

Pitram and Rotash Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-05-2005

Reported in : RLW2005(3)Raj2079; 2005(3)WLC292

Judge : V.K. Bali and; Harbans Lal, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 300, 302, 304 and 325; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : D.B. Criminal Appeal No. 765 of 1999

Appellant : Pitram and Rotash

Respondent : State of Rajasthan

Advocate for Pet/Ap. : B.N. Sandu, Adv. for;Public Prosecutor; Praveen Balwada, Adv.

Disposition : Appeal dismissed

Judgement :

V.K. Bali, J.

1. Pitram with the help of his sister's brother Rotash and four others from the village of Rotash namely Mahesh Kumar, Subhkaran @ Sube Singh, Amar Singh and Vijay Singh, it is the prosecution case, killed Moosaram, real brother of the

appellant Pitram and injured Mooli, mother of appellant Pitram and deceased Moosaram on 13.10.1996 at 8 p.m. In the trial held against six persons named above, whereas Mahesh, Subhkaran, Amar Singh and Vijay Singh have been acquitted, the appellant Pitram and Rotash have been found guilty of offence Under Section 302 read with Section 34 IPC and sentenced to undergo life imprisonment as also to pay a fine of Rs. 1,000/- or in default of payment of fine, to further undergo R.I. for a period of three months, vide order of conviction and sentence passed on that behalf by the learned Additional Sessions Judge, Neemkathana, District Sikar, dated 2.12.1999.

2. With regard to the occurrence leading to the death of Moosaram and injuries to Mooli that took place on 13.10.1996 at 8 p.m. FIR (Ex.P.2) was lodged on the same day at 9.30 p.m. by Maliram (PW-1). It was a written report handed over to Surendra Kumar, SHO (PW-17). Special report with regard to the incident reached the concerned Magistrate Neemkathana on next day i.e., 14.10.1996 at 3.30 p.m.

3. The conviction of the appellants rests on ocular account of the chain of events leading to death of Moosaram and injuries to Mooli, provided by the real brother of Pitram, the first informant Maliram as also mother of the appellant Pitram and deceased Moosaram as also two other eye witnesses namely Khyali Ram (PW-8) and Sarjit Singh (PW-9). The prosecution also relied upon statement made by Dr. Pramod Kumar Garg, (PW-12) who conducted post mortem on the dead body of Moosaram and examined Moolidevi as also Surendra Kumar, SHO (PW-17) who deposed with regard to the steps that he had taken while investigating the case.

4. While lodging the FIR by way of written report (Ex.P.2) Maliram (PW-1) stated that on 13.10.1996, he and his brother Moosaram after boarding a Tempo had gone to Neemkathana to bring domestic articles and after making the purchases, they had reached the Dhani of their father, which is situated on Bhudoli Road, at about 9 p.m. After parking the tempo and talking to their mother, when they had proceeded towards Dhani Lambawali and had reached the fields of Darogas, he heard cries of his mother that she was being killed and her sons should run away and further that the appellant Pitram had come with 4-5 hoodlums. When he heard the cries of his mother, he ran, in the meanwhile, 4-5 persons caught hold of his

elder brother Moosaram and attacked him with the intention to kill him. His brother Pitram, who was employed with BSF was armed with a 'Bakda' with which he gave injuries to his brother upon which he fell down and the companions of Pitram caused him injuries, upon which Moosaram cried for help from the complainant. He stated that Pitram had avenged his enmity. The appellant Pitram stated that the one who was troubling his wife and was real enemy, had escaped and he should be caught. Hearing this, he got scared and hid himself in the fields of his maternal aunt. Persons named above, on hue and cry raised by Moosaram started searching him with torch and then ran away. He looked after his brother but found that he had already died. At that time, persons who were passing through near the farm of Ramesh had also heard and seen the occurrence. He had recognised all the persons with the torch and could identify them if they might come before him. He followed these persons and then ran towards the police station.

5. Dr. Pramod Kumar Garg examined as PW-12 stated that on 13.10.1996 he had medico legally examined Moolidevi wife of Kishnaram and found following four injuries on her person :

1. Lacerated wound 7 x 2 x 0.5 cm with diffuse swelling Rt. Hand-blunt.
2. Diffuse swelling upper 1/2 of Lt. leg with knee-blunt.
3. Lacerated wound 2.5 x 0.5 x 0.5 cm Lt. leg near ankle-blunt.
4. Complaint of pain and tenderness Rt. Chest-blunt.'

