

**Vaja Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Sep-04-1979

**Reported in :** 1979WLN(UC)291

**Judge :** M.C. Jain and; S.N. Deedwania, JJ.

**Appeal No. :** D.B. Criminal Jail Appeal No. 216/1976

**Appellant :** Vaja

**Respondent :** State of Rajasthan

**Disposition :** Appeal dismissed

**Judgement :**

M.C. Jain, J.

1. The appellant Vaja stands convicted for the offences under Sections 302 & 324 IPC and his been sentenced to imprisonment for life for the offence under Section 302 and to rigorous imprisonment for one year for the offence under Section 324 IPC by the learned Additional Sessions Judge, Udaipur, by his judgment dated 31st Jan. 1976. 'The substantive sentences were ordered to ran concurrently.

2. The prosecution case in brief is that there was a dispute with regard to the land between the accused and his uncle Vala deceased. The villagers got the dispute settled About two days prior to the occurrence, the accused visited the house of the deceased Vala and expressed that as dispute stands settled and he has visited their house, they should also visit his house. Thereafter, the accused went away from the house of the deceased. It is said that on 6 6-75. Vala. his son Shanker PW 2, his daughter Mst. Hakri PW 3 and their one guest Bhoma PW 5 went from their village Dhanol to Chhani. The same day in the evening, they returned from Chhani. After covering some distance Shanker was sent back by the deceased to fetch ten paise, which remained with the shop keeper at Chhani It is said that near the river, the accused came from behind and he along with Valaji and Bhoma had a smoke. The prosecution case further is that the accused said to lake revenge as his brother Chokla has been killed by Vala (the deceased). After saying so, the accused inflicted blows with Kulhari on the head of Vala. Bhoma & Mst. Hakri tried to intervene On intervention, Mst. Hakri was also inflicted blows with kulhari. She sustained injuries on her back and on other parts of her body and a slight injury is also said to have been caused to Bhoma. Bhoma thereafter, went towards the village of the deceased.

3. The prosecution story further is that one Alka PW 4 was coming from towards the village Dhoan and was proceeding to Chhani When he was at a distance of about 100

paces he saw the accused inflicting kulhari blows on Mst. Hakri and thereafter, he also observed the accused chasing behind the deceased Vala. He came near Mst. Hakri, who had fallen on the ground. Alka then took Mst. Hakri to Chhani and informed about the occurrence to her brother Shanker. Shanker thereafter, went to his brother Magan and informed about the occurrence. During the occurrence, it is said that resistance was offered by Mst. Hakri. She caught hold of kulhari by its blade side and in that resistance, the kulhari broke into two pieces. Its broken handle part remained in the hands of the accused, whereas the blade part with a broken handle piece came in the hands of Mst. Hakri. This part of axe, which remained in the hands of Mst. Hakri, was blood stained. Magan visited the police station, Kherwara and lodged the report Ex PI at 9 p.m. on 6-6-75 and he also produced the broken axe blade part which was seized by the S.H.O., Chauthmal PW 13 vide memo Ex.P2. The SHO packed and sealed the same. Mst. Hakri was taken to Kherwara where her brother Kewla also arrived and informed Shanker that his father Vala has been killed by the accused Vaja with kulhari. Bhoma PW 5 had also left for the village Dhanol from the place of occurrence and after reaching the residence of Vala at Dhanol, he informed the wife of the deceased Smt. Khatri PW 6, about the occurrence. The SHO came to know of the death of Vala. Thereupon, he proceeded to the site and prepared Panchanama. Case was converted from Section 307 to Section 302 IPC. The SHO conducted the spot investigation and investigation from the witnesses. Postmortem of the dead body was got conducted. The blood stained articles were sent for chemical examination. All the articles were found to be having human blood on them. After completion of investigation, charge-sheet was presented against the accused appellant and the accused was committed for trial.

4. The Additional Sessions Judge, Udaipur, tried the accused for the offences under Section 302 & 307 IPC. He recorded the statements of as many as 18 witnesses. The accused in his statement denied the prosecution case and led no evidence in defence. After hearing the arguments, the learned Sessions Judge found the accused guilty of the offences under Sections 302 & 324 IPC. On the basis of the evidence of the injured witness PW 3 and eye-witnesses Alka and Bhoma PW 4 & PW 5 and corroborating evidence in the form of the statements of Shanker as well as medical evidence and further corroboration was sought from the First Information Report as well as the circumstantial evidence of articles found stained with human blood.

