

Rahim Bux Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-20-1990

Reported in : 1990WLN(UC)43

Judge : A.K. Mathur, and; R.S. Verma, JJ.

Appeal No. : D.B. Criminal Appeal No. 479 of 1989

Appellant : Rahim Bux

Respondent : State of Rajasthan

Judgement :

R.S. Verma, J.

1. Rahim Bux has been convicted for an offence Under Section 302 I.P.C. by the learned. Addl. Sessions Judge, Bhilwara, vide his judgment date 06-10-89 and has been sentenced to undergo life imprisonment and to pay a fine of Rs. 100/- and in default to undergo further imprisonment for two months. Aggrieved, he has come in appeal.

2. The facts of this case lie in a narrow compass. The case of the prosecution is that PW 1 Kamaruddin and appellant Rahim Bux are neighbours and their houses are situated at a distance of about 300' from each other. Kamaruddin had three sons, namely, PW 4 Amaruddin, one Fakhruddin and Rahim Bux@Pappu. It is

said that Rahim Bux's brother Fakhruddin was having some sort of illicit relations with Miss Bhuri daughter of appellant Rahim Bux. Naturally Rahim Bux was annoyed with this and on 15-8-88 at about 7 p.m., Rahim Bux went to the house of PW 1 Kamaruddin at Dadabadi, Bhilwara, to remonstrate Kamaruddin on this account. He had some loud verbal altercation with Kamaruddin. At that time, Kamruddin's daughter PW 9-Jenab was also present there. On seeing this verbal altercation, Smt. Jenab proceeded to the factory of Rahim Bux alias Pappu, which was situated nearby and where PW 4 Amaruddin and some other persons used to work. On being informed by Jenab about this verbal altercation, Rahim Bux alias Pappu his brother PW 4 Ajaruddin their employees PW 2 Abdul Razak, PW 3 Mohd. Hussain went to the place where Kamaruddin PW 1 and appellant Rahim Bux were having verbal altercation. Rahim Bux alias Pappu intervened in this altercation, at which the appellant whipped out a knife and stabbed Rahim Bux alias Pappu on the chest with the result that Rahim Bux started bleeding profusely. The appellant thereafter ran away from the scene of occurrence. Rahim Bux alias Pappu was immediately taken to the hospital while Amaruddin went to the Police Station, Bhilwara, to lodge a report. The report was lodged by him at about 8 p.m. for offence Under Section 307 I.P.C with PW 11 Ami Kumar. This report reached the Magistrate at Bhilwara on 17-8-88 at 2:30 p.m.

3. The prosecution story is that Rahim Bux alias Pappu was declared dead at the hospital by the doctor.

4. PW 11 Azad Kumar Sharma after having recorded the F.I.R. proceeded to investigate the matter. He learnt of the death of Rahim Bux and, therefore, altered the case from 307 I.P.C. to 302 I.P.C. Prior to this, Azad Kumar arrested the accused-appellant at the hospital at about 9 p.m. Next day i.e. on 16-8-88 at about 8 a.m., Shri Azadkumar examined the dead body and prepared Panchnama Ex. P 8 and got an autopsy conducted on the person of the deceased. The autopsy was conducted by Dr. Sharma, who found-one incised stab wound with clean cut margins and profuse bleeding, vertically 5.4' X 4' over upper part of right chest and below neck just over and above clavicle, 1' away from sterno-clavicle joint. Upon opening the body, he found that right upper lobe of lung had been cut and the intervening vessels and nerves had also been cut. The pleura had also been

injured. According to Dr. D.R. Sharma, the injury was ante-mortem in nature and had been caused by a sharp object. According to him, the injured must have died 3 to 12 hours before post-mortem examination. In his opinion, the cause of death was shock due to loss of blood as also due to rupture of lungs and other vessels. He prepared post-mortem report Ex. P6 in this regard. Upon further enquiry, he opined that injury was sufficient to cause death in the ordinary course of nature vide his report Ex.P 7.

5. After the post-mortem examination was over, the Investigating Officer recovered blood stained clothes of the deceased vide his memo Ex.P 9 and duly sealed them. He handed over the dead body to brother-in-law of the deceased vide Ex.P 10.

