

**State of Rajasthan Vs. Tejaram**

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**Court :** Rajasthan

**Decided On :** Sep-05-1985

**Reported in :** 1985WLN(UC)500

**Judge :** Kanta Bhatanagar and; Shyam Sunder Byas, JJ.

**Appeal No. :** D.B. Criminal Murder Ref. No. 2 and Appeal No. 141 of 1985

**Appellant :** State of Rajasthan;tejaram

**Respondent :** Tejaram;state of Rajasthan

**Judgement :**

**Kanta Bhatanagar, J.**

1. Appellant Tejaram was tried for the offence under Section 302 IPC by the Sessions Judge. Sirohi. By the judgment dated 20th April, 1985. he was held guilty for that offence and death sentence was passed. The learned Sessions Judge submitted the proceedings to this Court under Section 366 Cr. PC for confirmation of the death sentence. Appellant Tejaram felt aggrieved by the judgment of conviction and preferred appeal in this Court. As the death reference and the appeal filed by Tejaram arise out of the same judgment, we propose to dispose both of them by a common judgment.

2. Succinctly narrated the facts of the case giving rise to the trial of the appellant, his conviction and sentence and the reference by the learned Sessions Judge and the appeal by Tejaram are as under ;

3. On 8-6-1983 at about 8.30 A.M. Nathmal (PW 9) Sarpanch Panchayat Varada lodged report at police station Barloot before SHO Jafar Ali PW 16 to the effect that Teja Ram armed with 'Pharsi' (axe) was furiously roaming at Bus Stand Varada and there was apprehension of breach of peace for the reason that he was shouting that he had already finished two & would finish two or four more. SHO Jafar Ali started proceedings under Sections 107 and 116 Cr. PC and proceeded to Varada. At Bus Stand Babu PW 1 lodged the report Ex. P.1 containing the facts that when he was at his house at about 8 A.M. appellant Teja Ram, armed with one axe went in front of his house on a bicycle and asked him to come out with a threatening to do away with him and exclaimed that he had done away with Shaitania and Madania. Babu felt frightened and did not come out. Thereafter Teja Ram went towards the Bus Stand. After his going away from there, Babu went towards the jungle known as 'Hanumaji-ki-Odan' to find out as to what has happened to the boys who had gone with Jairam for grazing the she-goats as usual. In his way towards 'Hanumanji ki Odan', he saw Shaitania lying dead with injuries on his head. At some distance his other son Madania was also lying dead with injuries on the neck. Babu then went to the Bus stand, where appellant was causing nuisance. He then got the report Ex. P. 1 written and gave it to Jafar Ali SHO who had reached there in connection with the information furnished by Nathmal Sarpanch. The SHO sent Ex. P.1 with constable Devisingh (PW 11) to police station Barloot for getting the case registered Devisingh gave the information to Head Constable Roop Chand (PW 5) who registered the case under Section 302 IPC Devisingh returned to village Varada. SHO Jafar Ali proceeded to the site where dead bodies of Shaitania and Madania were lying. He inspected the site and prepared the Site Inspection Memo Ex. P.2 and Site Plan Ex. P. 3. He took blood-soaked earth and the control soil from the places where deceased Shaitania and Madania were lying, vide Ex.Ps. 4 & 5. The hair from the head of Shaitania & Madania were also taken vide Memos Ex. P. 7 & Ex. P. 8 respectively and were sealed. Inquest Memo of Shaitania Ex. P. 9 and that of Madania Ex. P. 10 were prepared. Panchnama of the dead body of Madania, Ex.P. 11 and that of

Shaitania Ex. P. 12 were also prepared. On the same day at 5.30 P.M. Dr. Jagdish Prasad (PW 13) Medical Officer, Primary Health Centre, Varada conducted the autopsy over the dead body of Shaitania and noted following injuries on his person:

Wounds : (1) Incised wound 2x1x2 cm, on the right shoulder in the region of head of humerus;

Cranium and Spinal Cord:

There was incised wound on the back of head extending from lower border of left ear to upper border of right ear. 5 cm. occipital bone, right astroid bone-membrain and brain.

Ex- P. 29 is the post-mortem examination report of Shaitania. In the opinion of the Doctor, Shaitania died due to injury to vital organ i.e. leading to shock and death. On the same day at 6: 50 P.M. Dr. Jagdish Prasad conducted autopsy over the dead body of Madania on the spot. The Doctor noted following injuries on the dead body:

Wounds:

(1) Abrasion 5.25 cm. x 4 cm. on left shoulder;

(2) Incised wound 10 cm. x 4 cm. x bone deep on the left side of head extending from mid of left ear cutting it to the back towards occipital. There was a fracture of left occipital bone and laceration of brain;

(3) Incised wound 16 cm. x 10 cm. on left side of neck cutting second and third survical spine. Spinal Card, muscle and vessels of left side of neck.

