

Swaroop Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-20-1986

Reported in : 1986WLN(UC)501

Judge : Gopal Krishan Sharma and; Panna Chand Jain, JJ.

Appeal No. : D.B. Criminal Appeal No. 242 of 1984

Appellant : Swaroopa

Respondent : State of Rajasthan

Judgement :

Gopal Kishan Sharma, J.

1. The appellants have preferred this appeal against the judgment dated 21-5-1984 passed by 'he Sessions Judge, Sawaimadhopur whereby he convicted each of the accused-appellants under Section 302/34, IPC, and sentenced each of them to imprisonment for life and a fine of Rs. 3,000/- each and in default of payment of fine to further undergo 2 years RI each.

2. One Laddu, son of Rugha lodged a written report at PS-Sawai-madhopur at about 1 PM on 2-5-1982, to the effect that his brother, Badri had gone to have a wnestling bout, and that at about 7.50 pm, he (Laddu) came to know on the basis of a rumour in the village that the sons of Kalyan had thrown his brother Badri

(deceased) after causing grievous injuries to him, into a culvert known as Bahi-ka-Nala'. Thereupon, Ladu along with Sanwalia Rampal and many other persons rushed to the place of occurrence, where Badri was lying drenched with blood. At that time, Badri was alive. Ramnath Soniya, Bhadya and Mandhya were sitting by the side of Badri (deceased). Laddu asked his brother as to what had happened, to which, Badri replied that Swaroop and Badri sons of Kalyan had given him beating with Gandasi and lathi. Injured Badri was then taken to bus-stand at Kundera on a cot and while he was being taken to hospital Sawaimadhopur, in the way, he expired. It was also alleged in the said report that there was enmity and litigations were going on between Badri (deceased) and Kalyan, the father of the accused-appellants; and that on account of that enmity the accused persons had committed the murder of his brother Badri.

3. On the above report, the police registered a case under Section 302 IPC, and started investigation.

4. During investigation, site-plan Ex. P.2 was prepared. Bloodstained earth was seized from the place of occurrence. Panchanama Ex. P.7 was also prepared at the spot. Post mortem on the dead body of Badri was conducted by Dr. R.S. Gupta, PW 12; and the post-mortem report is Ex. P. 8. The accused persons were arrested on 3-5-1982. Thereafter, on the information and at the instance of accused Ramsaroop, a Gandasi was recovered vide memo Ex. P. 21. On the information and at the instance of accused Badri, son of Kalyan, a lathi was recovered vide memo Ex. P. 22. The Gandasi and the lathi were then sent to forensic science laboratory and the serologist, whose reports are Ex. P. 23 and Ex. P. 24 respectively.

5. After completing the usual investigation, the police submitted a challan against both the accused-appellants, and they were committed to the court of Sessions Judge, Sawaimadhopur. The learned Sessions Judge framed charge against both the accused persons under Section 302, IPC or in the alternative under Section 302/34, IPC. Both the accused persons pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined 20 witnesses. No defence witness was produced by the accused persons.

7. After concluding the trial and hearing both the learned Counsel, the learned Sessions Judge found both the appellants guilty of offence under Section 302/34, IPC, and sentenced each of them as mentioned above.

8. Mr. Dhankar, the learned Counsel for the appellants did not argue on the merits of the case, but made his submissions only on two points, the first point being as to what offence has been committed by the accused persons and the second point being about the sentence to be awarded if it has been proved that offence has been committed by the accused persons.

9. Mr. Dhankar submitted that from the evidence including the medical report it cannot be inferred that the appellants had any intention of committing murder of Badri. According to clause thirdly' of Section 300, IPC. if the act was done with the intention of causing injury to Badri and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death, the accused persons could be held responsible for the offence of murder. In the present case, no doubt Badri had received 22 injuries on his person, but, only one injury was on the parietal region and that too by a blunt object and which was also a simple injury according to the doctor's statement. The other injuries alleged to have been inflicted by sharp weapon, were on the leg of the deceased. All those injuries were minor wounds because, their dimensions as mentioned in the post-mortem report, were 1' x 1/4' and 3/4' x 1/4' and so on. The injuries alleged to have been inflicted by lathis, were also on the right leg and on other parts of the body, which were also simple injuries. The allegation is that Badri (deceased) was inflicted injuries by a Gandasi. Gandasi is a sharp-edged weapon. If somebody has inflicted injuries by a sharp weapon like Gandasi the injuries would certainly be of serious nature. It cannot be said that the person who had the intention of committing murder of the injured, would inflict injuries of the dimensions like 1' x 1/4'; 3/4' x 1/4' and so on. None of the incised wound was of dimension more than 1' x 1/4'. So looking to the injuries and also the fact that they were on the leg of the deceased, we agree with the submission made by the learned Counsel for the accused-appellants that the accused-appellants had no intention of causing such bodily injury which was sufficient in the ordinary course of nature to cause death. The case of the accused-appellants, therefore, is not at all covered by clause 'thirdly' of

