

Kheta and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-14-1975

Reported in : 1986WLN(UC)211

Judge : Milap Chand Jain and; Jas Raj Chopra, JJ.

Appeal No. : D.B. Criminal Appeal No. 573 of 1975

Appellant : Kheta and anr.

Respondent : State of Rajasthan

Judgement :

Milap Chand Jain, J.

1. Appellant Kheta has been convicted of the offence under Sections 302/323 IPC and appellant Mallu has been convicted of the offence under Section 323 IPC. Kheta has been sentenced to imprisonment for life on the first count and three months' rigorous imprisonment on the second count. Both the sentences were ordered to run concurrently. Appellant Mallu has been sentenced to three months' rigorous imprisonment for the offence under Section 323 IPC. The third accused Hameera was acquitted of the offence under Section 323 IPC.

2. The relations between the family of deceased Bishna and the accused Kheta were not co-ordial. Accused Kheta was not allowing Bishna and his family to

irrigate their field. On November 25, 1973, there was a feast at the house of Smt. Bhani, Doongar and his two brothers with their families had gone to join the feast. The deceased Bisna and his wife Ramdevi were at the house. It is said that the accused Kheta came to the house of Bishna and called him. Thereupon, Bishna went out of house along with accused Kheta. After sometime, Bishna's wife Ram Devi heard the cries of her husband. Doongar and his two brothers with their families were returning from the house of Smt. Bhani, when they reached in the Guwad, they also heard the cries of Bishna Ram Devi as well as all the three sons of deceased Bishna, viz , Doongar, Prithvi and Bagdawat rushed towards the place from where the cries were coming. According to them, accused Kheta inflicted a Jaiee blow on the head of the deceased where by he fell down and became unconscious then accused Mallu and Hameera also inflicted blows on Bishna with Gandasi and Gandhali. When Doongar and his brothers along with their mother tried to intervene then accused persons also beat them. Doongar, then, proceeded to the Police Station, Hanumangarh and lodged the First Information Report Ex. P. 1. The injuries on the person of Doongar, Prithvi, Bagdawat and Ram Devi were examined by Dr. Dinesh Singh and autopsy on the dead body of deceased Bishna was conducted by him, on November 26, 1973 at 7 a.m. The post mortem examination of the deceased reveal that the deceased Bisna had one lacerated wound 1-1/2' x 1/2' x 1/4' on the right parietal eminence transverse direction. According to the medical opinion, the deceased died due to cerebral haemorrhage laceration followed by multiple fractures of skull bones.

3. The investigation was conducted and the accused persons were arrested. The weapons of offence were also recovered which were sent for chemical examination which reveal that all the three weapons were stained with blood but they were not forwarded for serological examination as the quantity of the blood was not sufficient. After completion of the investigation the accused persons were ultimately tried by the Addl. Sessions Judge, Hanumangarh. At the trial, the prosecution examined 11 witnesses. The statements of the accused persons were recorded, in which they denied the prosecution story. No evidence was led in defence. The learned Addl. Sessions Judge convicted and sentenced the accused persons as aforesaid. Dissatisfied with the conviction and sentence, the accused appellants have preferred this appeal.

4. We have heard Mr. Suresh Kumbhat, learned Amicus Curiae for the appellants and Mr. L.S. Udawat, learned Public Prosecutor for the State.
5. Mr. Suresh Kumbhat, learned Counsel for the accused appellants argued that the learned Additional Sessions Judge seriously erred in convicting the appellant Kheta of the offence under Section 302 IPC, as, according to the prosecution evidence, injuries on the head of deceased Bishna have not only been caused by accused-appellant Kheta but also they have been caused by Mallu and Hammera. In view of the evidence of the prosecution it cannot be definitely found as to who was the author of the fatal injury on the head of the deceased and so, the appellant Kheta cannot be held responsible for causing head injury on the person of deceased Bishna. He carried us through the statements of the witnesses and on that basis, he submitted that this part of the statements of the witnesses also is unbelievable when they state that the first blow on the head of the deceased was given by Kheta as they could not have observed Kheta inflicting Jaiee blow on the head of the deceased. The witnesses were attracted to the scene of occurrence on hearing the cries of Bisna 'MAR DIYA RE, MAR DIYA RE'. This shows that the blow had already been inflicted. So far as the blow of Jaiee on the part of accused Kheta is concerned, the witnesses should not be taken to be eye witnesses. In any case, it is submitted where there are more than one assailants, and there is only one injury on the person of the deceased Bishna then the accused Kheta is entitled to the benefit of doubt.
6. We find some substance in the aforesaid contention of Mr. Suresh Kumbhat, learned Counsel for the accused-appellants. PW 2 Bagdawat stated that Kheta inflicted a Jaiee blow on the head of the deceased and Mallu and Hameera also caught hold of his father. Both of them have also beaten him. He was confronted with his police statement Ex. D 1 Portion A to B where he stated that Triloka and Mallu also inflicted Gandhali blow on the head of the deceased Bishna. The witness disowned his earlier statement but his earlier version appears to be that Triloka and Mallu are also the persons who inflicted the blows on the head of the deceased with Gandasi and Gandhali. PW 4 Prithvi likewise disowned his portion A to B of his police statement where he stated that Triloka and Mallu also inflicted blows on the head of the deceased. In the examination-in-chief, he simply stated

that after the blow by Kheta on the deceased. Triloka and Mallu also inflicted blows to his father. Both of them were armed with Gandasi and Gandhali. PW 5 Raja Ram stated that Kheta inflicted a jaiee blow on the Bishna then Mallu and Hameera inflicted blows on the fallen deceased. PW 1 Doongar in his cross-examination stated that Hameera had inflicted 2-3 blows on the head of his father. As regards the blow by Jaiee, he stated that both the prongs of the Jaiee hit his father and the wooden part of the Jaiee did not hit him. PW 9 Ram Devi stated that Jaiee blow was inflicted by Kheta on the deceased, then he fell down and thereafter, Mallu and Hameera also inflicted blows to her husband after he had fallen with Gandasi and Gandhali. She has not stated that blows were inflicted on head. It would appear that she stands contradicted by the medical evidence as there are no other injury on the person of the deceased except one injury on his head. According to her, that part of Jaiee hit the head of the deceased which was thick Danda and prongs of Jaiee did not hit. It would appear from the evidence of the eye witnesses that there is no clear and definite evidence as to who is the author of the head injury on the person of the deceased and this part of the statement of the witnesses otherwise also is not believable that Kheta inflicted a Jaiee blow on head in their presence as it appears that they have reached the place of occurrence after hearing the cries and by that time, injury on the head of the deceased might have been caused and it is not known by whom that injury was caused.

7. In the above view of the evidence, in our opinion, it is not proved beyond reasonable doubt that the deceased was hit by the Jaiee blow of the appellant Kheta and as such, the appellant Kheta is entitled to the benefit of doubt for the offence under Section 302 IPC. So far as the conviction of the appellant Kheta and Mallu for the offence under Section 323 IPC is concerned the same has not been challenged before us. They have already remained in custody for a period of much more than the punishments awarded to them on this count.

8. In the result, the appeal of Mallu is dismissed and the appeal of Kheta is partly allowed. The conviction and sentence of Kheta for the offence under Section 302 IPC are set aside. However, his conviction and sentence for the offence under Section 323 IPC is mentioned. He has already served out the sentence as he has

remained in custody for a period more than the punishment awarded to him. The appellants are on bail and so, they need not surrender and their bail bonds are discharged.

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