

**Dungar Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jan-06-1984

**Reported in :** 1984WLN130

**Judge :** D.L. Mehta and; S.S. Byas, JJ.

**Appeal No. :** D.B. Criminal (Jail) Appeal No. 435 of 1978

**Appellant :** Dungar

**Respondent :** The State of Rajasthan

**Judgement :**

**S.S. Byas, J.**

1. By His Judgment Dated 28th October, 1878 The Learned Sessions Judge. Dungarpur convicted accused Dungar under Section 302, IPC and sentenced him to imprisonment for life with a fine of Rs. 200/- in default of the payment of fine to further undergo two months' like imprisonment. The accused has come up in appeal to challenge his conviction and sentence.

2. Briefly stated, the prosecution case, which is short and simple, is that deceased victim Gautam was the real brother of the accused PW 1 Dhula is their father while PW 2 Smt Leela is their mother and PW 3 Smt. Kesar is their sister. Accused Dungar was living in separate premises of the joint house and was also cooking

food separately. It is alleged that there was dispute between the deceased victim and the accused over the shares of the property of joint family. In the night between 3rd and 4th May, 1978, PW 1 Dhula, PW 2 Leela and PW 3 Mst. Kesar were sleeping on separate cots. The accused was also sleeping on a cot near them. The accused came in the mid-night with an iron rod in his hand struck a few blows to Gautam. PW 1 Dhula, PW Smt. Kesar tried to intervene. The accused also struck some blows to each of them. The condition of Gautam became precarious and he was immediately taken to Government Hospital, Dungarpur for treatment. He was admitted there but despite the treatment he did not survive and breathed his last on 12-5-78 at about 6.45 P.M. Since the offence had taken place in the territorial jurisdiction of Police Station Ganeshpur, the police at Dungarpur informed the Station House Officer, Ganeshpur. The Station House Officer Ganeshpur police station reached the hospital at Dungarpur and recorded the statement Ex. P 1 of Dhula (PW 1). A case under Sections 307 and 323, IPC was registered on its basis on 5-5-78. On the death of the victim, Section 302, IPC was added. The post mortem examination of the victim's dead body was conducted at about 8.30 A.M. on 13-5-78 by Medical Jurist Dr. B.M. Upadhiya (PW 9). He found the following injuries on the victim's dead body:

1 Lacerated wound on forehead on right side 6' x 1/2 ' x 1' going to the left eye perforating left eye ball. Brain matter coming out of wound that is frontal bone fractured and a chip of bone lying loose in wound. Achymosis on both eyes on lower and upper lids present. There was a cut in the lower lid of right eye 1/2 cm. X 10 c.m. x 1/10 c.m. on medial side. This injury was grievous and caused by blunt object.

2. Lacerated wound on left leg in its lower 1/4th on medial side, 1 cm x 1/3 cm, x 1/2 cm. This injury was simple and caused by blunt object.

3. Lacerated wound on left leg in its upper half 1/5 c.m. x 1/3 c.m. This was also simple and caused by blunt object.

3. In the opinion of Dr. Upadhiya the cause of death was head injury with brain tissues laceration. The report issued by him is Ex. P 12 After when the investigation was over, the police submitted a challan against the accused in the

Court of Munsif and Judicial Magistrate, Dungarpur, who in his turn committed the case for trial to the Court of the Session. The learned Sessions Judge framed charges under Sections 302 and 313 IPC against the accused, to which he pleaded not guilty and faced the trial. During trial, the prosecution examined 12 witnesses and filed some documents. In defence, the accused adduced no evidence. On the conclusion of trial, the learned Sessions Judge found the charge under Section 302, IPC duly proved against the accused. He, however held that the charge under Section 323, IPC did not stand proved. The accused was consequently convicted and sentenced under Section 302, IPC as mentioned above. Aggrieved against his conviction and sentence, the accused has taken this appeal.

4. We have heard the learned amicus curiae and the learned Public Prosecutor. We have also gone through the case file carefully.

