

Pappu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-20-2005

Reported in : RLW2006(2)Raj1200; 2006(1)WLC613

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302, 304, 307 and 342; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Jail Appeal No. 284 of 2001

Appellant : Pappu

Respondent : State of Rajasthan

Advocate for Def. : Shyam Arya, Public Prosecutor

Advocate for Pet/Ap. : Satyapal Poshwal, Amicus Curiae

Judgement :

Shiv Kumar Sharma, J.

1. The appellant faced trial in Sessions Case No. 56/1999 before the learned Additional Sessions Judge Baran who vide Judgment dated December 2, 2000 convicted the appellant for the offence under Section 302 IPC and sentenced him to suffer life imprisonment and fine of Rs. 500/-, in default to further suffer three

months simple imprisonment.

2. The allegations against the appellant in the written report submitted by informant Ram Swaroop Mali on June 9, 1999 at 10.00 PM with the Police Station Mangrol, were that at 9 PM on the said day he inflicted knife blows on the person of Om Prakash (now deceased) who was admitted to the hospital. A case under Sections 307 and 342 IPC was registered against the appellant by Police Station Mangrol and investigation commenced. On June 10, 1999 Om Prakash succumbed to his injuries and Section 302 IPC came to be added. Post mortem on the dead body was performed, statements of witnesses were recorded, the accused was arrested necessary memos were drawn and on completion of investigation charge sheet was filed. In due course of case came up for trial before the learned Additional Sessions Judge Baran. Charge under Section 302 IPC was framed against the appellant, who denied the charges and claimed trial. The prosecution in support of the case examined as many as 14 witnesses. In the explanation under Section 313 Cr.P.C., the accused claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the rival submissions and scanned the material on record.

4. As per postmortem report (Ex.P-4) following ante mortem injury was found on the dead body:-

Stab wound 2-1/2 x 1-1/2 cm x abdomen depelictical in shape obliquely upward backward & laterally in direction towards Lt. side 4 inch above umbilicus just right to mid line.

According to Dr. Pratap Singh Yadav (Pw. 2) death was caused on account of hemorrhagic shock due to spleen injury.

5. Learned Amicus Curiae vehemently criticised the finding of the learned Trial Court and canvassed that the appellant was implicated falsely on account of enmity. The complainant party illegally ousted the appellant from his house and when raised protest about it he was made the accused. Having scrutinised the

statements of witnesses and other material, we find no substance in this contention.

6. Factual situation that emerges may be summarised up thus:-

(i) Om Prakash (deceased) sustained only one injury and autopsy Surgeon Dr. Pratap Singh Yadav (Pw. 2) in his cross examination deposed that on the availability of quick medical aid the life of Om Prakash could be saved.

(ii) Nemi Chand (Pw. 12) stated that Om Prakash after sustaining injury, was taken to hospital Mangrol but no treatment was given to him and he was referred to Baran.

(iii) Ashwini Kumar IO (Pw. 12) admitted in his cross examination that when he arrested the appellant there were injuries on his person. The IO got the appellant medically examined but injury report was not submitted with the charge sheet.

(iv) As per the testimony of informant Ram Swaroop (Pw. 5) and Nemi Chand (Pw. 11) the deceased and appellant prior to infliction of injury had fought together.

7. From the material on record it is established that there was no premeditation on the part of the appellant to inflict the injury on the person of the deceased. It does not appear that the appellant attacked the deceased with the intention of causing his death, nor with the intention of causing such bodily injury as he knew to be likely to cause death, nor with the intention of causing bodily injury sufficient in the ordinary course of nature to cause death. The cause behind the incident was illegal ousting of the appellant from his house. Before inflicting the injury the appellant and deceased fought together. The appellant also sustained injuries and the deceased died on the next day of the incident. The offence is, therefore, reduced to one of culpable homicide not amounting to murder falling within the ambit of Part I of Section 304 IPC.

8. For these reasons we partly allow the appeal of appellant Pappu and instead of Section 302 IPC we convict him under Section 304 Part I IPC and sentence him to suffer ten years rigorous imprisonment and fine of Rs. 1000/-, in default to further suffer two months rigorous imprisonment.

9. The impugned judgment of learned trial Judge stands modified as indicated above.

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