

**Moola Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Feb-13-1992

**Reported in :** 1992(1)WLN262

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

**Appeal No. :** D.B. Criminal Jail Appeal No. 151 of 1984

**Appellant :** Moola

**Respondent :** State of Rajasthan

**Disposition :** Appeal dismissed

**Judgement :**

**Milap Chandra Jain, J.**

1. This appeal has been filed against the judgment of the learned Sessions Judge, Jalore dated March 30, 1984 by which the accused appellant has been convicted under Sections 302 and 449, I.P.C and sentenced to undergo imprisonment for life and five years and to pay fine of Rs. 200/- and 100/- respectively and in default of payment of fine to further undergo rigorous imprisonment for one month.

2. The prosecution case may be summarised thus. During the night intervening 11th and 12th August, 1983, Bhura (deceased) came to the hut of his brother Okha P.W.1 and inquired from him whether his brother Moola (accused-appellant)

had come to his hut, he denied, on search with the help of a lighted match stick he (accused) was found sleeping under Okha's cot and thereon he ran away. After Okha's protest with his father Narain his brothers Amra P.W.6 and Achla P.W.-7 came to his hut. While Okha P.W. 1, Bhura (deceased), Amra P.W.6 and Achla P.W.7 were talking, the accused Moola came armed with an axe and inflicted its blow on Bhura's head, he fell down on the ground with profuse bleeding. Amra P.W.6 and Achla P.W.7 caught hold and took him away. On the hue and cry of Okha P.W.1, neighbours including Moda P.W.5 came on the spot. Amra P.W.6 and Achla P.W.7 also came back. The injured Bhura was first taken to the village Sobdawas and thereafter to the Government Hospital, Bagoda. Okha P.W.-1 lodged F.I.R. Ex.P/2 in the Police Station, Bagoda. A case under sections 307, 326 and 457, I.P.C. was registered against the accused Moola, the same day (August 12, 1983), The injured died in the hospital. During investigation, the accused gave information Ex.P/18 and in pursuance thereof, Axe Article 1 was recovered at his instance. After completing investigation, a challan was filed under sections 302 and 457, I.P.C. against the accused Moola in the court of the Munsif cum Judicial Magistrate, Bhinmal who committed him to the court of the Sessions Judge, Jalore.

3. The prosecution examined Okha P.W.1, Paru P.W.2, Amra P.W.6 and Achla P.W.7 as eye witnesses, neighbours Bhera P.W.4 and Moda P.W.5 who immediately came to the place of occurrence, Munsif cum Judicial Magistrate, Bhinmal, Amritlal P.W.8 who recorded the statements of the prosecution witnesses under Section 164, Cr.P.C, the attesting witnesses Madanlal P.W.3 and Kana Ram P.W.9, police constable Jog Singh P.W.10 who took the sealed packets or articles to the Forensic Science Laboratory, Jaipur, head constable Prabhu Ram P.W.11 who deposited the sealed packets of articles in the Malkhana, Dr. Keshav Kotwani P.W.12 who conducted the autopsy of the deceased Bhura and prepared the post-mortem report Ex.P12 and the investigating officer Tapaswilal P.W.13 and tendered and proved 19 documents.

4. In his statement recorded under Section 313, Cr.P.C, the accused appellant denied the prosecution story and evidence. He has also stated that he has been falsely implicated due to enmity. He did not produce any evidence in his defence.

5. It has been contended by the learned Counsel for the accused-appellant that the prosecution story is highly unnatural and improbable, the origin of the occurrence as stated by the prosecution witnesses is not believable, no motive has been suggested for killing the deceased and the learned Sessions Judge has seriously erred to hold that the accused-appellant was the author of the injury received by the deceased on his head. In the alternative, he contended that no offence under Section 302, I.P.C. is made out against the accused and at the most an offence punishable under Section 304 Part II, I.P.C. is made out against him.

6. It is well proved from the evidence on record that the deceased Bhura received a serious injury on his head during the night intervening 11th and 12th August, 1983 in the hut of his cousin Okha P.W.1, as a result thereof he died on August 12, 1983 in the Government Hospital, Bagoda and his death was homicidal.

7. The first question for consideration in this appeal is whether this injury was caused by the accused-appellant Moola. It is well proved from the evidence on record that Okha P.W.1 and his wife Paru P.W.2 were present in their hut during that night. Both of them have stated on oath that the accused appellant came to their hut with an axe in his hand and inflicted it on the head of the deceased Bhura. They have further deposed that Bhera P.W.4 and Moda P.W.5 came there. They [Bhera and Moda] have deposed that on hearing the hue and cry they came to the hut of Okha P.W.1 and saw Bhura lying injured and bleeding. They have further deposed that Okha P.W.1, told that the accused Moola had inflicted injury on the head of Bhura and, thereafter, he had run away with his axe. Both of them have also deposed that Achla P.W.7 and Amra P.W.6 had also come there. Amra P.W.6 and Achla P.W.7 are admittedly real brothers of the accused-appellant Moola. They admit to have come to the hut of Okha P.W.1 during that night. Amra P.W.6 has deposed that he inquired from Okha P.W.1 as to who had caused injury on the head of Bhura but he did not give any reply. He was declared hostile. He denied various portions of his statement Ex.P/5 recorded under Section 164, Cr.P.C. when he was confronted with it wherein he specifically said that the accused appellant Moola caused the said injury on the head of the deceased Bhura. It was natural on his part not to have supported the prosecution case as accused appellant is admittedly his real brother. Achal P.W.7 has stated on oath

that on his inquiry Okha P.W.1 told him that the accused Moola had inflicted injury with his axe on the head of Bhura and, thereafter, he ran away. He was also confronted with his previous statement Ex.P/7 recorded under Section 164, Cr.P.C. wherein he disclosed that he himself saw the accused Moola inflicting axe-blow on the head of the Bhura. As already said above, he is also a real brother of the accused appellant Moola.

