

Foja Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-16-2003

Reported in : RLW2004(1)Raj215; 2003(4)WLC722

Judge : N.N. Mathur and; K.K. Acharya, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 304

Appeal No. : D.B. Criminal Appeal No. 541 of 2000

Appellant : Foja

Respondent : State of Rajasthan

Advocate for Def. : K.R. Bishnoi, Public Prosecutor

Advocate for Pet/Ap. : G.M. Khan, Adv.

Disposition : Appeal partly allowed

Judgement :

N.N. Mathur, J.

1. The appellant Foja stood tried on the charge of the murder of his nephew Hansia the learned Sessions Judge, Udaipur by judgment dated 02.06.2000 convicted him for the offence under Section 302 I.P.C. and sentenced to imprisonment for life and to pay a fine of Rs. 500/-; in default of payment, to further

undergo six months of imprisonment.

2. The prosecution case as disclosed during trial is that on 20.05.1994 the appellant Foja alongwith deceased Hansia, eye witnesses PW-1 Bholia and PW-12 Alkha were returning from the village Jed after attending marriage settlement proceedings in the panchayat pertaining to the marriage of Hansia. On the way, PW-6 Bhanja of their village also joined them. They were moving in two groups. PW-1 Bholia, PW-6 Bhanja and PW-12 Alkha were in one group. The appellant Foja and the deceased Hansia were moving behind them at a distance of about 10-15 steps. A verbal altercation took place between the appellant and the deceased Hansia on the issue of marriage. The appellant took out chhuri from the sheath. Hearing the cries of Hansia, they turned back and witnessed the appellant causing injury to Hansia on the chest. He fell down and after sometime succumbed to the injury. The appellant soon after causing the injury escaped from the scene of occurrence. An oral first information report was lodged at police station. Mandwa. The police registered a case for offence under Section 302 I.P.C. and proceeded with investigation. After usual investigation, police laid chargesheet against the appellant for offence under Section 302 I.P.C.

3. The appellant denied the charges levelled against him and claimed trial. The prosecution in support of the case examined 12 witnesses. The appellant in his statement under Section 313 Cr.P.C. denied the correctness of the prosecution evidence appearing against him. The trial court relying on the testimony of the eye witnesses PW-1 Bholia, PW-3 Phula and PW-12 Alkha and the corroborative evidence found the charges levelled against the appellant proved. The trial court convicted the appellant for offence under Section 302 I.P.C. and sentenced him in the manner stated above.

4. Challenging the conviction, it is contended by Mr. G.M. Khan, learned counsel appearing for the appellant that a careful reading of the statement of alleged eye witnesses, will show that they have infact not witnessed the incident. In alternate, it is submitted that in the facts and circumstances of the case, the conviction of the appellant does not travel beyond offence under Section 304 Part-11 I.P.C. On the other hand, the learned Public Prosecutor supported the judgment of the trial

court.

5. We have scrutinised the prosecution evidence carefully and considered the rival contentions. PW-1 Bholia has reiterated the account of incident as given in the First Information Report. In the cross examination, he has denied the suggestion that somebody else other than Fojiya caused injury to Hansia by arrow. Nothing substantial has been elicited to discredit the testimony of this witness.

6. PW-6 Mania has not supported the prosecution case and as such he has been declared hostile. PW-12 Alkha has stated that at about 12 Noon he was returning from the village Jed in the company of Mania, Bholia, Hansia and the appellant Fojiya, The appellant Fojiya and the deceased Hansia were moving behind them at some distance. He also stated that the appellant Fojiya inflicted injury on the chest of Hansia by Chhuri. In the cross examination, he admitted that the appellant Fojiya escaped from the place of occurrence alongwith Chhuri. He denied the suggestion that somebody else other than Fojiya inflicted injury to the deceased Hansia by arrow.

7. PW-10 Dr. Munavar AH stated that he conducted post mortem of the dead body of deceased Hansia and prepared the Post Mortem Report Exhibit P-7. He noticed a stabbed wound 2-1/2 cm x 1-1/2 cm on the chest of the deceased Hansia. The injury was ante mortem in nature. The cause of death was due to cut of left axillary vessels and pulmonary vein and cut of third rib lateral to mid clavicular line produced profuse haemorrhage, hypovolaemic shock, circulatory failure, respiratory failure and death. In the instant case, the First Information Report has been promptly lodged which reflect by the most contemporaneous account of what had taken place on the spot and as stated by the eye witnesses PW-1 Bholia and PW-12 Alkha. This also finds corroboration with the medical evidence. Thus, the prosecution has succeeded in establishing that the appellant Foja caused injury on the chest of the deceased Hansia by Chhuri.

8. The only point which remains to be considered is as to the exact nature of the offence committed by the appellant. On the prosecution case itself, the occurrence took place suddenly without any premeditation. The appellant is uncle of the deceased. They had gone to the village Jed for settlement of the issues with

respect to the marriage in the panchayat. They were moving together. It appears that suddenly something had happened between them when they were talking on the issue of marriage. The tribles in this area usually keep Chhuri with them. He took out the Chhuri from the sheath and suddenly caused injury to Hansia. In these circumstances, therefore, we do not think that appellant had any intention of causing any particular injury that he caused to the deceased with Chhuri on chest. There can, however, be no doubt that he must be having the knowledge that death may cause by his act. In these circumstances, therefore, the case against the appellant squarely falls within the ambit of Section 304 Part-II I.P.C. The instant case is very close to the decision of the Apex Court in Shankar @ Kallu v. State of Madhya Pradesh (1).

9. Consequently, both the appeals filed by the appellant Foja are partly allowed. The conviction of the appellant is converted from 302 I.P.C. to 304 Part-II I.P.C. and the sentence for imprisonment for life is reduced to the period already undergone. The record shows that the appellant has already undergone sentence of more than five years. The appellant is in jail, he shall be released forthwith, if not required in any other case.