6. In the opinion of the doctor, all the injuries had been caused by blunt weapon. The same were caused within duration of 24 hours. The doctor proved medico legal report Ex.P.15 Doctor also stated that on 14.10.1996 he had conducted post mortem on the dead body of Moosaram son of Kishnaram and found following eight injuries on his dead body.

1. Lacerated wound 6x2 cm x bone deep-chin-blunt obliquely placed.
2. Lacerated wound 3 x 1.5 x 1cm upper lip-blunt.
3. Bruise 10 x 3 cm. Lt. face obliquely placed.

4. Lacerated wound 10 x 2 cm x bone deep, Lt. Temporoparieto-occipital region semi curved in shape-blunt.
5. Lacerated wound 12 x 3 x 0.5 cm Lt. Leg blunt obliquely placed.
6. Lacerated wound 2 x 1 cm Rt. Leg-blunt.
7. Abrasion 2 x 1 cm Lt. thigh.
8. Bruise-three in number (A) 10 x 2 cm (B) 8 x 2 cm (C) 4 x 2 cm Horizontally placed on Lt. Thigh parallel to each other at 2 cms apart. All bruises red in colour.'
7. Doctor found that left temporal and parietal bones were fractured. In the opinion of the doctor, the cause of death was coma, which was because of head injuries. The injuries were ante mortem in nature and were caused within duration of 24 hours. The same were sufficient in the ordinary course of nature to cause death. The doctor proved post mortem report (Ex.P.16).
8. As mentioned above, Maliram (PW-1) real brother of deceased Moosaram and Mooli (PW-2) mother of the appellant Pitram and the deceased and two eye witnesses Khyali Ram (PW-8) and Sarjit Singh (PW-9) were examined by the prosecution. They fully supported the prosecution case.
9. The appellants in their statement Under Section 313 Cr.P.C. denied their participation in the commission of crime and claimed that they were innocent. They led no evidence in defence but for to produce on records statements of the witnesses recorded by the police Under Section 161 Cr.P.C.
10. Learned counsel appearing for the appellants in support of the present appeal contends that no independent witness in this case was examined by the prosecution and that from the site plan Ex.P.3 and 4 it was quite apparent that the occurrence had taken place somewhere near the farm of Ramesh which is on road side from where number of people pass through and yet, no one from amongst those who might be passing through was examined. Father of the appellant Pitram who could provide at least the background of the case was also not examined. He further contends that it was injury No. 4 which proved fatal but as per the

prosecution version, both the appellants had given injuries on the head of Moosaram and therefore, it could not be said who had caused the fatal blow. He also contends that the author of the first information report was an unknown person and was not examined by the prosecution. He further contends that the vehicle in which the appellants arrived at the scene of occurrence was not recovered and further that there was no motive to kill Moosaram and if at all, there was any enmity it was between the appellant Pitram and Maliram. The last contention of the learned counsel is that even if the prosecution might have led enough evidence to connect the appellants with the crime, the offence committed by them would not go beyond Section 304 Part II IPC and therefore order of conviction and sentence Under Section 302 IPC passed against the appellants, in any case, should be set aside.

11. We have heard learned counsel appearing for the parties and with their assistance examined records of the case. In the context of the facts of the present case, the we however find no merit whatsoever in any of the contentions of the learned counsel, as noted above. It is a case where Mooli Devi has made statement against her real son Pitram. Presence of Mooli Devi is proved to the hilt. She was herself injured in the occurrence that took place on 13.10.1996 in which her other son Moosaram died. Nothing at all has been brought on record that may even remotely suggest that Mooli Devi was inimically disposed towards her son Pitram. In the very nature of things, Mooli Devi cannot be treated to be an interested witness and she has to be held to be an absolutely independent witness. Witnesses related to deceased, in a given case, may exaggerate the role of assailants or may even involve some innocent persons but a mother while making depositions against her own son can never be treated to be an interested witness. In fact, she would be the most independent witness when she may depose against her own son knowing fully well that her deposition could result in deterrent punishment to her son. She could not have missed or wrongly identified brother-in-law of her son either. The same even though with a lesser degree could also be said about Maliram, real brother of appellant Pitram. Nothing at all, as mentioned above, has come on the records of the case, that may suggest that the mother and brother of Pitram had any cause to involve their son and brother in the commission of crime. Khyali Ram (PW-8) and Sarjit Singh (PW-9), the two

