(1997) 05 MP CK 0020

Madhya Pradesh High Court

Case No: Criminal A. No. 776 of 1988

Dosha		APPELLANT
	Vs	
State of M.P.		RESPONDENT

Date of Decision: May 2, 1997

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 307

Citation: (1998) 1 MPLJ 155

Hon'ble Judges: S.K. Dubey, J; Dipak Misra, J

Bench: Division Bench

Advocate: S.C. Dutt and Manish Dutt, for the Appellant; A.K. Khaskalam, Dy. A.G., for the Respondent

Final Decision: Dismissed

Judgement

Dipak Misra, J.

Feeling aggrieved by the judgment in Sessions Trial No. 132/87 passed by the learned First Additional Sessions Judge, Rewa, the appellant has preferred the instant appeal.

Stated briefly, the prosecution case is that on 8-5-1987 in village Sakarjima in the house of Ramvishram there was a "Tilak Ceremony", and Rajendra Prasad Mishra (P.W. 2), Raghvendra Prasad Goutam (P.W. 3), Rajendra Prasad (P.W. 4) and Ramkanhai (P.W. 5) had assembled for the said function. As it appears from the allegations three years before the date of occurrence the accused-appellant had misbehaved with a girl named Sunita for which Akhilesh, the deceased, and Ramkanhai had slapped him. On the date of occurrence i.e. on 8-5-1997 the deceased along with Ramkanhai and others had gone to the house of Ramvishram Brahman to witness the ceremony. While he was coming out, due to the previous grudge, the accused stabbed on the chest of Akhilesh Prasad. The companions of the accused namely Gajadhar and Ramkaushal assaulted Raghvendra Prasad. It is

also alleged that the accused-appellant also assaulted Ramkanhai. The matter was reported at Semariya Police Station by Raghvendra Goutam (P.W. 3). Akhilesh and Ramkanhai were sent for medical examination on police requisition. They were initially sent to Primary Health Centre at Semariya where Dr. Prakash Singh Parihar (P.W. 9) advised that they should be taken to Hospital at Rewa and accordingly they were sent to Rewa. On 9-5-1987 Akhilesh succumbed to the injuries at Rewa Hospital. Post mortem was conducted and thereafter on completing the formalities charge-sheet was laid against the accused persons for offences under sections 302/307, 323/34 of the Indian Penal Code (In short the I.P.C.).

The prosecution to substantiate the charge, examined 18 witnesses and brought certain documents on record. Defence examined two witnesses.

Analysing the evidence on record the learned trial Judge came to the conclusion that the accused-appellant was guilty of the offence punishable u/s 302/307, Indian Penal Code but was not guilty of the offence u/s 323/34. The other accused persons namely Gajadhar and Ramkaushal were acquitted of the charges. After finding the appellant guilty the learned Trial Judge sentenced him to undergo rigorous imprisonment for life and fine of Rs. 100/- in default, R.I. for one month for the offence u/s 302, Indian Penal Code and R.I. for 10 years and a fine of Rs. 100/-, in default R.I. for one month u/s 307, Indian Penal Code. Both the sentences were directed to run concurrently.

We have heard Mr. S. C. Dull, learned senior counsel with Mr. Manish Dutt appearing for the appellant and Mr. A. K. Khaskalam, learned Dy. Advocate General for the Slate. Mr. Dutt has not questioned the validity of the conclusion of the learned trial judge relating to the assault by the accused on Akhilesh, the deceased and Ramkanhai, the injured. His singular submission is that as a single blow was given by the accused without any intention to cause death and the peculiar factual backdrop, the accused should have been convicted u/s 304, Part II but not u/s 302, Indian Penal Code. As regard to the evidence relating to conviction u/s 307, Indian Penal Code there was a feeble challenge.

Though the learned counsel for the appellant has not challenged the assault part and the involvement of the accused in giving the blow, to satisfy ourselves we have perused the judgment of the court below with utmost anxiety and have scanned the evidence in detail. We find that there is ample evidence on record that the appellant assaulted Akhilesh and Ramkanhai. The ocular evidence gets support from the medical evidence, the report Ex. P-14. P.W. 9, Dr. P. S. Parihar who had initially examined Akhilesh, has found incised wound, abrasions on left nipple 1" in length and 1/2" in wide bone deep caused by sharp pointed object. P.W. 13, Dr. B. K. Sharma who had conducted post mortem of the dead body of Akhilesh in his report, Ex. P-21, had noticed a punctured wound on the left side of the chest and found intercostal muscles and tarcia are cut off. He has also noticed there was heavy bleeding from the wound. He has also found that the left verticle muscles were cut

and the lungs were also affected by the blow. He has clearly opined that the injuries were sufficient enough to cause death. We are convinced that the blow with the knife was given by the accused on the chest area of the deceased. As far as the blow on Ramkanhai is concerned there is also categorical evidence of P.W. 1 which has been corroborated by evidence of P.W. 8 and the injured, P.W. 5 himself. The same also gets corroboration from the medical evidence as brought on record under Ex. P-15, the report of P.W. 9.

