bheema against the judgment of the learned Sessions Judge, Pratapgarh dated March 27, 1978 convicting the appellant under Section 302/109, IPC and sentencing him to imprisonment for life.

2. The accused-appellant was tried in Sessions Case No. 108/76 in sequel to earlier Sessions Case No. 42/69. In that case (42/69) five persons Rama, Dewa, Heera, Thaweria and Amra were tried for offences under Sections 302, 302/34 and 201, IPC. The accused appellant then remained absconded and as such he could not be tried alongwith them.

3. Briefly stated, the prosecution case is that PW 5 Jeeva is the son and PW 8 Mst Dewli is the widow of deceased Nathu Dholi of village Talab Kheri district Chittoregarh. The accused appellant and others who were tried earlier are also residents of the same village. Nathu Dholi suspected his wife Mst. Dewli to be in liason with Rama (accused tried earlier). In the afternoon of 23-6-69, Nathu was coming from village Raipur to Talab Kheri. When on his way he reached near the tank, Rama met him and addressed abusive words. Thereafter Rama Deoji and the accused-appellant fell down Nathu. Deoji and the accused-appellant caught hold of the hands and legs of Nathu. Rama sat on Nathu's chest and struck a number of blows on his head, face, legs, chest and other limbs of the body with a heavy stone. The injuries proved fatal and Nathu succumbed to death then and there on the spot. The occurrence was seen by PW 5 Jeewa and PW 8 Mst. Dewli. Mst. Dewli (PW 8) wanted to go to police station to lodge the report of the incident but was detained by Detiya, Amra and Thaweria (accused tried earlier) and confined in a factory nearby. The miscreants conspired to lodge a false report in order to screen the offenders from being prosecuted. Amra and Thaweria went to Police Station, Salemgarh where Thaweria lodged report Ex. P 2 of the occurrence stating therein that Nathu was done to death by some unknown 15-20 persons. The police registered a case and proceeded with investigation. PW 3 Kalusing, the then Head Contable, reached the site and while he was preparing the inquest report of the victim's dead body, the Station House Officer PW 7 Mohammed Khan also reached there. The Station House Officer prepared the inquest report, inspected the site and prepared the site plan. He seized the blood stained earth lying around the victim's dead body. The post-mortem examination of the victim's dead body was conducted at about 10.30 A.M. on 28-6-69 by PW 11 Medical Jurist Dr. K C. Jain. He found the following anti-mortem injuries on the victim's dead body:

External:

- (1) Upper lip right half lacerated
- (2) Lacerated wound over right eye-brow, horizontal 2' x 1/2' upto bone deep
- (3) Lacerated wound left forehead 1 1/2' x 1/2' upto bone deep

(4) Lacerated wound right occipital region about 1 x 1/2' upto bone deep

Bruises and contusions:

The following bruises were noticed on the body:

(1) Middle of left thigh laterally 4' x 1/2

(2) Left knee laterally 2' x 1/2

(3) Left ankle laterally 3' x 1/2

(4) Left side of the chest 3' x 4' (5). Left shoulder 2 1/2' x 1' (6) Right shoulder 1 1/2' x 1

Internal:

Scalp: Lacerated wound over right eye brow, 2' x 1/2' upto bone deep Lacerated wound over left forehead 1 1/2' x 1/2' upto bone deep Lacerated wound right occipital region 1' x 1/2' upto bone deep

Skull--Fractured--

(1) Fracture of nasal bone

(2) Fracture of right temporal bone

(3) Fracture of right frontal bone. Fractures of nasal bone, right temporal bone and frontal bone were crushed fractures

(4) Fracture of maxilla and zyomatic

(5) Fracture of right half of mandible at its neck and head

In the opinion of doctor Jain, the cause of death was shock and heamorrhage from injuires to head and face. He was further of the opinion that the injury on the victim's head was sufficient in the ordinary course of nature to cause death. During investigation, it transpired that the report lodged by Thawaria was totally false. On investigation, the Investigating Officer arrived at the conclusion that three persons

viz., Rama, Dewa and the present accused-appellant had caused the murder of Nathu. Bheema and Dewa forcibly detained the victim by catching hold his hands and feet and Rama struck blows to him with a heavy stone. On the completion of investigation, the police submitted a challan against five persons. On trial, Rama was convicted under Section 302 while Dewa was convicted Under Section 302/109 and the remaining three were convicted Under Section 201, IPC. Rama and Dewa went in appeal and their appeal was dismissed by this Court on April 2, 1981.

4. The accused-appellant remained absconded but was ultimately arrested on 22-8-76. A challan was submitted against him in the Court of Munsif and Judicial Magistrate, Pratapgarh, who in his turn committed the case for trial to the Court of Sessions. The learned Sessions Judge framed a charge Under Section 302/109, IPC against the accused, to which he pleaded not guilty and claimed absolute innocence. During trial, prosecution examined 11 witnesses and filed some documents. In defence, the accused adduced no evidence. On the conclusion of trial, the learned Sessions Judge found the accused guilty. He was consequently convicted and sentenced as mentioned at the very out-set.