The post mortem examination report is Ex. P. 13. In the opinion of the Doctor cause of death of Madania was injury to vital organs i.e. spinal cord vessels and brain, leading to haemorrhage, shock and death. According to the Doctor the duration of death of the two boys was within 12 hours and injuries were sufficient in the ordinary course of nature to cause death. SHO Jafar Ali took in possession the blood stained pants (Article 2) and Bushirt (Article 3) of Madania vide memo

Ex. P 13 and the blood stained Bushirt (Article 4) of Shaitania vide memo Ex. P. 14.

4. At about 10 a.m. appellant Teja Ram armed with an axe and accompanied by his wife and children, went to police station Barloot and lodged the report Ex. P. 21. He produced the axe before the Head Constable Roop Chand. The Head Constable recorded the report Ex. P. 22. Roop Chand detained Teja Ram at the police station. In the night when Jafar Ali, after investigation, reached the police station, he arrested the appellant vide memo Ex. P. 25. The SHO took in possession the axe produced by Teja Ram and sealed it. The articles suspected to be blood stained, recovered during the course of investigation were sent for chemical examination, The report of the Director Forensic Science Laboratory Jaipur is Ex. P. 55. The report of the Director State Forensic Laboratory Jaipur regarding the hair is Ex. P. 56.

5. Upon completion of necessary investigation, charge-sheet against the appellant was filed in the court of Munsif and Judicial Magistrate, Sirohi. The learned Magistrate finding a case exclusively triable by the court of Sessions committed the appellant to stand his trial in the court of Additional Sessions Judge, Sirohi. The learned Judge charge-sheeted the appellant under Section 302 IPC and recorded his plea. He denied the indictment and claimed to be tried. To substantiate its case, prosecution examined 16 witnesses in all. in his statement under Section 313 Cr. PC, the appellant totally denied the allegations levelled against him and stated that he was owing money from Sardar Singh and was going there when at Barloot bus-stand he was apprehended. That being pressurised by the Sarpanch, Babu and other villagers who are against him and he had committed no crime. The learned Sessions Judge placed reliance on the prosecution evidence and convicted the appellant under Section 302 IPC and awarded death sentence to him. The learned Sessions Judge submitted the record of the case to this Court under Section 366 Cr.PC for confirmation of death sentence The appellant felt dissatisfied by this conviction and sentence and preferred appeal in this Court. As the appellant was unrepresented, Mr. S.R. Singhi was appointed Amicus Curiae to represent him in the appeal as well as in the murder reference.

6. We heard Mr. L.S. Udawat, learned Public Prosecutor for the State and Mr. S.R. Singhi, learned Amicus Curiae.

7. Prosecution has examined Jairam (PW 4) as an eye-witness to the occurrence. Circumstantial evidence against the appellant in his being seen after the incident with an axe by Chatra Ram ; his throwing a challenge to Babu, the father of the deceased boys to come out and informing him that he had murdered Madania and Shaitania; his going to bus-stand Varada with an axe in his hand and causing nuisance there; the Sarpanch, Panchayat Varada lodging the report against the appellant at police station Barloot; the appellant with his wife and children going to the police station and being arrested there and his axe and clothes suspected to be stained with blood, being taken in possession by the police; the blood on the clothes of the appellant and the axe said to be recovered from him being of the same blood group as that found on the Bushirt of Madania.

8. Jairam had gone to graze the she-goats with the two deceased boys in 'Hanumanji-ki-Odan' in the morning on the days of occurrence. He has stated about appellant Teja Ram reaching there with an axe in his hand and inflicting axe blow on the neck of Madania and his falling down and a second axe blow being inflicted on his neck. The witness stated that Madania succumbed to these injuries then and there. According to Jairam on seeing Madania being killed, Shaitania tried to run away towards his house but the appellant Tejaram ran towards him and inflicted injuries on his head. Shaitania fell down and died. The witness then left the field and ran away towards his house and remained hidden inside, apprehending his death also at the hands of the appellant. Babu has stated about Jairam's going in the jungle to graze she-goats with his sons Shaitania and Madania.

