

Dharma Ram Bishnoi Vs State of Rajasthan

Court: RAJASTHAN HIGH COURT

Date of Decision: Oct. 25, 2016

Acts Referred: Penal Code, 1860 (IPC) - Section 302

Citation: (2016) 4 CriLR 2149

Hon'ble Judges: Mr. Gopal Krishan Vyas and Mr. Kailash Chandra Sharma, JJ.

Bench: Division Bench

Advocate: Mr. Pradeep Shah, Advocate, for the Appellant; Mr. Vishnu Kachhawaha, Public Prosecutor, for the Respondent

Final Decision: Partly Allowed

Judgement

Gopal Krishan Vyas, J. - In this criminal appeal filed by the accused appellant Dharma Ram under Section 374(2) Cr.P.C. the judgment dated

22.3.2007 passed by the learned Addl. Sessions Judge (FT), Balotra, headquarter Barmer in Sessions Case No. 17/2006 (Old No. 57/2006) is

under challenged whereby the accused appellant was convicted for offence under Section 302 I.P.C. and sentence of life imprisonment along with

fine of Rs. 5,000/- and in default of payment of fine to further undergo R1 for six months has been imposed against him.

2. As per facts of the case, the complainant Jai Kishan S/o Dharma Ram submitted a written report (Ex.P-1) at 11.15 am on 3.5.2006 at Police

Station Sedawa District Barmer alleging therein that we are five sons and two daughters of their parent. The day on which the occurrence took

place complainant went at Dhorimanna for selling vegetables and four other brothers also went Dhorimanna to do some work for livelihood. His

younger sister Parmeshwari was alone in the house and his other sister Rameshwari went school for study. Today, in the morning at 9'O Clock

Tulsa Ram son of his elder father came on vehicle at Dhorimanna and inform that my father Dharma Ram (accused appellant) caused injury by

sharp edged weapon (Jhabad) to his mother Jamuna and due to said injury she died. Upon receiving aforesaid information, the complainant as well

as his three brothers Bhanwar Lal, Ladu Ram and Jagdish immediate went at village Sonadi from Dhorimanna where their sister Parmeshwari

informed that today in the morning at 8'O Clock accused appellant inflicted injury by sharp edged weapon upon the neck of deceased mother

Jamuna which resulted into death. The said incident took place in front of her. It is also stated by the complainant that his father accused appellant

Dharma Ram was having doubt upon character of his mother Jamuna and therefore, he used to make quarrel with her and today inflicted injury by

sharp edged weapon and the body of his mother is in the Dhani at the place of occurrence. Upon aforesaid complaint submitted by the

complainant Jai Kishan, F.I.R. No. 36/2006 was registered at Police Station Sedawa District Barmer under Section 302 I.P.C. and investigation

was commenced. After completing investigation, the SHO Police Station Sedawa filed charge-sheet against the accused appellant Dharma Ram

under Section 302 I.P.C. in the Court of Addl. Chief Judicial Magistrate, Barmer from where the case was committed to the Court of Addl.

District & Sessions Judge, Barmer, but transferred to the Court of Addl. District & Sessions Judge (FT), Balotra headquarter Barmer for trial.

3. The learned Trial Court framed charge under Section 302 I.P.C. against the accused appellant and proceeded to record evidence of

prosecution.

4. In support of prosecution case, statements of 11 prosecution witnesses were recorded and, thereafter, statement of accused appellant under

Section 313 Cr.P.C. was recorded in the trial. The accused appellant accepted the fact of causing injury to his wife but gave detailed explanation

with regard to bad character of his wife. In support of his statement produced his son DW-1 Bhanwar Lal as witness to explain the reason for the

occurrence.

5. The learned Trial Court after considering and ascertaining the entire evidence and the fact that accused appellant has accepted the guilt refused

to accept the defence and convicted the accused appellant for offence under Section 302 I.P.C. and passed the sentence of life imprisonment with

fine vide judgment dated 22.3.2007 passed in Sessions Case No. 17/2006 (Old No. 57/2006).