6. Shri Azad Kumar prepared the site plan Ex.P 2 the same day at about 9.30 p.m.

7. The prosecution story is that on 16-8-88 it about 11 p.m. too accused volunteered information in respect of a knife, which was recorded by Shri Azad Kumar vide Ex.P 11. In pursuance of this information, a knife was recovered at the instance of the accused-appellant from his house the same day at about 12.30 p.m. vide Ex.P 4. Some photographs were taken on the time of this recovery. Statements of witnesses were recorded and the knife was sent to Forensic Science Laboratory. Thereafter, the accused was challaned in the court of Munsif & Judl. Magistrate, First Class, Bhilwara, on offence Under Section 302 IPC. The learned Magistrate committed the accused to the court of Sessions at Bhilwara on 3-11-1988. The case was made over to the learned Addl. Sessions Judge by learned Sessions Judge, Bhilwara vide an order dated 28-11-1988.

8. The learned Addl. Sessions Judge framed charge Under Section 302 IPC against the accused-appellant, who pleaded not guilty and claimed trial.

9. At the trial, the prosecution examined PW 1 Kamaruddin, PW 2 Abdul Razak, PW 3 Mohd. Hussain, PW 4 Amaruddin, PW 5 Sattar Mohd. PW 6 Mahavir, PW 7 Ismile, PW 8 Dr. D.R. Sharma, PW 9 Miss Jenab, PW 10 Murlidhar, PW 11 Azad Kumar Sharma, PW 12 Ram Lal, PW 13 Jawan Singh, Photographer, PW 14 Kashim Khan, PW 15 Ram Prasad and PW 16 Amba Lal.

10. In his statement Under Section 313 Cr. PC the accused denied the prosecution story altogether and stated that the witnesses belong to one family and had falsely implicated him. He however, did not lead any evidence in defence.

11. After hearing both the sides, the learned Addl. Sessions Judge found that Rahim Bux alias Pappu died a homicidal death on the evening of 15-8-1988. He also arrived at the conclusion that it was the accused-appellant, who had stabbed Rahim Bux alias Pappu on the chest causing his death. Upon such findings, he convicted and sentenced the accused-appellant as stated above.

12. Learned Counsel for the accused-appellant has not challenged this part of the prosecution story that deceased Rahimbux alias Pappu had died a homicidal death due to stabbing. He also did not challenge this aspect of the prosecution story that it was the accused-appellant, who had stabbed the deceased. However, he contended that an offence Under Section 302, IPG was not made out against the accused-appellant. Accused-appellant had no enmity with the deceased and he could have no intention to commit murder of the deceased, His submission is that. Fakhruddin had abducted Miss Bhuri daughter of the accused-appellant two days ago. Miss Bhuri had been wrongfully confined in the house of PW 1 Kamaruddin. The accused-appellant had gone to the house of Kamaruddin to rescue Miss Bhuri, upon which the deceased and his companions gave beating to him with the result that he sustained injury on his head. The deceased was stabbed by the appellant when he was prevented from rescuing Miss Bhuri, which he had a right to do. He submits that in the facts and circumstances of the case, at best an offence Under Section 304 Part-II, IPC is made out. In this very context, he submits that the knife in question with which the accused-appellant is alleged to have stabbed the deceased, has not been produced before the trial court and it appears that it was an ordinary pen knife with which the accused-appellant had stabbed the deceased. This also shows that the accused-appellant had no intention to commit the murder of the deceased.

13. Learned PP opposed the appeal and submits the injury inflicted upon the chest of the deceased, shows that it had been inflicted with great force. He submits that

the reco very memo of the knife goes to show that that it was not an ordinary pen knife but was having a blade 5' in length and 1' in width. He submits that the conviction of the accused-appellant for offence Under Section 302 IPC is justified and this Court need not interfere with the same. In the alternative, he has submitted that if the accused-appellant was found guilty of an offence Under Section 304, Part-II, IPC, then the next of the kin of the deceased must be allowed suitable compensation in addition to such sentence, which may be passed by this Court.

14. We have carefully considered the contentions on both the sides. This is an admitted position that the deceased and his father Kamaruddin were neighbours of the accused-appellant. This is also an admitted position that Miss Bhuri, daughter of the appellant had some sort of illicit relations with Fakhruddin, the real brother of the deceased. From the testimony of Kamaruddin, it appears that the appellant had gone to remonstrate Kamaruddin on this account and it does appear that a loud verbal altercation took place between Kamaruddin on one band and the appellant on the other. It transpires from the evidence on record that hearing this verbal altercation, Miss Jenab PW 9, who is daughter of PW 1 Kamaruddin went to the factory of her brother Rahim Bux alias Pappu the deceased. On this, Rahim Bux along with PW 2 Abdul Razak proceeded towards his house followed by PW3 Mohd. Hussain and PW 4 Amaruddin, one Mahavir PW 6 also reached there.

