

Supreme Court of India

Riasat vs State Of U.P. on 13 January, 1969

Equivalent citations: 1969 I UJ 37 SC

Author: Bhargava

Bench: Shelat, Bhargava, Vaidialingam

JUDGMENT Bhargava, J.

1. Riasat has appealed, by special leave, against his conviction and sentence of death for an offence punishable under Section 302, Indian Penal Code, and another sentence of 6 months' rigorous imprisonment under Section 323, I. P. C. The facts forming the basis of the conviction are that, on 18th September, 1965, at about sunset, in village Marchaur, the appellant complained to one Yunus that his sister Asma had plucked some maize cobs from his field. Yunus enquired from his sister about it and informed the appellant that she had not done so. The appellant then asked Yunus to accompany him to see situation for himself. Yunus refused; whereupon the appellant caught hold of his hands and took him along towards his house. At the house, Smt. Fatima, mother of the appellant, started slapping Yunus and exhorted the appellant to give him a beating, so that the appellant also started beating Yunus with fists and kicks. Smt. Halima, the sister of the father of Yunus, who was living close-by, saw Yunus being beaten and ran up to save her nephew. The appellant pushed her on the ground and pressed his knee joints with great force. Smt. Halima raised an alarm which attracted her husband, Jumman, to the scene of occurrence and some other witnesses also arrived. Smt. Halima, however, died immediately as a result of the injuries caused by the appellant. The appellant and his mother there-after ran away from the scene of occurrence. On subsequent post-mortem examination on the body of Smt. Halima, it was found that she had two large contusions on the right and left side of the chest. On the right side, the 4th, 5th, 6th and 7th ribs in mid-auxiliary line were fractured and, on the left side, the 3rd, 4th, 5th and 6th ribs were fractured. The pleura was found lacerated at the sites of the fractures. Further, there was laceration of the left lung caused by one of the broken pieces of one of the left ribs. In the opinion of the Doctors, the injuries were sufficient to cause death in the ordinary course of nature. In fact, he was of the opinion that it was laceration of the left lung which primarily resulted in the death.

2. These facts have been held to be proved by the Sessions Court and the High Court of Allahabad on the basis of the evidence of three eye-witnesses, Yunus, Jumman, and one other person Bal-

Chand, who was an independent witness. The Courts also relied on the evidence of the Doctor which proved that Smt. Halima died a violent death as a result of the pressure applied on her chest which fractured her ribs and caused laceration of the left lung.

Both the Courts have concurrently believed the evidence of all these witnesses, and the finding of fact recorded by them holding that the version set out above has been established by the evidence of these witnesses has not been challenged before us by learned counsel for the appellant. Even, ordinarily, this court does not re-assess the evidence which has been concurrently believed by the Sessions Court as well as the High Court. In these circumstances, the finding of the two Courts that the facts set out above have been established must be accepted.

3. The main point that has been argued in this case is that, even on the facts established, the courts were wrong in holding the appellant guilty of the offence of murder; and we consider that there is considerable force in this submission. The facts proved that there was no previous enmity at all between the appellant and Smt. Halima or even Yunus, her nephew. The appellant resented the fact that Yunus wrongly denied plucking of maize from his field by his sister, and as a result, the appellant's mother and the appellant under her exhortation gave a mild beating to Yunus. Smt. Halima intervened to save, her nephew, whereupon the appellant threw her on the ground and sat on her chest. He then pressed the knees hard so as to cause contusion. Obviously there was no motive at all for the appellant to intentionally cause the death of Smt. Halima or even to cause intentionally such an injury as would, in the ordinary course of nature, result in her death. It appears that angered by the intervention of Smt. Halima, the appellant wanted to give her punishment, so that he sat on her chest and pressed it with his knees. It seems that his intention was to cause pain to Smt. Halima to punish her for intervening on behalf of Yunus. It is true that the actual injuries received by Smt. Halima happened to be so severe that eight of her ribs were broken and the bone from one of the ribs lacerated the lung resulting in her death. This does indicate that the pressure was applied with great force by the appellant; but, even then, we fail to see how it can be inferred that, when applying the pressure with his knees, the appellant had the intention that Smt. Halima should die or should receive such a dangerous injury as would, in all likelihood, cause her death. Learned counsel appearing for the State drew our attention to the statement of Yunus that the appellant applied pressure with his knees on the chest of Smt. Halima twice before the arrival of other witnesses and once in the presence of the other witnesses. Jumman and Bal-Chand only say that they saw pressure being applied once. It seems that the appellant did not realise that the pressure he was applying was so great as to cause such grievous injuries which might result in death; and, in any case, we do not think that, if the appellant had intended to cause the death of Smt. Halima or to cause such injury as would, in the ordinary course of nature, result in her death, he would have contented himself by merely applying pressure with the knees. Normally, a person in his position, if he wanted to kill Smt. Hajima, would have strangled her, because while sitting on her chest, that would be the easiest means of causing her death. The pressure from the knees could not have been applied with the object of causing the death of Smt. Halima, as that is not a manner in which any one would seek to kill another. 'In these circumstances, we think that the only inference which could have been justifiably drawn was that the appellant did not intend to cause the death of Smt. Halima or to cause such injuries as would; in the ordinary course of nature result in her death; but he did try to punish her by causing her severe pain by applying pressure with the knees. He should, therefore, have had the knowledge that the injuries, which he was likely to cause, might result in death, even though he was not intending to cause death. The offence committed by him, consequently, falls under the second part of Section 304 of the Indian penal Code and not under Section 302, I.P.C.

4. As a result, the appeal is partly allowed; the conviction and sentence for the offence under Section 302, are set aside and, instead the appellant is convicted for an offence punishable under Section 304 I.P.C. and sentenced to five years' rigorous imprisonment which we consider will be appropriate in the circumstances of this case. The sentence of six months' rigorous imprisonment for the offence under Section 323, I.P.C., for causing injuries to Yunus is upheld. The two sentences of imprisonment will run concurrently.