9. The criticism levelled against the testimony of Jairam is two told Firstly, his conduct in not informing Babu about the occurrence and instead of going to his own house and not reporting to even police till evening when his statement was recorded. Secondly, his statement regarding his sister bringing the she-goats from the jungle being inconsistent with the statement of Babu who has deposed that it was Jairam who had brought his she-goats and those of the witnesses after the

occurrence, from the jungle. So far as the bringing of the goats is concerned, suffice it to say that there is no reason to disbelieve the witness Jairam when he states that feeling frightened by the death of Shaitania and Madania he immediately ran towards his house and remained hidden inside out of fear of being killed. He has stated that he sent his sister to the 'Odan' to bring the she goats. Babu has of course stated that Jayaram brought the she-goats but that appears to be a statement by estimating that Jayaram might have brought the she-goats. He had himself not seen the sister of Jairam bringing the goats and, therefore, the possibility of his thinking that Jairam might have brought the she-goats might be natural. On such petty discrepancies between the statements of two witnesses, the statement of Jairam, otherwise creating confidence, cannot be brushed aside as a false deposition.

10. The conduct of Jairam in not going to Babu to inform him about his two sons dying at the hands of the appellant appears to be strange but on a careful examination of his statement, there appears to be nothing unnatural in his conduct. If a boy of 18 years on seeing two boys being killed by the appellant and the later going with an axe in his hands gets frightened and out of fear of being killed by the appellant in case of his disclosing to anybody the heinous act committed by him, hides himself in his house, there is no abnormality in it. Jairam has stated that when he went to his house only his two sisters, younger to him, were there. There appears to be nothing strange in the boy not telling the incident to his younger sisters. The learned Amicus Curiae has emphatically argued that if Jairam was at his house, why did he not go to the Police in the after-noon when it went for investigation at the site. The Investigating Officer has stated that in the after-noon Jairam was sent for, but he was not available at his house. On this contention, the learned Amicus Curiae built up the argument that Jairam was not at all there at his house as stated by him. The version of Jairam that he was inside the house and that of the Investigating Officer that he was not there, though inconsistent, is not damaging to the statement of Jairam. Jairam has himself stated that out of fear, he remained inside the house till evening. There is force in the argument of the learned Public Prosecutor that Jairam feeling frightened might have asked the sisters to tell the persons calling him in the afternoon that he was not at the house and there-after when he was called second time in the evening he

might have gone to the police and his statement was recorded. The learned Amicus Curiae has raised one more point to discredit the testimony of Jairam. According to Mr. Singhi if Jairam had not informed Babu about Madania and Shaitania being killed by Teja Ram, where was the source for Babu to know about Jairam's presence near about the place of the occurrence and the reason for Babu naming Jairam as an eye-witness in the First Information Report. Babu has nowhere stated that he was informed by Jairam about the incident and, therefore. Babu was asked to explain the reason for his mentioning in the First Information Report that Jairam had seen the incident. Babu has explained that he had so mentioned in the report because Jairam had gone with his sons to 'Odan' and, therefore, he thought that Jairam must have seen the incident,

11. The statement of Jairam is consistent throughout regarding the incident and there is nothing to disbelieve what he has stated. Babu, father of the boys has stated about dispute with the appellant on the question of a boundary between their houses and the appellant picking up quarrel on the day previous to the occurrence. The learned Amicus Curiae argued that on such a petty matter no man would commit such a heinous crime. That, even if there was any quarrel with Babu, the two boys Madania and Shaitania had nothing to do with that quarrel so as to become the victims of the wrath of the appellant. True it is that there is no material to suggest any serious quarrel or deep-rooted enmity between Babu and the appellant but this much is evident that the two were not on happy terms. What particular feeling prevails a man at particular time cannot be known. Mind of a man is a complicated machinery and only the doer of the act can know the reason of his particular act at a particular time in a particular manner. Motive if deducible from the facts and circumstances of the case, plays an important role in ascertaining the cause of a crime, but absence of motive or insufficiency of motive will not be helpful to the assailant if his crime is substantiated by cogent, convincing evidence direct or circumstantial.

12. Statement of Babu regarding the appellant throwing a challenge to him and shouting about his committing the murder of two boys has been rightly believed by the learned trial Judge. Babu being frightened at the appellant shouting with an axe in his hand, naturally could not come out to inquire of him the truth of what he

told when the appellant placed his cycle at house and went towards the bus stand, Babu immediately went towards the 'Odan' and found the dead bodies of Shaitania and Madania lying there. He then went to bus stand, where appellant was creating nuisance. He got the report Ex. P. 1 scribed by a teacher and gave it to PW 16 Jafar Ali SHO when he came there in pursuance of the information Ex. P. 28 lodged by Nathulal Sarpanch.