5. We have heard the learned amicus-curiae and the learned Public Prosecutor. We have also gone through the case file carefully.

6. There are two eye witnesses of the occurrence viz., PW 5 Jeeva and PW 8 Mst. Dewli. The learned Sessions Judge relied upon their testimony and held the charge duly proved against the accused on the basis of what they testified against him. It was vehemently contended by the learned amicus curiae that the evidence of the these two eye witnesses was wrongly relied upon by the trial judge. It was argued that there were major contradictions inter se in what they stated.

7. PW 5 Jeeva deposed that he was standing near a tank in the afternoon of the day of occurrence. His father was coming from village Raipur. When he reached the tank, Rama (accused tried earlier) came there and abused his father. Deoji (tried earlier) and the accused-appellant also came there. Rama, Deoji and Bheema fell down his father Nathu. Dewa and Bheema caught-hold the hands and feet of Nathu. Rama sat on his chest and struck blows on his head, chest and

other parts of the body with a heavy stone. Dewa and Bheema continued to forcibly hold Nathu throughout so long Rama struck blows to him. The witnesses further stated that he reached raised cries and his mother PW 8 Dewli came there. The witness stated that the accused had also taken his father towards the bed of the tank and there caused injuries to him with a dagger. In cross-examination the witness admitted that in the trial held earlier he did not state that injuries to his father were caused with a dagger also.

8. PW 8 Mst. Dewli is the widow of the deceased-victim. She deposed that accused Rama, Deoji and Bheema came to her husband and forcibly took away her husband Nathu towards the tank by dragging him. Her son Jeeva was there at the tank. He raised cries and she reached there. Reaching there, she saw that her husband Nathu was lying down. Accused Bheema had caught hold of his feet while Deoji had caught hold of his hands. Accused Rama was on his chest and was striking blows to her husband with a heavy stone weighing 2 or 3 kilograms. She also raised cries but none came to help. Dewa, Rama and accused-appellant Bheema took her in the sugar factory and confined her there in order to prevent her from reporting the matter to the police.

9. It was contended by the learned amicus curiae that according to PW 5 Jeeva, the deceased victim was coming from Raipur whereas according to PW 8 Mst. Dewli the accused had forcibly taken him from her house. It was argued that this is a material contradiction and render the testimony of these witnesses highly suspicious. As such reliance should not be placed on what they stated. In our opinion, the contradiction pointed out is not of any material significance. Both these witnesses were examined in the second trial nearly after eight years of the occurrence. Human memory is fallible. It appears that due to lapsing of memory PW 8 Mst. Dewli has stated about her husband's being forcibly taken by the miscreants. More over, this contradiction is not sufficient to out-rightly reject the testimony of these witnesses. The victim's being forcibly taken to the tank at the most can be taken to be improvement of the earlier version but this improvement does not destroy the main substratum of the prosecution case viz., the accused fell down the victim and thereafter committed his murder. The next contradiction relating to the infliction of the injuries with a dagger is also of not much importance.

PW 5 Jeeva admitted in his cross-examination that he did not state in the earlier trial that the accused had taken his father towards the bed of the tank and caused injuries to him with a dagger. The dagger-story is also an improvement and does not destroy the main substance of the case. The dagger-story is only an embroidering and the testimony of the two witnesses cannot be discarded merely on account of this subsequent improvement.

10. The learned Sessions Judge had accepted the testimony of these two witnesses as true and reliable. No cogent and convincing reasons have been subscribed before us which may induce us to take a view different from the learned Sessions Judge. The contention of the learned amicus curiae that the testimony of these two witnesses was wrongly relied upon, holds no ground. On the strength of what they testified, it stands proved beyond any manner of doubt that accused appellant Bheema alongwith others fell the victim down, continued to forcibly hold him by catching his hands and feet and the other miscreant Rama struck blows on the head, face, legs and other limbs of the victim with a heavy stone.

11. It was next contended by the learned amicus curiae that the offence made out is not covered by Section 302, IPC. We are again unable to accept his contention. The victim was struck blows on the vital parts like head and face. The medical evidence shows that the crushed-fractures were found on the temporal and frontal bones of the victim. Dr. Jain was of the opinion that the injuries were sufficient in the ordinary course of nature to cause the death. The offence made out is, therefore, covered by Section 302, IPC. The accused-appellant played a very vital role in the whole occurrence. Had he not forcibly over-powered the victim by catching hold of his hands and feet, the victim could have probably put resistance. It was the accused-appellant and Dewa who facilitated the commission of the murder of the victim by Rama. The act of the accused-appellant, thus, amounts to abetment. He was rightly convicted Under Section 302 with the aid of Section 109, IPC.

12. No other contention was raised.

13. The accused was rightly convicted and sentenced Under Sections 302/109, IPC. We find no force in this appeal of accused Bheema and dismiss the same.

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