

**Uka Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-04-1985

**Reported in :** 1985WLN(UC)548

**Judge :** Milap Chand Jain and; Jas Raj Chopra, JJ.

**Appeal No. :** D.B. Criminal (Jail) Appeal No. 619 of 1975

**Appellant :** Uka

**Respondent :** State of Rajasthan

**Disposition :** Appeal dismissed

**Judgement :**

1. This appeal is directed against the judgment of the learned Addl. Sessions. Judge, Jalore, dated 31st July 1975 whereby the appellant Uka was convicted under Section 302 IPC and was sentenced to imprisonment for life and to a fine of Rs. 100/-, in default of payment of fine to undergo one month's rigorous imprisonment for having murdered one Moda on the night intervening 27-6-1975 and 28-6-1975 at 4 a.m.

2. The prosecution case in brief is that the accused Uka, deceased Moda Jhulha PW 2 Khangara PW4 and other persons had gone to Mafwa with their cattle as there was famine in their village. Some of their women also accompanied with them. The wife of the deceased Moda viz. Gajra was also in their company. It is

alleged that the accused Uka developed illicit relations with Gajra for which accused was rebuked. It is said that on the night between 27-6-75 & 28-6-75 after their return from Malva when they were sleeping the outskirts of village Meda the accused cut the throat of Moda with 'datarda' and on some alarm of the deceased PW 1 Hakiya got up and Khangara also got up. They were attracted to the scene of occurrence, Hakiya was sleeping at a distance of 25 pavadas. They saw the accused cutting the throat of the deceased with 'datarda' Hakiya then awakened. Jhutha PW 2 and one Jawana were informed about the occurrence. The accused then expressed that he would lodge the report to the police himself and went away saying so. The police station Jalore was about 26 miles away and he went on foot and lodged the report Ex. P. 1 Mohan Singh S.H.O. PW 6 on his verbal report registered the case under Section 302 IPC and arrested him. It may be mentioned that PW 4 Khangara was also sent for lodging the report and Mohan Singh accompanied with the accused visited the place of occurrence and Khangara met them on the way. Mohan Singh PW 6 prepared the site-plan (Ex. P.4) Farad Surat Mal (Ex. P.5) and other documents. On the information of the accused he recovered 'datarda'. The deadbody was sent to Sivana Hospital through a constable. Post mortem was conducted by Dr. Shiv Lal Mutha on 29-6-1975 at 9.30 a.m. He found the following injuries on the person of the deceased:

(1) Lacerated wound 2-1/2' x 1/1-4' x 1/2' deep cutting sternomastoid muscle left side partially (not to the complete thickness);

The wound was transverse starting from left mastoid process. Skin was having sharp cutting edge;

(2) Lacerated wound 4/1-2' x 3' x 2' deep at the level of junction of trachea and larynx. The wound was horizontal. Skin margins sharp cut. Clotted blood seen in the wound in copious amount;

The following structures were found cut also below the wound No. 2;

(1) Trachea completely cut at its junction with larynx;

(2) Left cornu of hyoid bone broken;

(3) Common carotid left side cut and right side on the external carotid cut;

(4) Both sternomastoid muscle cut;

(5) Juglar vein of left side cut.

According to the medical officer the cause of death was due to cutting of the wind pipe and haemorrhage from large blood vessels. He prepared post mortem report Ex. P 8 and signed on it at A to B. According to him further though injury No. 1 alone was not sufficient to cause death in the ordinary course of nature but injury No. 2 was sufficient to cause death in the ordinary course of nature and that this injury can be caused by a datarda if it is sharp.

3. After completion of the investigation a challan under Section 302 IPC was filed in the Court of Chief Judicial Magistrate, Jalore, on 29-6-1975. He committed the accused for trial to the Court of Addl. Sessions Judge, Jalore, who by his judgment dated 31-7-1975 convicted and sentenced the accused as aforesaid. Being dissatisfied with his conviction, and sentence the accused has preferred this appeal.

4. We have heard the learned counsel for the appellant and Shri L.S. Udawat the learned Public Prosecutor for the State, and have gone through the record of the case very carefully.

5. The learned counsel for the appellant submitted that the prosecution in this case relies on the statement of the two eye witnesses viz. PW 1 Hakiya and PW 4 Khangara, but their statements are contradictory and their conduct is also unnatural. The witness Hakiya PW 1 stated that it was dark night; whereas PW 4 Khangara stated that it was moon-lit night. Hakiya has stated that throat was cut by the accused while sitting on the chest of the victim whereas Khangara has stated that the accused was sitting by the right side of the deceased. These contradictions show that both the witnesses had not seen the occurrence else such contradictions would not have appeared in their testimony.

