

Moti Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-27-1982

Reported in : 1982WLN(UC)591

Judge : S.K. Mal Lodha and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 247/76

Appellant : Moti

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Kanta Bhatnagar, J.

1. Appellant Moti was tried for the offence under Sections 302 and 323 IPC by the learned Additional Sessions Judge, Sirohi. By the judgment dated 17-2-76, the learned Additional Sessions Judge held him guilty for the aforesaid offences and sentenced him to imprisonment for life on the first count ad six months rigorous imprisonment for the second count with an order that both the sentences shall run concurrently. Being dissatisfied with his conviction and sentence, Moti has filed this appeal in this Court.

2. Succintly narrated the facts of the case giving rise to the trial of the appellant and the present appeal, are as under: Deceased Poona, resident of Phoolabai-Ka-Kheda, had borrowed grass-seed from the appellant. On 5-5-75, appellant went from his village Kundal to the village o the deceased Poona to receive the seed. He stayed there for the night. Next morning, he along with the deceased left for village Kachholi. Rupa (PW 5), brother of the appellant Moti also residing at the village Phoolabai-Ka-Kheda accompanied the two for village Kachholi, as he had to purchase grain from there. Poona was having a tin of ghee which he wanted to sell at Kachholi Mandi. At Kachholi, Rupa purchased grain from Thakur Badsingh and Poona sold the ghee at Kumharwada. Thereafter, all the three went to the hotel of PW 6 Baloo and took tea there They then went to the well of Vijaysingh (PW 4) and took bath. The grain purchased by Rupa and the empty tin of ghee of Poona were left at the hotel of Baloo. It is alleged that the accused was hiving one latai with iron ring with him at the time. It being late, they did not go to the hotel to take their articles, because the hotel used to be closed early in the evening. All the three then proceeded towards village Phoolabai-Ka-Kheda. In the way the appellant demanded his gram seed from Poona. The appellant asked Poona to accompany him to his village and return his gram seed. The deceased told him that he would go after 2 or 3 days because of his being busy at the time with some work at his well. The deceased also asked the appellant to return Rs. 100/- which he owned to him and told him that it will be only on his repaying Rs. 100/-that he would return the gram-seed. Rupa also told the appellant that when he would repay Rs. 100/- to Poona, the latter would return the seed. At this Moti inflicted lathi blow on the hand of Rupa. Rupa fell down. Poona rushed to the rescue of Rupa. Moti inflicted two lathi blows to Poona, one blow hit the parietal region and the other the temporal region. Poona fell down. Rupa came to the rescue of Poona but Moti had taken out the dagger at the time and warned Rupa of dire consequences in case he would go near. Being frightened Rupa went away to some distance. The appellant pat on the deceased and caused three blows with the dagger on his neck. On seeing this Rupa ran away towards the house of Poona and informed Surma (PW 2, son of Poona, about what had happened. Rupa alongwith Surma returned to the site. Meanwhile Moti had left the place. Poona was lying there. Poona was taken to the village & then to Sarupganj

Primary Health Centre. He breathed his last in the way. Rupa went to police out post, Sarupganj. PW 8 Harisingh SHO of Police Station Rohida was present there. Rupa lodged the oral report with the SHO which reduced into, writing is Ex. P. 3 The report was sent to police station Rohida and the case was registered. The SHO went to the Primary Health Centre, where the dead body of Poona was lying outside. He prepared the inquest report Ex. P. 6. The dead body was entrusted to the Doctor for post-mortem examination. Dr. Bhoor Singh (PW 1), Medical Officer. Primary Health Centre. Sarupganj, conducted the autopsy over the dead body of Poona on 7-5-75 at 9.30 P.M. and noted following injuries on his person.

1. Wounds Lacerated wound 1 1/2' x 1' x Bone deep 1' in front of left parietal eminence in direction caused by blunt object.
2. Lacerated wound--2' x 1' x Bona deep on left, mexillary process oblique in direction caused by blunt object.
3. Incised wound 1' x 1/2' x 2' on left side of neck at middle w(sic)adge shaped, prosterior anterior direction (oblique) cutting the carotid artery, Juglar vein and part of sternomestoid muscle.
4. Incised wound--3/4 'x 1/2' x 1 1/2' on left side of neck 1 1/4' before the injury No. 3. wedge shaped, posterio-anterior direction (oblique) cutting the carotid artery, Juglar vains and part of sternomestaid muscle.
5. Incised wound 1' x 1/2' x 2' on post fold of the left exiila, wedge shapped, posterior-anterior direction (oblique).

