

**Moda Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jul-16-1984

**Reported in :** 1984WLN(UC)172

**Judge :** Kanta Bhatnagar, J.

**Appeal No. :** S.B. Criminal (Jail) Appeal No. 9 of 1984

**Appellant :** Moda

**Respondent :** The State of Rajasthan

**Disposition :** Appeal dismissed

**Judgement :**

**Kanta Bhatnagar, J.**

1. Appellant Moda was tried for the offence under Section 302 IPC by the Sessions Judge, Jalore. By the judgment dated November 23, 1983 he was held guilty for the offence under Section 304 Part-II and sentenced to three years R.I. and a fine of Rs. 100/-, in default of payment of fine to undergo one month's R.I.

2. The material facts of the case leading to the trial and conviction of the appellant are as under - Appellant Moda betrothed his daughter Smt. Bhuri at village-Moda with Rondason of Sona. About a year prior to the incident of the death of his younger daughter Smt. Varju appellant Moda declined to give his daughter Smt.

Bhuri in marriage at village Moda It caused annoyance to Sona and others of village Moda On February 7, 1983 Soaa with certain persons went to villagi-Nihboda, where the appellant was residing and insisted upon him to finalise the marriage issue and a give Smt. Bhuri in marriage to the son of Sona of village Moda. Appellant Moda was reluctant to agree to the proposal. He went to Kishorilal(PW. 2) and asked him to get the matter set led as he did not wish to give his daughter Smt. Bhuri in marriage at village Moda. Kishorilal (PW. 2) along with Poonma Bhil (PW. 4) accompanied appellant Moda where Sona and other villagers of Moda had assembled. On being insisted to give Smt. Bhuri in the marriage of the son of Sona, appellant got enraged and started hurling abuses. He rushed inside the house and came out with an axe. His younger daughter Smt Varju aged 6-7 years old was standing outside the house. Appellant Moda inflicted axe blow at the neck of Smt. Varju and ran away from there with the axe in his hand Smt. Varju succumed to the injury sustained by her. This occurrence took place at about 5 00 P.M. and Kishorilal (PW. 2) went to the Police Station Bhinmal to lodge the report at about 9.15 P.M. He lodged the report Ex. P/4. Case under Section 302 IPC was registered against appellant Moda. S.H.O Khusal Singh (PW. 8) of Police Station Bhinmal went to the site and inspected the matter Appellant Moda was arrested on February 8, 1983. Charge sheet under Section 302 IPC was submitted against the appellant in the Court of Munsif and Judicial Magistrate First Class, Bhinmal. Learned Magistrate committed the accused to the Court of Sessions Judge, Jalore to stand his trial there. The learned Sessions Judge, charge sheeted the appellant for the offence of murder of Smt. Varju and recorded his plea. Appellant Moda denied the indictment and claimed to be tried. To substantiate its case, prosecution examined eight witnesses in all. The appellant in his statement under Section 313 of the Code of Criminal Procedure totally denied the indictment allegations levelled against him and stated that he has been falsely implicated in the matter. No defence witness has been examined.

3. The learned Sessions Judge in view of the evidence on record was of the opinion that there was no intention to commit the murder and therefore, did not consider it to be a case puoishable under Section 302 IPC. He hold the appellant guilty for take offence under Section 304 Part-11 and sentenced him three years R.I. and a fine of Rs. 100/- in default to undergo one month's R.I.

4. Being dissatisfied by his conviction and sentence, Moda has filed this appeal through the Superintendent, Central Jail, Jodhpur.
5. I carefully examined the record of the case and heard Mr. R.C Maheshwari, learned Public Prosecutor for the Mate.
6. Prosecution has examined a number of witnesses to Instantiate that there was a dispute regarding the marriage of Smt. Bhuri, daughter of the appellant and the latter did not wish to give her in marriage at village-Moda where she was betrothed.
- 7 From the statements of Kishorilal (PW. 2), Samoda (PW 3), Poonma Bhambi (PW. 5), it is proved that the villagers had assembled and there was not altercation about the marriage of Smt. Bhuri daughter of the jappellant . Informant Kishorilal (PW. 2), Head Master of the School of the village, has stated that at the instance of Moada, about the occurrence. In view of such evidence, prosecution case about appellant Moda causing death of his daughters Smt. Varju stands duly established. The learned sessions Judge has taken into consideration the fact that there could not be any intention of the appellant to cause the death of his daughter Smt. Varju a girl of tender age and that he could not even be imputed with the intention to cause such bodily injury to the child which might have resulted in her death.
8. While imposing the sentence, the learned Sessions Judge kept in view the fact that it was out of anger and provocation that the appellant had committed the murder of his young child. Taking into consideration the fact that the appellant being the head of the family has to maintain the family, the learned Judge took a lenient view in the matter and awarded three years R.I. and a fine of Rs. 100/-, in default of payment of fine to undergo one month R.I. only as stated earlier.
9. I carfully examined the case to find out whether a more lenient view acan be taken in the matter. Looking ot the gravity of the act committed by the appellant, I do not consider it a fit case in which the punishment of three years R.I. and a fine of Rs. 100/- may be said to be exhorbitant or daughter in marriage against his will to the person she was betrothed, and that caused annoyance to him and he might

have got perplexed but that would never justify a person losing balance of mind and self control to such and extent so as to cause the death of his own innocent child How so ever provoked a man may be he could not escape a criminal act. It is also relevant to observe that it was Smt. Bhuri and not Smt. Varju who was the bone of contention of the whole dispute.

10. In these circumstances, I find no reason to take a view different from the one taken by the learned Sessions Judge, even regarding the quantum of sentence awarded to the appellant. The learned Sessions Judge has already considered the facts and circumstances of the case and for that reason adopted such a mild attitude in awarding the sentence. The judgment, therefore, calls for no interference.

11. Consequently, the appeal having no merits is dismissed.

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