

**Babla Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Apr-06-1990

**Reported in :** 1990(1)WLN280

**Judge :** Kanta Bhatnagar and; R.S. Verma, JJ.

**Appeal No. :** D.B. Criminal Appeal No. 24 of 1985

**Appellant :** Babla

**Respondent :** State of Rajasthan

**Advocate for Pet/Ap. :** Mr. M.L. Garg

**Judgement :**

**Kanta Bhatnagar, J.**

1. This appeal is directed against the judgment dated December 18, 1984 passed by the learned Sessions Judge, Sirohi by which appellant Babla was held guilty for the murder of Ratna and was sentenced to imprisonment for life Under Section 302 IPC and a fine of Rs. 500/- in default of payment of fine to undergo one month's R.I.

2. Briefly stated, the facts of the case giving rise to the trial, conviction and sentence and the present appeal are that, in the evening of June 27, 1983 Ratna deceased had not returned home and therefore, his son Shanker (PW 3) went in

his search. He was found on the wine shop of Babu at Aadarsh village. He along with his father was returning to his village at about 10.00 P.M. When they reached near the Railway Line, Ratna consumed liquor from the bottle he had purchased from the shop. Shanker also consumed the liquor from it. While under intoxication Ratna abused Babla appellant who was also passing that way. The cause of enmity between the two is said to be that previously Babla was in service with Babulal Contractor of wine and was selling the wine at the Shop but subsequently in his place Ratna deceased was engaged. On hearing abuses Babla threw stones which hit Shanker. Shanker ran away from there. Babla caused dagger (chhuri) injuries to deceased Ratna. He succumbed to those injuries Lala (PW 4) who was also at the shop reached there and found Shanker and Babla scuffling. Shanker went to the village and got the report scribed from Sarpanch Yadvendra Singh (PW 7). That report was sent through Chaina (PW 2) to Police Station, Pindwara. The SHO Bakhtwar Singh (PW 11) on the basis of that report Ex. P/3 registered the case. He went to the site and made necessary investigation. On the next day i.e. June, 28, 1983 postmortem examination of the dead body was conducted by Dr. Noor Mohammed (PW 1), Medical Officer, Pindwara. The Doctor noted following injuries on the dead body:

(1) Incised wound 4'x 1/2'x3' deep, on the right part of the neck extended from supra sternal notch to border of Sterno costoid- resulted cut down of complete trachia and neck vessels;

(2) Incised wound 1'x1/8'x1/8' on left cheek;

(3) Incised wound 1/2'x1/8'x1/8' in between both eye brows.

3. According to the Doctor, the cause of death was shock due to extensive haemorrhage due to cutting down of great vessels of the neck and asphoxia caused by cutting down of traches. The postmortem examination report is Ex. P/2.

4. S.H.O. Bakhtwar Singh (PW 11) arrested the appellant on July 1, 1983. While in custody, the appellant furnished information Ex. P/19 for getting recovered his 'Bandi' (shirt) and in pursuance of that information he got recovered one blood stained 'Bandi'. The recovery memo is Ex. P/13.

5. Upon completion of necessary investigation charge sheet against the appellant was filed in the Court of Judicial Magistrate First Class, Abu Road. The learned Magistrate finding the case exclusively triable by the Court of Sessions, committed the case to the Court of Sessions Judge, Sirohi. The learned Sessions Judge, charge sheeted the appellant Under Section 302 IPC and on denial of the charge, proceeded with the trial. Prosecution examined eleven witnesses in all to substantiate its case. In his statement Under Section 313 of the Code of Criminal Procedure Babla denied the allegations levelled against him. No defence witness was examined.

6. We heard Mr. M.L. Garg, learned Counsel for the appellant and Mr. S.K. Mathur, learned Public Prosecutor for the State.

7. The prosecution led direct as well as circumstantial evidence to connect the appellant with the commission of the crime. The direct evidence is of Shanker (PW 3) and Lala (PW 4) and circumstantial evidence is recovery of dagger said to have been left by the deceased at the spot, Babla being aggrieved with Ratna on account of Babu Lal Contractor engaging Ratna in his place for selling wine and the recovery of the blood stained 'Bandi' in pursuance of the information furnished by him.

8. Shanker (PW 3) has categorically stated that he had taken his father Ratna from the wine shop of Contractor Babulal and while going to his village Babla met them near the Railway Line.

9. The learned Counsel for the appellant submitted that this witness has stated that Ratna used abusive language of Babla and, therefore, even if the prosecution case is taken to be true, Babla, being provoked by the abusive language of Ratna might have tried to cause injury to Ratna. The learned Counsel strenuously contended that from the prosecution evidence it is established that the dagger recovered from the site belonged to deceased Ratna and therefore, there is material to suggest that Ratna might have taken out the dagger from scabbard and the appellant in order to save himself might have snatched the same and in that process injuries might have been caused to Ratna.

