

Sugrive Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-05-1976

Reported in : 1976WLN602

Judge : V.P. Tyagi, Actg. C.J. and; R.L. Gupta, J.

Appeal No. : D.B. Criminal Appeal No. 249/1974

Appellant : Sugrive

Respondent : State of Rajasthan

Judgement :

V.P. Tyagi, Actg. C.J.

1. Appellant Sugrive was convicted by the learned Additional, Sessions Judge, Baran, Under Section 302 I.P.C. & sentenced to imprisonment for life, vide his judgment dated March 19, 1974. Having felt aggrieved by this order of conviction Sugrive has come in appeal before us.

2. Appellant Sugrive was employed to guard the agricultural field of one Mahatmaji in village Ancholi, Police Station Chhabra: On January 22, 1973 Sugrive went for a round and found somebody plucking gram plants from the field, tie threw a challenge to the miscreant, whereupon it is alleged that there were some hot words exchanged between Kanhaiya deceased and Sugrive appellant. Sugrive raised a cry for help, whereupon his companion PW 1 Chootiya, who was taking

his meals at the point 'S' in the site-plan Ex. D/3, started towards the place from where the cry was coming. But before he could reach the spot Sugriva ran away. It is said that Sugriva was armed with a spear. When Chhotiya did not find Sugriva in the field, he went to the nearby village; from where Chhotiya in the company of some other persons started in search of Sugriva. When the search party came to the field of Mahatmaji at the spot 'C' they found with the help of their torches dead body of Kanhaiya lying in the field. They also saw a spear wound on the chest of Kanhaiya. A report was lodged at the Police Station Chhabra. Sugriva was found missing from the village and therefore he could not be apprehended immediately. The postmortem of the dead body of Kanhaiya performed by Dr. T.R. Sikhwar whose statement was recorded as PW 1 in the committing court and was taken ON the record in the trial court. The doctor deposed that he found one injury on the chest longitudinal punctured wound, penetrating nature on the left side of the chest 1 1/2' lateral to the mid-sternal measuring 3 1/2' 1/3 x gone deep upto 4' towards the back: In his opinion the injury should have been caused by some sharp object. In the post mortem report the doctor stated that in his opinion the deceased must have died due to penetrating wound caused by sharp object which injured the vital organ like heart, left lung resulted shock and haemorrhage. Sugriva was challaned in the court of the Munsif Magistrate, First Class Chhabra, from where he was sent for trial to the court of Additional Sessions Judge, Baran.

3. The prosecution examined Chhotiya PW. 1. Nanda PW 2 & Balram PW. 3 as eye-witnesses. These witnesses no doubt stated at the trial that they had seen Sugriva giving a spear blow on the chest of deceased Kanhaiya, but when their testimony is brought under close scrutiny, we feel that we cannot accept the statements of the eye-witnesses as correct so far as the question of Sugriva giving blow on the chest of Kanhaiya is concerned. The First Information Report Ex. 2 was made at the Police Station Chhabra by Chhotiya PW 1 at about midnight the same day but in this report the incident was described in a different manner. Chhotiya deposed at the Police Station before the SHO that Nanda, Balram and the deponent were sitting in the field where they heard the voice of Sugriva calling Chhotiya for help as Kanhaiya was beating him. On bearing it, the witness's attention was drawn towards the side from where the cry of Sugriva was coming and he saw Sugriva was running after Chhotiya with a Ballam in his band because

Kanhaiya had plucked the gram plants from the field of Mahatmaji. According to the statements of these three witnesses the incident took place after the sunset and it was dark night. the distance between points 'S' where the witnesses were sitting and the point 'C' where the dead body of Kanhaiya was found lying in the field by the search party was 100 paces which comes to about 300 yards. The witnesses no doubt deposed that they had seen the accused giving a spear blow to Kanhaiya deceased but this part of the statement cannot be believed firstly because it was pitch dark and a person could not see the incident from such a long distance i.e. from point 'S' which is about 300 yards and secondly if the witnesses had really seen the giving blow to Kanhaiya their anxiety would have been to search Kanhaiya rather than to go from the village to find out the whereabouts of Sugriva. The story as revealed by the eye witnesses shows that the search party started from the village to find out Sugriva and not Kanhaiya This clearly Indicates that PW 1, who informed the villagers about the incident and asked them to go for the search of Sugriva, did not know by then that Kanhaiya had sustained a fatal spear blow at the hands of Sugriva. It is true that soon after the exchange of hot words between Sugriva and Kanhaiya the deceased was found lying dead in the field and therefore we cannot draw any other inference except that Kanhaiya had sustained a fatal injury on his chest at the hands of Sugriva. In this view of the matter the responsibility for inflicting fatal injury on Kanhaiya can be fastened on Sugriva who was seen with a spear in his hands when hot words were exchanged between the accused and the deceased. The trial court has believed the testimony of these witnesses but we have our own doubt in our minds about the correctness of their depositions regarding the actual inflicting of the blow on the chest of Kanhaiya by Sugriva. Nevertheless, under these circumstances the accused cannot escape the responsibility of inflicting blow to the deceased.

