

Koja Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-20-1986

Reported in : 1987WLN(UC)157

Judge : Shyam Sunder Byas, J.

Appeal No. : S.B. Cr. Appeal No. 374 of 1978

Appellant : Koja

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. N.N. Mathur

Judgement :

Shyam Sunder Byas, J.

1. The appeal is directed against the judgment of the learned Sessions Judge, Jalore dated October, 4 1978 convicting the appellant under Section 304, Part II, IPC and sentencing him to four years rigorous imprisonment and a fine of Rs. 1000/-, in default of the payment of fine to further undergo six month's like imprisonment.

2. Briefly stated, the prosecution case is that the deceased Thana (aged about 32 years) was the real elder brother of the appellant. PW 1 Amra and PW 4 Smt. Mirga are their parents while PW 3 Kumari Moti and PW 4 Rooga are their sister

and brother. They were all living in separate Jhumpas situate in a Gawari as shown in site plan Ex.P 16. The accused had sold his cattle to the deceased and in that connection the deceased owed a sum of Rs. 100/- to the accused. At about 8.00 a.m. on April 30, 1978, the deceased and the accused along with some other persons were sitting out-side the Jhumpa of the deceased. The appellant demanded the payment of Rs. 100/- from the deceased. The deceased expressed his inability to make the payment at that time. This annoyed the accused. He struck a blow of Lathi on the head of Thana. Thana fell down. There was profuse bleeding from his head injury. He was taken in a jeep to the Government Hospital, Sanchoe for treatment. The doctor on duty examined him and declared him dead. PW 1 Amra went to police station, Sanchoe and verbally lodged the report Ex.P 12 of the occurrence. The police registered a case and proceeded with investigation. The Station House Officer Durgesingh (PW 13) reached the hospital and prepared the inquest of the victim's dead body. He also seized and sealed his blood-stained clothes. The post-mortem examination of his dead body was conducted by PW 11 Dr. M.D. Dosi on the same day. The doctor noticed the following injuries on the victim's dead body:

External-

(1) Lacerated wound 2-1/4' x 1/4' x bone deep on left parietal bone in its upper part, about 2-1/2' above the ear. A big swelling was felt underneath the wound.

Internal-

Communitted fracture of left parietal and temporal bones, extending upto base of skull i.e. middle cranical fossa. A big haematoma was found on the outside and inside the wound and fracture.

3. In the opinion of Dr. Dosi, the cause of death of the victim was coma due to cirbral compression as a result of intra-cranial haemorrhage. The post-mortem report prepared by the doctor is Ex.P 12. The accused was arrested on that very day and in consequence of the information furnished by him, one Lathi was recovered. After the investigation was over, the police presented a challan against the accused in the Court of the Munsif cum Judicial Magistrate, Sanchoe, who, in

his turn, committed the case for trial to the Court of Sessions. The Sessions Judge framed a charge under Section 302, IPC against the appellant, to which he pleaded not guilty and claimed absolute innocence. In support of its case, the prosecution examined 13 witnesses and filed some documents. In defence, no evidence was adduced by the accused. On the conclusion of the trial, the learned Sessions Judge held that the accused had inflicted a blow on the head of the deceased victim with a Lathi. The offence made out was, however, not taken to be that under Section 302 but under Section 304, Part II, IPC. The accused was consequently convicted and sentenced as mentioned at the very out-set.

4. I have heard Mr. N.N. Mathur learned Counsel for the appellant and Mr. M.C. Bhati learned Public Prosecutor. I have also gone through the case file carefully.

5. The prosecution witnesses, who are parents, sister and brother of the appellant, turned hostile and lend no support to the prosecution. However, PW 5 Ladu Ram PW 6 Baredsingh alias Chhelsingh fully supported the prosecution case and stated that the accused had hit a blow on the head of the deceased-victim with a Lathi. The learned Sessions Judge, putting reliance on the testimony of these two witnesses, convicted the accused.

6. Keeping in view the direct testimony of these two witnesses PW 5 Ladu Ram and PW 6 Baradsingh alias Chhelsingh, Mr. Mathur did not challenge the finding of the trial Court nor his conviction under Section 304, Part II, IPC. The only submission made by him is that the sentence awarded is unduly harsh and excessive. It was submitted that the deceased was the real brother of the appellant. The appellant was a young person nearly 30 years in age when the incident took place. He had already remained in custody for 6 months. It was submitted that looking to the age of the accused and the period of detention he had undergone, a lenient view in the matter of sentence be taken & sentence should be reduced from four years to the period already undergone by him. It was further argued that this Court had released the accused found guilty under Section 304, Part II, IPC, on probation. It was on the other hand, submitted by the learned Public Prosecutor that the sentence awarded is by no means heavy or harsh. It is not a fit and proper case where the benefit of probation of good conduct should be

extended to the appellant. I have taken the respective submissions into consideration.

7. The accused had inflicted a blow on the victim's head with a Lathi. The deceased had given no provocation or cause to the accused. He simply expressed his inability to make the payment of the money he owed to the accused. The accused unnecessarily became hot-headed and struck the blow. In these circumstances, it would not be proper to release the accused on the probation of good conduct or to reduce the sentence to the period already undergone by him. However, the sentence of four years rigorous imprisonment appears to be somewhat heavy and excessive. It would not be improper to reduce the sentence to two year's rigorous imprisonment.

8. In the result, the appeal of accused Koja is partly allowed. His conviction under Section 304, Part II, IPC is maintained, but his sentence of four years rigorous imprisonment is reduced to that of two year's rigorous imprisonment. The sentence of fine is set-aside. With this modification, in sentence the appeal shall stand disposed of. The accused is on bail and is not present today. He is allowed one month's time to surrender before the learned Sessions Judge, Jalore to serve out the sentence, failing which the learned Sessions Judge will proceed against him in accordance with law.