5. Dissatisfied with his convictions and sentences, this appeal has been preferred by the accused Vaja.

6. We have heard Shri N.N. Mathur, learned Counsel for the appellant and SL Mardia, Public Prosecutor for the State.

7. Shri Mathur, on behalf of the appellant, carried us through the statements of Hakri, Alka & Bhoma PW 3, 4 & 5 and Shankerlal PW 2. He also referred to other relevant evidence on record & submitted that when the dispute was compromised and when the accused had visited house of the deceased 2 days prior to the occurrence where he extended an invitation to the deceased and members of his family to visit his house, there was no motive left with the accused to take any revenge or to settle any score with the deceased. He also urged that Alka is a chance witness and the statement of Bhoma was recorded after 14 days. His name was even not disclosed in investigation by witness, Mst. Hakri, Mst. Khatri and Shankerlal. Bhoma is said to be the guest. If the statements of the two witnesses PW 4 and PW 5 are excluded from consideration, there remains only the testimony of a single witness Mst. Hakri.

Though she is said to be injured in the occurrence but her sole statement is not of sterling worth and implicit reliance may not be placed on her statement. In the absence of corroborating evidence, Shri Mathur submitted that it would not be safe to record conviction of the appellant.

8. We have bestowed our anxious consideration to these contentions. After hearing Shri Mathur and after perusal of the statement of Mst. Hakri. Alka, Bhoma and Shankerlal and other connecting evidence, we are firmly of the opinion that the learned Sessions Judge has rightly placed reliance on the statement of injured witness Mst. Hakri and two eye-witnesses coupled with the corroborative evidence in the form of the statements of the witnesses as well as circumstantial evidence. Right from the setting of the machinery of law into motion till the end of the trial, the prosecution story is consistent and well knit and each evidence gets full corroboration from the other evidence. It may be observed that Bhoma had visited the house of the deceased and the deceased, his son Shankerlal and her daughter Mst. Hakri and Bhoma left the village Dhanol for Chhani on 6.6.75 and at about 5 p.m. on that day they returned from Chhani and the occurrence took place when Mst. Hakri, Bhoma and Vala were proceeding towards Dhanol and Shanker had gone back to Chhani to fetch ten paise from the shop-keeper. Mst. Hakri in her statement has categorically deposed that the accused greeted her father and her father, the guest and the accused, all smoked bidi and at the time the accused said to his father that he has killed his brother, so he will take revenge and immediately thereafter, he inflicted blows with kulhari on the back and neck of her father. When she intervened, the accused inflicted a kulhari blow on her back. The guest also intervened and he too received an injury on his hand. It may be stated that it appears that the accused had a suspicion that his brother has been killed by magic by the deceased but it has come in evidence of Shanker that the father and brother of the accused died in a natural way. Her statement further goes that she caught hold of the kulhari, where by the kulhari was broken into pieces and she fell down. She also states that Alka came from the opposite direction. She further states that the handle which remained in the hands of the accused, was also wielded by the accused and he inflicted blows with that broken part of the handle. She has also stated that when Alka had come, her father and the accused both had run away towards village Dhanol. Nothing adverse has come in her cross-examination. Her testimony, in our opinion, is of sterling character and implicit reliance can be placed on her statement. Her sole statement is sufficient to hold the accused responsible for the commission of the offences. Apart from her statement, there are the statements of Alka and Bhoma. Her statement gets full support and corroboration from the testimony of these two witnesses. Alka's testimony cannot be brushed aside solely on the ground that he happened to visit the place of occurrence by chance. Alka appears to be truthful witness as he has deposed only that part of the story which he actually observed. He does not state that he saw the accused inflicting blows with kulhari on the person of Vala. As regards Vala deceased, he states that the accused was seen chasing him but so far as Mst. Hakri is concerned, he has stated that he had seen Mst. Hakri being beaten by the accused with `kulhari. The arrival of this witness cannot be doubted. It has not been elicited in cross-examination of this witness as to why & how he was proceeding towards the village Chhani. It may further be observed that Alka carried Mst. Hakri to the village Chhani. The statement of Alka gets corroboration from the statement of Shankerlal to whom the occurrence was narrated by Alka. This prosecution story, in our opinion, is worthy of credence that out of the two persons namely, Alka and Bhoma, one proceeded to the village of the deceased and the other, proceeded to Chhani carrying Mst Hakri with him. Thus, Alka's statement as well goes a long way to establish the

case against the accused and also corroborates the testimony of Mst. Hakri as well as the other eye witness Bhoma.

