

Ladu Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Feb-02-1984

Reported in : 1984WLN469

Judge : G.M. Lodha and; G.K. Sharma, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 214 of 1977

Appellant : Ladu

Respondent : The State of Rajasthan

Judgement :

G.M. Lodha, J.

1. Appellant Ladu has filed this appeal against his conviction under Section 302 I.P.C. by the Sessions Judge, Ajmer for committing murder of Mangi Lal. Appellant Ladu was charged as under:

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igyk& fd fnukad 15 fnIEcj 1976 dks nks fnu ds yxHkx 1&30 cts yskM+h&dk;&okfM;k ou Jhuxj es vkius eakxhyky dh gR;k djus ds vfHkizk; ls mls dqYgkM+h ls xEHkhj o lk/kkj.k pksVs igqpkbZ tks pksVs ,d O;fDr dh gR;k djus ds

fy, lk/kkj.kr;k lk;kZlr Fkh vkSj mu pksVks ls mudh e`R;q gks x;h A bl izdkj vkus Hkkjrh; n.M+ lafgrk dh /kkjk 302 ds vUrZxr n.Muh; vijk/k fd;k tks fd bl ls'ku U;k;ky; ds izlaKku es g SA

nwljk& fd fnukad 15&12&76 dh fnu yxHkx 1-30 cts yhMh&dk;&okfM;k ou Jhuxj es vkus LosPNkiwoZd gtkjh dqYgkMh ls pksVs igqpkbZ vkSj bl rjg vkus Hkk0n0l0 dh /kkjk 324 ds vUrZxr n.Muh; vijk?k fd;k tks fd bl ls'ku U;k;ky; ds izlaKku es g SA vkSj es ,r~n}kjk funsZ'k nsrk gw fd vkidks mDr U;k;ky; }kjk mDr vkjksi ds fy, ijhf{kr fd;k tkos A

s/d -

ls'ku U;k;k/kh'k

The Sessions Judge while convicting the accused under Section 302 I.P.C. sentenced him to life imprisonment and acquitted him of the offence under Section 324 I P.C.

2. In this appeal, learned Counsel for the appellant has not contested the commission of the offences by the appellant, but he has argued that the offence can fall at the most under Section 304(2) I P.C. He, therefore, pressed the appeal to this limited extent and he prayed that the court need not go in details about the facts so far as the causing of death of the deceased is concerned, because apart from the prosecution evidence, Mangi Lal in his statement has admitted that he caused injuries by axe to Ladu although his plea is that this was done on account of provocation caused to him because accused was committing rape on his wife and did not desist from doing so ins pite of repeated warning.

3. We have even then gone through the entire record of the case and perused the relevant evidence.

4. The prosecution allegation in short, is that on 15-12-76 deceased Mangi Lal was on his field for guarding the field. At that time accused Ladu's wife entered the field and started picking up cow-dung Mangi Lal asked him not to do so. On this Ladu accused, who was grazing cattle nearby felt annoyed and told Mangi Lal not to talk to his wife and saying so in anger gave a blow of axe on the head of Mangi Lal

and another blow was given on his hand, when Mangi Lal tried to put on his hand to save his head. Hajari tried to intervene, but his finger was also injured. Mishrilal came there from nearby and by that time Mangi Lal fell down. Mishrilal tried to snatch the axe from Ladu, but Ladu threatened him. Mangi Lal died on the spot. Mishrilal and Hajari then gave information of this incident to Mangi Lal's brother's son Mana, who rushed to the Police Station, Srinagar and lodged the First Information report at 3.30 which was registered by the S.H.O. and is Ex. P. 3 on the Record. The resultant registration of the case and the commencement of the investigation ultimately resulted in the filing of challan against accused, who was then put to trial under Section 302 and 304 IPC as per the charge sheet extracted above. The prosecution in support of its case examined 10 witnesses and produced 17 articles.

5. According to Dr. Virendra, P.W. 1, deceased Mangi Lal received the following injuries:

- (1) Incised injury on their right fore-arm on the lateral side with cutting of both bones completely
- (2) Incised injury 1/2' x 1/2' x 1/2' on the lateral side of the right thigh
- (3) Lacerated injury 1-1/2' x 1' x 1/2' on the lateral side of the left knee joint
- (4) Incised wound in the frontal region 2-1/2' x 1/2' x 1-1/2' with the cutting of bone and involvement of dura matter and brain substance
- (5) Incised wound 4-1/2' x 2' x 1-1/2' with cutting of the bone and involvement of the dura matter and brain substance from frontal to occipital region
- (6) Incised wound 3' x 2-1/2' x 1-1/2' with cutting of the bone and involvement of dura matter and brain substance
- (7) Incised wound 3' x 2' x 2' on the left temporal region with cutting of the bone and involvement of the dura matter and brain substance.

