

Rashid Vs. State

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Court : Rajasthan

Decided On : Mar-12-1999

Reported in : 2000CriLJ3751

Judge : N.N. Mathur, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304 and 323

Appeal No. : Cri. Appeal No. 665 of 1981

Appellant : Rashid

Respondent : State

Advocate for Def. : Penney Singh, Public Prosecutor

Advocate for Pet/Ap. : N.M. Lodha, Adv.

Judgement :

N.N. Mathur, J.

1. This appeal is directed against the judgment dated 21-12-1981 passed by the learned Sessions Judge, Jodhpur, convicting the second appellant Sabir Hussain of the offence under Section 304, Part II, IPC and sentencing him to five years' rigorous imprisonment and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo six months' R.I. Accused appellant Rashid has been

convicted for the offence under Section 323, IPC and a fine of Rs. 500/- and in default of payment of fine to undergo three months' simple imprisonment.

2. The prosecution story is that second appellant Sabir Hussain and his son i.e. first appellant Rashid were the Jamandar of Bhatta Nos. 5 and 6 respectively situated in village Barna. Deceased Ogad Ram was an employee of Bhatta No. 5 and was doing the work of Mistri. On 10-4-1981, there was a paucity of labour and, as such, accused Sabir asked the deceased to send his labours at Bhatta No. 6 but he refused to do so. Thereafter, Sabir asked the deceased to leave the work and go home and, accordingly, deceased leaving the work went to his quarter. The deceased came back to the office near the Kanta, where accused persons came and gave him beating. It is further alleged that the accused Sabir Hussain caught the deceased Ogad Ram by neck and gave him beating. It is further alleged that Rashid also gave beating to Ogad Ram by hands and fists. Ogad Ram was thereafter taken to the quarter, where his condition sharply deteriorated and, therefore, he was immediately taken to hospital by car at Bilara for treatment. However, he died on the way. The dead body of Ogad Ram was again brought to village Barna. The information of the incident was given by the maternal uncle of Ogad Ram namely Bohra Ram. On the basis of this information, a case was registered for the offence under Section 302/34, IPC against the appellants. The autopsy was conducted by PW 8 Dr. K.N. Mathur. He noticed injuries on the neck and other parts of the dead body. In his opinion, such injuries could be caused if the neck is pressed with great force. After usual investigation, police submitted a challan against the appellants for the offence under Section 302 and 302/34, IPC. The appellants were charged for the offences under Sections 302 and 304/34, IPC. They denied the guilt and claimed trial. The learned trial Court found that it was a case of culpable homicide and not amounting to murder and, as such, convicted second appellant for the offence under Section 304, Part II, IPC and sentenced him as stated above. The first appellant has been convicted for the offence under Section 323, IPC.

3. Assailing the judgment, it is contended by Mr. N.M. Lodha learned counsel appearing for the appellants that the entire prosecution story is unbelievable. It is submitted that while according to the prosecution, the incident took place during

11 a.m. to 1 p.m. whereas the doctor in his statement has stated as Ogad Ram must have died three to four hours prior to the time of post mortem. It may be stated that autopsy was conducted on the next day i.e. 11-4-1981 at about 7 a.m. Thus, it is argued by Mr. Lodha that Ogad Ram must not have died on account of the incident, which took place on 10-4-1981 during the period 11 a.m. to 1 p.m. He has pointed out that another incident had taken place in the evening on which a case was also registered as 'State v. Bohra Ram'. It is submitted that this part of the story has been concealed by the prosecution. It is also submitted that prosecution story does not tally with the post mortem report. Mr. Lodha further submitted that it was only Dr. Verma, who first attended Ogad Ram, and he could have said about his condition but he has deliberately not been produced by the prosecution.

