

**Kheta Ram Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/917627](http://sooperkanoon.com/917627)

**Court :** Rajasthan Jodhpur

**Decided On :** May-18-2011

**Judge :** Narendra Kumar Jain; Govind Mathur

**Acts :** Indian Penal Code (IPC) - Sections 302, 304(Part-II); Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 173

**Appeal No. :** D.B.Criminal Appeal No.192/2007

**Appellant :** Kheta Ram

**Respondent :** State of Rajasthan

**Judgement :**

1. This appeal came up before us for orders on
2. An application seeking suspension of sentence, but with consent of counsel for parties we have heard the appeal itself finally.
3. In brief, facts of the case are that complainant Magh Singh (PW-1) submitted a written report (Ex.P/1) at Police Station Dungargarh on 19.2.2006 at 08:15 AM. As per the written report, on 17.2.2006 at about 10:00 PM Jagmal Singh and Ranjeet Singh conveyed Magh Singh that his brother Mool Singh has received certain injuries and he is lying in unconscious state. Magh Singh then rushed to the field and found Mool Singh lying in a jeep of Ramnarain in unconscious state. Parta Ram, Karni Singh and Kheta Ram were also sitting in the same jeep. Mool Singh was brought to the hospital at Bikaner where he was declared dead. After

returning to village, on inquiry Kheta Ram informed that Mool Singh alongwith Koja Ram came to him on 17.2.2006 and demanded a sum of Rs.200/- i.e. said to be due. He then gave a "aadia" blow to Mool Singh and due to that he became unconscious.

4. On basis of the complaint aforesaid investigation was made and a police report as per provisions of Section 173 Cr.P.C. was filed before the competent court. After committal of the case to the court of Sessions a charge for commission of an offence under Section 302 Indian Penal Code was read over to the accused and on denial of the same trial was commenced. The prosecution supported its case by producing 13 witnesses and 28 documents. An opportunity was given to the accused appellant to explain his conduct with regard to adverse material available in the prosecution evidence wherein he pleaded his innocence with assertion that the entire evidence adduced by the prosecution was false. In defence no ocular evidence was adduced by the appellant, however, two documents Ex.D/1 and Ex.D/2 were produced. The trial court after examining the evidence available and after hearing the parties held the accused appellant guilty for the offence punishable under Section 302 Indian Penal Code, thus, sentenced him for life imprisonment with a fine of Rs.1000/-. An additional imprisonment for a term of one month was also awarded in the event of default in payment of fine.

5. Being aggrieved by the judgment aforesaid dated 21.2.2007 passed by learned Additional Sessions Judge (Fast Track) No.2, Bikaner in Sessions Case No.54/2006 this appeal is preferred.

6. The submission of counsel for the accused appellant is that even by accepting case of the prosecution, as it is, then too the offence commissioned by the accused appellant do not constitute an offence punishable under Section 302 Indian Penal Code. According to learned counsel the act of the accused appellant at the most that may come within the purview of the offence punishable under Section 304 part-II Indian Penal Code.

Heard counsel for the appellant as well as learned Public Prosecutor.

7. The homicidal death of Mool Singh is not at all in dispute in view of the statements of Dr. Rahul Jain who conducted autopsy on the person of Mool Singh and submitted the postmortem report Ex.P/18. As per the medical evidence available the body of deceased Mool Singh was having following antemortem injuries: - 1.Stitched wound, 03 cm long, oblique, right occipital region (lacerated).

2. Abrasion 6 cm long, linear right leg lowers half medial aspect.

3. Abrasion 2 cm long right knee medial aspect.

4. Abrasion 1/2 x 1/2 cm left knee anteriorly.

5. Abrasion 1/2 x 1/2 cm left leg, upper part anteriorly.

6. Abrasion 2 x 1/2 cm right elbow, medially on abrasions right red seat is seen.

8. The cause of death given is coma due to antemortem injury to skull and brain that was sufficient to cause death in ordinary course of nature.

9. PW-13 Govind Ram being Investigating Officer verified all the steps taken during the course of investigation including the recovery of "aadia" on basis of the information of accused appellant as per Ex.P/6. The "aadia" recovered on basis of the information given by the accused was having blood stains and as per Forensic Science Laboratory report Ex.P/22 the blood stains available on the "aadia" matched with blood stains available on the bushirt of deceased and also the blood smeared soil collected from the spot where body of deceased was lying. Before proceeding further suffice it to mention that "aadia" is nothing but a wooden stick used as a vertical stand in a bullock or camel cart, as the case may be, or even in tractor trolley to provide support to the vertical boundaries.

9. The most important witness in this case is PW-7 Koja Ram. According to this witness he and Mool Singh consumed liquor at the residence of Mool Singh. Mool Singh then cooked food. Ranjeet Singh then came on tractor and with him Mool Singh and this witness went to hamlet of Karni Singh. Mool Singh after dropping Ranjeet Singh there took the tractor and proceeded for the hamlet of Kheta Ram. On calling, Kheta Ram came out from whom Mool Singh demanded a sum of

Rs.200/-. Mool Singh abused Kheta Ram as he expressed his inability to make such payment. The tractor driven by Mool Singh while getting turned hit Jagannath Ram who cried "MUJHE MAAR DIYA MUJHE MAAR DIYA". Kheta Ram being annoyed with that took out "aadia" and gave two blows to Mool Singh, consequent to that he fell down.

10. The facts stated by PW-7 in quite unambiguous terms discloses that accused Kheta Ram as a matter of fact was not having any intention to kill Mool Singh, but he gave "aadia" blow as an spontaneous act after getting Jagannath hurt by tractor. The intention to cause death in the instant case is conspicuously absent. As a matter of fact on basis of the evidence available it is impossible to infer even about the knowledge of the consequence to the extent of death of Mool Singh as a result of "aadia" blows given by accused appellant. In such circumstances the crime committed by him is certainly not an offence defined as murder under Section 300 Indian Penal Code. The accused certainly gave "aadia" blow to Mool Singh and consequent to that he died, but the accused was not having any knowledge that the blow given by him may cause death. This is further strengthen from the fact that no effort was made by the accused to flee from the spot. He remained at the spot till reaching of Magh Singh (PW-1). The case of the accused appellant in view of the facts and circumstances existing is an offence punishable under Section 304 part-II Indian Penal Code.

11. In view of the finding above, we are of definite opinion that the trial court erred while convicting the accused appellant for the offence punishable under Section 302 Indian Penal Code. Accordingly, this appeal is allowed in part. The conviction of accused appellant Kheta Ram son of Jagannath Ram is modified from Section 302 Indian Penal Code to Section 304 part-II Indian Penal Code and his sentence of life imprisonment is substituted by the sentence of rigorous imprisonment for a term of 6 years with a fine of Rs.5000/-. In default to pay fine, the accused appellant shall require to undergo two months simple imprisonment in addition to his substantive sentence.