

**Behari Lal Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Dec-05-1985

**Reported in :** 1985(2)WLN737

**Judge :** Jas Raj Chopra, J.

**Appeal No. :** S.B. Criminal Appeal No. 117 of 1978

**Appellant :** Behari Lal

**Respondent :** State of Rajasthan

**Disposition :** Appeal allowed

**Judgement :**

**Jas Raj Chopra, J.**

1. This appeal directed against the judgment of the learned Addl. Sessions Judge, Sriganganagar dated Feb. 21, 1978 where by the learned lower court has held the accused appellant guilty of the offences under Sections 334 and 335 IPC and has sentenced him to 1 year's rigorous imprisonment for the offence under Section 335 IPC. No separate sentence was recorded for the offence under Section 334 IPC. The accused has, however, been acquitted of the offence under Section 307 and 308 IPC.

2. The facts necessary to be noticed for the disposal of this appeal, briefly stated are that on 28-4-1977 at about 6.00 p.m. Sarwan Singh, who has been examined as PW 1 and who belongs to village Tamkot which was the original village of accused Beharilal also came to Sri Ganganagar as the house of the accused to demand Rs. 500/- which were due to him on the price of the cotton which was sold to him. Beharilal at that time has shifted from Tamkot & was living at Sriganganagar. It is alleged that the accused told the complainant that he will pay the amount on the next day and, therefore, he stayed for the night at the house of the accused. At about 11.30 p.m. in the night when he was struck a blow while he was sleeping, he woke up and found that the accused was inflicting blows to him with a sword. He then tried to snatch the sword from him. His cries attracted the attention of the wife of the accused and she too came and tried to rescue him. On this, the accused left the sword there and ran away. The report of the incident was lodged at Police Station Kotwali, Sri Ganganagar on the same night at 12.30 a.m. which has been marked Ex. P.

1. The injuries of complainant were got medically examined. His injury report has been marked Ex. P.

2. The X-ray examination of the injuries was also got conducted and the X-ray films have been marked Ex. P. 5 to Ex. P.

8. Site plan and Site inspection memos have been marked Ex. P. 13 and Ex. P. 13A respectively. Blood stained soil and control soil were also seized vide seizure memos Ex. P. 14 and Ex. P. 15 respectively. The sword was seized vide seizure memo Ex. P.

16. The blood stained pillow and bed-sheets were also seized vide seizure memo Ex. P.

17. Blood stained clothes of Mst. Dropadi were seized by seizure memo Ex. P.

18. The accused was arrested on 29-4-1977. His arrest memo has been marked Ex. P.

19. His blood stained clothes were seized vide seizure memo Ex. P. 20 and the chemical & serological reports have been marked Fx.P 22 & 23 respectively. Injuries of the accused were also got medically examined. His injury report has been marked Ex. P. 2.

3. After the usual investigation, a case against the accused was challaned under Section 308 IPC in the court of learned Chief Judicial Magistrate, Sri Ganganagar. However, the learned Chief Judicial Magistrate committed the case for trial to the court of Sessions, Sri Ganganagar from where it was transferred for trial to the court of learned Addl. Sessions Judge, Sri Ganganagar. The accused did not plead guilty to the charge and claimed trial whereupon the prosecution examined as many as 9 witnesses in support of its case. The statement of the accused was recorded. He gave the explanation that initially, he was living at Tamkot but the complainant Sarwan Singh has developed illicit relations with his wife. Aggrieved due to this conduct on the part of his wife and Sarwan Singh, he left village Tamkot and settled at Sri Ganganagar. On the fateful night when he reached his home at 10 or 10.30 p.m. after his daily work, he found accused Sarwan Singh committing rape with his wife. He asked him not to do so where upon Sarwan Singh attacked him with the sword by which he received injuries and in retaliation, he inflicted these injuries to the accused. He examined DW 1 Mukund Singh in his defence who happens to be a close neighbour of his house. After hearing the parties, the learned lower court came to the conclusion that the story put forward by the complainant that he was staying at the house of the accused with the intention of collecting the money which was due to him from the accused does not appear to be credible. It has rather held that the story put forth by the accused that he saw the complainant and his wife in a compromising position and on account of that, he received grave and sudden provocation and, therefore, in that state of mind, he has inflicted these injuries to the complainant and hence, it has acquitted the accused of the offence under Section 308 IPC. It has further held that no injury caused to the injured Sarwan Singh was likely to cause death and, therefore, even on merits offence under Section 307 IPC was not made out. It has, however, held that the injuries were inflicted on grave and sudden provocation and, therefore, offences under Sections 334 and 335 IPC are made out and, therefore, it has convicted and sentenced the accused appellant as stated by me above. Aggrieved

against this judgment, the accused appellant has preferred this appeal.

4. I have heard Mr. B.R. Arora, learned counsel for the accused appellant and Mr. B.C. Bhansali, learned Public Prosecutor for the State. I have also meticulously gone through the record of the case. Now, I have to decide whether the findings of the learned lower court can be sustained on the basis of the record of the case or not ?

5. Mr. Arora, learned counsel for the accused appellant argued that in this case, offence under Section 334 and 335 is not made out against the accused appellant because the provisions of Sections 334 and 335 IPC are attracted only when hurt is caused to some body else than the person who was responsible for giving the grave and sudden provocation or who has been the cause of grave and sudden provocation. In this case, the person who caused the grave and sudden provocation was the complainant and the accused's wife who were found in a compromising position by the accused and, therefore, when hurt was caused to the provoker himself the provisions of Sections 334 and 335 IPC are not attracted. This is clear from the very reading of both these Sections.

