

Simiya Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-31-1987

Reported in : 1987WLN(UC)302

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 176 of 1982

Appellant : Simiya

Respondent : State of Rajasthan

Judgement :

Shyam Sunder Byas, J.

1. Accused Simiya was convicted under Section 302 IPC and sentenced to imprisonment for life and a fine of Rs. 100/- in default of the payment of fine to further undergo two months' rigorous imprisonment by the learned Sessions Judge by his judgment dated April 20, 1982. He has come up in appeal and challenges his conviction.

2. Briefly stated, the prosecution case, which is short and simple, is that PW 2 Smt. Khetu and her husband Ratna (deceased-victim) were returning to their village Pawa in the noon of June 18, 1981 from Bhisma, where they had gone to collect the payment for the work they had done on the road. When they were

passing through the field of one Shersingh, situate in the Ountmariya Ghati, the accused came from behind and asked Patna as to where he was going. Ratna replied that they (he and Smt. Khetu) were going to their house. By that time, the accused came closely to Ratna and struck a blow of his axe on Ratna's head. Ratna fell down with profuse bleeding from his head injury. Smt. Khetu raised cries. The accused fled away taking his axe with him. Ratna did not survive and passed away instantaneously on the spot after a few minutes. After sometime, Ratna's brother Kala (PW 10) came there, Khetu narrated the incident to him. Kalu went to his village Pawa and collected some persons. They came on the spot. Smt. Khetu also told them that her husband was killed by accused Simiya. PW 10 Kalu went to police Station, Sayra and verbally lodged report Ex. P 1 of the occurrence at about 9.00 a.m. next day i.e. on June 19, 1981. The police registered a case and proceeded with investigation. The Station House Officer Durgsingh (PW 13) arrived on the spot, inspected the site, prepared the site plan and the inquest report of the victim's dead body. He also seized and sealed the blood-stained soil from the spot. The blood-stained clothes of the victim's dead body were also seized and sealed. The post-mortem examination of the victim's dead body was conducted by PW 11 Dr. Vyas the then Medical Officer Incharge, Primary Health Centre, Sayra. The doctor noticed the following ante-mortem injuries on the victim's dead body:

(1) Incised wound on the posterior part of right side of scalp 5 cm. above the mastoid process of right temporal bone. Size of wound 7-1/2 c m. long, 2-1/2 c m broad with associated fracture of underlying bone Brain matter coming out through the portion. Incised wound was surrounded by area of contusion size 11 c m. long 5c.m. broad;

(2) Swelling with contusion on the top of the scalp size 3-1/2 cm. x 3 cm. contusion 5 c.m. x 3-1/2 c.m.;

(3) Contused swelling on the right side of cheek extending from lateral angle of right eye to outer border of right ear and below upto angle of mandible and above 4 c.m. above the middle of zygomatic arch. Bony crests can be felt over zygomatic bone.

Injury No. 1 was opined to have been caused by some sharp-edged weapon while the contused swellings were stated to have been caused by some blunt object. The doctor was of the opinion that the cause of death was coma and syncope. The post-mortem report prepared by him is Ex P 10. The accused was arrested on June 21, 1981 and in consequence of the information furnished by him, axe (Article 5) was recovered. On the completion of investigation, the police filed a challan against the accused Simiya in the Court of the Munsif cum Judicial Magistrate, Gogunda, who, in his turn, committed the case for trial to the Court of Sessions. The Sessions Judge framed a charge under Section 302, IPC against the accused, to which he pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined 13 witnesses and filed some documents. In defence, the accused adduced no evidence. On the conclusion of the trial, the learned Sessions Judge held the charge duly proved against the accused. The accused was consequently convicted and sentenced as mentioned at the very outset.

3. We have heard the learned amicus curiae and the learned Public Prosecutor. We have also gone through the case file carefully.

