

Dama Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-25-1985

Reported in : 1985WLN(UC)314

Judge : Kanta Bhatnagar and; Jas Raj Chopra, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 219 of 1980

Appellant : Dama

Respondent : State of Rajasthan

Judgement :

Kanta Bhatnagar, J.

1. Appellant Dama was tried by the learned Sessions Judge, Udaipur Under Section 302 IPC. By the judgment dated April 10, 1980 the learned Sessions Judge convicted the appellant Dama for the offence Under Section 302 IPC and sentenced him to imprisonment for life and a fine of Rs. 500/-, in default of payment of fine to undergo one year's R.I.

2. Briefly stated, the facts of the case are as under : On October 21, 1979, the day next to Deewali deceased Bhera son of Kanha Mina, appellant Dama and seven or eight other persons assembled beneath a mango tree and after singing the songs known as 'hidke geet'. Daula put off the 'dhoti' of Dalla (PW 2) which

annoyed and he reprimanded him for being so. Bhera son of Kana gave two or three kicks to Dalla. At this appellant Dama rushed near them and contorted the neck of deceased Bhera son of Kanha and threw him aside. Bhera son of Kanha died instantaneously. Bhera son of Poonja, also present there, went to the Sarpanch who scribed the report and sent him to the Police Station. Bhera son of Poonja took that report to the police station Salumber and presented it before SHO Nathusingh (PW 6) on October 22, 1979 at 7.00 A.M. The SHO registered the case and proceeded for investigation. On reaching the site, he conducted necessary investigation. Dr. R.C. Sharma, Medical Officer, Primary Health Centre, Salumber conducted the autopsy over the dead body and noted four bruises and certain abrasions on the neck of the deceased. He also noted bruises and abrasions on other parts of the body of the deceased. The post-mortem examination report prepared by the Doctor is Ex. P 7. In the opinion of the Doctor, cause of death was throttling and the mode of the death was asphyxin. After completion of necessary investigation, charge sheet against the appellant was filed in the Court of Munsif Magistrate, Salumber. The learned Magistrate finding it to be a case exclusively triable by the Court of Sessions, committed the appellant to the Court of Sessions Judge, Udaipur to face his trial there. The learned Sessions Judge charge-sheeted the appellant for the offence Under Section 302 IPC. On his plea being recorded, the appellant denied the indictment and claimed to be tried. Seven witnesses were examined by the prosecution to substantiate the case against the appellant. The appellant in his statement under Section 313 of the Code of Criminal Procedure denied the allegations levelled against him and stated that Dalla and Daula were quarreling with each other and in that Bhera got crushed by the feet of the people. The learned Sessions Judge placed reliance on the prosecution evidence and convicted and sentenced the appellant as stated earlier.

3. Feeling aggrieved by his conviction and sentence, the appellant has preferred this appeal in this Court through the Superintendent, Central Jail, Udaipur. As the appellant was unrepresented, Mr. Rajendra Singhvi was appointed Amicus-Curiae to plead on his behalf.

4. We heard Mr. Rajendra Singhvi, learned Amicus-Curiae and Mr. L.S. Udawat, learned Public Prosecutor for the State and carefully examined the record of the case.

5. Upon perusal of the evidence on record, we are convinced that prosecution has established the case by convincing evidence that Bhera son of Kanha met his death at the hands of the appellant Dama.

6. Learned Amicus-Curiae confined his arguments to the point that even if the prosecution evidence is taken to be true, still offence Under Section 302 IPC is not made out and the conviction of the appellant on that count deserves to be set aside. Mr. Singhvi emphatically argued that from the eye witnesses it is evident that the people assembling beneath the mango tree were cutting jokes with each other and Bhera son of Kanha deceased gave kicks to Daula. That Dama appellant went near them and contorted the neck of Bhera son of Kanha and threw him aside. According to Mr. Singhvi, the appellant had no intention to commit murder of Bhera son of Kanha nor had he any intention to cause any such bodily injury likely to cause his death.

7. Learned Public Prosecutor admits that there was no serious matter or quarrel at the time. He however, supports the conviction Under Section 302 IPC on the ground that an innocent man has lost his life.

8. In order to appreciate the arguments advanced by the learned Amicus-Curiae, the statements of the eye witnesses will have to be seen carefully.

9. Bhera son of Poonja who was present at the site at the time of the incident and had immediately rushed to the Sarpanch to inform about it has stated about Dalla and Daula cutting jokes with each other and Daula putting off the 'dhoti' of Dalla. He has also stated about Bhera son of Kanha giving threat and Dalla giving one or two kicks to Daula. According to the witness, Dama appellant who was present there contorted the neck of Bhera son of Kanha and threw him aside. The witness stated that Bhera son of Kanha died then and there. Dalla (PW 2), Kamla (PW 3) and Devla (PW 5) have also supported 1 his version. As stated earlier, from the statements of these eye witnesses, it is duly established that, it was Dama

appellant who was responsible for the death of Bhera son of Kanha.

10. It is pertinent to note that there was no enmity between the appellant and the deceased. There was no immediate direct cause of quarrel. Daula and Dalla were the persons cutting jokes and the person annoyed was Dalla. Bhera son of Kanha had gone near them and when Bhera kicked Daula, the appellant contorted the neck of Bhera as mentioned above. Dama appellant cannot be attributed with any intention to commit any injury what to talk of fatal one to the deceased. He cannot also be imputed with the intention to cause any injury on the neck or any part of the body of the victim with the intention to cause bodily injury likely to cause death.

11. If a person contorts the neck of another with such a force that the victim succumbs to the injuries sustained in the process, the assailant can be attributed with knowledge that by his doing so there is possibility of the victim sustaining such bodily injuries as are likely to cause death.

12. This being the position in the present case, the conviction of the appellant for the offence Under Section 302 IPC is not sustainable. As we have opined that he also cannot be imputed with any intention to cause the fatal injury. His case, therefore, does not also fall within the ambit of Section 304 Part-I, IPC. The case of the appellant falls under Part-II of Section 304 IPC and he is therefore, liable to be convicted for that offence. In view of the peculiar circumstances of the case, we consider it to be a fit case in which a liberal view is warranted so far as the imposition of the punishment is concerned. We are of the opinion that three years RI shall meet the ends of justice.

13. Consequently, the appeal is partly allowed. The conviction and the sentence passed to the appellant for the offence under Section 302 IPC is set aside. He is instead of convicted for the offence Under Section 304 Part-II, IPC and sentenced to three years RI. The appellant is in jail since October 23, 1979 and as he has undergone the sentence awarded to him, he is set forth to liberty if not required in any other case.