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Banka Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-19-1985

Reported in : 1985WLN(UC)274

Judge : Kanta Bhatnagar and; Shyam Sunder Byas, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 440 of 1981

Appellant : Banka

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Shyam Sunder Byas, J.

1. Accused Banka Sonar was convicted under Sections 302, 307 and 326, IPC and was sentenced to imprisonment for life with a fine of Rs. 100/-, in default of the payment of fine to further undergo three months rigorous imprisonment on the first count, three years rigorous imprisonment with a fine of Rs. 100/-, in default of the payment of fine to further undergo one month's like imprisonment on the second and two years rigorous imprisonment with a fine of Rs. 50/-, in default of the payment of fine to further undergo one month's simple imprisonment on the last count. The accused has come-up in appeal to challenge his- conviction.

2. Briefly stated, the prosecution case is that at about 11.00 A.M. on January 5, 1981, PW 6 Jetha appeared at Police Station, Chauhtan and presented written report Ex. P 7. It was stated by him therein that in the night proceeding, he was sleeping in his Dhani. His brother accused Banka, who was living with his wife, mother Mst. Banoo (PW 1), his minor children PW 3 Deepa (4) and Kesiya (6) was quarrelling with his wife. She was raising cries. Hearing the cries, he rushed to the spot and found the accused and his wife Mst. Dhani in the court-yard (Aangan). The accused was having an axe with him while his wife was lying with multiple wounds over her body. Blood was oozing out from her wounds. He also found his mother and the two minor children of the accused severely injured. It was further stated therein that the wife of the accused did not survive and passed away instantaneously on the spot. The police registered a case and proceeded with investigation. The Investigating Officer Bhagwan Singh (PW 8) arrived at the Police Station on January 6, 1981. He inspected the site and prepared the site plan. He also prepared the inquest report of the dead body of deceased Mst. Dhani. Blood-stained soil was lifted from the place of occurrence. It was seized and sealed. The post-mortem examination of the victim's dead body was conducted at about 4.00 P.M. on January 5, 1981 by PW 1 Dr. Nimbraj-the then Medical Officer Incharge, Government Hospital, Chauhtan. The doctor noticed the following injuries on the victim's dead body ;

(1) Incised would - size 2-1/2' x 1-1/4' 1/2' with clotted blood on the left side neck back 1-3/4' away from left ear

(2) Incised] wound - size 2-1/4' x 1-3/4' x 2 1/4' on the right side neck back adjacent to right ear involving temporal bone and mas-toid region.

(3) Incised wound with clotted blood- size 1' x 1/2' x 1/4' on the left side of neck back lower part

(4) Incised wound with clotted blood - size 1-1/4' x 3/4' x 1/2' on the right side face adjacent to right ear

The injuries were ante-mortem in nature and were caused by sharp-edged weapon. The doctor was also of the opinion that injuries No. 1 and 2 of the

deceased-victim were sufficient in the ordinary course of nature of cause death. The injuries of Mst. Banoo, Kesu, Jetha and Deepu were also examined by Dr. Nimbraj. One of the injuries of Mst. Banoo was found grievous in nature. The accused was arrested and in consequence of the information furnished by. him, an axe was recovered. The blood-stained clothes of the deceased-victim and the other injured persons were also seized and sealed. After when the investigation was over, the police submitted a challan against the accused in the Court of Judicial Magistrate, Barmer, who, in his turn, committed the case for trial to the Court of Sessions. The learned Sessions Judge, Balotra framed charges under Sections 302, 307, 326, 324 and 323, IPC against the accused, to which he pleaded not guilty and claimed to be tried. According to him, he was absolutely innocent and has been falsely dragged in. In support of its case, the prosecution examined twelve witnesses and filed some documents. In defence, no evidence was adduced by the accused. In his statement under Section 313, Cr.PC he simply denied the allegation made against him, but raised no specific plea in defence. On the conclusion of trial, the learned Sessions Judge found the charges duly proved against the appellant. He was consequently convicted and sentenced as mentioned at the very out-set. Aggrieved against the said judgment, the accused has taken this appeal.

3. We have heard Mr. Suresh Kumbhat, learned Amicus Curiae for the appellant and Mr. G.M. Bhandari, learned Public Prosecutor for the State.

