

Ram Swaroop and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-09-2005

Reported in : RLW2005(4)Raj2730; 2005(1)WLC353

Judge : V.K. Bali and; Prem Shanker Asopa, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 300, 302, 323 and 447; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 605 of 1998

Appellant : Ram Swaroop and ors.

Respondent : State of Rajasthan

Advocate for Def. : M.L. Goyal, P.P.

Advocate for Pet/Ap. : N.A. Naqvi,; Liyakat Ali and; B.R. Rana, Advs.

Judgement :

Prem Shanker Asopa, J.

1. The criminal appeal is directed against the judgment dated 11.8.1998, in Sessions Case No. 175/98, passed by learned Additional Sessions Judge, Bandiqui, District Dausa, whereby he convicted and sentenced the accused appellant as under:

Rameshwar :

Under Section 302 IPC

Life imprisonment and a fine of Rs. 1000/-, in default of payment of fine, further 1 month imprisonment.

Under Section 323 read with 34 IPC :

A fine of Rs. 200/-, in default of payment of fine further one month imprisonment

Ram Swaroop :

Under Section 302 read with 34 IPC

Life imprisonment and a fine of Rs. 1000/-, in default of payment of fine, further 1 month imprisonment.

Under Section 323 read with 34 IPC :

A fine of Rs. 200/-, in default of payment of fine further one month imprisonment

Jagdish :

Under Section 302 read with 34 IPC

Life imprisonment and a fine of Rs. 1000/-, in default of payment of fine, further 1 month imprisonment.

Under Section 323 read with 34 IPC :

A fine of Rs. 200/-, in default of payment of fine further one month imprisonment

2. The prosecution story is that Sanjha w/o Bhanwara (P.W.7) lodged a report at Police Station Manpur on 29.9.90 stating therein that she is resident of Jahangiria, where the land of the accused and complainant are situated adjacent to each other and having a common 'dhora' (Boundary Wall). With regard to the occurrence, it was stated that on 29.9.90 at around 7.00 a.m. the complainant along with her son Surjan, grand-son Sita Ram and grand-daughter Badam went

to the field and her son Surjan started ploughing the field near the common boundary wall. The accused persons Rameshwar, Ram Swaroop, Jagdish, Narbad w/o Rameshwar and Chota w/o Ram Swaroop came there armed with lathies and dandas and gave beating to her son Surjan. It was alleged that Rameshwar was armed with lathi and others were having 'daridas' in their hands. Rameshwar inflicted lathi blow on the head of Surjan, as a result of which he sustained injury on his head and eye. When Sita Ram came to intervene, he was also beaten by all five accused, After giving beating, the accused went to their field. The incident was witnesses by Gainda, Gangadhar, Laxman etc.

3. The injured Surjan was taken to S.M.S. Hospital, Jaipur, for X-ray and further treatment and during the treatment he scummed to injuries on 30.9.90. Thereafter post-mortem was conducted;

4. That after hearing the arguments on charge, the accused Rameshwar was charged for the offence under Section 447, 302, 323 read with 34 IPC and other accused¹ persons Ram Swaroop and Jagdish were charged for offence under Sections 447, 302/34, 323/34 IPC.

5. On behalf of the prosecution, Dr. Madan Tripathi was examined as P.W. 1, and further examined Gangadhar P.W. 2, Laxman P.W.3, Gulab P.W.4, Sita Ram P.W.5, Gainda P.W.6, Sanja P.W.7, Kamla P.W.8, Badam P.W.9, Narayan Singh P.w.10, Dr. Kamal Kishore Sharma, P.W.11, Ramphool P.W. 12 and Kesri Chand, as P.W-13.

6. After conclusion of the evidence of the prosecution, the accused were examined under Section 313 Cr.P.C. wherein they have denied the prosecution story and further expressed their desire to produce defence but no defence was produced.

7. In the sessions trial the accused appellants were convicted as detailed out hereinabove. The accused appellants Ram Swaroop and Jagdish were convicted under Section 302 with the aid of Section 34 IPC on the basis that there was premeditation and common intention in furtherance of which the occurrence took place. Therefore, all the accused are liable for the injury of the lathi blow on the fore-head and eye and all have been convicted.

8. The crucial point for determination is whether there was any premeditation and common intention infurtherance of which the aforesaid occurrence took place, if not, then whether from the evidence on record, it is a case of sudden quarrel which makes only Rameshwar liable for the fatal injury and not other accused persons

9. We have heard learned Counsel for the accused appellants and learned P.P. and gone through the record of the case.

10. The submission of the counsel for the accused appellants is that the incident took place all of a sudden without any premeditation on account of ploughing the land near the common boundary wall and there was no evidence regarding pre-concert of mind of accused to commit murder. In absence of this evidence the accused appellants could not be convicted with the aid of Section 34 IPC.

