

# SUPREME COURT OF INDIA

Kishnia

Vs.

State of Rajasthan

Crl.A.No.120 of 1998

(K. G. Balakrishnan and B. N. Srikrishna JJ.)

10.09.2004

## JUDGMENT

### **K. G. Balakrishnan J**

1. The three appellants herein were found guilty of the offence punishable under Section 302 read with Section 34 and also for the offence under Section 201 I.P.C. The Sessions Court convicted these appellants and sentenced them to undergo imprisonment for life for the offence under Section 302 read with Section 34. No offence was made out against the appellants under Section 201 I.P.C. The appellants preferred an appeal before the High Court and their appeal was dismissed.

2. The first Appellant Kishnia and Second Appellant Mania are the children of Shama. These appellants used to graze their cattle in the field of Rawata and there used to be quarrels between deceased Rawata and these appellants. On one occasion, when there was a quarrel, deceased Rawata is alleged to have slapped the second Appellant Mania. On 17.4.1976, deceased Rawata and his son Rameshwar had gone to the nearby village for fetching water on a camel. At about 8.00 p.m., Rameshwar came running to his house and told his mother and brother that appellants Kishnia and Mania and the third appellant Karnail Singh had caused injuries to his father Rawata. Rameshwar told them that the appellants Kishnia and Mania were armed with lathis and appellant Karnail Singh was armed with 'Sela'. After some time, they saw the appellants standing little away from the boundary for their field. The appellants told them that Rawata had been killed and warned them not to report the matter to anybody, otherwise they would also be killed. Their camel was found standing there. After the appellants left the place, they saw Rawata lying dead near the boundary of their field. Mamraj, the other son of the deceased Rawata went to the Police Station Rawatsar on 18.4.1976 at about 11.00 a.m. and lodged the First Information Report. PW 6, the Station House Officer visited the scene of occurrence and prepared a map. He held inquest over the dead body. Sample of blood-stained soil was collected from the place of occurrence and he noted some footprints at the scene of occurrence. The pair of shoes allegedly worn by deceased Rawata was also taken into custody and was sealed. The dead body was sent for

post-mortem examination and as many as 25 injuries were found on the dead body. During the course of the investigation, a bamboo lathi was recovered. The 'Sela' allegedly used by the third Appellant Karnail Singh was also recovered.

3. The Sessions Court as well as the High Court relied on the evidence of PW 4 Rameshwar and also the evidence of PW 2 Mamraj, the son of the deceased and the evidence of PW 5 Tulsi, the wife of the deceased.

4. The learned Counsel for the appellants strongly urged before us that the Sessions Court as well as the High Court seriously erred in finding that the appellants were guilty. It was pointed out that there were a series of contradictions in the evidence of PW 4 Rameshwar and that of the evidence of PW 2 and PW 5. PW 4 Rameshwar deposed that just before the sunset he and his father went to the nearby village Sheikhchoolia for taking water. On their way, he heard some sound from behind that they would not be able to go ahead.

5. When he turned back, he saw the appellants Kishnia and Mania who were armed with lathis and the appellant Karnail Singh who was armed with 'Sela'. All the appellants started hitting the deceased Rawata and he fell on the ground, even thereafter they continued hitting him. PW 4 Rameshwar got scared and he ran back to his house and narrated the entire incident to his brother Mamraj and to his mother.

6. PW 4 was extensively cross examined. But there is nothing in evidence to show that he had not seen the incident. As regards the evidence of PW 2 and PW 5, the learned Counsel for the appellant contended that they had no opportunity to see the appellants as they were standing near the boundary of their field and it was much after the darkness had set in. These witnesses also had no case that they had seen the appellants but they identified them by their voice. PW 2 and PW 5 had previous acquaintance with these appellants as their properties were situate close to the field of the deceased Rawata. There is no inherent improbability in the evidence of PW 2 and PW 5 that they identified these appellants by voice as they were standing at a distance.

7. The learned Counsel for the appellants further submitted that the incident happened far away from the house of the deceased, however, the dead body was found near the boundary of his property and the prosecution has not explained as to how the dead body was found near the boundary. According to the prosecution, deceased Rawata had gone to fetch water on a camel.

8. The camel had also returned to the house of the deceased and the body of the deceased Rawata must have been carried by the appellants to the boundary of his property. The appellants threatened PW 2 and PW 5 by saying that they shall not report the matter to anybody otherwise they would also be killed. Of course, there is no direct evidence as to how the dead body of deceased Rawata was brought near his field but that does not give cast doubt on the prosecution case. The evidence of PW 2, PW 4 and PW 5 clearly establish that the appellants were responsible for the death of Rawata. The Sessions Court as well as the

High Court rightly convicted the appellants for the offence under Section 302 read with Section 34. We find no merit in the appeal and the appeal is dismissed accordingly.