

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR

**JUDGMENT**

(1) D.B.CRIMINAL JAIL APPEAL NO.333/2001  
(Roop Singh @ Rupa Vs. State of Rajasthan)

(2) D.B.CRIMINAL JAIL APPEAL NO.393/2001  
(Mst.Rajji Vs. State of Rajasthan)

D.B.CRIMINAL JAIL APPEALS AGAINST  
THE JUDGMENT DATED 4.5.2001 PASSED  
BY LEARNED SESSIONS JUDGE,  
HANUMANGARH (RAJASTHAN) IN  
SESSIONS CASE NO.82/98.

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Date of Judgment: August 31, 2006

**PRESENT**

**HON'BLE MR.JUSTICE N.N.MATHUR**  
**HON'BLE MR.JUSTICE R.P.VYAS**

Mr.Niranjan Singh, Amicus Curiae

Mr.O.P.Rathi, Public Prosecutor

**BY THE COURT: (PER HON'BLE MR.MATHUR J.)**

1. Both these appeals arises from the judgment dated 4.5.2001 passed by the Sessions Judge, Hanumangarh convicting Roop Singh @ Rupa and Mst.Rajji W/o Khani

of offence under Section 302 read with 34 I.P.C. and sentencing them to imprisonment for life and to pay a fine of Rs.2000/- each; in default of payment to further undergo one year's rigorous imprisonment.

2. Briefly stated the prosecution case is that on 17.6.98 P.W.2 Sardul Singh lodged oral First Information Report at Police Station, Pilibanga stating inter alia that in the morning at about 7.30 A.M. his brother Khani's son namely P.W.3 Modi aged 10-12 years approached to him and informed that in the night at about 10-11 his father has been killed by Shyama S/o Hazoor Singh and his mother Rajji by inflicting Kulhari blows on the head. The dead body was dragged and thrown on the road. On this information, the police registered a case for offence under Section 302/34 I.P.C. and proceeded with investigation. The police inspected the site, seized incriminating articles and prepared the inquest report. The post-mortem of the dead body was arranged. The appellants were arrested and incriminating articles were recovered in pursuance of the information given by them. After usual investigation, police laid charge-sheet against both the appellants for offence under Section 302/34 I.P.C.

3. The appellants denied the charges levelled against them and claimed trial. The prosecution adduced oral and documentary evidence to prove its case. The appellants in their statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against them. The trial court having found the prosecution case proved convicted and sentenced the appellant in the manner stated above.

4. Assailing the conviction, it is contended by Mr.Niranjan Singh learned Amicus Curiae appearing for both the appellants that the trial court has committed manifest error in convicting the appellants on the testimony of P.W.3 Modi and P.W.5 Kalu, who admittedly given the statements under the pressure of the police and the complainant party. It is submitted that in the First Information Report, the name of one Shyama has appeared as the assailant. However, this was later on substituted by appellant Roop Singh @ Rupa. In the cross examination, it is admitted by both the witnesses that they have given out the name of Roop Singh under the instructions of the Investigating Officer. It has also been admitted that they were kept

in police custody for about a week. Their mother namely Mst.Rajji the accused in the case was also being assaulted by the police. The learned counsel has also criticised the evidence of recovery of incriminating articles. It is submitted that the recoveries have been made from open and sundry place. On the other hand the learned Public Prosecutor has supported the judgment of the trial court.

5. We have carefully scrutinised the prosecution evidence and considered the rival contentions. The entire case rests on the testimony of the ocular evidence of P.W.3 Modi and P.W.5 Kalu.

6. Before we deal with the evidence of occurrence, it would be convenient to refer to the other relevant evidence i.e. P.W.1 Ram Lal and P.W.2 Sardul and P.W.12 Khushi Ram the brother and father of the deceased respectively.

7. P.W.1 Ram Lal is the cousin brother of deceased Khani. He deposed that in the early hours of the date of occurrence, P.W.2 Sardul Singh and P.W.3 Modi gave information about the murder of Khani. He went to the

house of Khani along with them. He found Khani lying dead on the road. There was injury on his head. He asked Sardul and Modi to inform the police of the incident. After some time police arrived. He has given details of the investigation. He is also motbir of the recovery of the incriminating articles. Nothing substantial has been elicited in the cross examination to discredit the testimony of this witness.

