

Ramesh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-17-1989

Reported in : 1989WLN(UC)292

Judge : K.S. Lodha and; R.S. Verma, JJ.

Appeal No. : D.B. Cr. Appeal No. 85 of 1984

Appellant : Ramesh

Respondent : State of Rajasthan

Judgement :

K.S. Lodha, J.

1. The appellant Ramesh has been convicted Under Section 302, IPC and sentenced to imprisonment for life and a fine of Rs. 100/-; in default to undergo one months simple imprisonment. He has further been convicted under Section 323 IPC and sentenced to one month's rigorous imprisonment by the learned Sessions Judge, Bhilwara, by judgment dated 15-2-1984. He has come up in appeal.

2. The matter has come up for disposal of the bail application today but the learned Counsel for the appellant unused that the appeal itself may be disposed of since he would only contend that the offence Under Section 302, IPC is not made

out and the appellant could have been convicted only Under Section 304, Part I, IPC. The learned Counsel has no objection to the appeal being heard. Therefore, we proceeded to hear the appeal.

3. The facts now not in dispute are that on 9-5-1983, the deceased Bheru and the accused Ramesh were going to take tea at the bus stand Baneda. The witnesses Kailash and Lala were also going little behind them. On the way, some quarrel arose between the deceased and the accused and the accused is alleged to have given him blows with a knife on the abdomen of the deceased. The deceased was taken to the hospital and he was operated upon. Gangren developed in the lower part to the gut and he succumbed to the injuries on 11-5-1983.

4. The learned Sessions Judge believing the direct evidence has found the appellant guilty for causing these injuries and was of the opinion that the offence fell Under Section 302 IPC. The reason given by him is that the gangrene had developed only on account of the injuries with the knife and that when a question was put to Dr. Chaudhary whether the injury No. 2 was sufficient in the ordinary course of nature to cause death, his reply was that it may have caused death and since according to the learned Sessions Judge this reply was given to the specific question as to whether the injury was sufficient in the ordinary course nature to cause death, it amounted to mean that the injury was sufficient in the ordinary course of nature to cause death. We are unable to subscribe to the view of the learned Sessions Judge. Such a meaning could not have been attributed to the reply given by the doctor to the question put to him and when the doctor replied that injury No. 2 may have caused death, it clearly means that according to him, it was not sufficient in the ordinary course of nature to cause death. Injury No. 1 was a simple injury by a sharp edged weapon. In these circumstances, we are of the opinion that the accused could not have been convicted Under Section 302 IPC. Looking to the circumstances, in which the injuries were inflicted and the nature of the injuries, we are clearly of the opinion that the case should fall Under Section 304 Part-I, PC and we are supported in this view by a decision of their Lordships of Supreme Court in Nachittar Singh v. State of Uttar Pradesh : (1982)1SCC609 . In that case, all that doctor stated was that any of the injuries found on the person of the deceased could cause death and the doctor had further stated that the

cause of death of the deceased was due to peritonitis resulting in irreversible secondary shock. Looking to this nature of the medical evidence did not, their Lordships objection that the medical evidence did not categorically opine that these injuries found on the deceased collectively or individually were sufficient to cause death in the ordinary course of nature. All that the medical evidence amounts to, is that these injuries found on the deceased were likely to cause death.

5. We therefore, partly allow the appeal, set aside the conviction of the appellant Under Section 302 PC and instead convict him Under Section 304 Part-I, IPC and sentence him to seven years rigorous imprisonment. The conviction Under Section 323 IPC is withdrawn.

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