

Sitaram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-12-1995

Reported in : 1996CriLJ1055

Judge : Rajendra Saxena, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 4(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 302 and 304; Code of Criminal Procedure (CrPC) - Sections 313, 421 and 422

Appeal No. : Cr. Jail Appeal No. 478 of 1994

Appellant : Sitaram

Respondent : State of Rajasthan

Advocate for Def. : K.L. Thakur, Public Prosecutor

Advocate for Pet/Ap. : Sandeep Mehta, Adv.

Judgement :

Rajendra Saxena, J.

1. This jail appeal has been filed against the judgment dated 11 -8-94 passed by the learned Addl. Sessions Judge No. 2, Chittorgarh in Sessions Case No. 216/93, whereby he found the appellant guilty for the offence under Section 304 part II IPC

and sentenced him to five years' rigorous imprisonment and a fine of Rs. one thousand and in default to further undergo one year's rigorous imprisonment.

2. Briefly stated the relevant facts are that the appellant had given his licenced gun to one Kishore from whom Ratanlal, deceased, took away that gun. On 3-10-93, the appellant went to the house of Ratanlal, deceased, situated in village Lakshpura and demanded his gun but the deceased Ratanlal refused to give back that gun. Thereupon, it is alleged that appellant hurled abuses and came out of the house of Ratanlal, deceased, who followed him. It is alleged that outside Ratanlal's house on the way, appellant got infuriated and dealt a 'ballam' blow on formers chest. Ratanlal fell down after sustaining punctured wound on his right chest cavity and bled profusely. Ratanlal's family members tried hard to take Ratanlal to hospital, but since there was no means of transportation, they could not do so Ratanlal died next day morning. PW 1 Bheru lodged an oral report of the incident at Police Station Rawat Bhata on 4-10-93. The doctor, who conducted the post mortem examination found a punctured wound in the fifth intercostal space along with sharp cutting of fifth rib at its medial end. He also found that his right lung was punctured, which was corresponding to the chest injury. The doctor opined that the cause of death was excessive external and internal haemorrhage leading to shock and death.

3. After usual investigation, challan was filed in the court of learned MJM, Rawatbhata, who committed the case to the learned Sessions Judge. The appellant was charged for the offence Under Section 302 IPC. He denied the indictment and claimed trial. The prosecution examined as many as sixteen prosecution witnesses. The appellant denied the circumstances appearing against him in the prosecution evidence and asserted that he has been falsely implicated. However, he did not adduce any evidence in his defence.

4. After trial, the learned trial Judge found the appellant guilty of the offence Under Section 304 part II IPC and sentenced him in the manner detailed above. Hence this appeal.

5. I have heard Mr. Sandeep Mehta, learned counsel for the appellant and Mr. K. L. Thakur, learned Public Prosecutor appearing for the State at length and

Carefully perused the record of the lower court.

6. Mr. Sandeep Mehta has rightly not challenged the conviction of the appellant Under Section 304 part II IPC, which stands amply proved from the evidence recorded in this case. The only contention of Mr. Mehta is that the age of the appellant on the day of the occurrence was 20 years i.e. below twenty one years and, therefore, the learned Sessions Judge has committed an illegality in not extending the benefit of probation-to the appellant.

7. On the other hand, Mr. K. L. Thakur, learned Public Prosecutor has submitted that at the time of recording the plea of the appellant, the learned trial Judge has estimated the age of the appellant as twenty-two years and that keeping in view the facts and circumstances of the case and the gravity of the offence, the appellant does not deserve to be released on probation.

8. I have given my thoughtful consideration to the rival contentions. In this case, the arrest memo has not been exhibited by the prosecution. In the charge, the age of the appellant has not been mentioned by the learned trial Judge. In the plea recorded Under Section 313 Cr.PC on 22-7-94, the appellant disclosed his age as twenty years and the learned Sessions Judge estimated his age between 20-22 years. Therefore, as per estimation of the learned Sessions Judge also, the age of the appellant was between 20-22 years.