At the side of injury No. 1, the doctor found communicated fracture of left parietal bone. The lungs, lever, Kid eys, etc. were found to be pale According to the Doctor all the injuries were ante-mortem in nature Injury No. 1 and 2 could be caused by a blunt object and injury No. 3,4 and 5 y some sharp edged weapon. In the opinion of the Doctor the death of Poona was caused due to shock as a result of heamorrhage & multiple injuries, He prepared the postmortem examination report Ex. P. 1. After postmortem examination, the SHO took in possession the blood smeared clothes of the deceased.

3. On the same day Dr. Bhoorsingh examined Rupa (PW 5) and noted following injuries on his person:
 1. Lacerated wound--1 3/4' x 1/4' x skin deep 2 1/2' above the left eye brown 2 1/4' from mid-place of scalp en left side According to the Doctor the injury was simple and caused by blunt object. The duration of injury was held to be within 24 hours from the time of examination. The injury report is Ex. P. 2.
 4. The SHO then went to the site and prepared the Site Plan Ex. P. 11 & the site memo Ex P 5. The pieces of Lathi, turban, ring & part of shoes were found at the site and were taken in possession vide memo Ex. P. 7.
 5. On 8. 5.75 appellant Moti was arrested vide Memo Ex. P.8 at the time of his arrest his clothes were found blood stained and were taken in possession vide Memo Ex. P. 8. On 18-5-76 while under custody the appellant furnished information Ex. P- 30 to SHO Harisingh for getting recovered one knife concealed at a well near a water hut in the way to Badli. The information was reduced into writing is Ex. P. 14. In pursuance of that information knife was recovered vide memo Ex. P. 14. All the articles recovered during the course of investigation were sealed then and there. The blood stained articles were sent for the chemical examination. The report of the Chemical Examiner is Ex. P. 15 and that of the Serologist is Ex. P. 16.
 6. Upon completion of the necessary investigation, charge-sheet against the appellant was filed in .he court of Munsif and Judicial Magistrate. Abu Road. The learned Magistrate finding a prima facie case triable by the court of Sessions, committed the appellant to the court of Additional Sessions Judge, Sirohi. The learned Additional Sessions Judge, charge-sheeted the appellant for the aforesaid offences and on his denial for the indictments and claiming to be tried proceeded with the trial. The prosecution examined nine witnesses in all. The appellant in his statement under Section 313 Cr. PC totally denied the allegations levelled against him and stated that his brother wanted to snatch his land and has for that reason falsely stated against him. No defence witness was examined. The learned trial Judge placed reliance on the prosecution evidence and passed the judgment under appeal.

7. The appellant has filed the appeal through Superintendent, Central Jail, Jodhpur. As he was unrepresented, Miss Kamla Ojha was appointed Amicus Curiae to plead on his behalf.

8. We heard Miss Kamla Ojha, learned Amicus Curiae and Mr. H.N. Calla, learned Public Prosecutor and carefully examined the record of the case.

9. The learned Amicus Curiae has assailed the findings of the learned trial Judge on two grounds. Firstly, that the statement of Rupa at the trial being inconsistent with his statement before the police should not have been relied on & secondly, that Rupa even if present might be the culprit & there was no reason to disbelieve the defence plea taken by the appellant in his statement under Section 313 Cr. PC.

10. The prosecution has led direct as well as circumstantial evidence in the case. The direct evidence is that of Rupa. The circumstantial evidence of Surma is to the effect that immediately after the occurrence Rupa went to him and informed about appellant Moti causing injuries to him and Pooana. Baluram (PW 5) and Vijaysingh(PW 4) have been examined by the prosecution to substantiate its case that the deceased, the appellant and witness Rupa were together prior to the commission of the crime at the hotel of Balu & then at the well of Vijay Singh. Yet another circumstance connecting the appellant with the commission of the crime is the recovery of blood stained shirt and Dhoti found on his person at the time of his arrest. The recovery of the knife in pursuance of the information furnished by the accused has also been relied on by the prosecution as a circumstance against the appellant.

