

Bhatu @ Bharat Kumar Vs. State of Rajasthan

Bhatu @ Bharat Kumar Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/767316

Court : Rajasthan

Decided On : Feb-13-1992

Reported in : 1992(1)WLN256

Judge : Milap Chandra Jain and; B.R. Arora, JJ.

Appeal No. : D.B. Criminal Appeal No. 67 of 1991 and Jail Appeal No. 64 of 1991

Appellant : Bhatu @ Bharat Kumar

Respondent : State of Rajasthan

Judgement :

Milap Chandra Jain, J.

1. These appeals have been filed against the judgment of the learned Sessions Judge, Banswara dated December 17, 1990 by which he has convicted the accused-appellant under Section 302, I.P.C. and sentenced him to undergo life-imprisonment and to pay fine of Rs. 100/- and in default to further undergo rigorous imprisonment for two months. ,

2. The prosecution case may be summarised thus. On March 14, 1987 at 4.15 P.M. Hari Ram Darjee P.W.-3 lodged F.I.R.Ex.P/3 in the Police Station Gharhi (Banswara) that at about 1 P.M. the same day he was working in his shop, he heard hue and cry coming from the side of his house, he proceeded towards it,

there he saw Moti Singh [deceased) lying on the ground, the accused-appellant Bhatu @ Bharat Kumar had pressed his (Moti Singh's) neck, he was giving fist blows on his abdomen and telling him [Moti Singh) that he had falsely implicated his brother in a police case and he would kill him. After much efforts, he rescued Moti Singh from his [accused's) attack, Moti Singh died and the accused Bhatu ran away. By that time, Thakur Gulab Singh, his son Pratap Singh and several ladies came at the spot and witnessed the occurrence, the dead-body was lying there and at the instance of the widow of the deceased. Sajjan Kanwar P.W.-2 he has come to lodge the report. Thereon, a case under Section 302, I.P.C. was registered and investigation was commenced. After completing investigation, a challan was filed against the accused in the Court of Munsiff- cum-Judicial Magistrate, Banswara who committed him to the Court of the Sessions Judge, Banswara.

3. The prosecution produced widow of the deceased Moti Singh, Sajjan Kanwar P.W.2, informant Hari Ram P.W.-3, Thakur Gulab Singh P.W.-7 and his son Pratap Singh P.W.8 as the eye- witnesses, the attesting witness Nathulal P.W.-1, Madan Singh P.W.-5 and Narain Singh P.W.-6 who were attracted to the place of occurrence on hearing the hue and cry, Dr. Surendra Kumar Mathur P.W.-4 who performed the autopsy of the deceased and the Investigating Officer Mohan Lal P.W.-9 and tendered and proved six documents. The accused Bhatu has either pleaded ignorance or denied the prosecution story. He has not produced any witness in his defence.

4. It is well-proved from the evidence on record that in the noon of March 14, 1 987 Moti Singh died of shock due to internal haemorrhage of spleen as a result of its rupture. It is not the case of the either party that the death was suicidal or accidental.

5. The first question for consideration in this appeal is whether the accused-appellant was the author of injuries received by the deceased Moti Singh. Sajjan Kanwar P.W.-2, widow of the deceased, has deposed that on the day of occurrence at about 1 2-1 P.M. She heard hue and cry from the side of the hand-pump, she rushed there, she saw her husband lying on the ground and the

accused Bhatu was giving fist-blows and kicks on his abdomen with great force. Hari Ram Darjee P.W.-3, Pratap Singh P.W.-8, Gulab Singh P.W.-7 and Mithalal rescued him with great difficulty and her husband Moti Singh breathed his last saying that he had been killed. She has further deposed that on her request Hari Ram, P.Wr3 went to the Police Station to lodge a report. Hari Ram P.W.3 has deposed that on the day of occurrence he was in his shop, he heard hue and cry coming from the side of his house, he rushed towards it, he saw Moti Singh lying on the ground and the accused Bhatu had caught hold of his neck and Moti Singh told him (Hari Ram) that he had been killed. He has further deposed that with great difficulty, he saved Moti Singh from further attack of the accused. He also stated that Gulab Singh P.W.-7, Sajjan Kanwar P.W.-2, also came running there. Hari Ram P.W.-3, has further deposed that on the request of Sajjan Kanwar P.W.-2, he went to the Police Station and lodged report and the Police came to the place of occurrence and prepared the site-plan Ex.-P/2 in his presence. Gulab Singh P.W.-7 and his son Pratap Singh P.W.-8 have deposed that on the day of occurrence Moti Singh came to their house, at about 12-1 P.M. he went therefrom certain boys proclaimed from the side of the hand-pump that accused Bhatu was beating Moti Singh, they rushed to rescue him and they found Moti Singh was lying there. Gulab Singh has further deposed that Mithalal Darjee told him that the accused Bhatu had beaten Moti Singh. Madan Singh P.W.-5 has deposed that at the time of occurrence he was at his field, there he heard the cry that Bhatu and Moti Singh were quarreling, he came to his house and saw the dead-body of Moti Singh lying near his house. Narain Singh P.W.- 6, has deposed that on the day of the occurrence at about 12.30 P.M., he came back to his house from his field and he saw the dead-body of Moti Singh and a crowd near his house. These witnesses have not effectively been cross-examined. Nothing damaging could be elicited out therein which may go to create any doubt in their testimony. Their testimony finds corroboration from the immediately lodged F.I.R. Ex.-P/3 and the post-mortem report Ex.-P/4 prepared by Dr. Surendra Kumar P.W.-4 after examination of the dead-body of the deceased Moti Singh.

6. It is correct that Hari Ram P.W.-3 has deposed that the accused had pressed the neck of the deceased and no injury was found on the neck. It is quite possible that in the process of pressing the neck did not receive any injury. It is also correct

that motive is not proved but it becomes insignificant on the face of sound testimony of the eye-witness Sajjan Kanwar P.W.-2 and Hari Ram, P.W.-3, to the effect that the accused inflicted injuries to the deceased Moti Singh with kicks and fist-blows. The learned Sessions Judge has rightly held the accused Bhatu as the author of the injuries of the deceased Moti Singh which resulted in his death.

7. The next question is about the offence committed by the accused. It is the admitted case of the prosecution that the accused-appellant was not armed with any weapon at the time of the occurrence. It is well-proved from the evidence on record that the accused inflicted injuries on the abdomen with repeated fist-blow and kicks and as a result thereof ninth rib was fractured causing rupture of the spleen. This shows that the kicks and fist-blows were given with great force. From this conduct on his part, it can well be said that the accused was well knowing that his repeated fist-blows and kicks would cause death. As such offence punishable under Section 304, Part-II, I.P.C. is proved. From the evidence on record, intention to cause death is not proved. It is also not proved that he had the knowledge that his act was so imminently dangerous that it would in all probability cause death or such bodily injury as was likely to cause death. Under the facts and circumstances of the case, rigorous imprisonment for 4 years would be quite reasonable.

8. Accordingly, the appeal is partly allowed. The conviction of the accused-appellant Bhatu @ Bharat Kumar altered from Section 302, I.P.C. to 304 Part II, I.P.C. He is sentenced to undergo rigorous imprisonment for four years. To this extent the judgment under appeal is modified. The sentence of fine of Rs. 100/- is maintained. The accused-appellant will get set-off under Section 428, Cr.P.C., 1973.