5. In assailing the conviction of the accused, the first contention raised by the learned amicus curiae is that there was acceptable evidence to connect the accused with the murder of Gautam. It was argued that three witnesses PW 1 Dhula, P W 2 Leela and P V 3 Smt. Kesar were the close relatives of the deceased victim and as such their evidence should not have been relied upon by the Judge of the trial court in convicting the accused. We have given our anxious consideration to the contention and find no force in it. It is true that PW 1 Dhula and PW 2 Smt. Leela are the parents of the deceased-victim and so also PW 3 Smt. Kesar is his real sister, but at the same time we cannot forget that the accused is also a real son of PW 1 Dhula and PW 2 Smt. Leela Smt. Kesar (PW 3) is also his real sister. In these circumstances we are unable to agree with the learned amicus curiae that three witnesses would falsely implicate the accused for no rhyme or reason.

6. PW I Dhula deposed that in the fateful night the accused came with an iron rod in his hand and struck blows to Gautam. One of the blow was struck on his head. The same version of the occurrence was given by PW 2 Smt. Leela. PW 3 Smt. Kesar deposed that when hearing the cries she came out she saw the accused standing there with an iron rod. These three witnesses were cross-examined at

length but nothing could be elicited from them which may induce us to discard what they testified on oath. Their evidence cannot be dismissed solely on the ground of their relationship with deceased-victim Gautam, especially when the accused also is the brother of the deceased-victim. We, therefore, agree with the learned Judge of the trial court that Gautam was struck blows by the accused with an iron rod. The first contention raised on behalf of the accused, thus, has no substance and is rejected.

7. It was next argued that offence made out is not covered by Section 300. IPC. The deceased victim was the real brother of the accused. No bad blood or strained relations existed between them before the occurrence. There was only a dispute about the shares in the property. It has not been brought on record that the accused intended to commit the murder of the victim. The victim died nearly after nine days of the occurrence. In these circumstances, contended the learned amicus curiae, the offence made out is covered by Section 301 Part II, IPC. In reply, the learned Public Prosecutor submitted that the head injury of the victim was stated by the doctor to be sufficient in the ordinary course of nature to cause the death. The case is, therefore, covered by clause III of Section 300 and the offence made out is punishable under Section 302, IPC. We have given our anxious consideration to the contention.

8. Admittedly the victim died nearly after nine days of the occurrence. There are no circumstances to show that the accused intended to cause the death of the victim. The relations between the accused and the deceased-victim had not reached the breaking point. The act of the accused is, therefore, not covered by the first two clauses of Section 299, IPC as the very essential ingredient of 'intention' is missing. In as much as the death has been caused and the head injury was caused by an iron rod, the knowledge mentioned in clause III of Section 299, IPC can be safely imputed to the accused. III did an act with the 'knowledge' that it was likely to cause the death of the victim.

9. In *Kishan Singh and Ors. v. The State of Madhya Pradesh* 1977 Cr. LR (SC) 836, the victim was hit a blow on the head and the death had taken place nearly after one month of the occurrence. Though the injury was found sufficient the

ordinary course of nature to cause the death yet the offence was held to be under Section 304, IPC. A very like situation arose in *Randhir Singh v. The State of Punjab* (1981 SCC (Cri.) 856) in which a single head injury was inflicted on the victim. The head injury was found sufficient in the ordinary course of nature to cause the death. But the 'intention' to inflict the fatal injury was not inferable from the facts and circumstances of the case. The accused was, therefore, convicted under Section 304 Part I, instead of Section 302, IPC.

10. As stated above, the accused caused only one injury on the head of the victim in the instant case. The victim died nearly after nine days of the occurrence. From the facts and circumstances, we are unable to accept that the accused had any 'intention' to cause the murder of the victim. The facts and circumstances induce us to hold that the accused had only the knowledge that his act was likely to cause the death and nothing more. The offence is punishable under Section 304 Part II, IPC.

11. In the result, we partly allow the appeal to accused Dugar. His conviction under Section 302, IPC and the sentence awarded there under are set-aside. Instead he is convicted under Section 304 Part II, IPC and is sentenced to seven years rigorous imprisonment with a fine of Rs. 100/-, in default of the payment of fine to further undergo one month's rigorous imprisonment.