

Gautam Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Apr-06-1992

Reported in : 1992(1)WLN601

Judge : B.R. Arora and; Rajesh Balia, JJ.

Appeal No. : D.B. Criminal Appeal Nos. 61 and 133 of 1991

Appellant : Gautam

Respondent : The State of Rajasthan

Judgement :

B.R. Arora, J.

1. These two appeals arise out of the judgment dated January 7,1991 passed by the Sessions Judge, Banswara, by which the learned Session Judge convicts and sentenced the appellant for the offence under Section 302 I.P.C.

2. Appellant Gautam alongwith Bhagu alias Bhagwati, Miss Lasi and Mrs. Jasoad W/o Ganpat, was tried by the learned Sessions Judge for the offence under Section 302 I.P.C. for committing the murder of Gordhan. The case of the prosecution is that on July 14,1986, at about 9.15 p.m., Gautam and Bhagwati Teli inflicted injuries by Kulhari on the mouth and neck of deceased Gordhan. Mst. Jasoda and Miss Lasi inflicted injuries Gordhan by Lathis. Initially the case was

registered under Section 307 I.P.C, but Gordha died during investigation on July 23, 1986 at Ahmedabad and the case was therefor converted under Section 302 I.P.C. The prosecution, in support of its case, examined 2 witnesses. The accused did not examine any witness in their defence. The learned Session Judge, after trial, acquitted Miss Lasi and Smt. Jasoda of the offence under Section 30 I.P.C. The learned Sessions Judge, also, acquitted the accused Bhagwati alias Bhagu of the offence under Section 302 I.P.C. but convicted and sentenced him for the offence under Section 323 I.P.C. The learned Sessions Judge, however, found the accused appellant Gautam guilty under Section 302 I.P.C. and passed the sentence of imprisonment for life and a fine of Rs. 100/- and in default of payment of fine further to undergo one month rigorous imprisonment. Accused Bhagwati alias Bhagu did not file any appeal, but accuse Gautam, dissatisfied with the judgment dated January 7, 1991, passed by the learned Sessions Judge, Banswara, convicting and sentencing him for the offence under Section 302 I.P.C, preferred these two appeals. D.B. Criminal Appeal No. 133 of 1991 we preferred by the accused-appellant through jail while D.B. Criminal Appeal No. 61 of 199 has been filed by the accused- appellant Gautam through his counsel.

3. The nature of the evidence produced by the prosecution, consists of the evident of the eye witnesses, namely, PW 6 Kundanji, PW7 Nathu Teli, PW 8 Ganga Ram. PW 1 Dali Chand, PW 11 Kalawati, PW12 Laxmanji and PW 13 Manjula. PW 10 Dali Chand has not supported the case of the prosecution and, therefore, he was declared hostile. So far as the evidence of PW 6 Kundanji, PW 7 Nathu Teli, PW 8 Ganga Ram and PW 12 Laxman are concerned, the learned lower Court after appreciation of the evidence, came to the conclusion that these witnesses have not seen the occurrence and they are not the eye-witnesses to the occurrence but they came at the place of the occurrence immediately after the incident was over when the injured was lying on the ground. The learned Session Judge, however, believed the statements of PW 13 Manjula and to some extent to statement of PW 11 Kalawati, also. PW 1 Gautam Lal, PW 2 Rajendra Prasad and PW Mahaveer Prasad are the three Motbir witnesses to the various recoveries. So far as PW 4 Partu and PW 5 Poorabiya are concerned, they are the Motbir witnesses of the arre of accused Bhagwati alias Bhagu. PW 9 Bheriya is a Motbir witness to the arrest of Mi Lasi and Smt. Jasoda. PW 15 is Dr. Binayak Rao Patil, who was a

Tutor in the Forensic Medicine Department in the B.J. Medical College, Ahmedabad, who conducted to post-mortem examination on the deadbody of deceased Gordhan. PW 18 is Dr. Om Dutt Mathur, who examined the injured Gordhan on July 14, 1986, at the General Hospital, Banswara and found five injuries on his person. The remaining are the police witnesses. PW 14 Lal Khan is the police Constable, who, on October 13, 1986, was posted at Police Station, Khamera and who took the sealed articles for F.S.L. examination to the State Forensic Laboratory, Jaipur, and handedover the same at the State Forensic Science Laboratory, Jaipur and got receipt Ex.P.17, PW 16 Dilip Singh was posted as Assistant Sub-Inspector at Police Station, Khamera, who initiated the investigation, arrested accused Gautam, prepared the arrest memo Ex.P.4, recorded the information¹Ex.P.11 and recovered the axe in pursuance to the information Ex.P.4 PW 17 is Durg Singh, Station House Officer, in whose presence, the F.I.R. Ex.P.6 was recorded at Police Station, Khamera. He prepared the site plan Ex,P.2, recorded blood stained earth and plain earth, lathi Article 2 and got all these articles sealed and thereafter sent all these articles to the State Forensic Science Laboratory, Jaipur, and the report of the F.S.L. is Ex.P.12 PW19 is Narendra Mohan Sharma Deputy Superintendent of Police, who conducted the investigation as a complaint was received from the side of the complainant party that the investigation conducted by the Station House Officer was not fair and was not free from doubt.