9. As regards Bhoma again, the prosecution story is consistent that he visited the house of the deceased and accompanied the deceased along with Shankerlal and Mst. Hakri to village Chhani and this guest also returned from Chhani in their company. It is true that his name was not disclosed and it appears that his name was not known to the witnesses. The name of this guest was not even known to Mst Khatri. A search was made of this witness by the other witnesses and after search, he was produced before the investigating officer. Thus, 14 day's delay was caused in recording the statement of PW5 Bhoma, simply because his name did not appear at the initial stage of the case, presence of this witness cannot be doubted when right from the very beginning the prosecution case was that there was one guest with the deceased. The delay in recording the statement of this witness has been satisfactorily explained. This witness was the resident of Gujarat and so time was taken in recording his statement after locating him. If the statement of this witness is perused, it would be evident that except this criticism, his testimony can not be assailed on any other ground.

10 Besides the ocular evidence, there are tell tale circumstances in the case. The weapon of the offence was broken into two pieces and the blade side fell in the hands of Mst. Hakri and it was produced before the police and was found stained with human blood. This part of the evidence is further unassailable. Thus, we are convinced that it was the accused appellant Vaja who inflicted kulhari blow on the person of Vala as well as on the person of Mst. Hakri.

11. Further, from the medical evidence, it is proved that the deceased Vala sustained as many as seven injuries. Dr. S.K. Mathur PW 15 found the following external and internal injuries on the person of Vala:

Wounds:

1. Incised wound 3 1/2' x 1/2' x 1 1/4' on right parietal region of the scalp, bone underneath is fractured.
2. Two incised wounds making cross on right side of occipital region, each measuring 1 1/2' x 1/2' x 1/2'.
3. Incised wound 1 1/2' x 1/2' x 1/2' obliquely in the mid parietal region of scalp.
4. Lacerated wound with bruise 1/2' x 1/4' x 1/3' and 1' x 1/2' on right on axillary region of face.
5. Incised wound 3 1/4' x 1/10' x 1/10' obliquely on the left scapular region in upper part.
6. Bruises 1/2 x 1/2", 1' x 1/2' and 1' x 1/3' all on posterior surface of the right shoulder.
7. Bruises 1 1/2' x 1/2' on right sided calvical in middle.

Cranium and spinal cord:

Scalp skull and vertebrae--four incised wounds on the scalp, scalp depressed at temporal region. Hair over the wounds cut by sharp weapon.

Skull-Depressed, comminuted fracture of right parietal, temporal, occipital and frontal bone of skull extending from right side of occipital bone to the right orbital margin, then linear fracture upto opposite side parietal bone transversely.

Membranes--Meninges at temporal region torn, temporal artery and vein ruptured.

Brain and spinal cord--Temporal and frontal lobe compressed, spinal cord not opened.

Injury:

Muscles--Right temporalis muscle torn and crushed.

Fracture--Fracture of right clavicle in middle.

Depressed fracture of the temporal, right parietal, right frontal and occipital bone with linear fracture of left parietal bone transversely.

12. In his opinion Vala died of injury to the brain and shock due to external haemorrhage from the right temporal artery and vein. Looking to internal effect of external injuries, it is apparent that the injuries to brain were sufficient in the ordinary course of nature to cause death & further the intention of the assailant is clear from the words which he uttered prior to the actual wielding of Kulhari on the person of Vala. As regards this offence, no argument has been advanced before us on behalf of the appellant. Thus, offence under Section 302 is amply brought home to the appellant. Further, Dr. Mathur has also proved injuries on the person of Mst. Hakri. There was one incised wound, two abrasions and two bruises on the person of Mst. Hakri. For having caused incised wound on the person of Mst. Hakri, the accused has been rightly convicted for the offence under Section 324 IPC. Thus, on consideration of the entire evidence on record, we find that it is a fool proof case against the appellant. The appeal has absolutely no force.

13. In the result, the appeal is hereby dismissed.

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