11. This is correct that prosecution case mainly hinges on the solitary testimony of Rupa. The question arising for determination is whether this witness is of sterling worth so as to justify the conviction of the appellant on his sole testimony. The only ground on which the veracity of the testimony of Rupa is challenged is the inconsistency in his deposition at the trial and the version given by him before the police regarding his reaching the hotel of Baluram. At the trial the witness has stated about his accompanying the appellant and the deceased from village Phoolabai-Ka-Kehda and all the three going to the hotel of Baluram. In his police

station Ex. D-2 at portion 'A to B' to which his attention was drawn he has stated about his coming alone from Phoolabai-Ka-Kehda to Kachholi and Poona and Moti meeting him at the hotel. The witness explained the position by stating that he had proceeded ahead and Moti and Poona had followed. This minor discrepancy in the two statements & that too properly explained, does not, in our opinion, discredit the testimony of Rupa so as to hold that he was not at all there in the company of the deceased and the appellant on the fateful day and for that reason could not be a witness to the occurrence.

12. The alternative argument of the learned Amicus Curiae that Rupa must have been the assailant and the appellant might have been falsely implicated by him in the case so that Rupa may enjoy the land belonging to the appellant is devoid of force. Firstly, because it is inconsistent with the argument that Rupa was not there to witness the occurrence and secondly, because there is not an iota of evidence to suggest that it was not the appellant rather Rupa who might have committed the crime. The defence plea about Rupa having an intention to snatch the land of the appellant and for that reason falsely implicating him in the case has not been even suggested to witness Rupa. In such circumstances merely because the appellant and Rupa are real brothers, it can not be said that Rupa had any intention to falsely implicate his real brother in the crime out of greed. There is full force in the contention of the learned Public Prosecutor that the fact of Rupa having sustained injury at the time of the occurrence is sufficient to belie the defence plea that Rupa might have been the assailant. The learned trial Judge has also considered this point and has rightly arrived at the conclusion that, had Rupa been the culprit, he would have run away from the site, instead of going to Surma, son of the deceased. There is evidence about the appellant picking up quarrel with the deceased but nothing against Rupa to indicate that: he for any reason might have felt annoyed with the deceased. The cogent, convincing statement of Rupa, coupled with the fact that he had also sustained injury at the hands of the assailant and his immediately rushing to the house of Poona and informing his son Surma about the occurrence lead to the irresistible conclusion that Rupa was there at the time of occurrence and has given the true narration of what had actually happened. In this view of the matter, the learned trial Judge, in our opinion, has committed no error in placing reliance on the evidence of Rupa and basing

conviction on his solitary testimony.

13. Baluram and Vijaysingh have stood well the cross-examination and there is nothing to doubt the veracity of their testimony on the point that on the day of occurrence the appellant, the deceased and witness Rupa were together.

14. The recovery of blood stained clothes which the appellant was wearing at the time of his arrest, has been proved by Harisingh SHO and Immamuddin (PW 7), motbir to the Memo. It is relevant to observe that the blood on those clothes was detected to be human blood as per report of the Serologist Ex. P. 15.

15. So far as the recovery of the knife in pursuance of the information of the appellant is concerned, we do not consider it a connecting link in the chain against the appellant. The reason is that the recovery was after 10 days of the arrest of the appellant. The knife was not shown to the Doctor at the time of his statement to have his opinion that the injuries sustained by the appellant could have been caused by the knife. Apart from it according to the report of the Serologist Ex. P. 16, the origin of the blood on the scrapping from dagger could not be determined as it was dis-integrated. But we may observe that in view of the direct evidence of Rupa and other circumstances against the appellant, this would not affect the prosecution case.

16. From the above discussion, we are of the opinion that prosecution has succeeded in establishing that it was the appellant and none else who was the author of the fatal injuries of the deceased Poona.

