

Lalla Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-10-2002

Reported in : 2003(1)WLC576

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 304

Appeal No. : D.B. Criminal Appeal No. 56 of 1999

Appellant : Lalla

Respondent : State of Rajasthan

Advocate for Def. : S.S. Rathore, Public Prosecutor,; N.A. Naqvi,; Mukesh Pu

Advocate for Pet/Ap. : S.R. Bajwa, Sr. Adv. and; Anurag Sharma, Adv.

Disposition : Appeal partly allowed

Judgement :

Sharma, J.

1. The appellant was indicted before the learned Additional Sessions Judge, Hindaun City in Sessions Case No. 13/1997 for having committed murder of Ramjan vide judgment dated January 22, 1999. He was convicted and sentenced under Section 302 IPC to suffer life imprisonment and fine of Rs. 500/- in default to

further suffer one month simple imprisonment. Against the said judgment present action for filing instant appeal has been resorted to by the appellant.

2. On the basis of Parcha Bayan of injured Ramjan (since deceased) recorded on January 9, 1997, FIR No. 32/97 came to be registered at Police Station Hindaun City against the appellant and three others. It was interalia stated in the Parcha Bayan that on that day around 9.00 a.m. while Ramjan was standing outside his residential house the appellant and three others namely Battu, Hussain and Pintu came to the spot and appellant inflicted injury with Santoor (a cutting instrument) on his head which resulted in profused bleeding. Ramjan was removed to Hospital by Babu and Pakira. Initially a case under Section 307 read with Section 34 IPC was registered but after the death of Ramjan on January 21, 1997 the case was converted to Section 302 IPC. Autopsy on the dead body of Ramjan was conducted and other necessary memos were drawn. The statements of the witnesses under Section 161 Cr.P.C. were recorded. The appellant and other accused persons were arrested. At the instance of the appellant Santoor was recovered. On conclusion of the investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Hindaun City. Charge under Section 302 IPC was framed against the appellant who denied the charge and claimed to be tried. As many as 13 witnesses were examined in support of the prosecution case. In the statement recorded under Section 313 Cr.P.C. the appellant claimed innocence. One witness was examined in defence. The learned trial Court on hearing final submissions acquitted Hussain, Battu and Pintu but convicted and sentenced the appellant as indicated hereinabove.

3. Mr. S.R. Bajwa, learned Senior Counsel vehemently criticised the impugned judgment and canvassed that no offence as alleged is made out against the appellant from the material on record. While appreciating the evidence the learned trial court did not keep in view the two cardinal principles; that the guilt against the accused must be proved beyond reasonable doubt and that the burden on the accused is not so heavy to prove the plea taken by him as it lay on the prosecution. The burden can be discharged by the accused merely by showing the preponderance of probability in favour of the plea taken by him. It is further urged

that Parcha Bayan Ex. P. 13 was recorded by Rameshwar Prasad ASI (PW. 11) in utter violation of the provisions of Rule 6.22 of the Rajasthan Police Rules. No plausible or reasonable explanation was given by Rameshwar Prasad as to why the dying declaration was not got recorded by a Judicial Magistrate or Executive Magistrate despite the fact that the residential premises of the Magistrate was just in front of the hospital where the injured Ramjan was admitted. The learned counsel further contended that the injury on the person of Ramjan was examined by Dr. Shri Mohan Meena (PW.9) vide Ex.P. 10 on a request made by the police at 9.30 a.m. whereas the Parcha Bayan Ex. P. 13 was recorded at 10.00 a.m. It is thus evident that the investigation had already commenced and the FIR is hit by Section 162 Cr.P.C.

4. It is next contended by Mr. Bajwa, learned counsel that Parcha Bayan (Ex.P. 13) suffers from many infirmities. It did not bear any endorsement of duty doctor that Ramjan was in a fit condition to give statement. Signatures of Ramjan on the Parcha Bayan were not obtained whereas Ramjan just half an hour back put his signatures on his injury report (Ex.P.10).

5. Learned counsel further urged that no reliance can be placed on the testimony of Fakira (PW.3) who is close relative of the deceased and a chance witness. The prosecution also could not establish beyond reasonable doubt that the incident occurred at the same spot shown in the site plan. No blood was found at the alleged place of occurrence. The prosecution has failed to give any explanation as to why the independent witness from the vicinity was not associated.

6. Mr. Bajwa, learned counsel alternatively submitted that having regard to the genesis of the occurrence and the surrounding circumstances and the fact that one blow with Santoor was given which happened to land on the head, it cannot be said with reasonable certainty that appellant intended to commit murder of deceased Ramjan or appellant intended to cause the particular injury. Reliance is placed on State of Rajasthan v. Teja Ram (1).

7. Per contra Mr. S.S. Rathore learned Public Prosecutor and Mr. N.A. Naqvi, learned counsel for the complainant urged that Fakira is a reliable witness and the learned trial judge had rightly believed his evidence. The case of the appellant is

covered under clause Thirdly of Section 300 1PC. In support of their contentions the learned counsel cited *Jai Prakash v. State* (2), and *State of Karnataka v. Vedanayagam* (3).

