Vijay Malar Vs State Of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: Jan. 11, 2024

Acts Referred: Code Of Criminal Procedure, 1973 â€" Section 374(2)
Indian Penal Code, 1860 â€" Section 34, 201, 300, 302, 304I, 304II

Hon'ble Judges: Sanjay K. Agrawal, J; Sanjay Kumar Jaiswal, J

Bench: Division Bench

Advocate: J.K. Saxena, Afroz Khan

Final Decision: Partly Allowed

Judgement

Sanjay K. Agrawal, J

1. This criminal appeal filed under Section 374(2) of Code of Criminal Procedure, 1973 (for short Ã¢â‚¬Å“Cr.P.C.Ã¢â‚¬) by the appellant-accused is directed

against the impugned judgment of conviction and order of sentence dated 20.01.2017, passed by the Sessions Judge, Jashpur, District Jashpur,

Chhattisgarh in Sessions Trial No.55 of 2016, whereby appellant-accused has been convicted for offence under Section 302 of IPC an sentenced to

undergo life imprisonment with fine of Rs.3,000/- and, in default of fine, additional rigorous imprisonment of 3 months.

2. The case of the prosecution, in a nutshell, is that, on 29.04.2016, in the evening, at village Aurijor Harradand within the ambit of Police Station

Kunkuri, District Jashpur (C.G.), the appellant-accused has assaulted his wife by means of hands and fists as also by stick, due to which, she suffered

grievous injuries on her head and died on 06.05.2016 while undergoing treatment at District Hospital Ambikapur, pursuant to which, merg intimation

was given to the Police vide Ex.P/13 and, on the basis of which, First Information Report (Ex.P/16) was registered against the appellant-accused.

Inquest proceedings were conducted vide Ex.P/2. Spot map and Panchnama were prepared vide Ex.P/9 & Ex.P/5 respectively. The dead body of

deceased Rajkumari was sent for postmortem examination and in the postmortem report (Ex.P/11), Dr. K.R. Tekam (PW-9) opined that the case of

death seems to be cardio pulmonary arrest due to head injury and nature of death is homicidal. Thereafter, appellant-accused was arrested vide

Ex.P/6 and his memorandum statement was recorded vide Ex.P/3, pursuant to which, seizure of blood stained stick was affected vide Ex.P/4.

However, said blood stained stick which is said to have been recovered pursuant to the memorandum statement of the appellant-accused (Ex.P/3)

was not subjected to FSL examination for the reasons best known to the prosecution. Thereafter, statements of witnesses were recorded and after

due investigation, the appellant-accused was charge-sheeted for offence punishable under Section 302 of IPC in the Court of Judicial Magistrate First

Class, Bagicha, District Jashpur (C.G.) and thereafter, the case was committed to the Court of Sessions Judge for hearing and trial in accordance with

law, in which, the appellant-accused abjured his guilt and entered into defence.

3. The prosecution in order to prove its case examined as many as 13 witnesses and exhibited 21 documents, whereas the appellant-accused in

support of his defence has not examined any witness, but exhibited one document.

4. The learned trial Court after appreciating the oral and documentary evidence available on record, convicted the appellant-accused for offence

punishable under Section 302 of IPC and sentenced him as mentioned herein-above, against which this appeal has been preferred by the appellant-

accused questioning the impugned judgment of conviction and order of sentence.

5. Mr. J.K. Saxena, learned counsel for the appellant submits that though the death of deceased Rajkumari is said to be homicidal in nature, but there

was no motive or intention on the part of the appellant-accused and only on account of sudden quarrel and under heat of passion on a petty dispute of

drinking liquor, the appellant-accused is said to have assaulted his wife Rajkumari, pursuant to which, she sustained grievous injury over her head and

succumbed to the said injury and thereby committed the offence. Thus, the case of the present appellant-accused falls within the purview of Exception

4 to Section 300 of IPC and the act of the appellant-accused is culpable homicide not amounting to murder and, therefore, it is a fit case where the

conviction of the appellant-accused can be converted/altered to an offence under Section 304 (Part-II) of IPC and, further, since the appellant-

accused is in jail since 26.06.2016 i.e. more than 8 years and 6 months, taking into consideration the period he has already undergone, the appellant-

accused be released from jail forthwith. Hence, the present appeal deserves to be partly allowed.

6. Per contra, Mr. Afroz Khan, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the

prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. The learned trial Court has rightly convicted the

appellant-accused for offence under Section 302 of IPC. Exception 04 to Section 300 of IPC is not attracted in this case and it is not a case where

conviction of the appellant-accused under Section 302 of IPC requires to be converted/altered to Section 304 Part-II of IPC, thus, the present appeal

deserves to be dismissed.

