
(2019) 01 RAJ CK 0003
In the Rajasthan High Court
Case No : Criminal Appeal No. 636 Of 2010

Gama @ Shiv Sagar And Anr

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 02-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304, 323

Citation : (2019) 01 RAJ CK 0003

Hon'ble Judges : Pradeep Nandrajog, J;Manoj Kumar Garg, J

Bench : Division Bench

Advocate : Deepika Vyas, C.S. Ojha

Final Decision : Disposed Off

Judgement

1. Charged for having committed offences punishable under Section 302/34 and 323/34 IPC, vide impugned judgment dated 20.10.2010 the appellants have been convicted for both offences. For the offence of murder they have been sentenced to undergo imprisonment for life and pay fine in sum of ₹ 10,000/- each. For the offence punishable under Section 323/34 IPC the appellants have been sentenced to undergo simple imprisonment for six months.
2. After taking us through the evidence, learned counsel for the appellants urged that in view of the evidence led by the prosecution, at best, for the death of Chetan Ram, the appellants can be convicted for an offence punishable under Section 304 Part-II IPC. Counsel states that for the simple injury caused to the wife of the deceased i.e. Tejo Devi and Babu Lal the conviction is unassailable.
3. In view of the submissions finally advanced at the hearing of the appeal we note only such facts as would be relevant to deal with the contentions advanced.
4. Process of criminal law was set into motion when Tejo Devi PW-10, reached Police Station Rajiasar, District Ganganagar at about 9.30 p.m. on 29.10.2008 and made a written report Ex.P-24 to the effect that she along with her husband Chetan Ram were resident of Village Sangeeta Police Station Suratgarh. That

since the last week her husband was working in a factory near a lift canal and both were residing in a room in the factory. The previous night, appellant No.1 Gama, a labour in the factory cut off the electricity supply to the factory and in respect of which at 10.00 a.m. in the morning her husband questioned Gama in this regard. One Babu Lal came there. There was a verbal altercation between Babu Lal and Gama. It was followed by Gama slapping Babu Lal. Her husband intervened. At that Gama and his brother, co-appellant Pappu, started a physical fight with her husband. Her husband ran on to the road outside. Gama picked up an iron rod and his brother picked up a stone. They both chased her husband. She and Babu Lal tried to save her husband. She was injured. Gama and Pappu, using the iron rod and the stone started hitting her husband on the front side of his face. Her husband got injured. Gama and Pappu ran away. That her husband had died.

5. On basis of the report the FIR Ex.P-25 for offences punishable under Section 302/34 and 323 IPC was registered.

6. The investigation was taken over by ASI Rameshwar Dayal PW-9 who proceed to the spot and seized the dead body of Chetan Ram and sent the same for post-mortem. Dr. Vijay Prakash PW-7 conducted the post-mortem and as recorded in the post-mortem report Ex.P-21 the injuries on the body of the deceased were nine in number. The same reads as under:-

- "1. Lacerated wound sized 1¼" x ½" x Bone deep, on rt. cheek
2. Lacerated wound lower lip(rt. Side). Sized ½" x ¼" x soft tissue deep.
3. Lacerated wound lower lip (rt. Side) sized 1"x ½" x soft tissue deep.
4. Left inner incisor tooth (upper) broken & adjusting teeth loosened.
5. Lacerated wound 1¼" x 1/6" x through & through left ala of nose.
6. Lacerated wound 3"x ¾" x bone deep extending from left eye brow to rt.side of upper part of nose (on examination by inserting finger into the wound, broken pieces of bone could be palpated - felt).
7. Lacerated wound of the shape of English letter 'L', on the left side of forehead, where the longer arm of the 'L' (from back to front) is 1¾" long & the shorter arm (from rt. to left) is 1½"long. Wound is bone deep & 1/3" wide.
8. Lacerated wound ½" x 1/8" x Bone deep on left cheek.
9. Lacerated wound ½" x 1/6" x Soft tissue deep, just in front of rt. Pinna."
7. Cause of death opined was laceration of the brain in the right occipital region caused by injuries No.6 and 7.
8. The complainant Tejo Devi PW-10 and Babu Lal PW-2 were got medically examined by the Investigating Officer and MLC Ex.P-

19 of Tejo Devi and Ex.P-20 of Babu Lal record no external injury to Tejo Devi but she complained of pain in the mid front of the left thigh and that Babu Lal had bruises and lacerated wounds on the left occipito-parietal region and the hand.