6. Mr. Bhansali, learned Public Prosecutor drew my attention to a Pull Bench decision of the Bombay High Court in Reg v. Bhala Chula (1962-63) Bombay High Court Reports 17 wherein it has been laid down as under:

The Court considers that the Subordinate Magistrate has correctly construed the 334th Section in applying it to the principal party who caused the provocation, & there upon, received the hurt which was the subject of complainant.

On the strength of this authority of the Bombay High Court, he submitted that this argument of Mr. Arora cannot be sustained.

7. Dr. Sir Hari Singh Gour in his treatise, 'The Penal Law of India' (9th Edition) has observed that one or the ingredients of the offence under Section 334 and 335 IPC which have to be proved by the prosecution is that he intended or knew it to be likely to cause it only to the person who gave him the grave and sudden provocation. This sets the entire controversy at rest. The learned author has

further observed as follows:

In the first place, it is required in each case that the provocation received should be grave as well as sudden. It is not sufficient if it is one without the other (See: Section 300). In the second place, it must come from the person assaulted and not from a third party. For, it is no excuse to hit A because B had aggravated the assailant. It will be an excuse but only in the case if A had set up B to provoke him or if the two had made common cause against him, in which case the provocation given by one would be equally a provocation given by the other. Thirdly, the assailant must direct his blow against his provoker if it falls upon another by mistake or accident, he is liable but to no greater extent than if he had hit the right person.

From the above observations, it is clear that the blow must be aimed at the provoker because the law provides no excuse to hit A because B had aggravated the assailant and, therefore, this submission of Mr. Arora cannot be sustained.

8. Mr. Arora, learned counsel for the accused appellant next argued that even if it is held that in such cases Sections 334 and 335 IPC can be attracted then too, in the light of the conclusion arrived at by the learned lower court in para 16 of its judgment, the case of the accused is covered by clauses thirdly and fourthly of Section 100 IPC and, therefore, he deserves absolute acquittal.

9. It will be useful here to notice the material part of para 16 of the judgment of the learned lower court: ... .. In this case, as stated above, Sarwan Singh developed illicit relations with the wife of the accused in village Tamkot. The accused being a helpless poor left the village and he settled down at Sri Ganga Nagar to avoid the situation where his wife may continue her illicit intimacy, with the witness Sarwansingh. However, when Sarwansingh came to Sri Ganganagar also and tried to rape his wife, which came to his notice all of a sudden, it was sufficient to give him grave and sudden provocation. In this respect my attention was drawn to Babulal v. State (2), wherein it was ruled as under: Where the husband thinks that the illicit intimacy which might have existed earlier between his wife and the deceased had ceased to exist because of the changed place of residence and this belief is shattered when he finds the deceased at his hut when

he was absent, this could certainly give him a mental jolt and as this knowledge will come all of a sudden it should be deemed to have given him a grave and sudden provocation. The fact that he had suspected this illicit intimacy on an earlier occasion also will not alter the nature of the provocation and make it any the less sudden.

10. The principles enunciated in Babulal's case apply with all force to the case on hand. Under these circumstances, the witness Sarwansingh and the wife of the accused were very much responsible for causing grave and sudden provocation to the accused. It has been provided in clauses thirdly fourthly of Section 100 IPC that the right of private defence of the body extends to causing of death in case of an assault with the intention of committing rape or with the intention of gratifying unnatural lust. This is actually a case of commission of rape and, therefore, the case of the accused is covered by the provisions of clauses thirdly and fourthly of Section 100 IPC. In this respect Mr. Arora invited my attention to a decision of the Allahabad High Court in Suraj Narain v. Emperor AIR 1933 All 213, wherein it has been held as under:

Accused on seeing the deceased, whom he had befriended and brought up from infancy in his own household, lying on the top of his (accused) wife and trying to violate her, took a gandasa lying nearby and struck the deceased a number of blows on his head as a result of which he died.

Held: that though the right of private defence laid down in Section 100 is a restricted right and has to be read subject to the provisions of Section 99 still the action of the accused in this particular case is covered by Clause (3) of Section 100 and that accused is entitled to an acquittal.

In Mohinder Singh v. State of Rajasthan 1977 RLW 187 a learned single Judge of this court has observed as follows:

The appellant discovered all of a sudden that the deceased, who was his friend, had committed the breach of faith by trying to commit rape on his wife in his house. His state of mind could very well be imagined at that time. If he inflicted several blows with a short stick on the body of the deceased in quick succession

upon finding his wife in a real danger of being raped, he could not be said to have exceeded the right of private defence especially when there is evidence of Nasib Kaur on the record that she could disengage herself from the grip of Boota Singh only after the latter had received seven or eight injuries on his body at the hands of the appellant. Hence, taking all the facts and circumstances into consideration, I am of the view that the appellant has discharged the burden of proving the existence of circumstances bringing his case within the general exceptions laid down in clause thirdly to Section 100, IPC. Under the law, he is not required to prove his plea of right of private defence of person beyond reasonable doubt. What is required from him is to discharge the burden by making out a prima facie case.

A base perusal of the observations of these two rulings clearly establishes that the right of private defence of person can be extended to the causing of death in cases of rape when grave and sudden provocation is caused to the accused.

11. The upshot of the above discussion is that the case of the accused is covered by clauses thirdly and fourthly of Section 100 IPC and therefore, he deserves his acquittal rather than conviction under Sections 334 and 335 IPC.

12. I, therefore, accept this appeal, set aside the conviction of the accused under Sections.334 and 335 IPC by giving him the benefit of doubt. He is already on bail. He need not surrender to his bail bonds.

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