Section 300, IPC. The other clauses are also not applicable to the present case, because, it cannot be inferred from the record including the medical-report that the accused persons had any intention of causing such bodily injury as they knew that injury was likely to cause death. All the injuries by sharp weapon and mostly by lathis, were caused on the leg of the deceased which was not a vital part of the body. Only 1 injury was caused on the vital part of the body of Badri (deceased), and that too was by lathi 2/1-2'x 1/2' x 1/2', which injury individually was not sufficient in the ordinary course of nature to cause death as stated by the doctor. Even out of 22 injuries on the body of Badri (deceased), none of the injuries individually, was sufficient in the ordinary course of nature to cause death All the injuries collectively were found to be sufficient in the ordinary course of nature to cause death. Except one injury, no other injury was on the vital part of the body of the deceased. They all were on the leg. Therefore, it cannot be inferred from the evidence and the medical-report that the accused persons had any intention of causing such bodily injury to Badri (deceased) which was likely to cause his death

10. Therefore, in our considered opinion, the case is not covered by any of the clauses of Section 300, IPC, and we do not agree with the conclusion arrived at by the learned Sessions Judge,

11. Now, we proceed to decide as to what offence has been committed by the accused persons in this case.

12. Mr. Dhankar argued that the case is covered by Section 304-II, IPC. We have considered this argument of Mr. Dhankhar. Straightway, we can say that the case is not covered by Section 304I, IPC, because, from the evidence, it cannot be inferred that the accused persons inflicted the injuries with the intention of causing death, or with the intention of causing such bodily injury as was likely to cause death. One of the accused had a Gandasi in his hand. If he had any intention of causing death or causing such bodily injury as was likely to cause death, then he would have certainly inflicted more serious blows by Gandasi and that too on the vital parts of the body of the injured. He could have inflicted Gandasi blows on the head or other vital parts of the body, but, inflicting of Gandasi blow on leg and injury of about 1'x 1/4' shows that the accused-appellant who inflicted the Gandasi

blow, had no intention of causing death of Badri, Similarly, the person who inflicted lathi-blows also had no intention of causing death or causing such bodily injury as was likely to cause death of Badri.

13. But, from the record of the case, it can be inferred that the accused-appellants had the knowledge that the injuries which they were going to inflict to Badri, were likely to cause his death, without there being any intention. So, inference of knowledge against the accused-appellants can be drawn. They inflicted injuries by Gandasi and Lathi to Badri (deceased) with the knowledge that the injuries which they were going to inflict, were likely to cause death of Badri.

14. Therefore, the case is covered by Section 304-II, IPC; and we accordingly hold so.

15. About sentence to be awarded to the accused-appellants, Mr. Dhankar argued that appellant Ramswaroop was a boy of 19 years of age at the time of the occurrence; and accused Badri was below 25 years of age. So, the argument of Mr. Dhankar was that looking to the age of the accused appellants at the time of commission of the offence and the fact that they both are in jail for more than 4 years, the sentence of imprisonment already undergone would be sufficient in this case.

16. We have considered the above argument of Mr. Dhankhar on the point of sentence. It is not disputed that the age of the accused-appellants at the time of commission of offence, was as has been argued by Mr. Dhankar. This is also a fact that both the appellants are in jail for more than 4 years. As observed, none of the injuries inflicted by the accused-appellants individually was sufficient in the ordinary course of nature to cause death, though collectively they were. We, therefore, feel that some lenient view should be taken in this case.

17. Ramswaroop accused who was a raw young boy of 19years of age at the time of commission of the offence, if detained in jail any more, certainly would cause hardship on him and also adversely reflect on his character, because, there would be every chance of his being in the company of the hardened criminals. So, a young boy should alwnys be kept away from such association in order to give him

opportunity to improve his conduct and become a good citizen.

18. Similarly, Badri accused who was below 25 years of age at the time of the commission of the offence, has already suffered sentence of imprisonment for more than 4 years. Against him, the allegation is that he had inflicted Lathi blows to Badri (deceased).

19. In such circumstances, taking a lenient view, we think, the sentence of imprisonment already undergone by the accused-appellants, would meet the ends of justice.

20. Consequently, the appeal is partly accented. The conviction and the sentence of both the accused-appellants under Section 302/34, IPC, are set aside. They both are found guilty of offence under Section 304-II, IPC and sentenced to imprisonment already undergone by them. Both the appellants are in jail. They be released forthwith, if not needed in any other case.

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