

Ghewar Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-14-1991

Reported in : 1991WLN(UC)152

Judge : J.R. Chopra and; Y.R. Meena, JJ.

Appeal No. : D.B. Criminal Appeal No. 312 of 1990

Appellant : Ghewar Ram

Respondent : State of Rajasthan

Judgement :

J.R. Chopra, J.

1. This appeal is directed against the judgment of learned Sessions Judge, Pali dated 1.10.1990 whereby the learned Sessions Judge has held the accused Ghewar Ram guilty of the offences Under Sections 302 r/w Section 325 and 323 IPC. For the offence Under Section 302 IPC, he has been sentenced to imprisonment for life alongwith a fine of Rs. 500/- and in default to undergo three months' RI. For the offence under Section 325 IPC, he has been sentenced to five years' RI alongwith a fine of Rs. 500/- and in default to undergo three months' RI. For the offence under Section 323 IPC, he has been sentenced to one year's RI. It has been ordered that all the sentences shall run concurrently.

2. Facts necessary to be noticed for the disposal of this appeal briefly stated are : that accused Ghewar Ram is the real nephew of deceased's husband Shri Mishra Ram. Ghewar Ram's father Hema Ram and Mishra Ram were real brothers. Mishra Ram died before about ten years of the occurrence leaving behind Smt. Lakudi and two sons Bagda Ram and Rama. Their fields are adjacent to each other. There is an opening in their fields which is locally called as 'Seria'. It is alleged that 'Seria' was opened by Smt. Nakudi which infuriated accused Ghewar Ram. He asked his aunt Smt. Lakudi to close that 'Seria'. She was busy in stitching some clothes and, therefore, she told that she will do it after she finishes job on her hands. It is alleged that thereafter Ghewar Ram went to his field and came back and asked Smt. Lakudi whether she has closed that 'Seria' and when she said that she has not done it so far, accused Ghewar Ram abused her and gave beating to her from a two pronged 'Jai'. Accused Ghewar Ram caused as many as nine external injuries on her body which have resulted in the fracture of 8th, 9th and 10th ribs. They have penetrated the liver spleen and the left lung and the lacerated wound which has resulted in internal haemorrhag which has resulted in dead of Smt. Lakudi. When here minor son Bagda Ram intervened, he too was given a beating. He received in all three injuries which have resulted in the fracture of frontal bone of the injured who was small child aged about ten to twelve years.

3. After usual investigation, the case was challanged against the accused Ghewar Ram and he has been convicted and sentenced as aforesaid and hence this appeal.

4. Mr. Sandeep Mehta, learned Counsel appearing for the accused appellant Ghewar Ram has submitted that it is not a case of intentional murder. The occurrence took place on a very trivial controversy as regards the closing of the 'Seria'. The deceased Smt. Lakudi and the accused Ghewar Ram were real aunt and nephew and the injured Begda Ram is the first cousin of the accused. Their fields are adjacent to each other. The report of the incident itself has been lodged by the father of the accused with the Sarpanch who reported the matter to the Police. Thus, it is not a case of pre-enmiy existing between the parties but the occurrence started on a very trivial matter. Actually, it is a case of over reaction of the accused who was of tender age i.e. 19 years and could not control his