13. Mr. Singhi criticised the evidence of Babu on the ground that he was telling a lie that he had given Ex. P. 1 to the SHO in the morning at Bus stand. To substantiate his argument Mr. Singhi referred to the statement of Badli (PW1) who has stated that her brother Shaitania had reached the village from Jalore in the after-noon and that he was present when the report was given to the police.

14. It is the report Ex. P 1 which set the investigating Agency to motion for the investigation of the murders of the two boys. Jafar Ali (PW 16) has stated about his receiving the report from Babu at the Bus stand at 9.10 a.m. He has also stated about a case under Section 107/116 Cr. PC being registered on the basis of the information Ex. P 20, filed by Nathulal at the police station at 8.30 a.m. PW 11 Davisingh has stated that the SHO gave him the report Ex. P 1 which he took to the police station and gave it to the Head Constable Roopchand. Roopchand (PW 5) has stated that as Jafar Ali SHO had gone to the Bus stand at the report of Sarpanch Barloot, he was incharge of the police station. He further stated that at 9.30 a.m., he registered a case on the basis of Ex. P 1 brought by the constable Devisingh from Varada and the time mentioned in the report was 9.10 a.m. The SHO has reached the site at about 10 a.m. and prepared the necessary memos there. At 5.30 p.m. Dr. Jagdish Prasad had conducted the post-mortem of the dead body of Shaitania and that of Madania at 6.15 p.m. In this view of the matter simply because Badli, a young girl of 15 years, feeling perturbed because of her losing her two brothers, has answered in affirmative to the suggestion in cross-examination that Shaitania was present when the report was given to the police, it cannot be said that the prosecution case regarding the information Ex. P 1 being given at about 9 a.m. at the Bus stand to the SHO is false. Badli has also corroborated her father when she stated that when she had gone for brooming in the village she had seen Tejaram near the house of Parma Suthar and he was

having an axe with blood on it at that time. She has also stated about the appellant hurling abuses to her parents. She has also stated about her father telling her, when she reached the house, about Tejaram killing Madania and Shaitania in the 'Odan'

15. Chatra Ram (PW 14) has stated about his seeing the appellant with an axe stained with blood in the jungle on a cycle. He has stated about his proceedings ahead to fetch earth from the 'Odan' and seeing Shaitania Madania lying dead. He has also stated about Jairam Jogi going towards the village with the she-goats. We agree with the learned Amicus Curiae that the statement of this witness does not inspire confidence. The conduct of the witness is very unnatural. On seeing two dead-bodies he did not try to find out what had happened, specially so when he claims to have seen the assailant going with an axe with blood. Jairam has nowhere stated about Chatra Ram's presence near about at the time of the incident or his seeing him while returning to his house after the incident. The most important reasons for disbelieving the version given by this witness is his not telling the police about what he has seen for 10-12 days after the occurrence. There is no explanation with the prosecution as to why such an important witness was not interrogated and examined till 10 or 12 days after the incident. We, therefore, do not attach any importance to what Chatra Ram has stated.

16. Mr. Singhi strenuously contended that if the appellant would have committed the murder of two boys, he would have tried to conceal the crime instead of giving it a publicity by shouting at the Bus stand. Different people react differently after committing the crime. There is no reason to disbelieve Nathmal that in the morning of the day of the occurrence, Teja Ram created nuisance and was shouting at the Bus stand. The version of Nathmal stands supported by his going to the police station, Barloot, immediately thereafter and lodging the report Ex. P 28. It is evident from the record that the SHO had proceeded with the investigation of the case under Section 107/116 Cr. PC against the appellant, and there Babu gave him the report Ex. P 1. This conduct of the appellant at the bus-stand is a connecting link to the prosecuting case because a short while after Jairam seeing the murders being committed, the appellant was seen by Babu out-side his house with an axe with him and was threatened by the former. Yet another circumstance

