

Bhika Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-09-1996

Reported in : 1997CriLJ193

Judge : D.C. Dalela and; A.K. Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 96 of 1978

Appellant : Bhika

Respondent : State of Rajasthan

Advocate for Def. : D.R. Bohra, Public Prosecutor

Advocate for Pet/Ap. : S.R. Singhi, Adv.

Judgement :

D.C. Dalela, J.

1. This appeal is directed against the judgment and order dated 21-1-1978 passed by the learned Addl. Sessions Judge, Sirohi, convicting the accused appellant for the offence under Section 302, IPC and sentencing in to life imprisonment and a fine of Rs. two hundred in Sessions Case No. 60/1976.

2. The appellant was tried for committing murder of his sister-in-law (Bhabhi) Mst. Nathu on 13-10-1976 in the village 'Jela'. The relations between the appellant and his real brother Poonma (husband of the deceased) were not happy. On the day of occurrence, deceased Nathu reprimanded the appellant for quarrelling with her children. It is alleged that the appellant felt aggrieved on such reprimand and, therefore, he picked up a lathi or 'danda' and dealt a blow on her. The blow fell on her head. She fell down injured and bled through mouth and nose. While she was being carried to the hospital she succumbed to her injuries. The cause of the death, according to the opinion of the doctor, was shock due to brain haemorrhage as a result of head injury. During trial, the prosecution examined ten witnesses. The appellant denied the guilt and stated that Mst. Nathu and others came to his house and dragged him to the house of the deceased and there, dealt blows on him. He tried to save himself with a lathi or 'danda' that he picked up and in the fight per chance, Mst. Nathu was injured. One witness has been examined in his defence.

3. After considering the evidence of both the sides and arguments advanced, the learned trial Court convicted and sentenced the appellant as above. Against the said conviction and sentence, this appeal has been preferred.

4. We have heard the arguments of both the sides.

5. The learned counsel for the appellant has only argued that on the facts found established by the learned trial Court, the offence committed by the appellant is one punishable under Section 304, Part II, IPC and not under Section 302, IPC as held by the learned trial Court. No other point has been argued and pressed by him. Therefore, the only question that requires to be considered on the facts found proved and established by the trial Court is whether the offence committed by the appellant is one punishable under Section 302, IPC or one under Section 304, Part II, IPC.

6. It transpires from the evidence on record that the appellant and PW 2 Poonma are real brothers and the relations between them were strained. Deceased Mst. Nathu was the wife of PW 2 and sister-in-law (Bhabhi) of the appellant. On the day of the occurrence, deceased Mst. Nathu reprimanded the appellant for quarrelling

with her children. The appellant felt aggrieved on such reprimand and it was in those circumstances that the appellant inflicted a single lathi blow on her which landed on her head causing injury which in the medical opinion of PW 4 Dr. N.K. Sharma was sufficient in the ordinary course of nature to cause death. The totality of the established facts and circumstances, in our opinion, do show that the incident had happened unexpectedly upon a sudden quarrel on the appellant having been reprimanded by the deceased and without any pre-meditation, during course of which the appellant gave a solitary injury to her. To our mind, the appellant could not be imputed with the intention to cause the death of the deceased or with intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause the injury which was likely to cause death.

7. In the case of Hemraj v. State of (Delhi Administration) reported in AIR 1990 SC 2252 : 1990 Cri LJ 2665, the Hon'ble Supreme Court has laid down (Para 14):

The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without pre-meditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither Clause I nor Clause III of Section 300, IPC will be attracted.... We hold in the present case that the offence committed by the appellant is one punishable under Section 304, Part II, IPC but not under Section 302, IPC.

8. In the present case, the appellant inflicted single lathi blow injury on the deceased. The occurrence happened unexpectedly on the spur of the moment and in heat of passion upon sudden quarrel following the deceased reprimanding

the appellant and there was no pre-meditation. Following the ratio of the aforesaid decision of the Hon'ble Supreme Court, we are inclined to hold that the intention to cause death or to cause fatal injury cannot be imputed against the appellant and, as such, the offence committed by the appellant is one punishable under Section 304, Part II, IPC and not under Section 302, IPC.

9. In the result, the appeal is partly allowed and we set aside the conviction of the appellant for the offence under Section 302, IPC and sentence of life imprisonment imposed therefor instead convict him for the offence under Section 304, Part II, IPC and sentence him to undergo rigorous imprisonment for a period of seven years. The judgment and order of the learned trial Court shall stand modified accordingly. We direct the appellant to surrender himself within seven days before the trial Court to undergo the remaining unserved portion of the sentence hereby awarded failing which the trial Court shall cause him arrested and send to jail to undergo the remaining unserved portion of sentence awarded hereby.

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