

Mohan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-14-2001

Reported in : 2001(3)WLC373; 2000WLC(Raj)UC97; 2001(3)WLN250

Judge : N.N. Mathur and; Prakash Tatia, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 67 of 1997

Appellant : Mohan Singh

Respondent : State of Rajasthan

Advocate for Def. : I.S. Pareek, Public Prosecutor

Advocate for Pet/Ap. : Doongar Singh, Adv.

Disposition : Appeal partly allowed

Judgement :

Mathur, J.

(1). This appeal is directed against the judgment dated 10th Dec., 1996 passed by Sessions Judge, Rajsamand convicting the appellant Mohan Singh of offence u/Section 302 I.P.C. and sentenced to undergo imprisonment for life and to pay a

fine of Rs. 2000/- in default to further undergo six months rigorous imprisonment.

(2). Briefly stated that prosecution case is that on 3.10.94 at about 11:00 P.M., P.W. 1 Kesar Singh lodged an oral First Information Report Ex. P1 at Police Station, Kelwada stating Inter alia that at about 7:00 P.M. he was attracted by the out cry of his brother Mohan Singh from his house. He rushed to his house. He found that number of people had assembled there. On inquiry, P.W. 3 Ratan Singh disclosed that uncle Mohan Singh and his wife Babia Devi thrashed Pratap Singh by 'Kulhari'. He also stated that Mohan Singh gave a 'Kulhari' blow on the head of Pratap Singh. He was taken to the hospital by P.W. 2 Ram Singh, P.W. 9 Gopal Singh and P.W. 4 Kishan Singh. He succumbed to the Injuries on the way. He also stated that a quarrel took place between Mohan Singh and Pratap Singh on the question of cutting of fodder. Police registered a case for offence under Section 302 I.P.C. against the appellant and proceeded with investigation. After usual investigation, police laid charge-sheet against appellant Mohan Singh and his wife Babia Devi 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 16 witnesses. The appellant in his statement u/Section 313 of the Cr.P.C. denied the correctness of the prosecution evidence appearing against him. He also stated that he has been falsely implicated on account of some land dispute. In defence he examined himself as D.W.I.

(4). It is contended by Mr. Doongar Singh learned counsel for the appellant that the learned Judge has committed a serious error in convicting the appellant on the charge of murder of Pratap Singh solely on the testimony of P.W. 3 Ratan Singh, in alternate, it is submitted that incident took place on the spur of moment and the appellant inflicted only single injury, as such it cannot be inferred that he intended to commit murder. Thus, even if knowledge is attributed to the appellant, his conviction cannot travel beyond offence under Section 304 Part II I.P.C. The learned Public Prosecutor has supported the judgment of the trial court.

(5). We have scanned, scrutinise and evaluated the prosecution evidence and considered the rival contentions. The trial court has convicted the appellant on the

testimony of eye witness P.W. 3 Ratan Singh corroborated by the evidence of P.W. 1 Kesar Singh, P.W. 2 Ram Singh, P.W. 4 Kishan Singh, P.W. 7 Roop Singh and P.W. 10 Puran bai. The trial court also found the circumstance of recovery of blood stained 'Kulhari' incriminating against the appellant.

(6). PW-3 Ratan Singh is a child witness aged 11-1/2 years. He has stated that in the evening, he was playing along with Arjun Singh in front of their house. His brother Pratap Singh passed through the house. At that time, appellant Mohan Singh gave a 'Kulhari' blow on his head, His wife gave a lathi blow which struck on the legs of Pratap Singh. Appellant after causing injuries entered inside the house. Injured Pratap Singh fell down. Hearing his out cry, Kesar Singh arrived there. Thereafter Ram Singh, Kishan Singh and Gopal Singh also arrived. He disclosed the fact of 'Kulhari' blow given to Pratap Singh by Mohan Singh. There is a lengthy cross examination, but nothing has been elicited to discredit the testimony of this witness. The statement of this witness finds corroboration from the testimony of other witnesses namely PW-1 Kesar Singh, PW-2 Ram Singh, PW-4 Kishan Singh PW-7 Roop Singh and PW-10 Puran Bal. PW-1 Kesar Singh has stated that hearing the out cry of Pratap Singh, he reached on the spot. The fact of 'Kulhari' blow given to Pratap Singh by Mohan Singh was told by Ratan Singh, The statements of all other witnesses are almost on the same line. PW-16 Nahar Singh is the investigating Officer. He has stated that appellant Mohan Singh was arrested on 5.10.94 vide Ex.P17. On the same day he gave Information Ex.P.18 leading to the recovery of blood-stained 'Kulhari' vide Ex. P16. The recovered 'Kulhari' was packed and sealed on the spot. There is evidence on record that the packed article remained intact from the time it was deposited in the Malkhana till it reached to the Forensic Science Laboratory. The F.S.L. report Ex.P.20 shows that the 'Kulhari' was found stained with human blood. Thus, there is ample evidence on record to show that the appellant gave a 'Kulhari' blow, to deceased Pratap Singh on account of which died.

(7). With a view to consider the nature of offence, we may refer to the statement of P.W. 14 Dr. A.M.R. Andrews. He has stated that he conducted the post-mortem of the dead body of Pratap Singh and noted the following injuries:-

(1) Wound 7.5 'x1' horizontal left temple brain deep.

He has proved the post-mortem report Ex,P12. In his opinion the deceased Pratap Singh died due to profuse bleeding from the wound. He also stated that the cause of death was clotting of blood in the skull and injury to temporal bone. A perusal of the post-mortem report shows that there is single injury. From the reading of the statement of Ratan Singh it appears that the incident took place on the spur of moment. In these circumstances, it cannot be inferred that the appellant intended to commit murder of Pratap Singh. He may be clothed with the knowledge that his act in all probability may cause death. He has not acted in a cruel manner. The blow was not repealed. Thus, his conviction under Section 302 I.P.C. is not sustainable. He is liable to be convicted for offence under Section 304 Part II I.P.C.

(8). Consequently, this appeal is partly allowed and the conviction of appellant Mohan Singh under Section 302 I.P.C. is altered to Section 304 Part II I.P.C. The appellant is in Jail since 1994. Thus, the sentence is reduced to the period already undergone. However, the fine remains intact. The appellant shall be released forthwith, if not required in any other case.

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