6. In this appeal, the said judgment is under challenged.

7. Learned Counsel for the appellant submits that accused appellant is not challenging the incident but gave detailed explanation how and why the

incident took place in his house. As per explanation given in the statement under Section 313 Cr.P.C. on the date of occurrence when accused

appellant reached his home, at that time, his daughter Parmeshwari was found involved in sexual act with his son Jai Kishan (complainant) though

might be with consent, therefore, when he was trying to teach lesson to Jai Kishan his wife Smt. Januma intervened and on being abused by her,

one blow by Farsi was given by the accused appellant to her which resulted into death. It is argued that as per exception (1) of Section 300 I.P.C.,

it is a case of culpable homicide not amounting to murder because due to sudden provocation and in the spur of moment, the incident took place

which is explained by the accused appellant in his statement recorded under Section 313 Cr.P.C. which is supported by the oral evidence of DW-

1 Bhanwar Lal who is another son of accused-appellant, therefore prayed that conviction of accused appellant for offence under Section 302

I.P.C. may be altered to Section 304 Part-I I.P.C. and sentence of life imprisonment may kindly be altered to the period already undergone.

8. Per contra, learned Public Prosecutor vehemently opposed the prayer and said that for any reason no person can be permitted to kill his own

wife even in spur of moment because husband is custodian of his wife and he is required to protect her life and cannot be permitted to cause injury

so as to cause death. In this case, the accused appellant is accepting the incident but gave false explanation which is not acceptable because it is far

from the truth.

9. Learned Public Prosecutor further argued that in view of the statement made by the accused appellant himself under Section 313 Cr.P.C. no

error has been committed by the learned Trial Court so as to hold accused appellant guilty for the offence under Section 302 I.P.C. and to pass

sentence for life imprisonment against him therefore, this appeal may kindly be dismissed.

10. After hearing learned Counsel for the parties we have perused the statement of PW-1 Parmeshwari daughter of the deceased and accused

appellant. Although PW-1 Parmeshwari turned hostile (sic hostile) and did not support the whole prosecution case, but as per her statement injury

was inflicted by his father (accused-appellant) upon neck of her mother but why I have no information about the reason.

PW-2 Jai Kishan (complainant) is also son of the accused appellant and the deceased, turned hostile and did not support the prosecution case.

PW-3 Ladu Ram is also son of accused appellant and the deceased. The said witness is not eye-witness but he said that when I reached at home

after receiving information at Dhorimanna about incident, I was informed by my sister Parmeshsari that accused appellant inflicted injury by sharp

edged weapon Jhabad upon the neck of Jaumuna and, therefore, she died.

PW-4 Rameshwari is also daughter of deceased Jamuna and accused appellant but as per her statement, she was not present at the time

occurrence took place.

PW-5 Sobha Ram is also son of deceased. His testimony is based upon hear say evidence.

PW-6 Chokha Ram is the real brother of the accused appellant. It is stated by him that on the relevant date when I came from my agricultural field

to the residence in the village, Ram Lal and Sukha Ram informed that Dharma Ram (accused appellant) has killed his wife. Further, stated by him

that from last 30 to 35 years there is no talking terms with his brother Dharma Ram. The aforesaid fact loudly speaks that Chokha Ram is not the

eye-witness but incident was ported to him by two persons namely Ram Lal and Sukha Ram.

The witness PW-7 Sukh Ram stated before the Court that 4-5 years back in the morning Shoba Ram, Tulsa Ram and Babu Master came to my

dairy shop and said that in the house of Dharma Ram his daughter was crying who informed us that his father Dharma Ram has killed his wife.

Upon aforesaid information, the said witness immediately went to the house of Dharma Ram where his daughter was crying. The above statement

also based upon hear say evidence because this witness was not present at the time of occurrence took place in the house of deceased.

The witness PW-8 Tulsa Ram stated in the Court that six months back I was at my residence, in the morning at 8"O Clock my father Sona Ram

came and informed that Dharma Ram (accused appellant) has killed his wife, therefore, information may be given to sons of Dharma Ram at

Dhorimanna.

Tara Ram (PW-9) SHO conducted whole investigation along with PW-10 Chatra Ram who was working on the post of SI at Police Station

Sedawa. The said witness deposed in his statement that at 12.00 am Shree Ram Constable No. 188 submitted the F.I.R (Ex.P-1) upon that the

F.I.R. No. 37/2006 was registered which bears my signature.

