

SUPREME COURT OF INDIA

Brijrani

Vs.

State of M.P.

CrI.A.No.14 of 1996

(Doraiswamy Raju and H. K. Sema JJ.)

31.07.2003

JUDGEMENT

H.K.Sema, J.

1. Five accused - Chuttia, Gulab, Vrindavan, Brijrani and Jagat Singh - were tried in Sessions Trial No. 72/85 by the IIIrd Additional Sessions Judge, Damoh and convicted and sentenced to undergo RI for life for offences punishable under Sections 302/149, IPC. Further accused Nos. 1-4 were convicted under Section 148, IPC and sentenced to undergo RI for one year. Accused No. 5 was convicted under Section 147, IPC and sentenced to undergo RI for one year. Accused Nos. 1-4 were also convicted under Section 324, IPC and sentenced to undergo RI for one year. Accused Nos. 2, 3 and 5 were also convicted under Sections 324/149, IPC and sentenced to undergo RI for one year. All the sentences were ordered to run concurrently. On appeal, the High Court, by the impugned judgment, acquitted accused Nos. 1, 2 and 5 of all the charges levelled against them and convicted accused No. 3-Vrindavan and accused No. 4-Brijrani for offences punishable under Sections 302/148 and 324, IPC and sentenced them to undergo RI for life and RI for one year respectively. The sentences were ordered to run concurrently. Accused-Vrindavan chooses not to prefer an appeal against his conviction. Accused-Brijrani, who is the appellant before us, is the mother of accused-Vrindavan.

2. Briefly stated, the facts are as follows:

“On 17-5-1985 when the deceased Rajaram was proceeding towards the village (Hintoli-Bari) with a bucket to fetch milk, he stopped on the way and had some talk with accused Chuttia. Then all of a sudden, he was assaulted with Pabbal (Sabbal) from behind by accused Vrindavan, son of accused Chuttia; and accused Brijrani, wife of Chuttia and mother of Vrindavan. Deceased Rajaram tried to run away but the accused chased him. Accused Vrindavan and accused Brijrani dealt farsa blows while other accused dealt blows on him with their lathis. On being alarmed by the cries of Rajaram, PW-4-Siyarani, who is the wife of deceased Rajaram, rushed to the spot to rescue her husband but she also sustained a farsa blow on her head dealt by the

accused Vrindavan and sustained another farsa blow on her hand dealt by accused Brijrani as a result of which she fell down. FIR (Ex. P-1) was lodged promptly at 9 a.m. on the same day in which all the particulars have been mentioned. PW-17-V. K. Jain (I.O.) immediately reached the spot and started investigating the case. After holding the inquest report (Ex. P-21), he seized the bucket and pair of shoes belonged to the deceased (Ex. P-11). He also seized samples of plain and bloodstained earth and two pieces of bone (Ex. P-12). A bloodstained farsa was seized from Brijrani vide Ex. P-16 on 17-5-1985. On 18-5-1985, a tabbal was seized from accused Vrindavan. We are not mentioning the full particulars of the seized articles from the possession of other accused as they are not before us, as noticed above.”

3. PW-12, Dr. V. P. Brijpuriya conducted postmortem examination on the body of the deceased Raja Ram on 17-5-1985 and found following eleven incised wounds of various dimensions.

"1. Cut wound - 13" x 3" x 2" on the left side of the back starting from the tenth rib and going downwards. Sides of the wound were clear and cut was vertical the upper. The upper angle was acute and the lower angle was wider.

2. Cut wound in square shape - 11" x 7" x 5" on the back (towards the chest) on the left side. The upper part of the wound was extended up to skeptula and the lower part up to the 10th rib. It was 2" away from the middle line and was pointing towards the inner side. On the outer side, it was up to the shoulder. The sides of the wound was sharp and vertical. Skeptula bone was cut into two parts. Lungs was protruding and visible under the wound. Lungs had two cuts - one 4" x 1½ and another was of 3" x 1". Chest was full of blood.

3. Cut wound:- 7" x 2" x 6" was on the right thigh - in the middle portion. This was circular. In this wound all the muscles of the thigh were cut and femur bone was cut into two pieces.

4. Cut wound 3" x ¼" x "-", vertical wound on the left side of chest.

5. Cut wound 2" x ½" x "-" - horizontal wound on the right side of the chest.

6. Horizontal wound on the upper part of the left shoulder 7" x 3" x 3". Muscles were cut due to this injury and cumeron bone were cut into two pieces. 3" skin was uncut in the front and towards the inner side of the wound.

7. Cut wound - 2" x 1½" x 1" - on the front portion of the chest on the right side, vertical, on the 4th and 5th rib.

8. Cut wound 3" x ½" x ¼" on the right cheek.

9. Cut wound - 3" x 1" x 1" on the right side of the head on the frontal region - on the back of the hair line - curved. Frontal bone was fractured.

10. Cut wound - 1½" x -" x 1" - Temporal bone was fractured on the frontal region on the right side of the head.

11. One cut wound - 1½" x -" x 2" - vertical on the cervical area of the chest on the left side. In this wound cervical bone was cut into two pieces."

4. PW-12 found that the deceased - Rajaram was virtually cut into two and died on the spot as a result of excessive haemorrhage. The High Court, on re-appreciation of evidence, convicted Brijrani and her son Vrindavan, as noticed above.

