

Nanda Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-24-1985

Reported in : 1985(2)WLN413

Judge : Kanta Bhatnagar and; Shyam Sunder Byas, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 686 of 1985

Appellant : Nanda

Respondent : State of Rajasthan

Judgement :

Kanta Bhatnagar, J.

1. This appeal is directed against the judgment dated September 30, 1980 passed by the learned Additional Sessions Judge Rajsamand by which appellant Nanda was convicted under Section 302 IPC and sentenced to imprisonment for life.

2. The victim Heema (aged about 9 years) was in the junele on October 18, 1979. At about 4.00 P.M., Bhera (PW 8) informed Vajja (PW 1) father of Heema deceased that Nanda Balai was belabouring in the Chhappar Vajja and Bhera rushed to Chhappar and saw Nanda Balai belabourine Heema with Lathi. On seeing them. Nanda took to heels. Kalu (PW 2) also saw Nanda running away with a Lathi from the place of occurrence At the instance of Vajja, PW 2 Kalu went to

police station, Charbhuia and lodged report Ex. P. 7. with PW 9 Gopi Lal Station House Officer of that Police Station. The S.H.O. went to the site and conducted necessary investigation On the same day, appellant Nanda was arrested. Charge-sheet against the appellant was filed in the Court of Additional Munsif & Judicial Magistrate Rajsamand. The accused was committed to the Court of Additional Sessions Judge, Rajsamand to stand his trial. On his pleading being recorded and his denying the charge, trial proceeded. The prosecution examined nine witnesses The appellant denied the allegations levelled against him in statement under Section 313, Cr.P.C. In defence no witness was examined. The learned Additional Sessions Judge placed reliance on the testimony of Vajja and Bhera and recorded the conviction of the appellant and sentenced him as stated earlier. Appellant Nanda filed this appeal through the Superintendent Central Jail, Udaipur. As he was unrepresented, Mr. S.K. Vyas was appointed amicus curiae to plead on his behalf.

3. Mr. Vyas did not press the appeal on merits but submitted that in view of the facts and circumstances of the case, the offence does not fall within the ambit of Section 302 IPC. According to him, the weapon used, the nature of the injuries and there being no evidence of any premeditation or planning should be taken into consideration and the case does not travel beyond the ambit of Section 304, IPC. The learned Public Prosecutor could not convince us that there was any motive to commit such a heinous crime of murder. He also could not point out any material sufficient to impute the intention to commit murder on the part of the assailant.

4. Upon the careful perusal of the record of the case, it is evident that the prosecution could not bring on record the origin of the quarrel. Bhera had called Vajja. They too must have taken time to reach the site. Both of them were unable to say how the quarrel between the two boys took place. The two boys had no previous enmity and, therefore, it is not a case of premeditation or pre-planning. The age of the accused, as estimated by the learned trial Judge at the time of his statement, was 16-17 years. There being no specific evidence about the accused being below 16 years, he was tried by the learned Additional Sessions Judge instead of his case being referred to the Children Court. There is force in the contention of the learned counsel for the appellant that the two boys being of

immatured understanding, might have quarreled on a trivial point and in such circumstances, if one of them inflicted Lathi blows to the other, he cannot be imputed with intention to cause murder or the intention to cause injuries likely to cause death-, The injuries have been caused by a Lathi. Dr. V.R. Atawat (PW 3), who conducted the autopsy over the dead body of Heema, had nowhere stated that the injuries noted by him on the dead body were sufficient in the ordinary course of nature to cause death. Thus, the case cannot be said to fall within the ambit of Clause 3rdly of Section 300, IPC. All that can be said is that the assailant while causing Lathi injuries to the victim should have knowledge that by his act he may cause bodily injuries to the victim likely to cause his death. In this view of the matter, 'knowledge' envisaged by Section 304, Part II, IPC can be imputed to him. A similar question arose before their Lordships of the Supreme Court in the case of Jayappa Dattu Rajage v. The State of Maharashtra (1982) Cr. LR 282. In view of the facts and circumstances of the case and the nature of the injuries their Lordships considered it a case covered by the provisions of Section 304, Part II, IPC.

5. We are, therefore, inclined to disagree with the finding of the learned trial Judge that the appellant was guilty for the charge of murder. In our opinion he can be held guilty only under Section 304, Part II, IPC.

6. Coming to the question of sentence, in view of the facts and circumstances of the case and the young age of the appellant, we consider that a period of five years will be the adequate punishment to be awarded to the appellant.

7. Consequently, the appeal of accused Nanda is partly allowed. The conviction and sentence of the appellant under Section 302, IPC are set-aside. Instead, he is convicted under Section 304 Part II, IPC and sentenced to rigorous imprisonment for five years. He was arrested on October 18, 1979 and is in custody since then. He has, thus, served out the sentence awarded to him by this judgment. He shall be immediately set-forth to liberty if not required in any other case.