Now the question which requires determination is whether because of the single blow given by the accused on the deceased, he is liable to be convicted u/s 304, Part II. Mr. Dutt has strenuously urged that the accused was a young man of 20 years at the time of occurrence and previously there was some quarrel relating to the alleged behaviour of the accused with Sunita. It is submitted by him that if the accused had the intention to cause death he would have assaulted in a violent manner or would have given more blows but would not have left after giving a single blow. To substantiate his submission he has referred us to the number of decisions of the Hon''ble Supreme Court while there has been delineation on injury caused by a single blow and the offence determined for the same. In the case of Jawahar Lal and Another Vs. State of Punjab, , keeping in view the age of the appellant thereunder and the background of trivial quarrel the absence of intention and the single blow given, the Apex Court came to hold that the accused had not particularly intended to cause the fatal injury and, therefore, was guilty of the offence punishable u/s 304, Part II. Mr. Dutt has also referred to Gurmail Singh and Others Vs. State of Punjab, ; Jagtar Singh Vs. State of Punjab, ; Tholan Vs. State of Tamil Nadu, , Surinder Kumar Vs. Union Territory, Chandigarh, ; and Hem Raj Vs. The State (Delhi Administration), .
We have perused the aforesaid decisions and we notice that each case has its own peculiar facts. The only similarity is that the Hon''ble the Supreme Court found that offence which had been made out in those particular cases was u/s 304, Part II. It has not been laid down as the ratio decidendi that whenever there would be a single blow it is to be recorded as an offence u/s 304, Part II, Indian Penal Code . It needs no special emphasis to observe that each case has to be scrutinized on its own factual matrix and the peculiar attending facts thereto.

Now we shall proceed to analyse the nature of evidence adduced in this case to deal with the submissions of the learned counsel for the appellant whether in the facts and circumstances of the case the blow given by the appellant makes the offence punishable u/s 304, Part II. We have already referred to the injury report, Ex. P-14, and the post mortem report, Ex. P-21. There is no doubt that the deceased was seriously injured and the blow given was fatal. The question of intention has to be found out from the surrounding circumstances and the manner in which blow was inflicted. In this regard we may refer to the evidence of Rajendra Prasad Mishra (P.W. 1). He has clearly stated that the accused gave the knife blow on the left part of

the chest of the deceased and thereafter assaulted Ramkanhai with the same knife. P.W. 3 Raghvendra Prasad Goutam has deposed as follows :-

"Jaise Akhilesh Nikalne Laga to Dosha Ne Bhari Teji Se Akhilesh Ke Seene Mein Chhura Mara."

P.W. 5 Ramkanhai has stated that the knife penetrated into the chest and the accused took out the knife and ran towards Ramkanhai and stabbed him. P.W. 2 Saukhilal has stated that there was animosity as the accused had misbehaved with Sunita for which Akhilesh and Ramkanhai had threatened him to take him to the police station. It has been brought in the cross examination that this incident had occurred 3 to 4 years back. On reading the evidence in proper perspective we notice that there has been no provocation whatsoever on the part of Akhilesh or Ramkanhai. The incident of misbehaviour relating to Sunita had occurred 3-4 years before. The deceased was assaulted while he was totally unapprehensive of an assault as he was coming out from a ''Tilak Ceremony''. The accused had also the occasion to be there and taking advantage of the situation he gave the knife blow to the deceased as well as to Ramkanhai. It is not an act done in the heat of passion. It is also not an act at the spur of the moment. The accused had the intention to assault Akhilesh and Ramkanhai, otherwise he would not have carried a knife with him to ''Tilak ceremony''. After stabbing Akhilesh on the chest he took out the knife and injured Ramkanhai with the same weapon. This cannot be regarded as an unintentional act. He had also given the blow on Akhilesh by applying force as has been stated by P.W. 3. On scrutiny of these materials it is clear as day that the overt act was done absolutely in a cool and calculated manner. The age of the appellant cannot be a mitigating factor in these circumstances. He had wielded a dangerous weapon and had chosen that part of the body where an injury could be fatal. In view of the aforesaid premises, we are of the considered view that the learned trial Judge has rightly found the accused/appellant guilty of the offence u/s 302, Indian Penal Code. We do not find any compelling reasons to differ with the same. As far as the conviction u/s 307, Indian Penal Code is concerned we also affirm the same as we do not find any fallacy in the reasons ascribed by the learned Trial Judge, moreso, in view of the weapon used and the injury caused.

In the result, there is no merit in the appeal and the same is accordingly dismissed.