sentiments and gave this merciless beating to this lady. It is not a case where he intended to cause murder of his aunt. At best, for the injuries that have been inflicted the accused had no intention to cause death but he had knowledge that such injuries were likely to cause death and, therefore, the case does not travel beyond Section 304 IPC. In this respect, he drew our attention to a Division Bench of this Court rendered in *Gopal and Ors. v. State of Raj.* reported in 1989 R.C.C. p. 261. That was a case where the accused and the deceased were in a close relation and the accused landed blows by blunt weapon on the head of the deceased without any previous enmity, motive or bad blood and, therefore, requisite intention that was inferred in the facts and circumstances of the case was knowledge to cause such injuries which were likely to cause death and the accused was consequently held guilty of the offence Under Section 304 p. II IPC. Our attention was next drawn to a D.B. decision of this Court rendered in *Munshi, Chhota & Girraj Girru v. State of Rajasthan* reported in 1981 Cr.L.R. (Rajasthan) p. 530. That was a case where the accused appellant only intended to teach a lesson to Chirenjilal for damaging their crop by allowing the water to flow into his fields. Here a case where the accused wanted to teach a lesson for creating the 'Seria' open so that damage is likely to be caused to his standing crop. That was a case where the occurrence took place without any premeditation in a sudden fight in the heat of passion upon a sudden quarrel and, therefore, it was felt that the offence does not travel beyond Section 304 part II IPC. Here too, the matter on which the incident arose, was a very trivial matter as regards the closure of the 'Seria' which the accused could very well have closed but he asked his aunt Smt. Lakudi to close it but when she did not close it in time, this infuriated accused and he over reacted and inflicted such severe blows to her aunt. They are closed relations and, therefore, it is a case of over reaction which has resulted in causing such internal injuries which were sufficient to cause death of Smt. Lakudi. Keeping in view all these facts and circumstances of the case, intention to kill cannot be inferred. At best, it is a case where accused wanted to teach a lesson for disobeying his commands as regards the closure of the 'Seria'. It was not such an incident which could have arisen to such an enmity that the accused would have given rise to kill his aunt. Our attention was next drawn to D.B. decision of this Court in *Amara Ram v. State* 1986 R.C.C. p. 445) wherein also, a man has died on account of the

four lathi blows heart on the head, two of which were severe and two were received not on the hands but on the legs. A quarrel started suddenly on account of removal of stones following exchange of abuses. It was held that there was no intention to cause death but accused was credited with the knowledge of causing such injuries by such a weapon on the head which were likely to cause death and, therefore, he was held guilty of the offence under Section 304 p. II IPC. In this case, the matter don't end there. Deceased Smt. Lakudi's son intervened and he too, was inflicted three blows, one of which has resulted in grievous injury on his head. This child of tender age wanted to rescue his mother and he too was taught a lesson. For causing injuries to him, the accused has been held guilty of the offences Under Sections 325 and 323 IPC. This conviction has been rightly recorded against his but so far as the offence Under Section 302 IPC is concerned, keeping in view the facts and circumstances of the case, we are inclined to take a view that the accused Ghewar Ram did not intend to. cause death of his aunt rather he over reacted and caused such injuries on her body which were likely to cause death and, therefore, it will be just and proper to hold him guilty of the offence Under Section 304 part II IPC. For the offence Under Section 304 p. II IPC, we think it proper to sentence him to four years' RI together with a fine of Rs. 10000/- and in default of the payment of fine, he shall further undergo two years' RI. For the offence under Section 325 IPC, he may be sentenced to two years' RI together with a fine of Rs. 500/- and in default to undergo RI for one month. For the offence under section 323 IPC, he may be sentenced to one year's RI.

5. In the result, the appeal partially succeeds, the conviction and sentence recorded against the accused appellant Ghewar Ram under Section 302 IPC are set aside and instead-of it, he is held guilty of the offence Under Section 304 p.II IPC and sentenced to four years' RI together with a fine of Rs. 10,000/- and in default to undergo two years' RI. For the offence under Section 325 IPC, he is sentenced to two years' RI together with a fine of Rs. 500/- and in default to undergo rigorous imprisonment for one month. For the offence under Section 323 IPC, he is sentenced to one year's RI. All the substantive sentences shall run concurrently. However, out of the amount of fine recovered, Rs. 10,000/- be paid as compensation to Shri Badga Ram and this amount be deposited in his bank

account which has been coened and he will be entitled to utilise it after he gets maturity till then the amount will remain deposited in the bank account. Mr. Sandeep Mehta, appearing for the accused Ghewar Ram prays for three months' time to deposit this amount. Two months' time is granted to Mr. Sandeep Mehta to deposit this amount in the bank account of deceased Smt. Lakudi's son Shri Badga Ram bearing No. 3697 opened in the Bank of Rajasthan, Sojat Road. The accused Ghewar Ram is already on interim bail upto 22.5.1991. He must surrender himself on the date his parole expires.

6. The appeal stands disposed of accordingly on merits.

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