

(2017) 10 RAJ CK 0011
In the Rajasthan High Court
Case No : 1075 of 2016

Kailash S/o Shri Haza Bhagora

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 13-10-2017

Acts Referred:

Indian Penal Code, 1860, Section 302,
Section 34, Section 341 -
Punishment for murder - Acts done by several persons in furtherance of common
intention - Punishment for wro

Citation : (2017) 10 RAJ CK 0011

Hon'ble Judges : Govind Mathur, Vinit Kumar Mathur

Bench : DIVISION BENCH

Advocate : J @APPELLANT @hash Deora, JPS Choudhary

Judgement

1. By the judgment impugned dated 30.9.2016, learned Additional Sessions Judge No.4, Udaipur, recorded conviction of accused Kailash and Kantilal, young boys of 19 and 20 years respectively, for the offences punishable under Sections 341 and 302 / 34 Indian Penal Code and awarded sentence to undergo life term imprisonment with a fine of Rs.10,000 each and further to undergo two months imprisonment in the event of default in payment of fine for commission of the offence punishable under Section 302 / 34 Indian Penal Code.

2. In brief, facts of the case are that on 26.2.2012 a written report was submitted by one Shri Bherulal to the Station House Officer, Police Station Panarva with assertion that on

25.2.2012, when his grand father Bhura was returning to home from the shop of Roshanlal, accused Kantilal and Kailash at about 06:30 PM, standing nearby the under construction house of Anna, had quarrel with him. Kailash pelted a stone that caused injury on the jaw of Bhura, consequently he fell down and then Kantilal gave a lathi blow on his back. Both the accused persons then fled from the spot of occurrence. The injuries caused resulted into death of Bhura.

3. Acting upon the written report, a case was registered against the accused persons for the offences punishable under Sections 341 and 302 / 34 Indian Penal Code. After regular investigation a charge sheet was filed before the court of Judicial Magistrate, First Class, Kotda who committed the same to the Sessions Court, Udaipur being a case Sessions triable. After hearing the accused persons, a charge was framed against them for the offences punishable under Sections 341 and 302 / 34 Indian Penal Code and on denial of the same trial commenced as desired.

4. The prosecution supported its case with the aid of evidence adduced by witnesses PW-1 to PW-16 and documents marked as Ex.P/1 to Ex.P/28. While availing the opportunity to explain the adverse and incriminating circumstances in prosecution evidence the accused termed the same false and concocted with explanation that deceased Bhura would have gone to liquor shop and must have fell down under intoxication. No evidence in defence was adduced.

5. The trial court, after examining the evidence available on record, recorded conviction and awarded sentence.

6. In appeal, the sole argument of learned counsel for the appellants is that even by accepting the prosecution case the offence said to be committed by them does not travel beyond an

offence described under Section 304 Part-II Indian Penal Code. According to learned counsel, as per medical evidence the cause of death is hemorrhagic shock due to injury on spleen and left lung and that injury was caused due to a single lathi blow on back of the deceased. It is asserted that the sequence of events indicates that the appellants were not at all intending to cause death of Bhura but due to some spontaneous quarrel, a lathi blow was given on back, which is not a vital part of human body. The accused, if had any intention to cause death of Bhura, then they must have caused lathi blow on some vital part and not on back of the deceased.

7. Learned Public Prosecutor quite fairly accept that the injury caused was not on any vital part but on back of deceased that that too spontaneously during the course of certain hot deliberations.

8. Heard learned counsels and examined the record.

9. Looking to the medical evidence available on record there is no doubt about homicidal death of Shri Bhura.

10. The only issue required to be examined is whether the present accused persons participated in the crime in question and if so, then whether that amounts to commission of an offence punishable under Section 302 Indian Penal Code.

11. The prosecution cited Shri Shri Bherulal (PW-1), Shri Kalu (PW-2), Shri Ramesh Chandra (PW-4), Smt. Mithudi Bai (PW-5), Smt. Nani Bai (PW-6) and Shri Kika (PW-7) as eye witnesses.

12. Shri Bherulal (PW-1) stated that at about 06:00 PM on 25.2.2012, his grand father Bhura was returning to his house. At that time accused Kailash intercepted him and asked some question. He then pelted a stone that caused injury on jaw of

Bhura. A lathi blow then was given by Kantilal. Both the accused persons immediately thereafter fled from the spot of occurrence.

13. Shri Kalu (PW-2) stated that on fateful day Kailash and Bhura had some hot deliberations and during that Kailash caused an injury on jaw of Bhura. Kanti then caused a lathi injury on the back of Bhura, as a result of that he died at the spot.

14. Shri Ramesh Chandra (PW-4) stated that his grand father Bhura had some quarrel with Kailash and Kanti, who are his neighbours. During the course of quarrel, Kanti caused a lathi blow and Kailash caused a stone injury to Bhura, in result Bhura died at the spot.

15. Smt. Mithudi Bai (PW-5), Smt. Nani Bai (PW-6) and Shri Kika (PW-7) also narrated the facts in same tune.

16. From examination of the facts stated by all the eye witnesses, it is apparent that the accused were not armed with any lethal weapon and they had some spontaneous quarrel with deceased Bhura. At the first instance, accused Kailash threw a stone, that caused injury at the face of Bhura, a lathi blow then was caused by accused Kanti. After causing these injuries, both the accused persons fled from the spot. The lathi injury was caused by Kanti at the back of deceased Bhura. It is only on medical examination, it was noticed that as a consequence to injury on back, spleen of deceased suffered injury that caused hemorrhagic shock, due to which Bhura died. In entirety, no evidence is available on record to indicate that the accused persons had any intention to cause death of Bhura.

17. In view of whatever stated above, we are of considered opinion that the trial court wrongly arrived at the conclusion that the accused committed an offence punishable under Section 302 Indian Penal Code. The offence committed by the accused

persons, looking to the evidence available on record, does not travel beyond an offence punishable under Section 304 part-II Indian Penal Code .

18. In view of it, the instant appeal deserves acceptance in part. Accordingly, the same is allowed in part. The conviction of the accused persons recorded for the offence punishable under Section 302 / 34 Indian Penal Code is set aside. The sentence awarded for commission of the offence as above too is set aside. The accused persons are convicted for the offence punishable under Section 304 Part-II/34 and also for the offence punishable under Section 341 Indian Penal Code. The accused persons are sentenced to undergo rigorous imprisonment for a period of five years with a fine of Rs.10,000/- each. They are required to further undergo rigorous imprisonment for a term of two months in the event of default in payment of fine.