independent witnesses, even though belonging to the village of deceased, have also corroborated the statements made by Mooli Devi and Maliram but in the peculiar facts and circumstances of the case, even if they were not to be examined and if examined were not to support prosecution case, conviction of the appellants could well be based upon the sole testimony of Moolidevi. In the circumstances mentioned above, contention of the learned counsel that no independent witness has been examined, has to be rejected. The contention of the learned counsel that no independent witness has been examined is also factually incorrect. There was no need to examine father of the appellant Pitram as well. It is no doubt true that while appearing as PW-1 Maliram stated that he had got the FIR written by a person who met him at the police station and he would not remember as to who was that person and naturally, therefore, that person has not been examined by the prosecution, but that alone, in the facts and circumstances of the case, would have no bearing whatsoever on the authenticity of the prosecution case. Non recovery of the vehicle was also of no consequence. It may be true that appellant Pitram may be more aggrieved with the conduct of Maliram (PW-1) than that of Moosaram and therefore, Maliram might have been the first target in the mind of Pitram and Rotash but that alone would not detract from the fact that Moosaram was indeed killed as perhaps he alone could be caught by the appellants and others whereas Maliram somehow escaped. It may be mentioned here that after killing Moosaram, the appellants had tried to locate Maliram as well, who, however, because of darkness at that time was able to hide himself and thus escaped. The appellants came together duly armed, opened attack first upon Mooli Devi and injured her; then they killed Moosaram with number of injuries that he sustained and mention whereof has been made above. The accused went together after committing the crime. In these circumstances, as to whether both the appellants caused head injury or only one of them did so, which proved fatal, would not make any difference as in the facts and circumstances of the case, the provisions contained in Section 34 IPC would be straightaway attracted.

12. For his contention that if participation of the appellants is proved, the case would not go beyond Section 304 Part-II IPC, learned counsel placed reliance upon two judgments of the Supreme Court in Tarsem Singh and Ors. v. State of Punjab 2002 (1) Crimes 209 and State of U.P. v. Indrajeet @ Sukhatha 2000 (3)

Crimes 184 (SC) and a division bench judgment of this Court in *Suraj Mal v. State of Rajasthan* 2000 (4) Crimes 360. In *Tarsem Singh (supra)*, the appellants were convicted Under Section 304-II IPC. It was urged on their behalf before the Supreme Court that in the facts and circumstances of the case, the offence committed by the appellants was punishable Under Section 325 IPC. This contention was rejected. It is not understandable as to how the facts of the case aforesaid could even remotely be applied to the facts of the case in hand. It may, however, be added that while raising the contention of the effect aforesaid, it was urged on behalf of the appellants that the attack in question was spontaneous without there being any personal or individual enmity with the deceased persons and the nature of injuries was such that offence could be punished only Under Section 325 IPC. In *State of U.P. v. Indrajeet (supra)*, the Apex Court upheld the judgment of the High Court which had found the offences committed by Indrajeet would not fall Under Section 302 IPC and would fall Under Section 304-II IPC. There were only two injuries on the body of the deceased out of which one was serious. The accused in the said case was held guilty under Section 304-II IPC primarily for the reason that there was no positive motive attributed nor alleged nor proved and there was no clinching circumstance evidence to establish the culpability of the accused for the charge of murder. Absence of intention to cause death coupled with lack of knowledge that death would inevitably be caused, the offence, it was held would fall Under Section 304-II IPC. The facts of the present case are quite distinguishable from the facts of the case of *State of U.P. v. Indrajeet (supra)*. The facts in *Surajmal v. State of Rajasthan (supra)*, reveal that the accused infuriated by hot exchanges at the time of making boundary with shrubs near his house scaled the wall of the house of his near relative Sohni and inflicted blows with axe on her person as a result of which Sohni died and her daughter-in-law Sushila sustained injuries. The doctor who performed autopsy on the dead body of Sohni found two incised wounds. While dealing with the statement of Sushila, the main witness, the Hon'ble Bench observed that she stated in her deposition that on the fateful day her mother-in-law Sohni asked the accused not to obstruct the street by putting shrubs. When Sohni asked the accused not to obstruct the path, there were altercations between them and suddenly accused scaled the wall and inflicted injuries on the person of Sushila

and Sohni who died instantly. The Hon'ble Bench found the case to be covered under Exception-I to Section 300 IPC as the injuries were caused by the accused while he was deprived of the power of self control on being provoked suddenly by the abuses hurled by the deceased. Facts of the present case rather show a pre-planned attack resulting into death of one and injuries to other. There was no wordy duel preceding the attack on Mooli Devi first and then Moosaram, the unfortunate victim of the attack.

13. This court is of the firm view that both the appellants would be guilty of offence Under Section 302 IPC. The common intention to commit crime is also fully established. There is absolutely no merit in this appeal, which we hereby dismiss thus confirming the order of conviction and sentence recorded by the learned Additional Sessions Judge, Neemkathana, dated 2.12.1999.

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