8. We have reflected over the rival submissions and scanned the record.

9. On a close scrutiny of injury report (Ex.P. 10) of Ramjan it appears that on the request of Police Station Hindaun City, Dr. Shri Mohan Meena (PW.9) examined the injury sustained by Ramjan on January 9, 1997 at 9.30 a.m. As per the Injury report Ramjan had one incised wound measuring 5' x 1' x Bone separating whitish material bulging on right fronto Parietal region curved margin clear everted. Dr. Shri Mohan Meena put a note on the report thus:

'Patient comes in conscious condition responding to command-Pulse 100 Mt.B.P. 120/80 MM Hg. respiration 20 Mt.-Pupils semidilated and reacting light.'

A look at the Post Mortem report (Ex.P.15) goes to show that the deceased had sustained wound over right Parito Temporal area of Right Cerebral hemisphere and Brain tissue was Oedematous and Gyasi and suki were partially fretted. The cause of death was coma as a result of antemortem head and brain injury.

It is thus evident that the deceased had received severe injury as a result of which whitish material bulged and brain tissue was lying out of the wound. In a similar situation their Lordships of the Supreme Court in *State of Rajasthan v. Teja Ram* (supra), indicated that where medical evidence showing that brain function of the injured would have impaired due to brain injury, even if the injured was able to speak out something after sustaining such injuries, it is unsafe to place reliance on such dying declaration.

10. In the instant case we find more than one reasons for not placing reliance on the alleged dying declaration (Ex.P.13) of the deceased. The reasons are these-

(i) It did not bear any endorsement of duty doctor that Ramjan was in a fit condition to give statement.

(ii) It did not bear the signatures of Ramjan.

(iii) It was allegedly recorded by Rameshwar Prasad ASI (PW.11) in utter violation of Rule 6.22 of the Rajasthan Police Rules. No independent person was associated while it was recorded.

(iv) No reasonable explanation was offered as to why it was not got recorded by the Magistrate, when the Magistrate was available at the residential premises situated just in front of the Hospital when Ramjan was admitted.

(v) Dr. R.K. Mathur (PW.12) in his deposition stated that the injury sustained by Ramjan could cause unconsciousness within half an hour.

11. That takes us to the deposition of Fakira (PW.3) who stated that there was altercation between the deceased and the appellant before the incident. The deceased asked the appellant that he did ignore the theft committed by him but if he would repeat the theft, the matter shall be reported to police. The appellant then brought Santoor from his shop and inflicted a blow with it on the head of deceased. From the cross examination although it is established that Fakira is the cousin of the deceased and he had disowned some parts of his earlier statement (Ex. D.2) yet on scanning his testimony from the point of view of trustworthiness we find his presence at the time of incident, quite natural and Fakira in our considered opinion is a wholly reliable witness.

12. It is thus evident that appellant gave only one blow with Santoor. No malice has been alleged to have been entertained by the appellant towards the deceased. The incident occurred on the spur of the moment. It appears that the house of the deceased was somewhere near the house of the appellant. There arose a situation in which appellant probably misguided by his own egocentric nature objected as to why deceased should make allegation of theft against him and in this back ground he gave one blow with a Santoor, the cutting instrument readily available at his meat shop, which landed on the head of the deceased and proved fatal. Could the appellant be said to have committed murder? Whether Part I or Part III of Section 300 IPC would be attracted in the facts of this case? Submission of Mr. S.S. Rathore learned P.P. and Mr. N.A. Naqvi learned counsel for the complainant was that at any rate the appellant when he wielded a weapon like a knife and gave a blow on the head, a vital part of the body must have

intended to cause that particular injury and this injury was objectively found by the medical evidence to be fatal and therefore Part II of Section 300 IPC would be attracted. Reliance is placed on *Jai Prakash v. State (Delhi Administration)* (supra) and *State of Karnataka v. Vedanayagam* (supra), wherein their Lordships of the Supreme Court propounded that when the ingredient of 'intention' is established, the offence would be murder and the intentional injury is found to be sufficient in the ordinary course of nature to cause death.

13. Having regard to the facts of this case we are satisfied that even if Exception I is not attracted, the requisite intention cannot be attributed to the appellant. But in the circumstances herein discussed he wielded a weapon like a Santoor and therefore he can be attributed with the knowledge that he was likely to cause an injury which was likely to cause death. In such a situation, he would be guilty of committing an offence under Section 304 Part II IPC. The appellant has been in the custody for more than five years. The ends of justice would be met in sentencing him to the period already undergone by him in detention and to enhance the fine part of sentence.

14. In view of the above discussions, we allow the appeal in part, while setting aside the conviction and sentence under Section 302 IPC, we convict the appellant under Section 304 Part II IPC and sentence him to the period already undergone by him in detention but in the facts and circumstances of the case we direct the appellant to pay a fine of Rs. 50,000/- (fifty thousand). In default he has to further undergo two years rigorous imprisonment. The amount of fine shall be deposited with the Deputy Registrar (Judicial). On depositing the amount of fine the same shall be paid to the wife of the deceased and the appellant shall be set at liberty if not required in any other case.