17. The learned Amicus Curiae next argued that in case her arguments regarding the innocence of the appellant are not appealing to the Court still, in view of the facts and circumstances, the conviction under Section 302 IPC is not sustainable. It has been vehemently pressed by her that the quarrel, even if any, bad taken place at the spur of the moment on a petty matter of the gram-seed and the repayment of Rs. 100/- which could not have created such an annoyance to the appellant so as to commit a heinous crime of murder. It has been stressed by Miss Kamla Ojha, learned Amicus Curiae that in the circumstances the intention of the appellant could not be more than causing injuries to the victim and, therefore, it is

a case following within the ambit of Culpable Homicide not amounting to murder. To substantiate her contention, the learned Amicus Curiae referred to the principle enunciated in certain authorities. On examining these authorities, we are of the opinion, that the principles enunciated in those cases are of no help to the appellant in the peculiar circumstances of this case.

18. In the case of *Radheyshyam v. The State* 1977 Cr LR (Raj.) 692 the appellant was held guilty under Section 304 Part 1 IPC for the reason that the injuries were caused to the deceased without premeditation in a sudden fight on sudden provocation regarding the ownership of the field from which the deceased had picked up Bhuttes.

19. In the case of *Badrilal v. The State of Rajasthan* 1981 Cr LR (Raj.) 474, there was no previous enmity between the appellant and the victim. Only one axe blow was given by the accused appellant, an old man of 72 years of age at the spur of the moment which hit the left parietal bone of the deceased, resulting in his death. In those circumstances, the conviction for the offence under Section 302 IPC was set aside and the appellant was convicted under Section 304 Part II IPC.

20. In the case of *Badrilal v. The State of Rajasthan* 1981 Cr LR (Raj.) 565, there was no previous enmity between the accused and the deceased. The incident took place at the spur of the moment. The accused appellant gave only one stroke with an axe on the left parietal bone of the deceased. The offence committed by the accused was held to be covered by exception of Section 300 IPC.

21. In the case of *Ram Karan and Ors. v. State of Uttar Pradesh* 1982 Cr LJ 1253, the quarrel ensued suddenly at the spur of the moment. Both the sides sustained injuries. There was no clear evidence to show that anyone took undue advantage, or acted in a cruel or unusual manner. In such circumstances, their lordships of the Supreme Court were pleased to hold that the accused was guilty of committing offence under Section 304 Part I read with Section 34 and not under Section 302 read with Section 34 IPC.

22. In the case on hand the quarrel of course was at the spur of the moment but there was no reason for causing annoyance to the appellant. Mere insistence of

the deceased to return the gram-seed only on his receiving his Rs. 100/- which the appellant owed to him cannot be said to be a case of grave provocation bringing the action of the appellant in the ambit of Exception one of Section 300 IPC. Had it been a case of inflicting injuries by lathi or even by knife in a fit of anger, the matter would have been different. But here there is the specific evidence of Rupa that on his asking the appellant to repay the debt of Poona so that he may return the gram-seed, the appellant inflicted a lathi blow to him. Poona coming to his rescue was given lathi blows by the appellant. If the appellant would have stopped only at that juncture, there would have been a legitimate argument to advance that the intention was only to cause injuries. But here is a case in which the appellant did not feel content by giving lathi blows to the victim, rather he took out the dagger and sitting on Poona who had fallen down by the lathi injuries & inflicted three dagger blows on his neck. The Doctor, as stated earlier has noted three incised wounds and two lacerated wounds on the dead body of Poona. According to the Doctor the injuries No. 1, 3 and 4 were individually sufficient in the ordinary course of nature to cause death. The fact of the assailant causing dagger injuries on the neck of the victim is sufficient to indicate the intention of the assailant to cause the murder of the victim. In such circumstances, the mere fact that the quarrel had ensued at the spur of the moment on a petty point cannot be held to be a ground for bringing the case of the appellant out of the definition of murder. The learned trial Judge has, therefore rightly held the appellant guilty for the offence of murder.

23. No discussion is required regarding the conviction of the appellant for the offence under Section 323 IPC Rupa, the injured had stated about his sustaining lathi blow at the hands of the appellant. The statement stands corroborated by the medical evidence of Dr. Bhoor Singh.

24. Consequently, the appeal filed by Moti is dismissed as having no merits.