4. The learned Sessions Judge, after careful scrutiny of the evidence on record, has rightly come to the conclusion that so far as the eye witnesses namely, PW 6 Kundanji, PW7 Nathu, PW8 Ganga Ram and PW12 Laxman, are concerned, they have not seen the occurrence and they came on the place of the occurrence immediately after the incident. We have gone through the statements of all these witnesss and a close scrutiny of the statements of these witnesses show that they have not seen the occurrence and reached at the place of the occurrence immediately after the occurrence. Though all these witnesses, in their examination-in-chief, have categorically stated that they had seen the accused inflicting injuries to the deceased Gordhan and after received the injuries, Gordhan fell down on the ground and the accused ran away PW 6 Kundaji has admitted even in the cross-examination that he reached at the place of the occurrence

alongwith Laxman. Laxman came to his house and informed him that Gordhan has been killed and later on they went to the place of occurrence. This witness is, also, a witness to the various recoveries and the preparation of the site plan. PW 7 has, also, admitted in cross-examination that he had not seen the accused inflicting injuries to Gordhan. In the statement of PW 8 Ganga, recorded by the police under Section 161 Cr.P.C, he has not stated that he had seen the accused armed with weapon, inflicting injuries to Gautam etc. He tried to explain the non-mentioning of that in Ex.D.2 by stating that he had stated so but why it has not been written by the Deputy Superintendent of Police, he cannot say. PW12 Laxman has admitted that he reached at the place of the occurrence when several persons were, also, assembled there and Gordhan was lying on the ground and he was informed by Miss Manjula that Gautam and Bhagu inflicted injuries to her father. A perusal of the statements of these witnesses, thus, clearly show that these witnesses had not seen the occurrence and they reached at the place of the occurrence after the incident was over.

5. here, then, remains the evidence of the eye witness PW13 Miss Manjula, who had seen the incident and that of Kalwati (PW 11), who has inside the house and came out of the house and saw the accused inflicting injuries to Gordhan. These witnesses have clearly stated the role played by Gautam and Bhagwati in inflicting injuries to Gordhan. A lengthy cross-examination has been conducted by the learned Counsel for the accused, but the evidence of these, witnesses remained intact and could not be shaken. The presence of PW13 Miss Manjula is very much natural at the scene of the occurrence as the incident took place out- side the house of Gordhan and she was with her father. She immediately after the incident, called the other witnesses and this witness, to us, appear to be a truthful witnesses and had seen the occurrence. The evidence of this witness finds fully corroboration from the evidence of PW 11 Kalawati and the other witnesses, who came at the scene of the occurrence immediately after the occurrence was over. In this view of the matter, we are, therefore, of the opinion that the prosecution has proved its case beyond any reasonable manner of doubt and it was the accused Gautam and Bhagawati who inflicted injuries to Gordhan, due to which he died.

6. Now comes the question what offence has been committed by the accused. It is proved beyond reasonable manner of doubt that the accused inflicted injuries by Kulhari on the person of Gordhan and Gordhan received the following injuries:

- (1) Cut injuries 9 cm. x 3 cm. x bone deep on left fact near left eye.
- (2) Cut injuries 6 cm. x 3 cm. x 4cm. muscle deep on base of neck posteriorly.
- (3) Cut injuries 8 cm. x 3 cm. x bone deep on left lumber area.
- (4) Abrasion of 2 cm. x 112 cm. on left clavicular aspect.
- (5) Abrasion of 5 cm. size on right forearm.

There is some discrepancy between the injuries mentioned in ExP.13 with that of the injuries mentioned in the post-mortem examination report Ex.P9. The incident took place on July 14, 1986, and the deceased was immediately taken to the Hospital at Ghatol and thereafter he was taken to the General Hospital, Bansara. PW18 Dr. Om Dutt Mathur, Medical Jurist, who examined the injuries of Gordhan on July 14, 1986, at, 10.30 p.m., has stated that if proper medical treatment would have been provided to the injured Gordhan then his life would have been saved. He has further stated that the injuries No. 3,4 and 5 were simple in nature. The doctor, who has medically treated Gordhan, has not been produced. The deceased Gordhan was thereafter taken to B.J. Medical College Hospital, Ahmedabad, where he was declared dead and the post-mortem was performed. When the : doctor himself was of the opinion that except injury No. 1, the other injuries were simple in nature and the deceased could have survived if proper medical treatment would, have been made available to him then the injuries caused to Gordhan were, therefore, not of such nature to cause his death instantaneously. But the totality of the established facts and. circumstances do show that the appellant could not be imputed with the intention to cause the death of deceased Gordhan or with the intention to cause a particular injury, but he can be imputed with the knowledge that he was likely to cause such injury which was likely to cause his death. In the absence of any positive evidence (proof) that the appellant caused the injuries with in intention to cause the death or intentionally

inflicted that particular injury which is sufficient in the ordinary course of nature to cause death, neither Clause Firstly nor Clause Thirdly of Section 300 I.P.C. will be attracted.

7. In this view of the matter, we are, therefore, of the opinion that the case of the appellant is not covered under Section 302 I.P.C, but falls under Section 304 Part II I.P.C.

8. In the result, we allow these appeals part, set-aside the conviction of the appellant Gautam under Section 302 I.P.C, but convict him under Section 304 Part II I.P.C and sentence him to undergo five years' rigorous imprisonment and a fine of Rs. 1000/- (One Thousand only) and in default of payment of fine further to undergo six months' rigorous imprisonment.

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