8. Nothing damaging could be elicited out in the cross- examination of Okha P.W.1 and his wife Paru P.W.2. Bhera P.W.4, Moda P.W.5 and Achla P.W.7 have corroborated them. F.I.R. Ex.P/2 was immediately lodged in the Police Station, Bagoda which was at a distance of 18 Kms. from the place of occurrence. Dr. Keshav Kotwani P.W.1 2 has stated on oath that the injury of the deceased Bhura could have been caused by axe Article 1. His report Ex.P/12 of the post-mortem examination corroborates the statement of Okha P.W.1 and Paru P.W.2. The investigating officer Tapaswi Lal P.W.13 has deposed that the accused gave information Ex.P/18 to him for the recovery of the axe and in pursuance thereof axe Article 1 was recovered from the place pointed out by him for the recovery memo Ex.P/10 was duly prepared by him. On chemical examination, this axe was found stained with human blood of 'B' group. The report Ex.P/9 of the Forensic Science Laboratory, Rajasthan, Jaipur further shows that human blood of 'B' group was also found on the blood smeared soil collected from the place of occurrence and also on the cloths of the deceased.

9. There is no force in the contention of the learned Counsel for the accused appellant that the prosecution story that the accused appellant was found sleeping under the cot of Okha P.W.1 during that night immediately before the occurrence is highly unnatural and unbelievable and the whole prosecution story is shrouded with mistry. There is nothing unnatural in it. Admittedly, the accused appellant Moola was neighbour of the deceased Bhura, Okha P.W.1 and his wife Paru P.W.2. The accused- appellant might have come in the hut of Okha P.W.1 during that night for any reason. It was natural on the part of Okha P.W.1 to protest his coming and. found sleeping there in such a position during the night. His real brother Achla Ram P.W.7 has stated in his examination-in-chief that during the night of occurrence he went to the 'dhani' of Okha along with his brother Amra

P.W.6, there he found Okha P.W.1, Paru P.W.2, Bhura, Chaina, Bavri and the accused Moola, they were quarreling, he and his brother Amra P.W.6 rescued him and, thereafter, they returned to their house. He has further deposed that after some time he heard the cries of the ladies from the house of Okha P.W.1, he along with his brother Amra P.W.6 went there and found Bhura lying unconscious on the ground with serious injuries on his head. The visit of the accused-appellant Moola in the hut of Okha P.W.1 during that night and quarrel with him there prior to his coming with an axe as well proved from the statement of his real brother Achla P.W.7. His visit during the night in the hut of Okha P.W.1 led him to lodge protest with his father Narain and this infuriated the accused appellant and prompted him to go to his house with an axe to do away the deceased Bhura who informed Okha about his visit. Thus it is well proved from the evidence on record that the accused appellant was the author of the serious head injuries of the deceased Bhura.

10. The next question for consideration is about the offence made out against the accused-appellant from the evidence on record. It is stated in the F.I.R. Ex.P/2 that the accused inflicted axe blow on the head of the deceased Bhura with an intention to do him away with such a force that the brain matter came out, his head started bleeding profusely and he became unconscious. Okha P.W.1 has deposed that immediately after the infliction of the axe-blow on Bhura's head, it started bleeding profusely and he fell down on the ground. Similar is the statement of his wife Paru P.W.2, Dr. Keshav Kotwani P.W.12 has deposed that the cause of death Bhura was the head injury, causing compound fracture of skull with profuse internal cranial haemorrhage had injury to brain matter. He has also stated on oath that the head injury was sufficient in the ordinary course of nature to cause his death. The learned Sessions Judge has rightly observed that this action of the accused fall in the third cause of Section 300, I.P.C. as he gave axe-blow on the head of Bhura with an intention of causing head injury and the injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. Even taking liberal view of the evidence, the case cannot escape to fall under fourth clause of Section 300, I.P.C. as the accused Moola inflicted axe-blow on the head of deceased Bhura knowing well that it was so imminently dangerous that it must, in all probabilities, cause death or such head injury as was likely to cause death. The facts of this case are similar to the illustration (c) of Section 300, I.P.C. The

case does not fall under Section 304, I.P.C. The accused Moola came in the hut of Okha P.W.1 in the night in order to kill deceased Bhura and actually killed him. Offence punishable under Section 449, I.P.C. is also well proved against him. He has rightly been convicted under Sections 302 and 449, I.P.C. Sentences awarded cannot be said to be excessive. Thus there is no force in the appeal.

11. Consequently, the appeal dismissed. The conviction and sentence of the accused-appellant are maintained.

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