11. The further submission of counsel for the appellants is that the weapons used in the occurrence were common instruments (Lathi-Danda), generally kept by the farmers. Therefore, no inference can be drawn that there was any intention of committing murder. In support of their submissions, counsel for the appellants has placed reliance upon a judgment of Hon'ble Supreme Court in Arvind Kumar v. State of Uttar Pradesh (1987(Supp) Supreme Court Cases 638), which was a case of sudden quarrel and the conviction was altered from one under Section 302 to Section 304 Part(I)I.P.C.

12. On the other hand the submission of learned Public Prosecutor is that Surjan died on account of injuries on fore- head and eye, which were caused by Rameshwar and there is evidence of doctor P.W.1 Madan tripathi that the said injury was sufficient to cause death. It was also submitted that there is evidence on record regarding common intention which has been rightly discussed by the trial Court.

13. According, to the Post-Mortem report Ex.P.1 the following injuries were found on the person of deceased Surjya alias Surjan:

(1) Multiple abrasion varying in size 1/4 x 1/4 cm, 1/2 x 1/2 cm right side lateral End eye soft brain seems fair also.

(2) Abrasion 4 x 3 cm left side parietal region lat. To mid. Line divide brown in colour.

(3) Abrasion 1/2 x 1/2 cm over left parietal region to injury No. 2.

(4) Stitched wound 6 cm with fine stitches over right frontal region near forehead.

14. In the opinion of doctor, the cause of death was 'COMA' brought about as a result of injuries to brain and skull.

15. In the Post-Mortem Report Ex.P.1, Dr. Tripathi opined that the Injury Nos. 1 and 4 on the fore-head were fatal and sufficient to cause death. Dr. Tripathi was examined as P.W.1 and has stated in his statement again that the injury Nos. 1 and 4 were fatal. The eye witnesses (Gangadhar P.W., Laxman P.W.3, Gairda P.W.6 Sanjha w/o Bhanwara P.W.7 and Badam P.W.9 all have stated that Ram Swaroop, Jagdish and Rameshwar were armed with lathi and danda.

16. Sanjha P.W.7, Badam P.W.9 have stated that Rameshwar inflicted blow of lathi on head and eye. As per the evidence of Dr. Tripathi P.W.1 the said head and eye injury is sufficient to cause death.

17. It appears that the quarrel had taken place on account of ploughing the fields near the common boundary wall as is the case emanating from the FIR itself. It further appears that while ploughing the fields, complainant in all probability, demolished the common 'Dole' even though by a sheer mistake which further appears to have infuriated the appellants. It is significant to mention that the appellants have since been acquitted of the charge framed against them with regard to trespassing into the land of the complainant party which would further show that it is not a case where the appellants had gone into the fields of the complainant party and then gave them beatings. From the attending circumstances, it appears that the fight had taken place at or near the common boundary of the parties and the cause was demolition of the common 'Dole', In the circumstances mentioned above, there could be no premeditation and common

intention for causing death. Infuriated on account of demolition of the common wall, appellant, it appears, started giving injuries to the complainant party with whatever weapons were already in their hands and it may be mentioned here that the appellants are said to have caused injuries by such weapons which are usually handled by farmers in normal course. Present is thus proved to be a case of sudden fight.

18. As discussed above, we are of the firm view that the present case is not of premeditation and common intention but the same is of sudden fight and is covered by exception (IV) of Section 300 IPC.

19. In Arvind Kumar's case (supra), the Hon'ble Supreme Court in para No. 3 of its judgment held as under:

'3. After hearing learned Counsel for the parties and examining the evidence in detail, we are inclined to the view that the case should fall within Exception 4 to Section 300. From the testimony of the two eye witnesses PW 3 and PW 4, it is clear that the act was committed by the appellant without any premeditation. In the course of the same of cards there was a sudden quarrel and in the heat of passion the appellant inflicted the stab injuries on the deceased. It cannot be said that the appellant had taken undue advantage or calculatedly acted in a cruel and unusual manner. In the premises, the appellant must be held guilty of only culpable homicide not amounting to murder punishable under Section 304 Part I of the Indian Penal code.'

20. The aforesaid judgment of Hon'ble Supreme Court is fully applicable to the facts and circumstances of the instant case.

21. The conviction of accused Ram Swaroop and Jagdish is based on common intention. Therefore, their conviction under Section 302 read with Section 34 IPC is set-aside and their conviction under Section 323 IPC is maintained.

22. The conviction and sentence of Rameshwar under Section 302 IPC is converted to Section 304 Part I and he is sentenced to seven years R.I. and a fine of Rs. 25000/- and in default of payment of fine, six months rigorous imprisonment.

23. The appeal is partly allowed to the above extent.

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