

Achalia Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-03-1989

Reported in : 1989WLN(UC)109

Judge : K.S. Lodha and; R.S. Verma, JJ.

Appeal No. : D.B. Cr. Jail Appeal No. 295 of 1983

Appellant : Achalia

Respondent : State of Rajasthan

Judgement :

K.S. Lodha, J.

1. The facts of this case lie in a very narrow compass and the question urged before us is also very short and, therefore, the relevant facts are being stated in short. The accused Achalia is the real elder brother of PW 11 Jaisa Ram. He was a widower and it appears that he was making overtures towards Jaisa Ram's wife or had illicit relations with her. Therefore, Jaisa Ram took away his wife from their village Bhavrani to her father-in-law's place Gol. After staying at Gol for sometime, Jaisa Ram took his wife to village Bedia where his sister lived. At Bedia again, accused Achalia reached and started teasing Jaisa Ram's wife Smt. Hanja. Being annoyed of this, Jaisa Ram left with his wife for village Gol from Bedia, then he had reached about 6 kms. from Bedia on way to Gol, the accused Achalia over

took them. He was armed with an axe. At first, Achalia asked Jaisa Ram to come back to their village Bhavrani along with his wife Smt. Hanja but Jaisa Ram declined and thereupon, the accused Achalia gave the axe blow towards Jaisa Ram but Jaisa Ram averted the blow on the Lathi, which he was carrying. Jaisa Ram's wife Smt. Hanja tried to intervene and Achalia gave an axe blow on her neck. Smt. Hanja fell down and died. Jaisa Ram then went to the Sarpanch of Bhavrani and informed him to this incident. The Sarpanch asked him to report the matter to the Police whereupon Jaisa Ram got a report Ex. P14 written & presented the same at the Police Station, Noora. The police registered a case under Section 302 and 307 IPC and started investigation During the course of the investigation, Jaisa Ram was got medically examined and the doctor found the following injuries on his person:

1. Abrasion of 0.5 c m. X 0.1 c.m. on the left palm of the hand 3 c.m. proximal to base of little finger.
2. Abrasion of 0.5 c.m. X 0.1 c.m. on distal phalange of the little finger and middle phalange of the ring finger dorsally of the right hand.

Both injuries were simple by caused blunt weapon. The post-mortem examination of Smt. Hanja was also carried out and Dr. S.L. Chopra PW 10 found the following injuries on her person:

A obliquely incised wound present at the level of 5th cervical vertebrae of size 10 c.m. x 2.5 c.m. x 6.0 c.m. at the right side of the neck. Extending antero-posteriorly, anterior and lies near, the sterno mastoid muscles covered with blood clot and neighbouring skin also stained blood clot. Edges are deep stained, Maggots are present in the wound cutting the platysma and the muscles of the right side of the neck, the external carotid artery was also divided and 5th vertebrae was grazed.

He also found that the external carotid artery on the right side was divided. He was of the opinion that the death was due to shock due to external haemorrhage from the wound of the neck. Before of the court, he stated that the injury was sufficient in the ordinary course of nature to cause death. The Lathi on which Jaisa Ram

averted the blow of Achalia, was also produced before the Police along with the FIR and in this recovery memo Ex. P 5, the L.C. Shri Jet Mal Singh noted that there was a mark of the impact of a sharp edged weapon on the 5th digit of the Lathi from the bottom. The axe could not be recovered as the accused was said to be absconding after the incident and ultimately, he was arrested on 25-4-82 vide Ex. P 11. After the completion of the investigation, the accused was charge sheeted and he was committed to the Court of the learned Sessions Judge, Jalore. Charges under Sections 302 and 307 were framed against him. He pleaded not guilty. The prosecution thereupon examined 16 witnesses and produced 19 documents. The accused when examined Under Section 313 Cr.P.C. denied the prosecution story. He bow ever, did not produce any evidence in defence. The learned Sessions Judge convicted him Under Section 302, IPC and sentenced him to imprisonment for life and a fine of Rs. 200/- in default to three month's further rigorous imprisonment by judgment dated 29-6-83. It may be noted here that he failed to record any finding of conviction or acquittal for the charge Under Section 307, IPC. It appears further that while he was framing the points for consideration, he concentrated only on the question whether the accused Achalia had committed the murder of Smt. Hanja and the other question whether he had made an attempt on the life of Jaisa escaped his notice altogether. This is also important to note that when no finding has been recorded regarding the charge Under Section 307 IPC, which had been framed against the accused, he will be deemed to have been acquitted of that charge and the State has not filed any appeal against that implied acquittal.

2. The trial court appears to have relied upon the evidence of Jaisa Ram PW 11, the only eye witness in the case and the fact of the absconding of the accused, which was based on the evidence of PW 13 Sanga Singh, PW 14 Hindu Singh and PW 15 Shri Mod Singh. Rest of the witnesses, who were produced to afford circumstantial evidence have turned hostile.