4. So far as the incident which took place on 10-4-1981. PW 1 Mst. Gerki has supported the prosecution case. She has stated that accused Sabir Khan caught hold his son Ogad Ram by neck. She also stated that accused Rashid had given her son beating by hands and fists. PW 2 Raju Ram has stated that accused Sabir Khan caught hold Ogad Ram by neck, then Rashid gave him beating by hands and fists. PW 3 Sukh Ram has also stated on the same line. PW 4 Bohra Ram has proved the F.I.R. PW 6 Khem Singh has stated that he witnessed Sabir and Rashid gave beating to Ogad Ram. In view of this overwhelming evidence, the prosecution has succeeded in proving that accused Sabir caught hold deceased Ogad Ram by neck on 10-4-1981 and accused Rashid assaulted by hands and fists. PW 8 Dr. K.N. Mathur conducted the post mortem and noticed the following injuries :

1. Bruise 1.5 cm x 1 cm on left side of the neck at level of cricoid cartilage;
2. Bruise 1.5 cm x 1 cm on left side of the neck 1 cm below the injury No. 1;
3. Abrasion seminunarlal of 1 cm x 1/8 cm on left side of the neck; and
4. Abrasion 1 cm x 0.5 cm on left infra scapular region.

5. The doctor also found a fracture of trachial tube (third) on left side which was extending anterior to posterior aspect of trachea. He also found the collection of blood into the trachial tube (wind pipe). He further noticed soft tissues of muscle around the trachea were ruptured. In his opinion, the cause of death was asphyxia due to throttling. All the injuries were ante mortem in nature. He further expressed that these injuries could cause if he neck is pressed with great force. In his opinion, the immediate effect of fracture of trachea is either cause difficulty in respiration and pain at the site of fracture. In the normal course, it is difficult to swallow anything after the fracture of trachea. In the cross examination, he also stated that unconsciousness depends upon the nature of fracture and block of tracheal tube because of the collection of the blood. In his opinion, the injuries were sufficient in the ordinary course of nature to cause death. With respect to the presence of thumbs mark on the neck, he stated that ordinary such impressions should be on the neck. He also stated that Ogad Ram could have been survived if the medical aid would have been given in time. Some questions were put to him with respect of Case No. 106/1981 'State v. Bohra Ram' pending in the Court of MJM, Bilara. Thus, the case of the prosecution is amply proved by the medical evidence as well. So far as the discrepancy pointed out by Mr. Lodha with regard to time of death is concerned, in my view there is no substance in the contention as the doctor has not given any reason as to on what basis, he has said that Ogad Ram would have died three to four hours prior to the post mortem. So far as the non examination of the doctor is concerned, it may be noticed that deceased was not given any treatment by said doctor Verma. In view of this, I do not find substance in any of the contentions raised by Mr. Lodha. Thus, the conviction of both the appellants for the offence convicted by the trial Court, is upheld.

6. It is lastly contended by Mr. Lodha that the statement of the second appellant was recorded in the year 1981 and at that time, his age was 65 years and, now he is an old man of 83 years. The sentence was suspended by this Court in 1982 on account of his illness. He submits that incident took place on spur of the moment and looking to the advance age and further the fact that he is a sick person, the sentence may be reduced to the period already undergone. It is pointed out that he remained in jail during the period 22-4-1981 to 5-11-1981 and thereafter for the period from 12-12-1981 to 11-3-1982. Looking to the fact that the second appellant

is a sick person and he is at an advance age of 83 and he is on bail for last more than 18 years, the ends of justice would be met if the sentence is reduced to the period already undergone. However, the appellant will pay a compensation of Rs. 10,000/- to the mother of deceased Ogad Ram.

7. Consequently, with the modification on the point of sentence as indicated above, the appeal fails and is dismissed. However, the appellants shall pay a compensation to the tune of Rs. 10,000/- to the mother of deceased Ogad Ram. Three months' time is granted to the appellants to deposit the said amount of compensation with the trial Court to be paid to mother of deceased Ogad Ram. In case the appellant No. 2 does not pay the compensation, the order of reducing the sentence shall stand vacated and the sentence awarded by the trial Court shall remain intact and the appeal shall stand dismissed. In such event, CJM, Jodhpur will ensure that the second appellant is sent to jail to serve out the remaining sentence.

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