

STATE OF RAJASTHAN

v.

GULAB SINGH AND ORS.

(Criminal Appeal No. 1049 of 2008)

JULY 10, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860 – ss.302 r/w 34, 307:

Murder – Conviction by Trial Court under s.302 r/w 34 – High Court altered conviction to s.307 observing that there was no injury on body of the deceased and 'mechanical' injury was absent – On appeal, held: There was clear non-application of mind by High Court – It is not understandable as to what the High Court meant by the expression 'mechanical injury', particularly when evidence of the doctor and the post-mortem report showed that there were 12 injuries on body of the deceased and each one of them was described to be ante-mortem – Judgment of Trial Court restored.

The prosecution case was that the deceased was found lying dead with her hands and mouth/face tied with cloth. Trial Court convicted the accused-Respondents under s.302 r/w s.34 IPC. On appeal, High Court altered the conviction to s.307 IPC primarily on the ground that there was no injury on the person of the deceased, as allegedly accepted by the Public Prosecutor. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. On a bare reading of the High Court's order, it is clear that it is a classic case of non-application of mind. [Para 7] [653-D]

2. From the evidence of the doctor and the post-mortem report, it is clear that there were 12 injuries no-

A ticed on the body of the deceased and each one of them
was described to be ante-mortem. It is not clear as to how
the High Court observed that there was no injury on the
body of the deceased. Still more surprising is the obser-
B vation of High Court that "mechanical" injury being ab-
sent, it would be unjust, if the argument of the accused is
not given some weightage. It is not understood as to what
the High Court meant by the expression 'mechanical in-
C jury'. It is unfortunate that a Division Bench of the High
Court came to such atrocious and fallacious conclusion.
The judgment of the trial Court is restored and the High
Court's order so far it relates to alteration of conviction
from s.302 read with s.34 to s.307 IPC is set aside. [Para
8] [653-F, G & H; 654-A & B]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal

D No. 1049 of 2008

From the Judgment and final Order dated 15.7.2005 of
the High Court of Judicature for Rajasthan at Jodhpur in D.B.
Crl. Appeal No. 198/2002

E V. Madhukar, Rajesh Kumar and Aruneshwar Gupta for
the Appellant.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

F 2. Challenge in this appeal is to the order passed by a
Division Bench of the Rajasthan High Court, Jodhpur, altering
the conviction of the respondent for offence punishable under
Section 302 read with Section 34 of the Indian Penal Code,
1860 (in short the 'IPC') to Section 307 IPC. However, the con-
G viction under Sections 458 and 460 IPC were maintained. The
substantive sentences in respect of the offences were reduced
to the period already undergone.

H 3. The trial Court i.e. learned Sessions Judge (Fast Track),
Rajsamand had convicted respondents 1 to 4 for offences pun-

ishable under Section 302 read with Section 34 and Sections 460, 458 and 397 of IPC and various other sentences in respect of the other offences. A

4. Prosecution version in a nutshell is as follows:

Sessions case in question arose from the first information report (exhibit P-5) which was presented by the complainant Shri Prakash Chand (PW-4) before the police incharge of Arakshi Kendra, Rajsamand on 11.7.1999. It was stated therein that on 11.7.1999 in the morning at around 6.30 a commotion was taking place outside the house of Dali Chand father of Naval Ram. The complainant went to the house of Dali Chand and saw that Smt. Jyoti wife of Dali Chand was lying dead there, whereas her hands and mouth/face were tied with cloth. Inside the room the hands and legs of Dali Chand were also found tied. Thereafter, Roop Singh untied his hands and legs. Goods were lying scattered inside the room. The children of Dali Chand live in Bombay and Dali Chand was having a shop of controlled commodities. This incident was stated to have been committed by some unknown persons. B C D

After the presentation of the aforesaid complaint, case No.479/99 for offences punishable under Sections 460/458 IPC was registered and investigation commenced. E

In the course of the investigation the investigating officer recorded the statement of the complainant Prakash Chand. The injured Dali Chand was admitted in the hospital at Rajsamand and Udaipur for treatment. His injury report exh.P-4 was received. His x-ray was also conducted. After inspection of the place of the incident, spot memo exh.P-14 was prepared. The panchayatnama memo of the dead body of the deceased Jyotibai Exh.P-1 was prepared. The clothes which had been used to tie the hands and the mouth of the deceased were having blood on them and, therefore, they were seized as evidence vide exh. P-7. After conducting the post mortem of the dead body of the deceased the report Exh.P-3 was taken on record. Her dead body was handed over to her heirs for cremation vide H

