

PETITIONER:
DEVA

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 17/11/1998

BENCH:
M.K. MUKHERJEE, G.B. PATTANAIAK, S.P. KURDUKAR.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T
C.B.Pattanaik, J.

The appellant has been convicted under Section 302 I.P.C. and sentenced to imprisonment for life and a fine Rs.200/-, in default, to further undergo imprisonment for four months by the learned Additional Session Judge, Sirohi and the said conviction and sentence has been upheld by the Division Bench of Rajasthan High Court at Jodhpur in Criminal Appeal No. 141 of 1979. It was alleged by the prosecution that on 16.10.78 during the morning hours the cattle of the deceased entered into the field of the accused Deva and damaged the crop. Accused, therefore, put those cattle in the cattle pond. Deceased however agreed to give six Maund of maize as compensation, after which the cattle were released. The further case of prosecution is that Deva had gone out and on his return in the evening, there was some altercation between him and the deceased. PW 14 however intervened and got them separated. In the night, while accused was sitting at a hotel belonging to PW 7, the deceased came out of his house and seeing him coming out the accused left the hotel and inflicted injuries upon him by a dagger (Chhuri) on the stomach of the deceased. The deceased then went to his house and informed his wife PW6 that the accused has inflicted the injuries to him by means of a knife. On this score, there was an uproar in the village and several villagers went to the house of the deceased and found injured Samti. Natha PW2, then went to the Police Station and lodged a report. On the basis of that report, Exhibit P3, when was treated as F.I.R., the Police started investigation and ultimately submitted the charge sheet. On being committed, the accused was tried by the learned Additional Session Judge.

The prosecution examined 14 witnesses, including the Doctor PW 1 who had conducted the autopsy over the dead body of the deceased and the three eye witnesses PWs 4, 5 and 7. The doctor PW 1 found as many as seven incised wounds and the cause of the death according to him was shock due to the injuries, more particularly injury No.2 which led to internal haemorrhage. On the basis of the medical evidence as well as the oral testimony of PWs 2 to 7, the learned

Additional Sessions Judge came to hold that the death of the deceased was homicidal in nature. The said conclusion was not assailed in appeal nor has been assailed before us. From the medical evidence it is established that the injuries of the deceased were caused by a sharp edged weapon. The three eye witnesses viz. PWs 4, 5 and 7 though stated that there was a struggle between the accused and the deceased did not state that the accused had a knife with him with which he assaulted the deceased. The learned Additional Sessions Judge however came to the conclusion that as the occurrence took place at a place where there was not much of light and underneath a tree the eye witnesses might not have been able to see the knife which the accused was having. Relying upon the recovery of a knife at the instance of the accused, while in custody and the statement of PW 6, the wife of the deceased that deceased told her that Deva had inflicted the knife blow to him, the learned Additional Sessions Judge came to the conclusion that it is the accused who has inflicted the knife blow at the deceased. On the aforesaid finding the learned Additional Sessions Judge having convicted the appellant under Section 302, the appeal was carried to the High Court. The High Court confirmed the conviction and sentence passed by the learned Additional Sessions Judge relying upon the testimony of PWs 4, 5 and 7 who were supposed to be the eye witnesses to the occurrence and the evidence of PW 6 who stated that her husband Samti told her that the accused Deva had inflicted knife blows on him. The conviction and sentence passed by the High Court against the appellant is being assailed in this appeal.

The learned counsel for the appellant contended before us that none of the eye witnesses having stated that accused inflicted injury to the deceased by means of a knife and on the other hand they having categorically stated that when the accused and the deceased grappled and both of them fell down on the ground, it was the deceased who was having a stick in his hand, both the learned Additional Sessions Judge as well as the High Court in appeal erroneously came to the conclusion that the injuries on the deceased were caused by the accused. It may be stated here that PWs 5 and 7 were declared hostile and were cross examined by the Public Prosecutor as they did not support the prosecution case. We have scrutinised the evidence of these three witnesses and fail to appreciate that on the evidence of these witnesses how the courts below came to the conclusion that the injuries on the deceased were caused by the accused-appellant. PW 6, the wife of the deceased no doubt in her evidence stated that her husband told her that Deva had inflicted knife injury but in the cross examination it was elicited that her husband never told that there was a grappling between him and Deva. All the three eye witnesses having categorically stated that the accused-appellant had not given any knife blow on the deceased and on the other hand, having stated that the accused and the deceased were grappling with each other when the deceased alone was holding stick in his hand, it is difficult to accept the statement of the wife PW 6 that the deceased hand told her that Deva had inflicted knife injury on him. That apart, the nature of the injuries are such that on getting those injuries, blood must have oozed and in that case the eye witnesses could have easily noticed the same but in fact none of them have noticed any such blood injury on the deceased. In this state of affairs merely because the accused is alleged to have given recovery of a knife while in custody, it is difficult to hold that prosecution has

been able to establish charges beyond reasonable doubt and it is the accused who is the perpetrator of the crime. In our considered opinion, the conclusion of the learned Additional Sessions Judge as well as the of the High Court in the impugned judgment that accused-appellant caused the injury on the deceased is wholly unsustainable. We, therefore, set aside the conviction and sentence passed against the appellant and acquit him of the charges levelled against him. The appellant be set at liberty forthwith unless he is required in any other case. The appeal is allowed.

JUDIS