16. It appears from the testimony of Amaruddin that the deceased caught hold of the shoulder of the accused-appellant, upon which the accused-appellant took out a knife and stabbed the deceased. This testimony of Amaruddin is corroborated by the testimony of Mahavir PW 6, who is said to have witnessed this incident. It appears that this part played by the deceased appellant has been suppressed by PW 1 a Kamaruddin, PW 2 Abdul Razak, PW 3 Mohd. Hussain and PW 9 Jenab.

16. We may here state that there is no evidence on the record worth the name to show the Miss Bhuri had been abducted two days prior to the incident or had been wrongfully confined in the house of Kamaruddin. Of course, it has come in evidence that Miss Bhuri was present at the scene of occurrence when this incident took place. This fact is admitted by PW 2 Abdul Razak, PW 4 Amaruddin

though other witness have tried to delay her presence at the spot. From the above narration, it appears that the accused appellant had actually gone to PW 1 Kamaruddin to remonstrate him because his son Fakhruddin was having illicit relationship with Miss Bhuri. It appears that a loud verbal altercation took place between the two persons. It does not appear that the accused-appellant had gone to the house of Kamaruddin with the object of committing the murder of Rahim Bux. Had it been so, he would have gone to the factory of Rahim Bux, where he was working. More over he had no grouse against Fakhruddin, whom he did not touch at all. The truth appears to be that on being informed by Jenab, deceased Rahim Bux accompanied by his employees and brother Amaruddia reached the scene of occurrence and caught hold of the shoulder of the accused-appellant. This must have infuriated and scared the accused-appellant and it was in these circumstances, that he suddenly took out a knife in heat of moment and stabbed the deceased on the chest. It does not appear that the appellant had really intended to cause the death of the deceased. It is rather unfortunate that the knife pierced deep in the chest of the deceased and caused the fatal injury.

17. We would like to take note of the fact that the accused-appellant was arrested that very night from the hospital where the deceased had been taken. This shows that he did not try to make himself scarce but must have repented for his act otherwise there is no reason why he should have gone to the hospital and should have been arrested from there.

18. It is true that the recovery memo of the knife mentions the length of the blade of the knife as 5' and its width as 1' but it is curious that the knife has not been produced before the learned trial Judge, even though the same is said to have been sent to the forensic Science Laboratory. Azad Kumar Sharma, who recovered the knife, does not speak of the dimensions of the blade of the knife. Tara Chand, an attesting witness of the recovery of the knife, has not been produced by the prosecution. Sattar Mohd. another attesting witness has been produced but, he too was not asked to identify the knife allegedly recovered from the accused. Therefore, it is not satisfactory, proved that the knife was of unusual size.

19. The afore-mentioned circumstances go to show that the accused-appellant inflicted the injury in question on the chest of the deceased on the spur of the moment and without any pre-meditation. It does not appear that he at all intended to cause the death of the deceased. To our mind, the case of the accused is covered by Exception IV to s. 300 I.P.C. It does not appear that the accused-appellant took any undue advantage or acted in a cruel or unusual manner. He did not repeat the blow. The truth appears to be that when he found deceased Pappu catching him by the shoulder accompanied with his brother and employees, he must have been scared and then he must have inflicted the injury in question in the heat of moment.

20. In the facts and circumstances of the case, we are of the opinion that offence Under Section 302 I.P.C. is not made out beyond shadow of reasonable doubt against the accused-appellant and his action falls only Under Section 304, Part-II, I.P.C.

21. Now the question is as to what punishment should be meted to the accused-appellant. In our opinion, a sentence of three years rigorous imprisonment and a fine of Rs. 5,500/- and in default further rigorous imprisonment for six months should meet the ends of justice. Fine, if realised, Rs. 5000/- may be paid to the next of kin of the deceased.

22. Accordingly, the appeal is partly allowed and the conviction of the appellant is altered from one Under Section 302 I.P.C. to one Under Section 304, Part II, I.P.C. The sentence of life imprisonment and fine of Rs. 100/- is set aside and instead the accused-appellant is sentenced as stated above to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5500/- and in default further rigorous imprisonment for six months. Out of the fine, if realised, Rs. 5000/- may be paid to the next of kin of the deceased on production of a proper succession certificate.