4. These witnesses namely, PW 1, PW 2 and PW 3 are unanimous on the point that they heard the cry of Sugriva calling for help from his friends for his rescue. the cry was that Kanhaiya was beating him Sugriva was arrested after five days and at the time of his arrest no injury was found on his person. From this fact, we cannot hold that Sugriva used the force against Kanhaiya when he was being belaboured by the deceased. In these circumstances, the theory of self-defence

that be used force against the deceased when the was beaten is totally lost.

5. Now the question that arises is whether under the circumstances of the case the conviction of Sugriva under Section 302 IPC can be sustained or not. Learned Counsel for the appellant urged that there was no previous enmity between Sugriva and Kanhaiya deceased and therefore it is difficult to infer that there could be any intention on the part of the appellant Sugriva to kill Kanhaiya. However, Sugriva concedes that in the heat of passion Sugriva might have used his spear to punish Kanhaiya for plucking gram plants from the field, but it cannot definitely be said that Sugriva wanted to cause this very injury or any injury to Kanhaiya which ultimately in the ordinary course of circumstances may cause his death. He further urged that in order to bring the action of Strive under Section 300 it is the duty of the prosecution to establish the following ingredients, namely:

1. It must establish, quite objectively that a bodily injury was caused to the victim.
2. that the nature of the injury was such which could cause in the ordinary course of circumstances the death of the victim,

(These two circumstances are purely objective.)

3. It must be proved that there was an intention to inflict that particular bodily injury which caused the death.

Enquiry about the first two ingredients is purely objective and inferential and has nothing to do with the intention of the offender. Mr. Singhvi urged that the circumstances that have been brought on the record cannot objectively lend to an inference that Sugriva intended to cause this particular type of injury to Kanhaiya. He urged that this possibility cannot be ruled out that while the appellant and the deceased were coming in contact with each other, the injury was caused accidentally which perhaps the appellant never intended to cause on the body of the victim. Relying upon Hardev Singh and Anr. v. The State of Punjab 1975 Cr LR (SC) 95 learned Counsel further argued that the onus of proving all the three ingredients to bring the case under murder is on the prosecution. It is vehemently argued that the prosecution could not establish beyond all reasonable doubt the

Ingredient No. 3 as referred to above. According to Mr. Singhvi it should be proved by the prosecution beyond doubt that the appellant had intended to cause this very fatal injury which resulted in the death of Kanhaiya.

6. From the circumstances that have been established by the Prosecution it cannot safely be said that the accused had an Intention to Inflict that particular bodily injury which ultimately resulted in the death of Kanhaiya. Sugriva no doubt wanted to punish Kanhaiya for committing theft from the field which he was guarding, but from this lone circumstance it is difficult to say that he intended to inflict this very bodily injury as was found on the person of Kanhaiya. This possibility cannot altogether be ruled out that injury by the spear could be received by Kanhaiya on the vital part of his body when he was trying to face his assailant in an aggressive mood. The eye-witnesses, who could not see the incident from such a distance, could not give out with certainty the manner in which the blow was given by Sugriva to Kanhaiya. It will not, therefore, be safe to convict the accused to charge of murder. Relying upon *Hardev v. The State of Punjab* 1975 Cr LR (SC) 95 and *Harjinder Singh v. Delhi Administration* : 1968 CriLJ1023 learned Counsel for the appellant urged that at best Sugriva could be convicted for an offence under Section 304 Part I. In view of the aforementioned two authorities where the learned Judges could not find with certainty the intention of the assailant for causing fatal injury on the body of the victim, they thought it proper to convert the conviction Under Section 302 to one under Section 304 Part I. We also feel for the reasons mentioned above that we cannot definitely come to the conclusion that Sugriva Intended to inflict the injury of this intensity which was sustained by the deceased, It will not therefore be safe to sustain the conviction under Section 302 IPC &, therefore, we convert the conviction of the appellant Sugriva from Section 302 IPC to one under Section 304 Part I.

7. In the result, the conviction of the appellant Sugriva Under Section 302 IPC is set aside and consequently, the sentence of life imprisonment awarded to him is quashed. We, however, convict Sugriva for an offence under Section 304 Part I, I.P.C. and sentence him to seven years' rigorous imprisonment. The appeal is accordingly partly allowed.