8. P.W.2 Sardul is the brother of deceased Khani. He stated that his nephew P.W.3 Modi informed him about the death of his father Khani. He also told him that his father was being killed by Rupa and Rajji. He further stated that he lodged oral First Information Report Ex.P16. He further stated that on inquiry, P.W.3 Modi and P.W.5 Kalu disclosed that their father Khani was murdered by Rupa and Rajji. He has given some details of the investigation. In the cross examination, he admitted that when P.W.3 Modi approached to him he appeared to be under some fear. He asked him to state the true facts without any fear. Nothing substantial has been brought in from the cross examination to discredit the testimony of this witness.

9. P.W.12 Khusi Ram is the father of deceased Khani. He stated that after 6-7 days of the incident, the appellants Rajji and Rupa approached him and tendered apology for killing Khani. He asked them to approach to the State Government. In the cross examination, he admitted that Rajji was living separate from him for the last more than 5-6 years. However, she used to visit them.

10. P.W.3 Modi is the son of deceased Khani aged 17-18 years. He deposed that on the fateful night he was at his residence. After his mother cooked the food the appellant Rupa arrived at their residence. He straight way went inside the room. Thereafter, his mother also went inside the said room. Both of them came out of the room after about an hour. His deceased father was sleeping outside the house on a sand dune. Rupa was carrying a Kulhari in his hand. His mother was carrying a **Chhuri**. Rupa gave a Kulhari blow on the head of his deceased father. His mother also caused injuries by **Chhuri**. Rupa gave 2-3 blows. He succumbed to the injuries on the spot. Rupa brought his deceased father down from the cot. Rupa and his mother Rajji dragged the dead body of his father Khani and threw on the

road. An empty bottle and pair of shoes were placed nearby the dead body. The signs of dragging were removed by his mother. The occurrence was witnessed by him, his brother and the sister. The appellant Rupa threatened them that if they raise voice, they will also be killed. In the morning he reported the matter to his elder uncle Sardul.

11. P.w.5 Kalu is a child witness aged 12 years. The trial court having satisfied that he had sensibility of disposing on oath, after noting the questions & answers put to him, it recorded his statement. He deposed that on the date of occurrence he was at his residence along with his mother, father, brother and the sister. After taking food his father went to sleep on the sand dune. He went to sleep at a distance of about 4-5 Pavandas from the place his father was sleeping. At that time Rupa arrived armed with a Kulhari. Appellant Rupa straight way went inside the room of the house. He was being followed by his mother. After about an hour both of them came out of the room. The appellant Rupa gave 3 Kulhari blows on the head of his deceased father. His mother also inflicted injuries to his father by **Chhuri**. His father raised voice but soon he succumbed to the

injuries. He was brought down from the cot. The dead body was dragged and thrown on the road. A great deal of argument has been made criticising the testimony of both the eye-witnesses of the occurrence namely P.W.3 Modi and P.W.5 Kalu on the ground that they changed their initial version under the police pressure substituting the name of appellant Rupa in place of Shyama. It is submitted that P.W.3 Modi has admitted in the cross examination that he has given the name of Roop Singh in the Court as suggested by the police. He also admitted that he has given the name of his mother in Court as suggested by the police. He further admitted that his mother was being beaten by the police in his presence. On the day when police had beaten his mother, she disclosed the name of appellant Rupa. He was also kept in police custody for 2-3 days. Only thereafter appellant Rupa was arrested.

12. We have carefully scrutinised the evidence of both the witnesses of the occurrence, who are none else but the sons of deceased Khani and appellant Rajji. We are of the view that the admissions of both the witnesses in the cross examination as pointed out by the learned counsel cannot be read in isolation. It has to be read in

totality of the facts and circumstances. A horrifying incident has taken place in presence of three children. Unfortunately, their mother is also a party to the incident. They alleged to have witnessed their mother finishing the father.

13. P.W.5 Kalu has stated that his mother had threatened P.W.3 Modi that if he does not take name of Shyama, he would also be killed. At the initial stage police must have made an effort to extract truth from the witness and appellant Rajju keeping in view so far as it had become necessary as the Kalu has disclosed the name of Rupa. Thus, it had become necessary to bring P.W.3 Modi out of the threat given by appellant Rajju. P.W.2 Sardul has stated that initially when P.W.3 Modi had approached to him he noticed that he was under certain fear. P.W.3 Modi has in terms denied that his father was murdered by Shyama.

