

(1995) 04 RAJ CK 0050

Rajasthan High Court

Case No: Criminal Appeal No. 440 of 1986

Maji Khan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision: April 7, 1995

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (1996) CriLJ 916

Hon'ble Judges: V.S. Kokje, J; V.G. Palshikar, J

Bench: Division Bench

Advocate: Doonger Singh, Bhagwati Prasad and Sanjan Sharma, for the Appellant; V.R. Mehta, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

V.S. Kokje, J.

The appellant Maji Khan and two others, Sher Singh s/o Inder Singh and Abdul Sattar s/o Samad Khan were presented on the charge u/s 302, I.P.C, in the alternative under Sections 302/34, I.P.C. The trial Court has acquitted the appellant on the charge u/s 302 read with Section 34, I.P.C, but convicted u/s 302 of the I.P.C. The other two accused persons were acquitted of both the charges u/s 302 of the I.P.C, as well as under Sections 302/34, I.P.C. The appellant has been sentenced to undergo life imprisonment with Two Hundred Rupees fine. This conviction and sentence is under challenge in this case.

2. The prosecution case, in short, was that the appellant in an intoxicated state came on the spot where Madan Gopal Pandey. Prabhu Modi, Dev Raj and Fagi Maharaj were sitting. He was accompanied by four other persons, out of them appellant came forward and extracted a pole from "Paliya" and abusing Madan Gopal and others sitting there, threatened them. On this, they climbed over to the temple. " Maji Khan followed them there and caught hold of Prabhuji and called Abdul to

assault. This others accompanying Maji Khan also went there. Prabhuji was not seen thereafter and therefore, a report was lodged by Madan Gopal about the incident. On investigation, it was found that Maji Khan was washing his blood-stained clothes on a tank and when he was seen by the police, he ran away towards a Nala opposing to temple. He was arrested and at his instance the dead body of Prabhu Modi was, recovered from the Nala. After completion of investigation, the prosecution was launched which has resulted in the conviction of the appellant as above. The trial Court found the following circumstantial evidence against the appellant.

1. His having been seen last together with the deceased Prabhu Modi having taken along with him from the place where Madan Gopal and others were sitting with him.
2. Recovery of dead body of Prabhu Modi at the instance of the appellant.
3. The appellant having been found washing his blood-stained clothes, his running away and being caught.
4. The shoes of the appellant having been found clear near the dead body of Prabhu Modi having blood-stains on them.
5. The appellant's clothes having blood stains of the same group as was found on the clothes of the deceased.
6. The watch of the deceased having been recovered on the information given by the appellant.

3. The learned counsel for the appellant submitted that the circumstantial evidence against the appellant cannot be said to be such which would exclude the possibility of his innocence. It was vehemently argued that it has not come on record that the appellant was seen last together with deceased alone. The entire evidence shows that all the accused persons had come on the spot together and moved together. As the co-accused have been acquitted of the charge under Sections 302/34, according to the learned counsel, the appellant could not have been held guilty and punished u/s 302, I.P.C. Decisions of the Supreme Court, reported in [Sawal Das Vs. State of Bihar](#), and [State of Maharashtra Vs. Annappa Bandu Kavataje](#), were pressed into service.

4. PW 1, Madan Gopal has stated on (he point that the appellant and one other person came and took Prabhu Modi with them, three oilier persons standing near the pole also accompanied them and all of them went towards Gadsisar. PW 3, Dev Raj also stated the same thing. According to him also, the appellant and other four persons took the deceased along with them. PW 6 Bhagi Maharaj of course does not specifically say that all the accused persons took Prabhu away but he has deposed that about 50-60 paces away 3-4 persons were standing. It is, therefore, clear that all the accused persons were alleged to have taken away the deceased with them when he was last seen together with all of them. In such circumstances, when no

eye-witness of the actual assault is known, on the basis of circumstantial evidence a charge u/s 302/34, I.P.C. might have been proved but not a charge u/s 302, I.P.C, against any one of the accused persons. The possibility of any one of the persons accompanying the deceased having assaulted him cannot be ruled out and likewise the innocence of the appellant cannot be also ruled out.

5. In the aforesaid circumstances, therefore, in view of the acquittal of the appellant and all other accused persons on a charge under Sections 302/34, I.P.C, and that of the co-accused persons on the charge of Section 302 also, the charge u/s 302, I.P.C, against the appellant cannot be sustained. The conviction and sentence have therefore to be set aside.

6. The appeal is allowed. The conviction and sentence are set aside. The appellant be released forthwith if not required to be detained in any other case.