PW-11 Jhala Ram who was witness of arrest of accused turned hostile.

11. Upon consideration of all above statements it is obvious that none of the witnesses attributed the motive of the incident. Most of the witnesses

are hear say witness except PW-1 Parmeshwari who has declared hostile in the trial but stated the fact that his father (appellant) inflicted injury to

her mother Jamuna by Farsi which is sharp edged weapon and due to the said injury she fell down and died.

12. We have considered the explanation of the accused given in the statement recorded under Section 313 Cr.P.C. by the accused appellant,

which reads as under:-

esjh tc teuk ls "kknh gqbZA eSa 13 lky dk Fkka teuk 17 lky dh FkhA teuk 17 lky dh FkhA teuk tc esjs ?kj igy ckj vk;h rc mlds isV esa 4 ekg

dk cPpk Fkka blls nq[kh gksdj eSa ?kj NksM+dj iatkc pyk x;kA ihNs esjs ?kj okyksa us teuk dks esjs NksVs HkkbZ pkS[kkjke ds ?kj cSBk

fn;kA teuk dk igyk yM+dk t;fd"ku fdlh tkV dh uktk;t vkSykn FkhA pkS[kkjke ls teuk ds nks vkSj yM+ds iSnk gq,A ,d ykMwjke o ,d

cq/kkjkeA tc eSa iatkc ls okfil vk;k rks teuk us dgk fd oks esjh vkSj pkS[kkjke dh choh cudj jgsxA ;g eq>s eatwj ugha Fkk u ?kj okyksa dksA

?kjokyksa ds dgus ij eSaus teuk o mlds vkSyknksa dks viuk;kA fQj pkS[kkjke vyx gksdj nwljh "kknh dj vyx jgus yxk exj teuk ls laca/k cuk;s

j[kkA fQj teuk ls nks yM+ds o nks yM+fd;kWa iSnk gqbZA tks Hkaojyky] txnh"ku ijes"ojh o jkes"ojh gSaA dqN o""kZ rd Bhd pyk fQj teuk

esjs ls yM+us yxh fd rw ukenZ gS fdlh dke dk ugha gSA fQj teuk us vius rhuksa cM+s yM+dkSa ls "kkjhfd laca/k cuk;sA eSaus lcdks le>k;k ij

dkSbZ ekuk ughaA teuk ds bl pyk pyu ls esjs HkKbZ;ksa o esjs xks= okyksa us esjs o esjs ?kj dk cfg""dkj dj fn;kA eSaus xkWao okyksa ls

xqgkj dh Fkh fd mldks le>kvks ij ;s yksx ugha ekusA nks nhikoyh iwoZ [ksr ds vUnj t;fd"ku vkSj teuk dks laHkksxjr ns[kk mlds dqN fnu ckn

jlkSbZ ds >wEis esa teuk o t;fd"ku [kM+s&[kM+s dks dqdeZ djrs ns[kkA ,d fnu vksVs ds vUnj cq/kjke vkSj teuk dks xyr gkyr esa ns[kkA

nksuksa ds diM+s [kqys gq, FksA ?kVuk ds fnu t;fd"ku vkSj Hkaojyky jkr dks <+k.kh esa lks;sA eSa lqcg tYnh mBdj lkaxjh rksM+us pyk x;k]

okfil vk;k ml le; fnu mxus okyk Fkk] teuk i"kvksa dks pkjk Mky jgh FkhA pDdh okys >wEis esa cksyus dh vkokt lquus ij eSaus vUnj >kadk

rks ns[kk fd t;fd"ku ijes"ojh ds lkFk laHkksx dj jgk FkkA bl ij eSa vkos"ku esa vk x;k] esjs eu esa vk;k fd ,sls dqdehZ rks viuh ekWa o cgu ls

