

Raj Kishore vs The State on 27 January, 1953

Equivalent citations: AIR1953ALL464, AIR 1953 ALLAHABAD 464

JUDGMENT

Agarwala, J.

1. This is an appeal by Raj Kishore who has been convicted under Sections 304 and 326, I. P. C. and sentenced to four years' R. I. under the former and two years' R. I. under the latter section. The facts of the case are not disputed by the appellant.

2. The appellant was employed in Railway loco at Tundla. On 21-9-1949 he was on duty from 4 P. M. to 12 midnight. After finishing his work he went to his house, took his meal and lay in bed outside the house in the lane. He had not yet fallen into sleep when he saw his wife Smt. Sri Devi coming out of the house. She had a liaison with a neighbour Chandra Kishore who was then sleeping nearby with a friend of his. Smt. Sri Devi and Chandra Kishore went inside the house. The appellant got suspicious and followed them stealthily and heard his wife and Chandra Kishore whispering to each other in the courtyard of a dilapidated house adjacent to his own house. He stood there quietly. A little later, peeping over the wall of the dilapidated house he saw to his astonishment that Chandra Kishore was having illicit intercourse with his wife. He lost his self-control and immediately attacked Chandra Kishore with a danda from behind while he was having intercourse. Chandra Kishore became unconscious on receiving danda blows. The appellant then assaulted his wife with the danda. She also became unconscious. Then he rushed inside, his house and getting hold of a razor cut the nose of his wife and again beat both of them with the danda. Several villagers came up on the scene. The appellant himself went to the police station, lodged the first information report and deposited the chopped off nose, the razor and the danda at the police station.

3. Chandra Kishore did not regain consciousness and died four days later. The post-mortem report on his body revealed that he had received 12 injuries on all parts of his body. His skull was fractured and death, in the opinion of the doctor, was due to coma on account of head injuries. The wife recovered.

4. The appellant made a confession before a Magistrate admitting the circumstances narrated by him in the first information report and he stuck to his statement before the enquiring Magistrate as well as in the Court of Session. There can be no doubt that the appellant committed the murder of the deceased under grave and sudden provocation. His case fell within Excep. I to Section 300, I. P. C. and he was rightly convicted under Section 304, Part I, I.P.C.

5. The only question before me is whether the sentence requires modification. In this connection learned counsel has urged that a lenient view of the matter should be taken. He has relied upon a Lahore case: -- 'Hussain v. Emperor', AIR 1939 Lah 471 (A). In that case the accused killed the

deceased on seeing him lying in a bed with his wife. The deceased had previously adulterous intercourse with his wife while the accused was in jail and the wife had given birth to a child on account of this intercourse. The accused bore ail this patiently. But he could not bear it any longer when he found the deceased in bed with his wife again. Young J. awarded a sentence of three months' R. I.

6. In another case of this Court -- 'Emperor v. Mendi Ali', AIR 1941 All 310 (B), however, Braund J. awarded five years' R. I. when the learned Sessions Judge had awarded 10 years' R. I. In this case also the accused had seen with his own eyes his wife in the act of adultery with the deceased.

7. There can be no hard and fast rule as to the sentence which should be imposed in such cases. Every case has to be decided on its own facts. Where the husband sees his wife in adultery with another man, there can be no doubt that grave and sudden provocation is caused to him and the law recognises that if he kills the man committing the adultery in such circumstances, he does not commit murder but that he commits a lesser offence, namely, culpable homicide not amounting to murder. No doubt, the law provides that the sentence for an offence of culpable homicide not amounting to murder may be transportation for life or ten years' R. I. when the case is covered by Part I of Section 304, I. P. C., as it is generally covered by that part in all such cases, yet since the act was, one may say, almost natural in the circumstances, one must award a sentence as low as is commensurate with the nature of the offence and as the facts would justify. At the same time the sentence should not be so low as to encourage the commission of homicide.

8. I consider a sentence of two years' R. I. under Section 304, I. P. C. to be just in such cases, and a sentence of one year's R. I. would meet the ends of justice in case an offence under Section 326, I. P. C. is also committed.

9. I, therefore, dismiss the appeal with this modification that I reduce the sentence of rigorous imprisonment under Section 304, Part I, I. P. C. to two years' R. I. and that under Section 326, I. P. C. to one year's R. I. Both the sentences would run concurrently as ordered by the Court below.

10. The appellant is on bail. He shall surrender to his bail and serve out the sentence.