6. Besides that if two witnesses had seen cutting of the throat of the deceased, they would have certainly prevented the accused from doing so. Their conduct appears to be unnatural so reliance should not be placed on the testimony of both

the witnesses. It is also pointed out that if the accused had cut the throat, the accused would have certainly sustained blood stains on his clothes but it is not the prosecution case that there were any blood stains on his person or clothes. That also shows non participation of the accused in the commission of the offence. It is also pointed out that if the accused would have committed the offence, then he would not have gone to lodge the report at the police station which is at a distance of 26 miles from the occurrence. Mrs. Renu Chatterji further stated that weapon of the offence has not been produced as adverse inference should be drawn against the prosecution & it may be taken that weapon was not used for commission of offence. If these submissions are considered as a whole then her submission, is that offence is not brought home to the accused. If there is a motive that alone would be insufficient to hold the accused guilty. She submitted that in any case the accused is entitled to the benefit of doubt.

7. We have considered the above submissions of the learned counsel for the appellant. The main argument relates to the two eye witnesses. We have to see whether the testimony of the two eye witnesses is worthy of credence. It may be mentioned that in this particular case motive is amply proved. Gajra has appeared as PW 5 and she deposed that deceased had indulged in illicit relations with her, so there was bad blood between the deceased and her husband. She had already left for her village a month prior to the occurrence. It is in this back ground the occurrence has taken place. From the evidence of Hakiya (PW 1), Jhutha PW 2) and Khangara (PW 4), it is amply proved that they along with other persons were returning to their village from Malwa along with their cattle and they had stayed on the fateful night in the out skrits of village Meda. The deceased and other witnesses were sleeping near by and Hakiya was sleeping about 25 pavandas away. If any one cuts the throat of a man at a distance of 25 pavandas, it was natural for the victim to have shrieked or raised some noise and as a result of which those who are sleeping would get up. Hakiya (PW 1) has clearly stated that he was sleeping at 25 pavandas and he heard the voice at about 4 a.m. He got up and went near Moda and saw the accused cutting the throat of Moda with datarda. A threatening was given by the accused when he tried to approach. When this threatening was given, he was at a distance of 4 pavandas and at that stage he refrained from proceeding further. Similar is the statement of Khangara (PW 4). He

also got up on the voice of the deceased and before he got up, Hakiya had already got up and proceeded towards, the place where Moda was sleeping. Khangara saw the accused cutting the throat of the deceased. In our opinion, their statement that they saw the accused cutting the throat of the deceased, is reliable. It is true that some contradiction have appeared into the testimony of the witnesses but they are not material. Their statements were recorded much after the occurrence and such like contradictions as have been pointed out appear in the testimony of the witnesses. It may be mentioned that at the time of commission of the offence the accused might be sitting on the chest and when Hakiya saw him Khangara might have seen the accused by the side of the deceased. Position of the accused and the victim as stated by these two witnesses may be so as they have stated. It is significant to note that both the witnesses stated that 'datarda' was used to cut the throat, that shows that the weapon of offence was observed by them. Besides that dark night or moon-lit night is immaterial because the time was early morning at 4 a.m. on 28-6-1975 there may be twilight so discrepancy of night being dark or moon-lit is not very significant. It is further significant to note that at the time of the occurrence Hakiya (PW 1) got awakened. Javana and Jhutha were old men of 60 years. They were immediately informed as to how the accused had killed the deceased Moda. The occurrence was immediately narrated by Hakiya to Jhutha and Jawana. The conduct of the witness thus appears to be natural. It may also be mentioned there that though the accused left saying that he himself will lodge the report still his version was not taken as such and Khangara was sent for lodging the report. It appears that the accused had already reached the police station Jalore and lodged the report so the accused was found hand-cuffed coming with Mohan Singh SHO. So far as the contents of the FIR are concerned, they are not admissible in evidence. The FIR is admissible in evidence to this extent that as to who was the maker of the report so it can be taken that it was the accused who made the report. It is true that normally the accused does not proceed to lodge a report but it all depends on the accused as to what course of action he adopts after commission of the offence.

8. 'Datarda' has not been produced in the Court but Mohan Singh's statement reveals that clothes and 'datarda' were sent for chemical examination to the S.P. Jalore from where Jabar Singh took them to Jaipur. It appears that before any

report was received, the accused was tried and that appears to be the reason for the non production of the weapon of the offence as such no adverse inference can be drawn against the prosecution for the non production of the weapon. Thus, in our opinion motive is well proved in this case and further from the ocular evidence corroborated by the evidence of Jhutha, it is proved it was the accused Uka who caused the death of Moda by cutting his throat with 'datarda'. He has been rightly convicted under Section 302 IPC.

9. There is no force in the appeal. The appellant is on bail. He shall surrender to his bail bonds immediately. The learned Sessions Judge, Jalore, is further directed to effect his arrest to serve out the sentence.

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