

**Rumal Shah Vs. State**

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**Court :** Delhi

**Decided On :** Sep-15-2011

**Judge :** Pradeep Nandrajog; Sunil Gaur, Jj.

**Appeal No. :** CRL.A.195/1999

**Appellant :** Rumal Shah

**Respondent :** State

**Advocate for Def. :** Mr.Pawan Sharma; Mr.Harsh Prabhakar, Adv.

**Advocate for Pet/Ap. :** Mr.Javed Hashmi; Mr.Rashid Hashim, Adv.

**Judgement :**

1. Eye witness account stated before the Court by Chandrika Prashad PW-4 is conceded to by learned counsel for the parties as a true account of what happened on 30.10.1996 at around 6:00 PM which caused the death of Jasrathi, wife of the appellant and mother of co-accused Anwar Shah, who faced a trial at a Juvenile Court since he was a juvenile when the offence was committed.

2. We thus note, in brief, testimony of Chandrika Prashad PW-4 who stated that he knew Rumal Shah i.e. the appellant since last 14 years, being neighbours. Rumal Shah was married to Jasrathi and had 5/6 children born to her and for the last 3/4 years Jasrathi used to quarrel with Rumal Shah, alleging his having an affair with a lady Ram Kali who lived in the vicinity. Since Rumal Shah persisted with his

relationship with Ram Kali, Jasrathi left Rupal Shah and went to her village but returned on 2.10.1996. On the day of the incident i.e. 3.10.1996 at about 6:00 PM he saw Jasrathi unlock the shop belonging to Rupal Shah and as she was in the process of unlocking the same, her son Anwar Shah came and started beating his mother with a danda telling her not to unlock the shop. Jasrathi insisted to open the shop saying that the shop belonged to her. Rupal Shah reached the spot and took the danda from the hand of his son Anwar and hit Jasrathi who fell down. Rupal Shah lifted a brick and hit Jasrathi on the head. Both Anwar and Rupal Shah ran away after causing injury to Jasrathi.

3. The testimony of Chandrika Prashad PW-4 would show that the act of the appellant and his son was not pre-meditated. There was tension between husband and wife. The wife had left for her village but returned a day previous and on the day of the incident she tried to forcibly occupy the shop from where appellant used to conduct business and she alleged that the shop belonged to her. Her minor son Anwar prevented her from occupying the shop and hit her with a danda; appellant chanced to reach and got infuriated at the attempt of his estranged wife to take forcible possession of the shop and seething in anger, upon the provocation of forceful dispossession from his shop, hit his wife first with a danda and then a brick.

4. The post-mortem report Ex.PW-1/A, proved at the trial by its author Dr.Ashok Jaiswal PW-1, would reveal that Jasrathi had 2 abrasions, 1 on the left malar region and the other on the right side front of neck, suggestive of a scuffle in which the opponent tried to push Jasrathi by catching hold of her neck. 4 lacerated wounds, 1 on the left eyebrow and 2 in the temporal region and the 4<sup>th</sup> on the right zygomatic region evidence the assault by a blunt object, could be a stick or a brick. A swelling on the dorsum of the nose was also detected.

5. Death was due to craniocerebral injuries i.e. the 3 lacerated wounds on the left eyebrow and the temporal region.

6. No doubt the death of Jasrathi is homicidal and the appellant, her husband, is responsible for the same, but it cannot be said that the evidence unerringly points to his intention to kill Jasrathi. The evidence leans in the direction of the offence

being culpable homicide not amounting to murder for two reasons. Firstly, there was a provocation by Jasrathi, who tried to forcefully occupy the shop wherefrom appellant used to carry on business, and secondly it was anger due to provocation, without any particular intention to cause death; intention being to teach Jasrathi a lesson of her life and to prevent her from forcefully occupying the shop, that the appellant hit his wife. To put it in legal terminology, it can be said that the appellant acted pursuant to a provocation or alternatively and additionally it can be said that there was no intention to kill Jasrathi and the intention was to teach her a lesson of her life by causing grievous injuries and unfortunately death resulted.

7. Disposing of the appeal we partially allow the same and convict the appellant for having caused the homicidal death of his wife. On the issue of sentence, we note that the offence was committed on 3.10.1996 i.e. nearly 15 years ago. The appellant is not involved in any other offence. When admitted to bail the appellant had undergone an actual sentence of 6 years and 5 months and had earned a remission for a period of a little over 1 year. Accordingly, we hold that ends of justice would be satisfied if the appellant is sentenced to undergo imprisonment for the period already undergone.

8. The appeal stands disposed of in terms of para 7 above and since the appellant is on bail we discharge the bail bond and surety bond furnished by the appellant.

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