" यह गलत है कि श्यामा ने मेरे पिता का कत्ल किया है। "

14. On a court question, P.W.3 Modi has clarified that though he was being beaten by the police but whatever the statement made before the police and the learned Magistrate was correct. It may be stated that in a

statement before the police under Section 161 and before the Magistrate under Section 164 Cr.P.C. he has given the name of Rupa as the assailant of his deceased father Khani.

15. P.W.5 Kalu has denied the suggestion that he was giving the name of Rupa at the instance of his grandfather. He further stated that initially he was under certain fear but later on when he reached to his grandfather he considered appropriate to disclose the truth. Thus, on careful consideration of the entire evidence, we are of the view that the version of both the witnesses to the effect that appellant Rupa visited their house and he killed his father by inflicting Kulhari blows along with their mother is correct. The statements of these two witnesses find corroboration from medical evidence as well as the evidence of recovery of incriminating articles.

16. P.W.6 Dr.Jaspal conducted the autopsy on the dead body of deceased Khani vide Ex.P20. He noticed the following injuries on his person:-

(1) Incised wound 6" x 4½" x cavity deep on the right side of scalp from the lateral boundary of nose to right eye. Right

maxillary process, Right frontal bone, Right Parietal Bone & up to the behind the parietal eminence, and also injury to underlying issue & substance and also injury to left brain tissue present, Pinna separated from the body.

(2) Incised wound  $3\frac{1}{2}$  X 1" x cavity deep on the right fore Head & right anterior part of scalp present.

(3) Incised wound  $2\frac{1}{2}$ " x  $\frac{1}{4}$ " x cavity deep with anterior part of the fore head & scalp mid line.

(4) Abrasion:- (i)  $3\frac{1}{2}$  x 2" size on the lower part of chest anteriorly left side.  
(ii) 3" x 2" size on the right lower part of chest anteriorly.  
(iii) 2" X 1" size on the upper part of abdomen anteriorly right side.

(5) Bruise 2" x 2" around left umbilicus anteriorly.

In his opinion the cause of death of deceased Khani was multiple injury on face and scalp and vital part i.e. Brain causing excessive haemorrhage & shock.

17. It is stated by P.W.11 Hardeep Singh that Mst.Rajju was arrested on 23<sup>rd</sup> June, 1998 vide Ex.P10. While in custody she gave information Ex.P24 leading to recovery of the bloodstained **Chhuri** vide Ex.P11 in presence of Motbirs namely P.W.1 Ram Lal. In pursuance of the same information a bloodstained

Salvar and Jampher were also recovered vide Ex.P12. The said articles were seized and packed on the spot. It is not necessary to deal with the link evidence as the same has not been challenged. Suffice it to say that there is sufficient material on record to show that the seized articles remained intact till they reached to the Forensic Science Laboratory. As per the FSL report Ex.P31 the **Chhuri**, Salvar and Jampher have been found stained with blood of human origin. The appellant Rajji has failed to give any explanation as to the presence of human blood on **Chhuri** and her own apparels namely Salvar and Jampher.

18. The appellant Rupa was arrested on 24<sup>th</sup> June, 1998 vide Ex.P25. In pursuance of the information given by him vide Ex.P26 a bloodstained Kulhari was recovered vide Ex.P14 in presence of the Motbir P.W.1 Ram Lal. Further in pursuance of another information Ex.P27 the appellant's apparels were recovered vide Ex.P15 in presence of the Motbirs. The articles were seized and packed on the spot. They reached intact to the Forensic Science Laboratory. As per the FSL report Ex.P31 they have been found to be stained with blood of human origin. The appellant Rupa has failed to give

any explanation as to the presence of human blood on the Kulhari recovered from his possession so also his own clothes. It is also significant to notice that the clothes of the deceased were seized by the police vide Ex.P8. As per the FSL report Ex.P31 the blood on **Chhuri** as well as on the Salvar and Jampher are of the same group i.e. Blood Group 'B'.

19. Thus, analysing the entire evidence, we find the testimony of P.W.3 Modi and P.W.5 Kalu natural and trustworthy. The attempt of the appellants to mislead the police by influencing the witness like P.W.3 Modi had not succeeded. The statements of both the witnesses find corroboration from the medical evidence as well as the recovery of the incriminating articles. Thus, we are of the view that the prosecution has succeeded in establishing the case against both the appellants beyond any manner of doubt.

20. Consequently, both the appeals being devoid of merit stand dismissed. Both the appellants are in Jail, they will serve out the remaining part of the sentence.

**(R.P. VYAS), J.**

**(N.N.MATHUR), J.**