5. It is not disputed that the deceased and the accused are closely related. PW-4-Siyarani is the wife of deceased Rajaram. Accused Vrindavan is the nephew of PW-4-Siyarani. Accused Brijrani is the elder sister-in-law (Jethani) of PW-4. Accused Gulab is the nephew of PW-4. Accused Chuttia is the brother-in-law of PW-4 and father of the accused Vrindavan. Accused Brijrani is the mother of accused Vrindavan.

6. The High Court, while convicting the appellant, relied upon the testimony of PW-1 - Ghasiram and PW-4 - Siyarani - wife of the deceased. PW-1 - Ghasiram is an independent witness. He specifically stated in earlier part of the statement that the incident was witnessed by him and both accused Nos. 3 and 4 were armed with Pabbal and Farsa. This witness, however, stated that he could not see later part of the assault near the house of Dhanua as his view was obstructed by a house in between but he over-heard Rajaram shouting for help. He has also stated that being alarmed by the cry of her husband, Siyarani had rushed to his rescue. PW-4 - Siyarani has also stated that being alarmed by the cries of her husband, she went to the house of Dhanua to rescue her husband. She saw her husband being assaulted. She also suffered a farsa blow on her head dealt by accused Vrindavan and another blow of farsa on her hand dealt by appellant - Brijrani.

7. Mr. Manish Mohan, learned counsel for the appellant strongly urged that the presence of the appellant - Brijrani at the place of incidence has not been established. This contention, in our view, is negated by the testimony of PWs-1 and 4, apart from documentary and medical evidence. As already noticed, accused and PW-4 were closely related. Bloodstained farsa was seized from the appellant - Brijrani (Ex. P-16) on the date of the incident, i.e. 17-5-1985 itself. PW-1 Ghasiram categorically stated that on the fateful morning when he was going to the farm for daily morning routine, he saw deceased Rajaram going from his house towards the village with a bucket for taking milk. He also saw Rajaram stopped to talk to Chuttia. At that time, accused Vrindavan hit Rajaram with Pabbal from behind which hit Rajaram at his back. He also saw, amongst others, Gulab's mother, which witness was lateron identified as Brijrani, assaulting Rajaram with farsa.

8. PW-4 - Siyarani is the wife of deceased Rajaram. She stated that around 7 a.m. when she was inside the house, she heard the sound of her husband "come.save me" from the

front side of the house of Vrindavan. She rushed to Dhanua's house where she saw her husband was being assaulted. Accused Vrindavan came and gave a farsa blow on her head. Appellant - Brijrani gave a farsa blow on her arm and she fell down unconsciously. When she regained consciousness she saw her husband was cut into two pieces. She recognized the pabbal and farsa with which she was hit. She could identify Pabbal (Art. A) with which she was hit by accused Vrindavan and farsa (Art. B) with which she was hit by appellant - Brijrani.

9. PWs-1 and 4 were subjected to cross-examination but nothing could be elicited to impeach the credit worthiness of their testimony.

10. PW-12, Dr. H. P. Brijpuria, as already noticed, conducted post mortem on the deceased and found eleven incised wounds of different dimensions and sizes. The doctor opined that the sizes of all cut wounds were clear and sharp. The doctor in paragraph 7 of his examination-in-chief, stated as under :

"All the injuries of the deceased were ante-mortem. Wound Nos. 1, 2, 3 and 6 were expected from sharp, heavy and long edged weapon. Wound Nos. 4, 5, 7, 8, 9 and 10 were expected from a sharp cutting and heavy weapon which is different from the earlier one. The inner injury of the wound No. 2 was expected from multiple hit at the same spot. Injury No. 2 was serious which was sufficient to cause death in normal circumstances."

11. The doctor further opined in paragraph 20 of examination-in-chief as under:

"The injuries suffered by the deceased is possible by the weapons item (A) pharsa and Katarna item (B) produced in the Court."

12. As already noticed, Art. (A) was seized from Vrindavan and Art. (B) was seized from the appellant Brijrani. The doctor further opined that all the injuries could not be possible by the same weapon because all of them were of different depth and sizes. The doctor in paragraph 23 of cross-examination stated as under:

"It is correct that the internal injuries suffer by the body depend upon the fact that how the sharp edge of the weapon hits the body. All the injuries could not be possible by the same weapon because all of them were of different depth and size. On the basis of the depth and length of the wounds I am telling that they could have been caused by two different weapons. If only a small portion of a long edged weapon had hit the body, then the size of the wound will be smaller."

13. PW-4, Siyarani, as already noticed, suffered two injuries - one on the hand by blow of Pabbal dealt by Vrindavan and the other on the left hand dealt by a farsa blow by appellant Brijrani. PW-18 - Dr. K. P. Tripathi examined PW-4 on 17-5-1985 and found the following injuries on her body:

1. "Incised wound: 4" x ½" deep up to the bones, on the front side of the head.
 2. Incised wound: 3" x 2" x ½" on the frontal part of left hand".
14. The medical evidence corroborates the ocular testimony of PW-4 in material particulars.
15. In the premises aforesaid, we have no reason to take a view different from the view taken by the two Courts concurrently. This appeal, accordingly, stands dismissed.
16. The appellant is on bail. She shall be taken in custody forthwith. Her bail bonds stand cancelled.
- Appeal dismissed.