

**Sohan Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Apr-26-1991

**Reported in :** 1991WLN(UC)190

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

**Appeal No. :** D.B. Criminal Jailappeal No. 364 of 1986

**Appellant :** Sohan

**Respondent :** State of Rajasthan

**Judgement :**

**J.R. Chopra, J.**

1. On joint request the case was finally heard. The facts necessary to be noticed for the disposal of this jail Appeal brief to state are : that on 4.9.84 deceased Rameshwar and accused Sohaniya went to graze their cattle in the filed. There, it is alleged that deceased Rameshwar asked Sohaniya whether he has married as they both happened to be friends. When Sohaniya said that he has not married whereupon Rameshwar told Sohaniya that he should send his wife to him for three to four days, this infuriated Sohaniya and they scuffled with each other and thereafter, the other persons i.e. P.W. 5 Bhanwara and PW 6 Prem Singh who were present there, intervened and rescued them from each other. Thereafter, it is alleged that accused Sohaniya who was armed with a lathi, struck a blow on the

head of the deceased Rameshwar whereby he was seriously injured, became unconscious and was shifted to the hospital and there he expired in the same night.

2. Learned Counsel for the petitioner Mr. Garg has submitted that according to two eye witnesses i.e. PW 5 Bhanwara and PW 6 Prem Singh, deceased Rameshwar as also accused Sohaniya were friends and there was no previous enmity existing between them. The incident has taken place on a very trifling request made in a jocular mood. The deceased was asked Sohaniya to send his wife for three to four days and that probably infuriated Sohaniya deceased Rameshwar and thereafter they scuffled with each other and thereafter they were rescued by these two eye witnesses. Both of them were sitting and all of a sudden Sohaniya got up and inflicted a lathi blow on his head which is proved to be fatal. Mr. Garg further submits that the case cannot travel beyond Section 325 or at best Section 304 P.II IPC because in such matters, there could not have been any intention to kill. Earlier, the accused and the deceased were friends and it was on account of a filthy joke that the accused over reacted and inflicted a blow on the head of the deceased. It is a case of infliction of single blow although the post mortem report shows that the accused had inflicted three injuries and one of them was on the chest but that by itself is not sufficient to prove that he has inflicted more than one blow when both the eye witnesses have stated that it is a case of infliction of single injury.

3. Keeping in view these facts and circumstances of the case, we are convinced that the case cannot travel beyond Section 304 P. II IPC. Although the vital organ of the body was chosen for inflicting a lathi blow but in the peculiar facts and circumstances of the case, where no previous enmity was existing between the deceased and the accused and the injury that has been inflicted was only one and that too has been inflicted by a lathi, no intention to kill can be inferred in such circumstances. At best, it is a case of infliction of an injury which was likely to cause death and, therefore, the case cannot travel beyond the provisions of Section 304 PH IPC. The accused is already in custody since 5.9.84 and thus he has remained in custody for more than six & half years and that period of his custody appears to be sufficient in the facts and circumstances of the case.

4. In the result, this appeal partially succeeds, the conviction & sentence of the accused petitioner recorded Under Section 302 IPC is set asaid and instead of it, he is held guilty of the offence under Section 304 P.II IPC and for the aforesaid offence, he is sentenced to the period of his custody, If the accused is not required in any other case, he should be set at liberty forthwith.

5. The appeal stands disposed of accordingly on merits.

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