The doctor's opinion shows that the accused died on account of the injuries on his head. Doctor also testified that the incised wound could be caused by axe.

6. The crucial question, which comes for consideration before us is that though undoubtedly causing of the death by the accused of the deceased Mangi Lal has been proved beyond all reasonable doubt by the testimony of the eye witnesses corroborated by the medical evidence as discussed by the trial court, which has not been challenged before us, yet the important question which requires answer is as to what offence the accused has committed. At the very outset we would like to set out below the relevant provisions of the IPC in this respect. Section 299 IPC defines culpable homicide. Section 300 defines murder. Section 300 also contains exceptions, where culpable homicide is not murder and these exceptions in all are five.

7. Since we are concerned, in the instant case with exception 1 and 4 the same are reproduced below for ready reference.

Exception 1.--When culpable homicide is not murder--Culpable homicide is not murder if the offender, whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident

Exception 4.--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Now in the light of the above provisions of the law we have to consider as to what is the offence in the instant case and particularly what are those features on account of which the accused can claim the benefit of these exceptions. We are not prepared to accept the defence theory that deceased Mangi Lal was committing rape over the wife of the accused and accused was provoked on account of that because the deceased did not desist to do so in spite of warning. It is true that only the accused has stated so in his statement, but he has produced his wife P. W. 1 Dhapu in support of defence evidence also. Dhapu has stated that while she was picking up cowdung, Mangi Lal deceased came there and caught hold of her, she tried to get rid of him and ran towards 'Panrodi-ka-dol' where her husband was grazing cattle, but accused, Mangi Lal followed her and caught hold

of her again. After that Mangi Lal started ravishing her by falling on her on which her husband came and told him thrice to not do so, but Mangi Lal did not pay heed to the warning of her husband. On this her husband Ladu gave an axe blow Mangi Lal.

8. We find this story improbable on various reasons. Firstly, in broad day light knowing it very well that Ladu was grazing cattle and after Ladu's wife ran towards that place where Ladu was standing, Mangi Lal would not dare to ravish Ladu's wife in presence of her husband. Secondly, even if some foolish act is done it is impossible to be believe that when Ladhu repeated warnings to Mangi Lal not to do so and leave Ladu's wife, Mangi Lal would continue to ravish her inspite of Ladu had come with an axe in his hand. It is also important to note here that this version nowhere finds place at the stage of investigation and no report was lodged by Ladu's wife, who was certainly not under the arrest. No attempt was made at that stage to get the medical examination conducted of Ladu's wife or to get these points verified at the time of post mortem examination of the deceased as to whether there were any signs of discharge. We do not find any cross examination conducted in this respect of the doctor who has been examined also. We have also examined the statement of the Investigating Officer, the medical evidence and the post mortem of the deceased and the memorandum of the condition of the dead body in the form of inquest report etc in order to find out if the story of rape has got any element of genuineness. We do not find any support anywhere in this respect. We are of the opinion that the story is too tall to be believed in the form put by the defence. It is true that if the story would have been probable, we would not have insisted for strict proof from the defence, but since we are convinced that the story is improbable we have got no hesitation in confirming the finding of the trial court in this respect in disbelieving the story.

9. In spite of the above, the question still remains whether the accused is to be convicted under Section 302 IPC or 304 IPC. In this respect, we find that the prosecution evidence of the believable eye witnesses, which have been believed by the trial courts, consists of only PW 7 Hajari. The story put by this witness is that Ladu's wife was picking up cow dungs from Mangi Lal's field and Mangi Lal told her not to do so. Ladu's wife insisted inspite of this and told that she would

continue to pickup cow dungs. Ladu struck axe blow on the head of Mangi Lal and Ladu's wife ran away to call MishriNath. He caught hold of the axe and tried to give a blow on his head but he could escape with minor injuries on the thumb. This witness was confronted with the police statement Ex. P. 3, which mentions that Mangi Lal was reprimanded by Ladu not to talk to his wife. He denied that he has mentioned this but it may be that Ladu was having great anger and heart of passion when he rushed towards deceased Mangi Lal.