A Exh.P-2. From the place of the incident bloodstained stones and control sample stones were seized in respect whereof exh.P-8 was prepared. Statements of the witnesses were recorded. A list of stolen articles was prepared. Chance prints were taken from the place of the incident. Accused Gulab Singh, Uday Singh, Nathu Singh and Laxman Singh were arrested. Gold and silver articles along with cash of Rs.24,400/- were recovered at their instance. Thereafter, jewellery was recovered at the instance of accused Dhool Singh and Shambu Singh. In this regard exhs. P-10 to Exh.P-13 were prepared. The place of the incident was pointed out by the accused in respect whereof exhs. P-49 to 52 was prepared. The accused were identified by the witness-Dali Chand and thereafter the seized case property in the case were also identified in respect whereof exh. P-67 to 72 were prepared. Bloodstained clothes and stones were sent for FSL examination to Forensic Sciences Laboratory Udaipur.

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The place of the incident was photographed. After necessary investigation sufficient evidence was found against accused Gulab Singh, Uday Singh, Nathu Singh for offences punishable under Sections 460, 458, 302 IPC and against accused Dhool Singh, Moti Singh, Shambu Singh for offences under Sections 414, 411, 120B IPC. The station in charge, Raj Nagar filed a charge sheet against the above named accused persons before the Court of learned Chief Judicial Magistrate, Rajsamand. Case was committed to the Court of Sessions.

F In order to substantiate the accusations the prosecution examined 16 witnesses. The doctor who examined the deceased found 12 injuries on the body of the deceased. Placing reliance on the prosecution version in the light of the evidence led the learned trial Judge recorded the conviction and imposed sentence as afore-stated.

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H It is to be noted that one Shambhu Singh was sentenced to one year's rigorous imprisonment and fine of Rs.1,000/- for the offence punishable under Section 411 IPC was imposed. In the appeal before the High Court he was not a party. The High Court altered the conviction primarily on the ground that there

was no injury on the person of the deceased, as allegedly accepted by learned Public Prosecutor. A

5. Learned counsel for the appellant-State submitted that the reasoning of the High Court is utterly fallacious as there was no question of the learned Prosecutor feebly agreeing that there was no injury on the person of the deceased. In fact, the evidence of doctor to which reference has been made by the trial Court is clear to the extent that there were 12 injuries on the body of the deceased. In the post-mortem report also 12 injuries were indicated. It is, therefore, submitted that the High Court was clearly in error in altering the conviction from Section 302 read with Section 34 IPC to Section 307 IPC. B C

6. There is no appearance on behalf of the respondents in spite of service of notice.

7. On a bare reading of the High Court's order it is clear that it is a classic case of non-application of mind. The only conclusion indicated by the High Court to alter the conviction reads as follows: D

"Learned PP feebly agrees that there was no injury on the person of the deceased. Mechanical injury being absent it would be unjust if the arguments of the learned counsel for the appellants is not given some weightage. In this background offence under Section 307 IPC would be clearly made out because in that process there was an attempt by virtue of which one of the victims have died." E F

8. As rightly submitted by learned counsel for the State that from the evidence of the doctor to which reference has been made by the trial Court and the post-mortem report, it is clear that there were 12 injuries noticed on the body of the deceased and each one of them was described to be ante-mortem. It is not clear as to how the High Court observed that there was no injury on the body of the deceased. Still more surprising is the observation that "mechanical" injury being absent it would be unjust, if the argument of the learned counsel for the accused is G H

A not given some weightage. It is not understood as to what the High Court meant by the expression 'mechanical injury'. It is unfortunate that a Division Bench of the High Court has come to such atrocious and fallacious conclusions. The appeal deserves to be allowed which we direct. The judgment of the trial Court is restored and, therefore, the High Court's order so far it relates to alteration of conviction from Section 302 read with Section 34 to Section 307 IPC stands set aside. The respondent shall surrender to custody forthwith to serve the remainder of sentence.

C 9. The appeal is allowed.

B.B.B.

Appeal allowed.