"kkjhfd fj"rk j[krk gks mldk ftUnk jguk lgh ugha gSA Hkkjoy esa dqrj djus dh Qjlh iM+h Fkh] eSa x;k] Qjlh ysdj t;fd"ku dks ekjus nkSM+k rks

teuk chp esa iM+h] eq>s vuki luki xkfy;ka fudkyus yxh vkSj dgus yxh fd t;fd"ku esjh vuqefr ls ijes"ojh ds lkFk laHkksx dj jgk gS rw jksdus okyk

dkSu gksrk gS u rks t;fd"ku rsjh vkSykn gS u ijes"ojh rsjh vkSykn gSA teuk ds eqWag ls og lqudj eSa viuk fu;U=.k [kks cSBkA jksx dh tM+

teuk FkhA eSaus Qjlh ls teuk dh xnZu ij okj dj fn;kA ftlls teuk uhps fxj x;hA t;fd"ku >wEis ls fudy dj /kksjheUuk dh rjQ Hkkx x;kA "kkSjxqy

lqudj Hkaojyky Hkh vk x;k FkkA oks chp esa ugha iM+kA fQj eSa ogka ls Fkkuk jokuk gks x;kA jkLrs esa tks Hkh feyk muls eSusa dgk fd

eSaus teuk dks ekj fn;k gSA esjs ifjokj okyksa ls dguk fd jkes"ojh o ijes"ojh dks llqjky Hkst nsa ugha rks ;s rhuksa HkKbZ budks oS";k cuk dj

NksM+saxsA Fkkus esa tkdj Fkkusnkj dks tkdj iwjh ?kVuk crk nhA Fkkusnkj us iwjh ?kVuk fy[k dj esjs nLr[kr dj;k;sA ckn esa D;k gqvq eq>s

irk ughaA Fkkusnkj us esjs ikap dkxtksa ij nLr[kr dj;k;sA dsoy ,d dkxt ,fDtfcV Mh&1 ij esjs nLr[kr gS tks vfUre ist ij gSaA ckdh esjs nLr[kr fd;s

gq, dkxt cny fn;s x;s gSaA

13. We have perused the explanation of accused in his statement recorded under Section 313 Cr.P.C. and statements of DW-1 Bhanwar Lal.

Upon assessment of entire evidence, we have no hesitation to observe that as per prosecution case, one injury was inflicted by the accused

appellant to the deceased by sharp edged weapon. The postmortem of her body was conducted by the medical officer of Primary Health Center,

Sedawa Dr. CL Meena, but unfortunately, said witness is not produced before the Court to prove the postmortem report (Ex.P-16), but fact of

the postmortem has been admitted by the accused appellant, therefore, the learned Trial Court accepted the postmortem report for consideration.

14. Upon assessment of entire evidence, in the light of the statement of the accused appellant under Section 313 Cr.P.C. which is supported by the

witness DW-1 Bhanwar Lal son of the accused appellant Dharma Ram, we are of the opinion that the incident took place due to quarrel in

between the family members and it is out come of illicit relationship. It is also worthwhile to observe that none of the witnesses deposed any fact

with regard to "motive" whereas accused appellant gave complete explanation for the incident, which is supported by the statement of DW-1

Bhanwar Lal, who is son of the deceased and the accused appellant himself.

15. It is also worthwhile to observe that all the witnesses are close relatives and they accepted the fact that Dharma Ram accused appellant after

marriage went to Punjab and Haryana and remained there for 12 years and in between said period, the family members made Nata marriage of his

wife Jamuna with his brother Chotha Ram but till Dharma Ram came back from Punjab after 12 years, three issues were born to deceased Jamuna

from the wedlock of Nata Marriage with Chotha Ram.

16. Similarly, the following statement is given by DW-1 Bhanwar Lal son of deceased as well as accused appellant Dharma Ram in defence, which

reads as under:-

esjh ekrk dk uke teuk Fkk vkSj firk dk uke /kekZjke gSA ge dqy 5 HkkbZ vkSj 2 cfgu gSA HkkbZ;ksa ds uke t;fd"ku] ykMw] cq]jke] eSa

txnh"k gS vkSj cfguksa ds uke ijes"ojh o jkes"ojh gSA t;fd"ku] ykMq o cq]jke dk cki pks[kkjke gSA "kknh ds ckn esjs firk /kekZjke iatkc

gfj;k.kk pys x;s Fks vkSj 12 lky ckn okfil vk, FksA tc /kekZjke iatkc etnwjh djus pyk x;k rc ihNs esjh ekrk teuk dk gekjs ifjoky okyksa us teuk

dks pksFkkjke ds (rsxM) ukrs fcBk fn;k FkkaA tc /kekZjke iatkc ls etnwjh dj okfil vk;k rc rd teuk ds rhu larkusa iSnk gks pqdh FkhA tc