10. It is significant to notice here that according to this witness only one injury was caused by Ladu on the head of Mangi Lal. From the medical evidence we find that deceased Mangi Lal had number of injuries on his person and they were in all 7 No Prosecution witness mentioned that 7 injuries were caused by Ladu on the person of deceased Mangi Lal.

11. We have perused the statement of this witness also but we find that only eye witness who witnessed the entire occurrence is Hajari & others came later on We, therefore, find in order to appreciate that when the deceased had 7 injuries and the witness observed that Ladu gave one axe blow on the head of deceased, he is giving correct and exact version of incident. In our head opinion either witness is deliberately concealing the details of the fight which must have preceded resulting in the injuries or he came little later and observed only one injury and the other injuries were inflicted before his coming on the scene of occurrence.

12. We are unable to accept the prosecution version that merely because Mangi Lal told Ladu's wife not to pickup cow dungs, the accused might have given 7 axe blows. In the very nature of things as per that the accused as well as deceased belong to the cultivating class of the village and are village rustics, it is probable that in all probability there was fight between the accused and the deceased and this must have happened because when Ladu's wife was being reprimanded by Mangi Lal, Mangi Lal must have used abusive language towards Ladu, which must have enraged Ladu resulting in a sudden fight. We are of the opinion that the only inference which we are drawing in the facts and circumstances of the case that the act of Ladu was without premeditation and a sudden fight took place about picking up of cow dungs and because his wife was abused by the deceased, the accused

was deprived of the power of self control by grave and sudden provocation. We, therefore, feel that exception (1) as well as exception (4) of Section 300 IPC applies in the instant case.

13. In *State of Rajasthan v. Kanti Lai* 1978 RLW 230 this court was concerned with an incident where the husband killed his wife. This court held that what transpired after the appellant went to his house could not be ascertained because there was no evidence. The exact discussion is as under:

What transpired after the appellant went into his house, no evidence is forthcoming. Soon after the murder the appellant confessed before PW 7 and PW 13 that he did commit the murder of his wife in anger. This confession made by the appellant in all probability indicates that there must have been violent quarrel between the appellant and his wife. Although the appellant has not led any evidence in support of his case that he committed the murder of his wife in grave and sudden provocation from the very fact that he inflicted so many injuries on his wife and thereafter confessed that he did so in anger in all probability indicate that he did so under grave and sudden provocation, having lost his self control. As pointed out by the Supreme Court in *Harbhajan Singh v. State of Punjab* 1978 RLW 230 there is consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. This, however, is the test prescribed while deciding whether the prosecution has discharged its onus of proving the guilt of the accused. It is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where he is called upon to prove that his case falls under an exception, law treats the onus as discharged if he succeeds in proving a preponderance of probability.

14. In the instant case What transpired between Ladu and Mangi Lal before Ladu gave fatal blow o axe is not known because witness Hajari reached the spot at a stage where the earlier part of the quarrel and fight was over and the last blow on the head was being given or he is deliberately concealing that part of the case because he mentions only one injury on the head and confidently avoids other 6

injuries as to how and when and by whom they were caused.

15. That being so looking to the nature of the quarrel between accused and deceased, the fact that they are from village and belong to community of cultivating class and are rustics and cultivating persons, who are enraged as soon as any abuse is given to the women folk the conclusion and inference, which can be drawn, is that there was some altercation and sudden fight by abuses by the deceased to the wife of the accused and that developed in such provocation to the accused, that on account of grave and sudden provocation he lost self control, In such state of affairs the injuries were caused by the accused without any premeditation in sudden fight and heat of passion on sudden quarrel after he was deprived of power of self control by grave and sudden provocation.

16. We accordingly accept the submission of learned Counsel for the accused that the conviction of the accused deserves to be converted into Section 304 IPC from Section 302 IPC.

17. Consequently, the conviction of accused Ladu under Section 302 IPC is set aside and it is altered into Section 304(1) IPC. The accused was arrested on 35-12-1976 and since then he is in jail, therefore, he has already undergone a sentence of 7 years and 2 months without counting the remission to which he was entitled. We feel that the ends of justice would be met by sentencing him to the sentence already undergone by him, as mentioned above.

18. The appeal is, therefore, partially accepted. The accused should now be released forth-with unless he is required in any other case.