9. In *Raisul v. State of U.P.*, : 1977 CriLJ1555 the accused was convicted and sentenced to death Under Section 302 IPC, before the trial court. The appellant disclosed his age as 18 years but the learned Sessions Judge estimated his age as about 24 years. The High Court on seeing the accused personally also took the view that the estimate of the age given by the Sessions Judge was correct. It was contended that since the accused was below 18 years of age on the date of offence, sentence of death imposed upon him was unjustified. The Apex Court held that the learned Sessions Judge as well as the High Court were not right in substituting their own estimates in regard to the age of the appellant and on the basis of such estimate rejecting the statement as to his age made by the accused. It was further observed that appearance can often be deceptive. The Apex Court, therefore, held that the age of the accused was below 18 years on the date of the

incident and converted his sentence to that of life imprisonment. In the instant case, the learned Sessions Judge has himself estimated the age of the accused between 20-22 years on 22-7-94. Therefore, it stands firmly established that the age of the appellant on the date of occurrence i.e. 3-10-93, was positively below 21 years.

10. Now let us find out whether it will be proper to leave the appellant on probation of good conduct?

11. In *Sabal Singh v. State of Rajasthan*, 1985 Cri LR (Raj) 455, the accused persons were convicted for the offences Under Sections 148, 302 and 302/149 IPC by the Sessions Judge. On appeal, this court found them guilty of the offence Under Section 304 part II instead of 302 IPC. The accused persons were not previous convicts. Two accused persons were below 21 years of age at the time of the incident. It was held that it would be proper to release the accused persons on probation of good conduct and, accordingly, benefit of probation was extended to them.

12. In *Madanlal v. State of Rajasthan*, 1988 Raj LW 169, the deceased misbehaved with the daughter of the accused. Accused being provoked, went to the house of the deceased and some altercation took place. The accused took a fire wood and caused injuries to the deceased resulting in his death. He was found guilty of the offence Under Section 304 part II. There was no previous conviction of the accused and his antecedents were also not bad. The act was done in grave and sudden provocation. It was held that the accused deserved the benefit of probation.

13. Similar are the facts of the case on hand. Here, the appellant went to the deceased's house and demanded his gun, which the latter had taken away from Kishore. Thereafter, an altercation took place between them and during a sudden and grave provocation, the appellant pierced his 'ballam' into the chest of the deceased which the 'Adivasies' generally have with them, and caused the fatal injury. The appellant is not a previous convict. Even, there is not a fringe of evidence that the antecedents of the appellant have been bad or questionable.

14. Keeping in view the peculiar facts and circumstances of the case and character and past antecedents of appellant including the nature of the offence, I am of the considered opinion that it is a fit case, wherein the appellant, who is under detention since 5-10-93 and has already suffered imprisonment of one year, three months and seven days, be released on probation of good conduct Under Section 4(1), [Probation of Offenders Act, 1958](#) and he may be directed to pay an amount of Rs. five thousand as compensation to PW 6 Smt. Chandri, widow of deceased Ratanlal r/o village Bagaspura,

15. In the result, this appeal partly succeeds and the conviction and sentence of the appellant for the offence Under Section 304 part II IPC are maintained, but instead of sentencing him, he is released on probation provided he executes a personal bond in the sum of Rs. ten thousand and furnishes two sound and substantial sureties in the sum of Rs. five thousand each to the satisfaction of the learned trial Judge to appear and receive the sentence when called upon during such period and to keep peace and be of good behaviour for a period of two and a half years from today and deposits an amount of Rs. five thousand as compensation, which shall be paid to PW 6 Smt. Chandra widow of deceased Ratanlal. If the appellant fails to deposit this amount of Rs. five thousand, it shall be recovered from him as a fine in accordance with the provisions of Sections 421 and 422 Cr.P.C.