connecting of the case and the most important circumstance against the appellant connecting him with the crime is his going to the police station Barloot on the day of the occurrence itself. Roopchand, Head Constable, has stated about Tejaram going to the police station, with an axe in his hand, and lodging the report Ex. P 2. Roopchand has also stated about the appellant producing an axe with blood on it before the witness and the witness informing the SHO vide Ex. P 22, Mr. Singhi emphatically argued that the statement of Roop Chand is not believable. The reason advanced is that if at 9.30 a.m. Roopchand had registered a case on the basis of Ex. P. 1 brought by Devisingh, he could know that Tejaram is an accused wanted in a murder case and as such when the accused reached the police station about 10 a.m. Roopchand should have immediately arrested him instead of waiting till evening. Jafar Ali on being questioned on this point explained that, as Roop Chand was not knowing that Teja Ram was wanted in a case, he might not have arrested him. The explanation has no substance. However on that count alone the prosecution case about the appellant going to the police station at about 10 a.m. cannot be disbelieved. The formal arrest of the accused was of course made in the evening by Jafar Ali, and it is also that the axe was taken in possession and the seizure memo of the axe was prepared but there is the evidence of Daku (PW 3), wife of the appellant to substantiate the prosecution case that the appellant had gone to the police station in the morning Daku (PW 3) is the wife of the appellant. She has been declared hostile by the prosecution because she has realised from the police statement regarding the accused making a confession about the crime before her, but she has admitted at the trial that her husband went to the police station first and then she, with her children, went to the police station. Thus the fact of the accused going to the police station has been proved by his wife Daku. Jafar Ali has stated about axe, Article 7, being taken in possession from the accused at the time of his arrest vide memo Ex. P. 26. He has also stated about the shirt and Dhoti of the appellant, having stained of blood on them, being taken in possession vide memo Ex.P 27. The blood stained axe and the blood stained clothes of the appellant, along with other articles suspected to have blood on them and seized during the course of investigation were sent for chemical examination. It is important to note the contents of Ex.P. 15, the report of the Serologist. According to that report the blood group of the blood on the Bushirt

of Madania deceased and that on the shirt and Dhoti of Tejaram and that on the axe seized from him was 'AB' group. Learned Amicus Curiae argued that if two murders were committed and on clothes of one of the deceased blood was of group 'A' and on the other 'AB' then presence of 'AB' group blood alone on the axe and the clothes of the appellant, should raise a suspicion for his being the author of the two murders. The argument has no force. It is only in rare cases that blood group can be ascertained from the articles, sent for Serological test. In the present case, the group of blood on the axe and the clothes of the appellant being the same which was found on the Bushirt of Madania deceased, is a very strong circumstance against the appellant to connect him with the commission of the crime.

17. From the above discussion, we are in perfect agreement with the finding of the learned trial Judge that prosecution has established beyond all shadow of doubt that it was the appellant and non-else who was the perpetrator of the crime of the murders of Madania and Shaitania. The conviction of the appellant under Section 302 IPC is justified.

18. The learned trial Judge has awarded sentence of death to the appellant. The learned Public Prosecutor vehemently contended that the appellant has committed a heinous crime of murdering two innocent boys and, therefore, he deserves the extreme penalty and has been rightly sentenced to death. The learned Amicus Curiae, on the other hand, referred to the provisions of Section 354(3) Cr.PC and submitted that it is not the rarest of the rare cases in which extreme penalty of death may be imposed.

19. The appellant has committed the heinous crime of murdering two helpless innocent boys. Murder, of what ever type it might be, is always repelling. Most of the murders are horrifying. While awarding punishment to a culprit in a murder case, courts are not to be moved by humanitarian consideration that life of a person has been brought to an end through the merciless act of the culprit. The court should go into the death of the crime, the manner in which it is committed and the surrounding circumstances of the case. The present trend of legislation is that sentence of death is not to be invariably awarded in all cases of shocking

murders. Section 354(3) of the Code of Criminal Procedure, 1973, is an expression of this trend of legislation. Prior to the enactment of this section courts were to give reasons for not awarding the extreme penalty of death to a culprit charged of the offences under the Penal Code. But according to the provision of Section 354(3) of the new Code, Courts are to see whether there are special reasons for imposing extreme penalty of death. The term 'special reason' had been the subject matter of discussion in a number of cases before the Supreme Court. In the case of *Bachan Singh v. State of Punjab* : 1980 CriLJ636 , their Lordships have been pleased to observe as under:

Section 354 of the Code of Criminal Procedure, 1973, makes a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before April 1, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, were normal sentences. Now, according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.

19. Through the case on hand is of double murders but there are not available on record aggravating circumstances, such as a pre-planning or calculated murder so as to bring the case within the category of rarest of rare cases in which extreme penalty of death may be imposed. We, therefore do not consider it to be a case in which the sentence of death awarded by learned Sessions Judge may be confirmed. In the absence of special reasons, justifying imposition of death sentence, we consider it to be a case in which the sentence of death may be altered to one for imprisonment for life and we order accordingly.

20. Consequently, the appeal filed by Teja Ram is partly allowed. His conviction under Section 302 IPC is maintained but the sentence of death awarded to him by the trial court is commuted to one of imprisonment for life. The reference for confirmation of death sentence made by the learned Sessions Judge, Sirohi, is rejected.