7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost

circumspection.

8. The first and foremost question is as to whether the death of the deceased was homicidal in nature ?

9. The learned trial Court has recorded in affirmative by taking into consideration the oral and documentary evidence available on record and

particularly, considering postmortem report (Ex.P/11) which is duly proved by the evidence of Dr. K.R. Tekam (PW-9) and the statement of

eyewitness, namely, Sevnath (PW-5). Accordingly, taking into consideration the postmortem report (Ex.P/11) and the statements of Dr. K.R. Tekam

(PW-9) and that of eye-witness Sevnath (PW-5), we are of the considered opinion that the learned trial Court is absolutely justified in holding that the

death of the deceased Rajkumari is homicidal in nature, as the same is correct finding of fact based on evidence and same is neither perverse nor

contrary to the record. Accordingly, we hereby affirmed the said finding.

10. Now, the next question would be whether the accused-appellant herein is the author of the crime in question ?

11. In the instant case, the incident took place on 29.04.2016, whereby appellant-accused and his wife were quarelling on the petty issue of drinking

liquor, the appellant-accused seems to be in evasive mood, he is said to have started abusing as well as assaulting his wife with hands and fists and

under sudden anger he brought a stick and assaulted his wife Rajkumari, pursuant to which, she suffered grievous injuries on her head and died while

undergoing treatment. Thereafter, the matter was reported to the police and investigation was carried out, in which memorandum statement of

appellant-accused (Ex.P/3) was recorded and pursuant to which, a blood stained stick is said to have been recovered vide seizure memo (Ex.P/4), but

it was not sent for FSL examination for the reasons best known to the prosecution. But still, fact remains that it is the appellant-accused who on

sudden quarrel and under heat of passion on a petty dispute of drinking liquor, assaulted his wife by means of hands and fists as well as stick, due to

which, she suffered grievous injuries on her head, which is duly proved by the postmortem report (Ex.P/11) conducted by Dr. K.R. Tekam (PW-9).

Accordingly, we hereby affirm the finding recorded by the learned trial Court that the appellant-accused is the author of the crime in question.

12. The aforesaid finding brings us to the next question for consideration, which is, whether the trial Court has rightly convicted the appellant-accused

for offence punishable under Section 302 of IPC or his case is covered with Exception 4 of Section 300 of IPC vis-a-vis culpable homicide not

amounting to murder and, thus, his conviction can be converted to Section 304 Part II of IPC, as contended by learned counsel for the appellant-

accused ?

13. It is apparent from the spot map (Ex.P/9) and crime detail form (Ex.P/18) that at the time when incident took place appellant-accused and

deceased Rajkumari were present in the courtyard of their house and quarelling for a petty issue of drinking liquor, the appellant-accused seems to be

in evasive mood and started abusing and assaulting his wife with hands and fists and, in furtherance thereof, the appellant-accused brought a stick and

under anger, the appellant-accused assaulted his wife by means of said stick, due to which, she died due to head injury while undergoing treatment.

14. The Supreme Court in the matter of Sukhbir Singh v. State of Haryana (2002) 3 SCC 327 has observed as under :-

Ã¢â‚¬Å“21. Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir

Singh is proved to have committed the offence of culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden

quarrel and did not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304

(Part I) IPC. The finding of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside

and he is held guilty for the commission of offence of culpable homicide not amounting to murder punishable under Section 304 (Part I) IPC and

sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000. In default of payment of fine, he shall undergo further rigorous

imprisonment for one year.Ã¢â‚¬â€‹

15. The Supreme Court in the matter of Gurmukh Singh v. State of Haryana (2009) 15 SCC 635 has laid down certain factors which are to be taken

into consideration before awarding appropriate sentence to the accused with reference to Section 302 or Section 304 Part II of IPC, which state as

under :-

Ã¢â‚¬Å“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors

are only illustrative in character and not exhaustive. Each case has to be seen fro its special perspective. The relevant factors are as under :

(a) Motive or previous enmity;

(b) Whether the incident had taken place on the spur of the moment;

(c) The intention/knowledge of the accused while inflicting the blow or injury;

(d) Whether the death ensued instantaneously or the victim died after several days;

(e) The gravity, dimension and nature of injury;

(f) The age and general health condition of the accused;

(g) Whether the injury was caused without premeditation in a sudden fight;

(h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;

(I) The criminal background and adverse history of the accused;

(j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

(k) Number of other criminal cases pending against the accused;

(l) Incident occurred within the family members or close relations;

(m) The conduct and behaviour of the accused after the incident.

Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

24. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the

accused is the bounded obligation and duty of the Court. The endeavour of the court must be to ensure that the accused receives appropriate

sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be

kept in view while convicting and sentencing the accused.Ã¢â‚¬â€‹

16. Likewise, in the matter of State v. Sanjeev Nanda (2012) 8 SCC 450 their Lordships of the Supreme Court have held that once knowledge that it

is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or

with fine or with both. It has further been held that to make out an offence punishable under Section 304 Part II of the IPC, the prosecution has to

prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause

death.

17. Further, the Supreme Court in the matter of Arjun v. State of Chhattisgarh (2017) 3 SCC 247, has elaborately dealt with the issue and observed in

paragraphs 20 and 21, which reads as under :-

Ã¢â‚¬Å“20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in Surinder Kumar v. UT, Chandigarh

[(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under :(SCC p. 220, para 7)

Ã¢â‚¬Å“7. To invoke this exception four requirements must be satisfied, namely, (I) it was a sudden fight; (ii) there was no premeditation; (iii) the act was

done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not

relevant nor its I relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive

factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of

course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the

moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided

he has not acted cruelly.Ã¢â‚¬â€‹

21. Further in Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances

Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

Ã¢â‚¬Å“9. .... '18. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight;

(c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person

killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the Ã¢â‚¬Å“fightÃ¢â‚¬ occurring in Exception

4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the

passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a

combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to

be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For

the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown

that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression Ã¢â‚¬Å“undue advantageÃ¢â‚¬ as used in the provisions

means Ã¢â‚¬Å“unfair advantageÃ¢â‚¬â€‹.Ã¢â‚¬â€‹

18. In the matter of Arjun (supra), the Supreme Court has held that if there is intent and knowledge, the same would be case of Section 304 Part-I of

IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then same would be a case of Section 304 Part-II

IPC.

19. Further, the Supreme Court in the matter of Rambir v. State (NCT of Delhi) (2019) 6 SCC 122, has laid down four ingredients which should be

tested for bring a case within the purview of Exception 4 to Section 300 of IPC, which reads as under :-

Ã¢â‚¬Å“16. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:

(i) There must be a sudden fight;

(ii) There was no premeditation;

(iii) The act was committed in a heat of passion; and

(iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.Ã¢â‚¬â€‹

20. Reverting to the facts of the present case in light of above principles of law laid down by their Lordships of Supreme Court, it is quite vivid that

there was no premeditation on the part of the appellant-accused to cause death of the deceased, but only on account of drinking liquor, the appellant-

accused suddenly started quarreling with his wife, abused her and ensued a dispute with her and, in furtherance thereof, brought a stick and assaulted

her, pursuant to which she suffered grievous injuries on her head and died while undergoing treatment in the hospital, as such, there was no

premeditation on the part of the appellant-accused to cause death of the deceased Rajkumari. However, looking to the injuries sustained by deceased

Rajkumari, as recorded by Dr. Mitlesh Minj (PW-7) and Dr. K.R. Tekam (PW-9), which have been caused on her head, the appellant-accused must

have had the knowledge that such injuries inflicted by him on the body of the deceased would likely to cause her death, as such, this is a case which

would fall within the purview of Exception 4 of Section 300 of IPC, as the act of the appellant-accused completely satisfies the four necessary

ingredients of Exception 4 to Section 300 of IPC i.e. (i) there must be a sudden fight; (ii) there was no premeditation; (iii) the act was committed in a

heat of passion and (iv) the appellant had not taken any undue advantage or acted in a cruel or unusual manner and, therefore, the conviction of the

appellant-accused under Section 302 of IPC can be altered/converted to the Section 304 (Part-II) of IPC.

21. In view of the aforesaid discussions, the conviction of the appellant-accused for offence punishable under Section 302 of IPC as well as the

sentence of life imprisonment awarded to him by the learned trial Court is hereby set aside. Considering that there was no premeditation on the part of

the appellant-accused to cause death of the deceased but the injuries caused by him were sufficient in the ordinary course of nature to cause death,

the appellant-accused is convicted for offence punishable under Section 304 Part II of IPC. Since the appellant-accused is in jail from 26.06.2016 i.e.

more than 8 years and 6 months, taking into consideration the period he has already undergone, we award him sentence already undergone by him and

the fine sentence imposed by the learned trial Court shall remain intact. Accordingly, the appellant-accused be released from jail forthwith, if not

required in any other case.

22. Let a certified copy of this judgment alongwith the original record be transmitted to the trial Court concerned as well as to the Superintendent of

Jail where the appellant is languishing for necessary information and action, if any.

23. This criminal appeal is partly allowed to the extent indicated herein-above.