

CASE NO.:
Appeal (crl.) 85 of 1998

PETITIONER:
State of Rajasthan

RESPONDENT:
Maharaj Singh & Anr.

DATE OF JUDGMENT: 03/09/2004

BENCH:
K.G. Balakrishnan & Dr. A.R. Lakshmanan

JUDGMENT:
J U D G M E N T

K.G. BALAKRISHNAN, J.

This appeal is preferred by the State of Rajasthan against the acquittal of the accused respondents by the High Court. Originally there were three accused, but the first accused Gujarmal died during the pendency of the appeal. These accused were tried by the Sessions Judge, Karoli, Rajasthan for the offence of murder punishable under Section 302 read with Section 34 IPC. The Sessions Judge found them guilty of offences punishable under Section 304 Part I read with Section 34 IPC and sentenced them to undergo imprisonment for a period of 10 years. Aggrieved by the same, they preferred an appeal before the High Court and the learned Single Judge held that they were not guilty of any offence. Aggrieved by the judgment of the learned Single Judge, the present appeal is preferred by the State of Rajasthan.

The prosecution case is that on 5.10.1992 at about 8' o clock in the morning, deceased Ram Swaroop went to the house of the first accused Gujarmal and told him that his camel had been causing damage to the cultivation of the deceased and requested Gujarmal not to allow the camel to stray into his field. Accused Gujarmal got annoyed with the deceased over this complaint. Further case of the prosecution is that Gujarmal along with his sons Maharaj Singh and Bachan Singh attacked Ram Swaroop with 'lathis' and beat him on his head and other parts of the body. As a result, Ram Swaroop fell unconscious. Ram Swaroop's wife and the other eye witnesses took him to Karoli Hospital. As his condition was serious, Ram Swaroop was referred to Govt. Hospital at Jaipur. But on the way to the hospital, Ram Swaroop died.

While Ram Swaroop was in Karoli Hospital, a head constable visited the hospital on receiving intimation from the doctor, but he could not take any statement from Ram Swaroop. On 7.10.1992, PW-2 Rajpal gave Exh. P-1 written complaint before the Masalpur Police Station and on that basis the case was registered and the investigation started. The dead body of Ram Swaroop was subjected to post-mortem examination. There were five injuries and all the injuries were caused on his head. There was a fracture of the skull and the doctor was of the opinion that the death was due to the injuries on the head which resulted in clotting of blood. PW-1 to PW-5 were the eye witnesses. PW-1 is the wife of the deceased Ram Swaroop. She deposed that on the day of the incident, her husband Ram Swaroop had gone to the house of Gujarmal and she came to know that Gujarmal and his sons had beaten up her husband and he was admitted in the hospital. PW-2 Rajpal is also an eye witness. He deposed that on the date of the incident, Ram Swaroop went to the house of Gujarmal and told him that his camel had been causing damage to his cultivation. Gujarmal, Maharaj Singh and Bachan Singh had 'lathis' with them. PW-2 deposed that Maharaj Singh hit Ram Swaroop on his head near the left eye, as

a result of which Ram Swaroop fell on the ground. Then, Gujarmal struck another blow of 'lathi' on Ram Swaroop. Then PW-1 and others took the injured to his house. PW-3 deposed that he had seen a quarrel taking place between deceased Ram Swaroop and Gujarmal and that he also saw accused Maharaj Singh and Bachan Singh beating up Gujarmal with lathis' on his head. PW-4 and PW-5 also gave a similar version of the incident. All these witnesses are residing in the neighbourhood and there is no reason to disbelieve these witnesses. The fact that deceased Ram Swaroop was brutally attacked by these accused persons is proved satisfactorily. However, the learned Single Judge of the High Court declined to accept the prosecution version merely on the ground that there was a delay in lodging the F.I. statement before the police. The learned Single Judge was of the view that the incident happened on 5.10.1992 between 7 A.M. and 8 A.M. and the report was given to the police at 10.30 A.M. on 7.10.1992 and that this delay was not satisfactorily explained. This finding of the learned Single Judge is challenged by the appellant-State.

The finding of the learned Single Judge that the delay in lodging the F.I. statement is not explained is incorrect. On the date of the incident, deceased Ram Swaroop was taken to Karoli Hospital and he was admitted there. PW-6, Dr. M.L. Kawant, attached to the hospital at Karoli deposed that he sent Exh. P-11 report to the police station and the S.H.O. came to the hospital, but Ram Swaroop was not in a fit condition to make any statement. On the back of the Exh. P-11 report, the S.H.O. made an entry to the effect that he visited the hospital and made Exh. P-13 report wherein PW-6 noted that the patient was not fit for making any statement. Strangely enough, the police did not take any action thereafter and they swung into action only when Exh. P-1 report was made by PW-2 on 7.10.1992 at 10.30 A.M. The delay in registering the case was due to the ignorance and negligence on the part of the police. The police officer who visited the hospital at Karoli could have registered the case based on the information that may be volunteered by any of the bystanders to the patient. The delay in lodging the report before the police has not caused any serious prejudice to the accused nor did it cast any doubt on the prosecution case. The fact that the incident happened on 5.10.92 and Ram Swaroop sustained fatal injuries and was admitted in the hospital and as to how the incident happened, is spoken by a series of witnesses. Delay in lodging the F.I.R. would be material when there is a doubt regarding the prosecution case. There is no allegation that the accused were roped in and a false case was foisted upon them. It is also material to point out that the defence of the accused was that deceased Ram Swaroop sustained injuries as he was attacked by a mad camel. No evidence was let in to substantiate this contention. No suggestions were put to the doctor who conducted the post-mortem examination or PW-6 who first medically examined deceased Ram Swaroop. PW-6 deposed that injuries were caused on the head of the deceased by hitting. The nature of injuries would also show that they were caused by beating with 'lathis'.

There is overwhelming evidence on the side of the prosecution to prove the case against the accused respondents, Maharaj Singh and Bachan Singh. They were found guilty of the offence punishable under Section 304 Part I read with Section 34 IPC. Learned Sessions Judge was perfectly justified in finding them guilty of the offence under Section 304 Part I read with Section 34 IPC.

The incident happened in 1992. Several years have lapsed since these respondents were acquitted by the High Court. We find it just and proper to reduce their sentence of imprisonment from ten years to five years each. In the result, we allow this appeal filed by the State and confirm the conviction of these respondents for the offences punishable under Section 304 Part I read with Section 34 IPC. However, the sentence of 10 years' R.I. is reduced to a period of 5 years' R.I. on each of these two respondents-accused. They are entitled to set off the period already undergone by them as undertrial prisoners and the period undergone after conviction. The respondents shall surrender before the Court of the Special Judge, Dacoit Affected Area & Additional Distt. & Sessions Judge, Karoli, within a period of two weeks, failing which the said court shall take appropriate steps to apprehend them. Personal bonds furnished by the accused respondents before the Registrar (Judicial) of this Court shall stand revoked.

JUDIS