

Babuda Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-23-2001

Reported in : 2002CriLJ3366

Judge : N.N. Mathur and; Jagat Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304, 325 and 447; Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Criminal Jail Appeal No. 302 of 1998

Appellant : Babuda

Respondent : State of Rajasthan

Advocate for Def. : I.S. Pareek, Public Prosecutor

Advocate for Pet/Ap. : Amitabh Acharya, Adv.

Judgement :

N.N. Mathur, J.

1. This appeal is directed against the judgment dated 17-3-1998 passed by the learned Sessions Judge, Pratapgarh, convicting the appellant of offence under Section 302, I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs. 250/- and in default of payment of fine to further undergo one month's

simple imprisonment. He has also been convicted of the offence under Section 447, I.P.C. and sentenced to three months' imprisonment and a fine of Rs. 100/- and in default of payment of fine to further undergo fifteen days' imprisonment. Both the substantive sentences have been ordered to run concurrently.

2. Briefly stated the prosecution case is that on 2-1-1995 at 3.40 p.m., P.W. 8 Homla lodged an oral F.I.R. Ex. P. 12 before P.W. 3 Jeeva, S.H.O., Police Station, Salamgarh, stating inter alia that in the afternoon at about 1 p.m., he along with deceased-Mangu were on the way to attend the 'Mausar' (feast on death). When they passed through the field of Mangu, appellant-Babuda was found plucking gramms and cutting grass from the field. Mangu asked Babuda not to damage his crop. On which, Babuda, caught hold of Mangu. threw him on the ground, sat on his chest and pressed the neck. In this way, Mangu died. On this report, police registered a case for the offence under Sections 302 and 447, I.P.C. The police inspected the site and prepared the inquest report and sent the dead body for autopsy. After usual investigation, police laid charge-sheet against the appellant-Babuda.

3. The appellant denied the charges levelled against him and claimed trial. The prosecution in support of the case examined 14 witnesses and produced certain documents. The appellant in his statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against him. The learned Sessions Judge found the prosecution case proved. He convicted and sentenced the appellant as noticed above.

4. It is contended by Mr. Amitabh Acharya, learned Amicus Curiae, appearing for the appellant that the entire case rests on the single interested witness P.W.1 Ramchandra. It is submitted that other eyewitnesses P.W.5 Doola and P.W.8 Homla have not supported the prosecution case and as such they were declared hostile. In the alternate, it is submitted that on the facts of the case, it does not appear that the appellant intended to commit murder of Mangu, as such, the offence against him does not travel beyond Section 325, IPC. On the other hand, learned Public Prosecutor has supported the judgment of the trial Court.

5. We have scanned, scrutinised and evaluated the prosecution evidence exhaustively and considered rival contentions. Before dealing with the contentions, it will be appropriate to indicate the evidence produced by the prosecution before the trial Court.

6. P.W. 14 Dr. Sanjay Bhargava has stated that he conducted the post mortem of the dead body of deceased Mangu and noticed the following injuries :

1. Abrasion 3/4 cm x 1/2 cm over right side of neck under lower jaw, 3 cm right to midline;

2. Contusion - 3cm x 3. cm. over right side of neck under lower jaw.

7. He has proved the post mortem report Ex. P. 13. In his opinion, Mangu died of asphyxia due to strangulation. Thus, the prosecution has established that deceased Mangu died of homicidal death.

8. P.W. 1 Ramchandra has stated that he was going to attend the 'Mausar' (feast on death) along with P.W.5 Doola. From the other route, Homla and Mangu were also going to attend the Mausar. At that time, accused Babuda was uprooting the grass. This led to quarrel between Babuda and Mangu. Babuda caught hold of Mangu, threw him on the ground and pressed the neck. The call of Homla attracted him. He found Mangu lying on the ground and Babuda pressing the neck. He, with the help of Homla, intervened and separated them. He was accompanied by Doola. Doola was sent to inform the father of Mangu. He massaged the body including the neck in order to save the life of Mangu. Nothing has been elicited in the cross-examination to discredit the testimony of this witness.

9. P.W.5 Doola has not supported the prosecution case and as such he has been declared hostile. P.W.8 Homla, who lodged the F.I.R., also did not support the prosecution case and, as such, he has been declared hostile. P.W. 13 Ratan Singh is the Investigating Officer. He has proved the receipt of the F.I.R. He has also given the details of the investigation.

10. The two eye-witnesses namely P.W.5 Doola and P.W.8 Homla have not supported the prosecution case. However, P.W.1 Ramchandra has given the

complete narration of the incident. His statement finds cor-roboration from the prompt F.I.R. and the medical evidence. In our view, he is a witness of sterling worth. Thus, the prosecution has succeeded in establishing that deceased Mangu died of homicidal death on account of strangulation by appellant Babuda.

11. As regards the nature of offence, it appears that a sudden quarrel had taken place and the appellant pressed the neck of Mangu. In the facts of the case, it cannot be said that accused Babuda has acted in a cruel and unusual manner. Thus, it cannot be said that appellant intended to commit murder of Mangu. However, he can be clothed with the knowledge that his action may cause death in all probability. Thus, the learned Sessions Judge has committed error in holding appellant Babuda guilty of murder. He is guilty of culpable homicide not amounting to murder punishable under Section 304, Part II. IPC.

12. Consequently, this appeal is partly allowed. The conviction of appellant Babuda for the offence under Section 302, IPC is converted into 304, Part II. IPC. Appellant Babuda is in jail since the date of his arrest. Thus, he has remained in jail for more than six years. The ends of justice would be met, if he is sentenced to the period already undergone. Accordingly, he is sentenced to the period already undergone. However, his conviction and sentence for the offence under Section 447, IPC is maintained. As the appellant has undergone the sentence, he shall be released forthwith, if not required in any other case.