/kekZjke iatkc ls okfil vk;k rc lekt o ifjokj okyksa us teuk dks pks[kkjke ds ?kj ls gVkdj okfil esjs firk /kekZjke ds ?kj esa fcBk fn;k FkkaA

/kekZjke ds teuk ls 2 yM+ds o nks yM+fd;kWa iSnk gqbZ Fkh ftuds uke Hkaojyky o txnh"k o yM+dh;kWa ijes"ojh o jkes"ojh iSnk gqbZ

FkhA lekt o ?kjokyksa us /kekZjke ds ifjokj dk cfg"dkj blfy, fd;k fd teuk igys pksFkkjke ds ?kj esa Fkh vkSj /kekZ ds ?kj vk;h FkhA teuk ds

uktk;t rkYyqdkr t;fd"ku] ykMq o cq]jke ls FksA tc teuk ds t;fd"ku] ykMw o cq]jke ls uktk;t rkYyqdkr gq, rc /kekZ us bldk fojks/k fd;k FkkaA

ml le; /kekZ us xkao ds ljiap HkkbZ;ksa o lekt ds yksxksa ls dgk Fkk fd teuk o mlds cM+s yM+dksa dks le>kvksa fd ,slk xyr dke u djsaA mlds

ckn Hkh teuk ij dksbZ QdZ ugha iM+k vkSj ckn esa ij es"ojh o jkes"ojh ls t;fd"ku us teuk dh lgefr ls uktk;t rkYyqdkr cuk fy, FksA ftl fnu teuk ejh

ml jkr dks <+k.kh ij eSa] t;fd"ku] /kekZjke] teuk] jkes"ojh o ij es"ojh FksA lqcg 4 cts /kekZjke yw[k ysus pyk x;k Fkka vkSj eSa vkSj t;fd"ku

<+k.kh esa lks jgs FksA /kekZjke yw[k ysdj okfil vk;k rks pDdh okys dejs esa ij es"ojh o t;fd"ku ds cksyus dh vkoktsa lquh fQj /kekZjke us

yw[k ogha ij NksM+ nh vkSj pDdh okys >wEis esa x;k Fkk rks fd t;fd"ku o ij es"ojh "kkjhfd IEcU/k cuk, gq, FksA rc /kekZjke Hkk[ky esa

iM+h QlhZ ysdj vk;k vkSj t;fd"ku dks ekjus nkSM+k Fkk tc teuk chp esa iM+h Fkh vkSj teuk us dgk Fkk fd u rks t;fd"ku rsjh vkSykn gS vkSj

u gh ij es"ojh rsjh vkSykn gSA t;fd"ku o ij es"ojh tks dqN dj jgs gSa mldh ethZ ls dj jgs gS ,slk teuk us dgk Fkk rc esjs fir /kekZ us teuk ds QlhZ

dh mlds xnZu ij ekjh ftlls og uhps fxj x;h Fkh rc rd eSa Hkh tkx x;k vkSj ogkWa vk x;k Fkka t;fd"ku ij es"ojh dks NksM+dj /kksjheuk Hkkx x;k

Fkka vkSj /kekZ eq>s o xkao okyxa dks ;g dgdj fd bu yM+fd;ksa dks llqjky Hkst nsuk ugha rks ;s ikih yM+ds bldk IR;kuk" k dj nsaxsA eSa

Fkkus tkdj is" k gks jgk gwWaA eSa yk" k ds ikl cSBk jgk fQj iqfyl vk;h Fkh] eSaus iqfyl dks ;s lkjh ckr crk nh Fkh ij iqfyl us esjh ckr ugha lquh

FkhA

17. It can be presumed that no son will make any false allegation against his mother or other family members including sisters unless of until

personal grievance does not exist. In this case accused appellant has accepted the incident and his son DW-1 Bhanwar Lal has supported his

explanation in which serious allegations are levelled with regard to character of deceased Jamuna as well as Parmeshwari, who is said to be sister

of DW-1 Bhanwar Lal.