4. Before proceeding further, it may be pointed out that the learned Amicus Curiae did not challenge the opinion of Dr. Nimbraj about the cause of death of the deceased victim Mst. Dhani and the injuries found on the body of Banoo, Kesu, Jetha and Deepu. We have gone through the statement of Dr. Nimbraj and find no good reasons to distrust what he stated. The death of Mst. Dhani was, thus, homicidal in nature. It also stands proved from what he stated that the other four injured persons sustained multiple injuries. One of the injuries of Banoo (PW 2) was grievous in nature.

5. In challenging (he conviction of the accused it was contended by learned amicus curiae that the conviction is not based on a proper appraisal of the

evidence of the prosecution witnesses. It is based more or less on conjectures and on inferences not warranted by the facts. It was further argued that PW 3 Deepa and PW 4 Kesiya, who are the sons of accused are of too tender age. As such, their evidence should not be taken into consideration in assessing the guilt of the accused. In reply, it was submitted by the learned Public Prosecutor that the prosecution has examined PW 2 Banoo, PW 3 Deepa, PW 4 Kesa, PW 6 Jetha, PW 8 Mst. Mangli and PW 9 Mangla, Out of them, Mst. Banoo is the mother, Deepa and Kesa are the sons and Jetha is the real brother of the accused. Mangla (PW 9) is the wife of Jetha (PW 6). Since they are closely related to the accused, it cannot be expected from them that they would falsely implicate him. We have given our anxious consideration to the rival submissions.

6. The prosecution has examined six eye witnesses of the occurrence. PW 2 Banoo is the mother of the accused. She deposed that in the mid-night when she heard the noise and the cries, she got up. She tried to prevent the accused being his mother, but she could not successfully do so. In her cross-examination, she admitted that the accused had committed the murder of his wife Mst. Dhani. She herself sustained injuries at the hands of the accused. Since she lives in the same Dhani, her presence on the spot is quite natural and is not open to any suspicion. PW 6 Jetha is the real brother of the accused. He is the person who lodged the First Information Report (Ex.P 7) of the occurrence at the Police Station. He deposed that in the night, hearing the noise and the cries, he and his wife rushed to the spot. When they reached there, he saw the accused standing with an axe in his hand. His wife Mst. Dhani was lying in the court-yard. She had multiple wounds on her body and blood was oozing out from them. The witness further stated that he tried to catch-hold of the accused, but the accused resisted and caused injuries to him. The same version has been given by Mst. Mangli (PW 8). She is the wife of PW 6 Jetha.

7. The evidence of these three witnesses, viz., Banoo (PW 2), Jetha (PW 6) and Mst. Mangli (PW 8) has been relied upon by the learned Sessions Judge. On a careful scrutiny of what they deposed, we are unable to take a view different from that taken by him. Since these witnesses reside in the same Dhani, their arriving on the place of occurrence is quite natural. They are the close relatives of the

accused and, therefore, the possibility of their implicating him falsely is not there.

8. It is true that PW 3 Deepa and PW 4 Kesiya are minor children. The first is of four years in age while the second is of six years in age. Deepa (PW 3) could not be properly examined because he was too raw to understand the things. It would be, therefore, proper to completely ignore what he stated However, PW 4 Kesiya has a rational understanding. In his cross-examination, he stated that his mother was done to death by his father. Even if the testimony of this witness Kesiya (PW 4) is excluded from consideration, the evidence of remaining three witnesses, viz., Mst. Banoo (PW 2), Jetha (PW 6) and Mst. Mangli (PW 8) is sufficient to arrive at the conclusion that it was the accused who had killed his wife Mst. Dhani by inflicting blows of an axe on her neck and other parts.

9. The evidence of these witnesses could not be shaken or shattered in cross-examination.

10. Mr. Kumbhat, the learned amicus curiae could not subscribe any cogent and convincing reasons before us as to why the evidence of the above the witnesses should not be accepted as true. The first contention raised by the learned amicus curiae has, thus, no substance.

11. As regards the nature of offence, Dr. Nimbraj (PW 1) has stated that injuries No. 1 and 2 of the deceased-victim Mst. Dhani were sufficient in ordinary course of nature to cause death. The accused has inflicted injuries on the head and neck of the deceased-victim. He used a formidable weapon like axe in inflicting the blows. The intention to kill was, thus, there. He was, thus, rightly convicted under Section 302, IPC. The other offences under Section 307 and 326, IPC also stand duly proved against him. He inflicted severe and grievous blows with the axe to Banoo (PW 2) and others. His conviction and sentence under Sections 307 and 326, IPC are also proper. No interference is called for.

12. In the result, we maintain the conviction and sentence of accused Banka under Sections 302, 307 and 326, IPC. His appeal is consequently dismissed.

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