9. Both appellants were arrested around 2.00 p.m. on 06.11.2008. They made disclosure statements and pursuant thereto an iron rod and a piece of stone respectively was recovered. FSL report Ex.P-29 records that human blood of group 'A' was detected on the two which also happened to be the blood group of the deceased proved from the fact that the blood of the same group was detected on the pant and shirt which the deceased was wearing when he was assaulted.

10. Appearing as PW-2, Babu Lal deposed facts in sync with the statement Ex.P-24 on basis whereof the FIR was registered and appearing as PW-10 Tejo Devi also deposed facts in sync with her statement based whereon the FIR was registered.

11. With reference to the statement made by Tejo Devi on basis whereof the FIR was registered and the testimony of the two injured witnesses, learned counsel for the appellants urges that the statement and the testimony would show that there is no pre-meditation on the part of the appellants to either murder the deceased or cause injury to the two witnesses. The statement made to the police at the first instance and the testimony of the two injured witnesses, learned counsel urges, show that the previous night electricity to the factory where the deceased and the complainant were residing had been disconnected by appellant Gama and the next day morning her husband questioned Gama as to why he did so. Babu Lal intervened. There was a heated exchange of words between Babu Lal and Gama. Gama slapped Babu Lal. The deceased intervened to separate the two. Co-appellant Pappu joined. Both appellants started fighting with the deceased who ran towards the road. Appellant Gama picked up an iron rod and appellant Pappu picked up a stone and started hitting him on his face. The two injured witnesses intervened and received simple injuries.

12. We agree with the submissions advanced by the learned counsel for the appellants that the evidence suggests that on the issue of electricity supply being disconnected to the factory the previous night, when deceased questioned Gama, Babu Lal intervened. Gama slapped Babu Lal; Pappu joined. The deceased intervened to save Babu Lal and unfortunately became the victim of the assault.

13. It is thus a case where a trivial incident took an ugly face on the spur of moment. Neither appellant came armed with the intention of causing any injury either to Babu Lal or to the deceased. The initial target of the assault was Babu Lal and at that stage neither appellant was armed. It is only when deceased intervened that the appellants picked up an iron rod and a stone each i.e. handy objects.

14. The post-mortem report shows that the blows were directed towards the face

of the deceased and unfortunately injuries No.6 and 7 caused fracture of the skull on the forehead and resulted in damage to the brain tissue.

15. It is thus a case where it has to be held that the appellants, while assaulting the deceased, had knowledge that by their act the deceased could die and the assault was not with the intention to murder the deceased.

16. For the death of the deceased the offence committed by the appellants is culpable homicide not amounting to murder punishable under Section 304 Part-II IPC.

17. Maintaining the conviction of the appellants for the offence punishable under Section 323 IPC for the injuries caused to Babu Lal and Tejo Devi which are simple in nature and also maintaining the sentence for the said offence, we dispose of the appeal modifying the conviction of the appellants pertaining to the death of Chetan Ram. The appellants are convicted in respect of said death for the offence punishable under Section 304 Part-II IPC. The appellants have undergone an actual sentence of 9 years, 10 months and 29 days as of today. Thus, we sentence the appellants to undergo the imprisonment for the period already undergone for the offence punishable under Section 304 Part-II IPC. Both sentences shall run concurrently.

18. Since the appellants are in jail, they are directed to be set free forthwith if not required to be in custody in any other case.