3. The learned Amicus Curiae urged before us that even if the story put forward by Jaisa PW 11 is believed, the accused could not have been convicted Under Section 302, IPC but could have been convicted only Under Section 304, IPC He urged that from the evidence of Jesia, it appears that there were illicit relations

between Achalia and the wife of Jaisa or at least, Jaisa suspected such illicit relations between them on the basis of the rumors heard in the village, that Achalia had no apparent reason or motive to kill Smt. Hanja, that even the fact that Achalia wanted to kill Jaisa or when he inflicted a fatal blow on him is not established and he has impliedly been acquitted of the charge in this respect, that while Achalia was trying to beat Jaisa, Smt. Hanja intervened and in the course of that intervention, a blow unfortunately fell on her neck and, therefore, it cannot be said that Achalia in fact intended to cause the very injury which came to be caused on the person of Smt. Hanja and in these circumstances, the offence under Section 302, IPC could not be said to be made out against him and he could have been only held guilty under Section 304, IPC. The learned Public Prosecutor on the other hand, urged that the accused had intentionally inflicted blow on the neck of Smt. Hanja with a weapon like axe and that too with sufficient force and, therefore, he must be attributed the intention of killing Smt. Hanja or the intention of inflicting injury, which was sufficient in the ordinary course of nature to cause death and, therefore, his conviction under Section 302, IPC is proper.

4. We have given our careful consideration to the rival contentions. It may be mentioned here that apart from the statement of Jaisa Ram PW 11, the learned Sessions Judge appears to have relied upon the circumstance of absconding against the accused but on perusal of the statements of the witness in this respect, we are clearly of the opinion that this circumstance has not been proved beyond doubt. This is even admitted by the prosecution witnesses not less than Jaisa Ram himself that the accused used to go out for earning his livelihood even since the death of his wife but he did not know where he used to go. This has also been admitted by some of the other prosecution witnesses that he used to go to Gujarat and Haryana when ever there was famine in Rajasthan, e.g., PW 1 Neniya has stated so. The evidence of PW 13 Sanga Singh, PW 14 Hindu Singh and PW 15 Mod Singh, the Police officials who tried to effect the service of the warrant on the accused, only goes to show that search was made for him only in or near about the village and naturally he could not have been found there. On the basis of search, he cannot be said that he had absconded after the offence when it appears that even from before he used to go out for earning his livelihood. Therefore, we are only left with bare testimony of Jaisa PW 11 and from his

evidence, it does clearly appear that he suspected illicit intimacy between his wife and Achalia. According to him, when Achalia persisted in making overtures towards Smt. Hanja, he took away Smt. Hanja to the village Bedia where his sister was married but there also, Achalia persisted in making overtures to his wife at Bedia also on the day of this incident, he left with Smt. Hanja for village Gol, the village of his father-in-law and it was on the way that Achalia over took them. Achalia first asked him to come back along with his wife to village Bhavrani but when he declined' he, (Achalia) aimed a blow with the axe, which he was carrying with him but he averted that blow on his Lathi. Jaisa does not say that this blow was aimed on his head or neck or any other vital part of the body. The impact of the blow on the Lathi is also of no magnitude and according to the seizure memo, there was a mere mark of the impact of the axe blow, which did not cut or even scratch the Lathi and, therefore, it can safely be concluded that the blow aimed by Achalia at Jaisa was not a very severe blow, which may have caused the death of Jaisa or caused him any grievous injury. It was at that stage that Smt. Hanja tried to intervene. Looking to the relations between Achalia and Smt. Hanja as alleged by Jaisa Ram himself, it cannot be accepted that Achalia would have intended to kill Smt. Hanja. This is not the case of the witness Jaisa Ram that any second blow was aimed at him, which may have fallen on Smt. Hanja. Therefore, the only conclusion is that in the scuffle a blow came to be inflicted on Smt. Hanja and unfortunately, it fell on her neck. The accused therefore, could not be attributed the intention of causing the very injury, which came to be inflicted upon the person of Smt. Hanja. Only a single blow was inflicted by the accused on Smt. Hanja also and he did not try to repeat the blow. Therefore, the case appears to be very near the case reported in Hardeo Singh v. State of Punjab 1975 SCC (Cr.) 186. In the present case also, it cannot be said that the accused had in fact aimed the blow on the neck of Smt. Hanja and the possibility that the blow may have accidentally fallen on her neck, cannot be ruled out. In these circumstances, the case of the accused cannot fall under Clause (i) or Clause (iii) of Section 300 and he could not have been, therefore, convicted under Section 302, IPC. The other two clauses of Section 300 are not at all attracted. He could, therefore, have been held guilty only under Section 304, Part-II, IPC as he could be attributed the knowledge that by inflicting the blow with the axe, he was likely to cause the death of Smt. Hanja.

6. The appeal is, therefore, partly allowed. The conviction of the appellants under Section 302 and the sentence passed thereunder is set aside instead he is convicted under Section 304, Part-II, IPC and is sentenced to seven year's rigorous imprisonment.

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