10. The motive according to the prosecution for commission of the crime was annoyance of Babla against Ratna. It is pertinent to note that at the relevant time one Mana (PW 5) was selling liquor at the shop. There is no evidence on the point that Ratna being employed in place of Babla by Babu Lal contractor was continuing on that job at the relevant time. It is also important to note that according to Shanker (PW 3) son of deceased Ratna, Ratna was intoxicated and even at the site of occurrence he had consumed liquor from the bottle he had purchased from the wine shop, Shanker has also admitted to have consumed liquor that remained in the bottle after his father's consuming from it. Shanker has specifically stated that his father abused Babla, who had thrown stones which hit Shanker and he ran away to some distance. This clearly shows that the origin of the quarrel was Ratna's using abusive language. That how ever will not justify the action of the appellant i.e. causing dagger injuries to Ratna, one out of which proved fatal.

11. The statement of Lala (PW. 4) is that he was going to his village and while passing through the way the incident had taken place. He saw Babla and Shanker scuffling and seperated them. According to the witness thereafter Babla indicted dagger injuries to Ratna. The attention of the witness was drawn to his Police Statement where he has stated that whirr he reached the site, he saw Ratna lying down and the witness could not explain the discrepancy between his Police statement and the version given in the Court. From the record it is established that Shanker was- with bit father at the relevant time and, therefore, the prosecution case mostly rests on his testimony.

12. It is significant to note that though in the Court Shanker has stated that the appellant had left his dagger at the site, the initial story coming fourth in his Police statement of Shanker and also that of Lala is that the dagger, weapon of offence, belonged to deceased Ratna. Attention of the witness was drawn to those parts of their Police statements and they could not tell anything about it.

13. Bakhtawar Singh S.H.O. (P.W. 11) who has recovered the dagger from the site has stated that the dagger belonged to deceased Ratoa. He has prepared the recovery memo of dagger. The memos were prepared at the instance of Shanker

(P.W. 3) and dagger was said to be belonging to the deceased and it is upon that basis that Bakhtawar Singh has stated in the Court that the dagger belonged to the deceased.

14. The learned Public Prosecutor could not point out any material to suggest that the dagger belonged to Babla and not to the deceased.

15. From the above discussion it is established that the dagger the weapon of offence belonged to the deceased. From the evidence on record it is proved that Ratna had sustained injuries at the hands of Babla. In that view of the matter the circumstances of recovery of dagger from the spot and the recovery of blood stained 'Bandi' are of not importance. The pertinent question is as to whether Babla had caused injuries to the deceased with an intention to cause his murder.

16. The learned Counsel for the appellant vehemently argued that when the quarrel was initiated by Ratna there arises no question of any intention of causing murder on the part of Babla appellant. According to the learned Counsel for the appellant even if prosecution case as it stands is taken to be true, the appellant can be held guilty only Under Section 304, Part-II, I.P.C for causing injuries with the knowledge that the injuries would be likely to cause death.

17. The evidence on record clearly indicates that Ratna, Babla and Shanker all were intoxicated at the relevant time The origin of the quarrel was Ratna's using abusive language against Babla in the way. Babla was not having any arm with him. The dagger, as stated above, belonged to the deceased. There is no material to point out as to how Ratna took out the dagger from the scabbard and Babla snatched it from him. Be that as it may, the significant fact is that Babla had used the weapon which was with the deceased and there is force in the contention of the learned counsel for the appellant that something more than what Shanker (P.W. 3) has stated must have taken place which might have led Babla to take the dagger of Babla and cause injuries to him. The incident had taken place on the Way. There was no pre-meditation. Out of three injuries sustained by the deceased only one was fatal. The other two are minor injuries of small dimension on cheek and eye brow which are located in such a way that there might be possibility of, as pointed out by the learned Counsel for the appellant by one stroke

though there is no such question put to the Doctor, all of them being caused by one blow. Be that as it may, the circumstances of the case discussed by us above, do not indicate that Babla had any intention to commit the murder of Ratna. In the absence of any injury on the person of Babla, the case does not fall within the ambit of right of private defence even. However, looking to the circumstances of the case i.e. Ratna under intoxication initiating the quarrel by using abusive language to Babla and the weapon of offence belonging to deceased, take the case out of ambit of Section 302, I.P.C. and the appellant can be convicted Under Section 304, I.P.C. The learned Counsel for the appellant submitted that the case would fall Under Section 304, Part-II, I.P.C. We do not feel inclined to accept that contention. The nature of the fatal injury the appellant had caused by dagger suggest that the act by which death was caused was done with the intention of causing such bodily injury as was likely to cause death. This brings the case within the per view of Section 304, Part-I, I.P.C.

18. Consequently, the appeal of Babla is partly allowed. The conviction and the sentence Under Section 302, I.P.C are set aside. He is instead of convicted Under Section 304, Part-I, I.P.C. and sentenced to eight years R.I. and a fine of Rs. 500/- , in default of payment of fine to undergo six months R.I.

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