18. In view of above facts, we have no hesitation to hold that the occurrence took place in spur of moment, there was no motive or intention of the

accused appellant to kill her wife, but at the time of intervention by her one blow by sharp edged weapon was inflicted upon the deceased Jamuna

by the accused appellant which resulted into death.

19. In case of Arjun v. State of Maharashtra reported in 2012 Cr.L.R. (SC) 506 the Hon"ble Supreme Court held that if motive is absent

then allegation of prosecution for inflicting only one injury may be that too by force, then also no offence under Section 302 I.P.C. is said to be

made out because offence cannot travel beyond offence under Section 304 Part-I I.P.C. The relevant para No. 17 of the said judgment is quoted

herein below for ready reference:

17. Considering the background facts as well as the fact that there was no premeditation and the act was committed in a heat and passion and that

the appellant had not taken any undue advantage or acted in a cruel manner and that there was a fight between the parties, we are of the view that

this case falls under the forth exception to Section 300 I.P.C. and hence it is just and proper to alter the conviction from Section 302 I.P.C. to

Section 304 Part-I I.P.C. and we do so.

In case of Ranjit Sarkar v. State of Tripura (Cr. Appeal No. 1247/20150 decided on 23.9.2015 the Hon"ble Court Supreme Court held that if it

emerges from the evidence on record that only one blow was given by the appellant to the deceased which appears to have been given with full

force, but without any intention, then offence is covered by Part I of Section 304 pic not under Section 302 I.P.C. The relevant discussion made in

paras Nos. 10 to 12 of the judgment is as follows:

10. We have carefully gone through the statement of PW-15 Dr. Ranjit Kumar Das, who conducted postmortem examination on the dead body

of Anil Das on 18.6.2007. In fact, first four ante-mortem injuries mentioned by the Medical Officer relate to single injury. The first one is stitched

wound. The second is haematoma on the deeper layer of scalp over right parietal region. The third injury also relates to the same as it discloses

fracture on the depressed bone of the head on anterior part of right parietal bone. The fourth ante mortem injury also relates to above three

injuries, which discloses subdural haemorrhage present over cerebral hemispheres. The only ante mortem injury No. 5 is actually the second injury

which is an abrasion measuring 3cm x 2cm over the dorsum of left wrist joint.

11. PW-2 Anil Das also does not state about more than one blow given by the appellant on the head of the deceased with wooden file. The injury

on the dorsum of left wrist joint could have been caused when the injured fell down on the ground. As such, in substance the evidence on record

suggests only one blow given by the appellant on the head of the deceased which appears to have been given with full force.

12. In the above facts and circumstances, having re-assessed the depositions of witnesses and other evidence on record, we are of considered

opinion that the act on the part of the appellant is covered by Part-I of Section 304 I.P.C. Therefore, we set aside the conviction and sentence

under Section 302 I.P.C., awarded by the Trial Court and affirmed by the High Court. Instead, the appellant Ranjit Sarkar is convicted under

Section 304 Part-I, and sentenced to rigorous imprisonment for a period of ten years. With this modification in the conviction and sentence, the

appeal stands disposed of.

20. We have considered the entire evidence in the light of the statement made by the accused appellant under Section 313 Cr.P.C. supported by

the defence witness DW-1 Bhanwar Lal so also aforesaid judgments. In our opinion, no offence under Section 302 I.P.C. is made out but because

allegation against the accused appellant is for causing only one blow that too without premeditation and in sudden provocation, therefore, the case

cannot travelled beyond Section 304 Part I I.P.C., therefore, the conviction of accused appellant is hereby altered from offence under Section 302

to 304 I I.P.C.

Consequently, the instant appeal is partly allowed. The conviction and sentence passed against the accused appellant Dharma Ram for offence

under Section 302 I.P.C. by the learned Addl. Sessions Judge (FT) Balotra Headquarter Barmer vide its judgment dated 22.3.2007 is hereby set

aside and the accused appellant is hereby held guilty for offence under Section 304 Part-I I.P.C. and sentence of life imprisonment is hereby

reduced to ten years rigours imprisonment, while maintaining the order of fine. The accused appellant is in the custody since 3.5.2005, therefore,

he may be set at free if not needed in any other case.