4. Keeping in view the direct testimony of PW 2 Sent. Khetu, the learned amicus curiae did not challenge the incident and the role assigned to the accused by her. We have also gone through the testimony of PW 2 Smt. Khetu and are of the opinion that she is a witness of truth. She deposed that while she and her husband were returning to their house in the noon of the day of the incident, the accused came from behind when they were in Ountamariya Ghati. The accused had an axe and struck a blow with it on the head of her husband. The accused thereafter ran away. Her husband (Ratna) fell down. There was profuse bleeding from his head injury. He did not survive and passed away then and there after some moments. Though this witness happens to be the widow of the deceased-victim, that cannot be taken to be a valid reason for distrusting her sworn testimony. It may be recalled that the accused is the son of PW 10 Kalu, who had arrived on the spot after a few minutes of the occurrence. PW 10 Kalu is also the real brother of the deceased-victim Ratna. Looking to this close relationship, it cannot be conceived that PW 2 Smt. Khetu would falsely implicate the appellant for the murder of her

husband. The learned amicus curiae was therefore, well advised in not challenging the testimony of PW 2 Smt. Khetu. From what she deposed, it is the accused who had inflicted an injury on the head of Ratna with an axe and thereby caused his death.

5. The contention of Mr. Doongar Singh is in respect of the offence made out against the accused. It was argued by him that the deceased was the real uncle of the accused. No bad-blood was there between them except some quarrel over the fields. This quarrel was an old one. No immediate motive was alleged by the prosecution. Only one injury was inflicted by the accused. PW 2 Smt. Khetu is, no doubt, a witness of the incident, but she has suppressed the material facts as to how the incident started. These circumstances show that there was no intention on the part of the accused to kill Ratna. It is also not clear from the prosecution evidence whether the accused intended to strike the blow on the head of Ratna. Taking these circumstances into consideration, the offence made out falls under the Second Part of Section 304, IPC. Reliance in support of the contention was placed on *Dhanna Ram and Ors. v. State of Rajasthan* 1984 WLN (UC) 123 and *Daluram v. State of Rajasthan* 1984 WLN (UC) 61, to which one of us (Hon'ble Byas, J.) was a party.

6. It was, on the other hand, contended by Dr. Bhandawat learned Public Prosecutor, that the injury was inflicted on the head, which is a delicate and vulnerable part of the human body. The weapon used was an axe. The head injury was stated by the Doctor to be sufficient in the ordinary course of nature to cause death. In these circumstances, the accused was rightly convicted under Section 302, IPC. We have taken the respective submissions into consideration.

7. Admittedly, the deceased Ratna was the real uncle of the accused. According to PW 2 Smt. Khetu the widow of the deceased, the deceased and the accused live(d) in the same house and used to meet almost daily. Though she stated that the accused used to pick-up quarrels with her husband in connection with the partition of some fields, there is no acceptable evidence on this point. PW 2 Smt. Khetu, in her cross-examination, categorically admitted that there was no quarrel between the accused and the deceased Ratna. The prosecution has also not

alleged any immediate motive which prompted the accused to commit the crime. It appears that PW 2 Smt. Khetu has not stated the real facts as to how the occurrence started. It may be due to hot exchange of words or altercation between the deceased and the accused. It is also not clear from the prosecution evidence that the accused intended to cause that particular injury which he caused on the victim's head. It cannot be said with any definiteness that the accused had aimed to blow at the particular part of the victim's body. We are, therefore, of the opinion, that the case is not covered by Section 300, IPC. In as much as death has been caused, the knowledge, at least, can be attributed to the accused that he did an act which was likely to cause the death. The offence made out is, therefore covered by Section 304, Part-II, and does not fall under Section 302, IPC.

8. In the result, the appeal of accused Simiya is partly allowed. His conviction and sentence under Section 302 are set-aside and instead he is convicted under Section 304, Part-II, IPC and is sentenced to eight years' rigorous imprisonment. The appeal shall accordingly stand disposed of.

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