

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Rameshwar Yogi Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO. 1443/ 2002)

D. B. Criminal Appeal under Sec. 374
(2) Cr. P. C. against the judgment dated
1-10-2002 in Sessions Case No. 25/2002
passed by Shri Govind Ram Gupta, RHJS,
Additional Sessions Judge (Fast Track)
No. 1, Kota.

Date of Judgment : July 31, 2008.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE MAHESH BHAGWATI

Mr. A. K. Gupta] for the appellant.
Mr. Vijayant Nirwan]

Mr. Jinendra Jain, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma, J.)

Rameshwar, appellant herein, with a lathi in hand, chased and ousted a mad dog out of the village. At the same time Rameshwar inflicted lathi blow on the head of his cousin Rajendra. Rameshwar was put to trial for committing murder of Rajendra before learned Additional Sessions Judge (Fast Track) No.1 Kota, who vide judgment dated October 1, 2002 convicted and sentenced him under Section 302 IPC to suffer imprisonment for life and fine of

Rs. 1,000/- , in default to further suffer imprisonment for six months. In this appeal Rameshwar has assailed the said finding of learned trial court.

2. It is the prosecution case that on January 07, 2002 informant Mhan Lal (Pw.1) submitted a written report (Ex.P-1) at police Station Sangod to the effect that on the said day around 8 AM while his son Rajendra was going towards the field Ram Gopal, Rameshwar and Nand Bi hari waylaid him and inflicted lathi blows on his person. On that report a case was registered under sections 341, 323, 307 and 34 IPC and investigation commenced. During the course of investigation Rajendra succumbed to his injuries and section 302 IPC was added. Dead body was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (fast Track) No.1 Kota. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 14 witnesses. In the explanation under Sec.313 Cr PC, the appellant claimed innocence. One witness in support of defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein

above.

3. Prior to his death Rajendra Kumar vide injury report (Ex. P- 17) received following injuries:-

1. Lacerated wound over frontal region 1 x 1cm with contused swelling 2cm left to mid line 8cm above left brow scalp layer deep.
2. Abrasion over Lt. frontal region 0.5 x 0.5cm
3. Lacerated wound over Rt. parieto occipital region 2 x 1cm x bone deep with contused swelling.
4. Lacerated wound over occipital region 1 x 0.5cm with contused swelling.

Dr. P. K. Tiwari (Pw. 14), who performed autopsy and drew Post Mortem Report (Ex. P- 18) opined that cause of death was coma as a result of head injury.

4. The only contention of learned counsel for the appellant is that since the incident occurred all of sudden and the appellant did not act in a cruel manner he could not have been convicted and sentenced under section 302 IPC. Learned Public Prosecutor however opposed this contention and urged that intention of appellant to kill the deceased can be gathered from the circumstances.

5. We have pondered over the submissions.

6. Rekha (Pw. 8) is the only eye witness of the incident. In her deposition she stated that:-

"गांव में हडकी कुत्तिया को भगाकर रामेश्वर आया था। उसके पास लठ्ठ था। उसने आते ही मेरे भाई साहब के माथे पर लठ्ठ की दे पाडी।"

(Rameshwar came after ousting mad dog out of the village. He was armed with lathi. As soon as he came he inflicted lathi blow on the forehead of my brother.)

In her cross examination she deposed that Rameshwar inflicted only one lathi blow on the person of Rajendra.

7. The Fourth exception to Section 300 IPC covers acts done in a sudden fight. The term 'fight' occurring in Exception-4 is not defined in the Indian Penal Code. 'Fight' postulates a bilateral transaction in which blows are exchanged. The help of Exception-4 can be availed if death is caused: -

- (i) without premeditation;
- (ii) in a sudden fight;
- (iii) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and
- (iv) the fight must have been with the person killed.

8. As already noticed death of Rajendra was caused without premeditation and in a sudden fight. The appellant gave single blow with lathi on the head of Rajendra and he did not repeat the same.

This fact situation brings this case within the ambit of Exception 4 to Section 300 IPC.

9. For these reasons, we partly allow the appeal and instead of section 302 we convict the appellant under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period of more than six years, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. Appellant Rameshwar Yogi, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

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

(Mahesh Bhagwati), J. (Shiv Kumar Sharma) J.

arn/