

Tripta

Vs

State of Haryana

Criminal Appeal No. 294 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

08.04.1992

JUDGMENT

1. Smt. Tripta w/o Sheo Karan is the appellant before us. Both the wife and the husband were tried for the offence punishable under Section 302 read with Section 34, IPC and convicted and sentenced to imprisonment for life by the learned Additional Sessions Judge, Narnaul. The appeal filed by them was dismissed by the High Court.
2. The special leave petition was dismissed as against Sheo Karan. Leave was granted in respect of the appellant and she was released on bail.
3. The prosecution case is as follows:

Sheo Karan and deceased Sardara were real brothers. Their father Har Lal used to live with deceased Sardara and in consideration of the services rendered to him by Sardara's sons, Har Lal parted with his land in favour of his grand sons namely the sons of Sardara. Sheo Karan was aggrieved with this conduct of Har Lal and Sardara. A Civil Suit was also filed and compromise was arrived at. On 18th July, 1978, Har Lal, Sardara and Pat Ram (son of Sardara) aged about 11 years were lying on cots in a room of the house of Har Lal. It is alleged that Sheo Karan armed with a wooden stick and his wife Tripta armed with a gandasa proceeded to the room where Har Lal, Sardara and Pat Ram were lying. PW 14 wife of Sardara and her son PW 15 seeing these accused going towards the room they also followed. The accused Sheo Karan having entered the room questioned Har Lal as to why he had transferred his land in favour of the sons of Sardara to which Har Lal replied as they were serving him so he parted the land in their favour. This provoked Sheo Karan and in a fit of anger he gave two stick blows on the head of Har Lal, who fell down. Sardara and Pat Ram tried to intervene and helped Har Lal by raising an alarm. At this juncture, it is alleged that the appellant gave a blow with a gandasa on the left side of the face of Sardara and Sheo Karan gave two blows with the wooden stick on his hand and he caught hold of Pat Ram from the neck and also gave him a stick blow on his head. He fell down and became unconscious. The people gathered at the scene of occurrence and the appellant run away. The injured persons, namely, Har Lal, Sardara and Pat Ram were removed in a tractor trolley to the Primary Health Centre. Pat Ram succumbed to the injuries on the way. Har Lal and deceased Sardara were treated for the injuries. On Sardara the doctor found an incised wound from left angle

of the mouth and two lacerated wounds on the scalp.

4. On Har Lal he found a 'V' shaped lacerated wound above the occipital protuberance slightly on the right side.

5. After fifteen days, i.e. on 2-8-75 (2-8-78) Sardara died. The doctor conducted post-mortem on the dead body of Pat Ram, found a lacerated wound on the left side of scalp and there was fracture of left parietal and occipital bones. He opined that ante-mortem injury was sufficient in the ordinary course of the nature to cause the death.

6. The post-mortem was conducted on 2-8-78 on the dead body of Sardara. Doctor found two healed wounds. The first wound was irregular in shape and situated on the left side of mandible. On dissection there was comminuted fracture of the left side of mandible. The doctor also found a healed wound on the head of the deceased and on an internal examination there was a fracture. On further dissection a brownish coloured haematoma was found at the site of the injury and he opined that the death was the result of toxaemia and the ante-mortem spinal injuries which were sufficient in the ordinary course of the nature to cause the death. The prosecution examined PWs 14 and 15 who were the wife and other son of the deceased Sardara as eye-witnesses. Both the Courts held that the case of murder is proved against Sheo Karan as well as the appellant.

7. So far as Sheo Karan is concerned, it can be seen that he was responsible for causing the death of Sardara as well as his son Pat Ram and his petition was dismissed as mentioned above. Now coming to the appellant the question that falls for consideration is whether she can be convicted under Section 302 read with Section 34, IPC. The prosecution must establish that there was an intention to kill the deceased and it was shared by both the accused. The facts mentioned would show that Sheo Karan and his wife, the appellant went to Har Lal's room to question him as to why he has transferred his lands in favour of the sons of Sardara to which he replied that it was his will and pleasure since they have served him so he parted the land in their favour. This caused provocation to Sheo Karan and he started beating Har Lal till then no part was attributed to the appellant. At this juncture according to the eye-witnesses the deceased and his sons and the other people intervened and Sheo Karan dealt blows on the head of the deceased and it is alleged that the appellant also caused one injury on the left side of the face of Sardara. The doctor has found that it is the head injury that proved fatal and it must also be remembered that Sardara died after fifteen days. So far as the other deceased Pat Ram is concerned no role is attributed to the appellant. She did not participate in the attack on Har Lal. It can thus be seen that the only part attributed to the appellant was that when Sardara intervened Sheo Karan dealt blows on the head and the appellant dealt one blow on the mandible. It can thus be seen that there was no common intention on the part of the appellant to kill Sardara. The prosecution version is that their intention was only to question Har Lal as to why he parted his lands to the sons of Sardara instead of giving equally to both the sons. Because of his reply Sheo Karan enraged it is only at that stage Sardara entered into the picture and the attack on him took place. Viewed from this angle we find it difficult to hold that the appellant had intention to cause the death of the deceased or that she shared the same with her husband Sheo Karan. Both have to be held responsible for their individual acts. In that view of the matter the offence committed by the appellant would be one punishable under Section 326, IPC as simpliciter. Consequently her conviction under Section 302 read with Section 34, IPC be set aside and she is convicted under Section 326, IPC and sentenced to five years' Rigorous Imprisonment. Bail bonds of the appellant shall stand cancelled.

8. The appeal is disposed of accordingly. Order accordingly.

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