

Prema Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-11-1987

Reported in : 1987(1)WLN597

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Criminal Appeal No. 172 of 1982

Appellant : Prema Ram

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Ashok Kumar Mathur, J.

1. This appeal is directed against the judgment dated 21-4-1982 passed by the learned Sessions Judge, Pali where by he convicted the accused appellant under Section 302 I.P.C. and sentenced him to life imprisonment with fine of Rs. 200/- and in default of payment of fine to further undergo two months imprisonment. He also convicted the accused under Section 324 I.P.C. and sentenced him to six months rigorous imprisonment He directed that both the sentences shall run concurrently.

2. The facts giving rise to this case are that on 28-2-1980 Mst. Gajari wife of Amararam Gujar has filed a written report before the Sub-Inspector of Police, Balunda. It was stated that on 28-2-1980 some quarrel took place in the day between her and the wife of accused Pemaram. When accused came at house then his wife informed him about the so-called quarrel. Accused Pemaram got enraged and approached her husband and assaulted him with a scissor which is used for cutting the wool. Her mother-in-law tried to intervene but the accused assaulted her also. She cried for help that brought Mohan Bhambi and some more persons on the scene of occurrence. On the basis of this report, the police took up the investigation. The deceased was immediately taken to the Hospital at Pali, but on medical advise he was shifted to Jodhpur. The police arrested the accused on 3-3-1980. Thereafter scissor was got recovered at the instance of the accused. The deceased thereafter expired at Jodhpur on 5-3-1980, after giving the dying declaration Ex.P 4 where in he has stated that accused Pemaram hit him with scissor in his stomach. This dying declaration Ex. P 4 has been proved by PW 14 Dr. L.R.C. Bhandari and PW 13 Gopal Singh, Sarpanch Gram Panchayat, Balunda. However, when the deceased died a case under Section 302 and 307 I.P.C. was registered against the accused. The accused was sent for trial under the aforesaid sections.

3. The prosecution examined about 21 witnesses and got a large number of documents exhibited.

4. Learned Sessions Judge, Pali, after due trial, found the accused guilty under Sections 302 and 324 I.P.C. and sentenced him as aforesaid.

5. Learned Counsel for the appellant has not challenged the finding of guilt arrived at by the learned Sessions Judge. We have also gone through the judgment and the record and we find that the learned Sessions Judge has rightly believed the testimony of PW 6 Gajari wife of the deceased and has also relied upon the testimony of dying declaration Ex. P 4 recorded by the Doctor in the presence of Gopal Singh PW 13 Sarpanch of the village. So far as the guilt of the accused is concerned the same stands amply established.

6. Learned Counsel has laid much stress that in the facts and circumstances of the case the offence cannot travel beyond Part-II of section, 304 I.P.C. Learned Counsel has submitted that in the back ground of the morning incident where the wife of the deceased and the wife of the younger brother of deceased had exchanged heated words and this was not liked by the accused and on account of this he went to remonstrate before the deceased and there he got enraged and hit the deceased with the scissor, meant for cutting the wool in the stomach of the deceased. Learned Counsel submitted that this was a solitary incident and was in heat of passion. Therefore, the accused cannot be held guilty for causing the murder under Section 302 I.P.C. According to the learned Counsel, the offence does not travel beyond Section 304 Part-II, I.P.C. as the accused had no intention to cause such a bodily injury in order to cause death of the deceased. In this connection, learned Counsel has invited our attention to *Nathu v. State of Rajasthan* 1985 Cr. LR (Raj.) 348; *Murli and Ors. v. State of Rajasthan* 1978(3) RCC 288; and *Ramaswami v. State of Tamil Nadu* : (1982)1SCC474 .

7. We have bestowed our best of consideration to the cases cited by the learned Counsel. We are afraid that the contention of the learned Counsel does not appear to be well placed. This is not a case of single blow. But in the present case not less than four injuries had been caused on the vital part of the body like umbilicus, chest at the level of lower ribs, on the left nipple, at the lower border of the right side of chest. The injuries received by the deceased are as under:

- (1) Stitched incised wound 20 cm. long on the left side of abdomen at the level of umbilicus;
- (2) Stitched incised wound 11 c.m. long on the left side of chest at the level of lower ribs;
- (3) Stitched incised wound 3 c.m. long above the left nipple;
- (4) Stitched incised wound 12 c.m. long at the lower border of right side of chest;
- (5) Stitched incised wound 3 c.m. long on ant. asp. of right arm (middle 1/3)
- (6) Stitched incised wound 3.5 cm. long on the ant. asp. of left arm middle 1/3;

(7) Incised wound 3.5 x 2 c.m. x muscle deep slightly to the right side of interscapula region;

(8) Incised wound 2 x 1 cm x muscle deep 2 c.m. above & left to the injury No. 7;

(9) Incised wound 2 x 1 c.m. x muscle deep 2-1/2 cm. above & Rt. to the Injury No. 7.

The nature of the injuries caused on the body of the deceased shows that they were caused intentionally with such a force that the first injury on the body of the deceased has penetrated upto 20 cm. and repeatedly the blows have been given to the deceased on vital part of the body. The Doctor has deposed that the cause of death is shock as a results of paritonites. If the accused had only given one blow and desisted from repeating the blows, it would have been understandable that the accused has only remonarated on account of the dispute between the two ladies. But he repeated the blows and that too on the vital parts of the body and not less than 4 injuries were caused in the chest and stomach region. The rest of the injuries even may not be taken into consideration but the very fact of causing these injuries makes it apparent the intention of the accused. Thus, looking to the nature of the injuries and the manner of remonstrations by the accused to protest over the earlier incident between the two ladies leaves no room for doubt that the accused in the ordinary course of nature knew very well that the injuries are likely to cause death of the deceased.

8. In Nathu's case (1) a sudden quarrel took place over a Chaddhi and in heat of passion a knife blow was given. Thus, in these circumstances it was thought proper to convert the conviction of the accused from under Section 302 I.P.C. to that of Section 304 Part-I I.P.C. But such is not the case here.

9. Like wise in Murli and Ors. case(2) the occurrence took place in the heat of passion. Here the accused had gone to his brother to protest against the earlier morning incident between the two ladies and it is not on account of any heat of passion or otherwise.

10. In Ramaswami's case (3) patricide sequel was on account of a domestic squabble and a single blow was inflicted on the head of the deceased, he was hospitalised and subjected to surgery but due to infection eventually he died after 10 days In these circumstances the conviction of the accused was converted from under Section 302 I.P.C. to Section 304, Part-II, I.P.C. It is not the case here. Here the deceased died on 5-3-1980 on account of the injury caused in the stomach. Thus, the present case stands on different footing with the cases cited by the learned Counsel for the appellant.

11. Thus, in the result, we do not find any merit in this appeal and the same is dismissed. The conviction and sentence is affirmed

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