

Devi Lal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-05-1988

Reported in : 1988WLN(UC)388

Judge : J.R. Chopra, J.

Appeal No. : S.B. Cr. Jail Appeal No. 173 of 1987

Appellant : Devi Lal

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Sandeep Mehta

Judgement :

J.R. Chopra, J.

1. This is a jail appeal against the judgment of learned District and Sessions Judge, Pratapgarh dated 2-4 1987 whereby the learned trial court has held accused appellant Devi Lal guilty of the offence under Section 304, Part-II and has sentenced him to 5 years rigorous imprisonment.

2. The facts necessary to be noticed for the disposal of this appeal briefly stated are: that some enmity was existing between deceased Chaggan Lal and accused Devi Lal and his father. It is alleged that on 21/01/1984 at about 700 p.m. when Chaggan Lal was coming with his cattle and passed by the house of Devi Lal, he

came out of his house, armed with a Lathi and inflicted injuries to Chaggan Lal. Thereafter, Chaggan Lal fell down and was shifted to his own house by Mst. Dakhi Bai and Mst. Nani Bai and then the report of the incident was lodged by Chaggan Lal's son Chand Mal PW 4 which has been marked Ex.P 2. On the next date, Chaggan Lal died because of the injuries received by him and, therefore, a case was registered under Section 302, IPC. The post mortem was got conducted and after the usual investigation the case against the accused was challaned under Section 302, IPC in the court of learned MJM, Nimbahera from where it was committed for trial to the Court of learned District and Sessions Judge, Pratapgarh who after holding the trial convicted and sentenced the accused as aforesaid and hence this appeal.

3. Mr. Sandeep Mehta, appearing for the appellant has submitted that even if the entire evidence, as recorded in the case is taken to be true, there is no proof of the fact that the injury inflicted by the accused on the head of the late Shri Chaggan Lal was likely to cause death. No doubt, the post mortem report Ex.P 19 has been admitted as true and further on the back of the Ex.P 2, it has been reported that Chaggan Lal was admitted in the Hospital of Chittorgarh as a case of head injury in an unconscious stage on 3-10-1984 at 1.00 p.m. and he died at 5.35 p.m. because of the head injury received by him and so it cannot be disputed that Shri Chaggan Lal died of the injuries received by him. He further does not dispute that the head injury has resulted in a fracture but he has submitted that the prosecution ought to have examined the Medical Officer to prove that the injuries were either sufficient in the ordinary course of nature to cause death of Shri Chaggan Lal or they were likely to cause death of Chaggan Lal and till that is proved the accused can be held guilty of the offence under Section 304, Part-II, IPC. At best, he can be held guilty of the offence Section 325, IPC. The two eye-witnesses of the occurrence i.e. PW 1 Balmukand Sharma and PW 6 Ganshyam Lal Sharma have stated that when Chaggan Lal passed by the house of Devi Lal, Devi Lal who was armed with a Lathi attacked him and caused injuries to him on his head and other parts of his body. It has been stated by PW 2 Balu, a boy aged 8 years, that after infliction of the injuries to Chaggan Lal, he was in a position to speak and that fact, which he has asserted in his examination in chief, has not been controverted by putting any question to him in cross-examination. It has been stated by PW 2 Balu

and PW 7 Motipuri that Chaggan Lal told them that his injuries have been inflicted by Shri Devi Lal. It is, therefore, clear that Devi Lal as the author of the injuries caused to late Shri Chaggan Lal. It is quite probable that Chaggan Lal must have died of the injuries received by him but for convicting the accused under Section 304, Part-II, IPC, the prosecution has to prove that the accused inflicted that injury with the knowledge that such an injury is likely to cause death of the injured and the Doctor has also to prove that the injury was likely to cause death. The proof of these facts is absent in this case. Under these circumstances, I have no option but to agree with Mr. Sandeep Mehta that accused can at best be held guilty of the offence under Section 325, IPC. The accused is in custody since 7 10-1984. Thus he has remained in custody almost for a period of 3 years and 4 months. Mr. Mehta has submitted (hat looking to the facts and circumstances of the case and further looking to the young age of the accused, this sentence should be held as sufficient.

4. The result is that I partially accept this appeal set aside the conviction the accused appellant Devi Lal recorded under Section 304 Part-II, IPC by learned Sessions Judge, Pratapgarh and alter it to a conviction under Section 325, IPC. The substantive sentence of 5 years is reduced to the period of his custody.

5. Before parting with this cause, I will like to observe and impress upon the learned lower court i.e. the Sessions Judges that inspite of the fact that the injury reports and the post mortem reports are admitted by the counsel for the accused, the person who has issued such injury reports or post mortem reports should invariably be examined by the court to prove the nature of the injuries i.e. injuries received by the injured are ante-mortem or post mortem in nature and to prove the cause of death as also the nature of the injuries i.e. whether they are sufficient in the ordinary course of nature to cause death or they are likely to cause death. The procedure prescribed by law should not be circumvented in such serious cases where the life of a man is involved.

6. The accused is in jail, his release orders be issued forth with if he is not required in any other case.

