(2002) 09 MP CK 0029

Madhya Pradesh High Court

Case No: Criminal Appeal No. 719/90

Netram alias Goyal Babu		APPELLANT
	Vs	
State of M.P.		RESPONDENT

Date of Decision: Sept. 16, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 324

Citation: (2002) 2 JLJ 254 : (2002) 4 MPHT 152

Hon'ble Judges: Dipak Misra, J; A.K. Shrivastava, J

Bench: Division Bench

Advocate: Vijay Nayak, for the Appellant; A.K. Mishra, Dy. A.G., for the Respondent

Final Decision: Partly Allowed

Judgement

A.K. Shrivastava, J.

The appellant has been convicted of the offences punishable under Sections 302 and 324 of the Indian Penal Code (hereinafter referred as ''the IPC'') and has been sentenced to suffer rigorous imprisonment of life and six months respectively by the judgment dated 2-7-1990 passed by the learned Sessions Judge, Narsinghpur in Sessions Trial No. 58/90.

2. In brief, the case of prosecution is that on 9-2-1990 at 8.30 p.m. accused bought betel from the shop of deceased''s wife Lachhi Bai, which was not found palatable to him. He asked for another betel which she refused. Consequently accused hurled filthy abuses. Lachhi Bai called her husband-Ramdayal to whom the appellant gave a knife blow which landed on his chest. The matter was reported to the police by Phuiwar Singh (P.W. 4) in form of FIR (Ex. P-5) and accordingly the criminal law was set in motion. On 11 -2-1990 accused was arrested and at his instance a knife was recovered from the bushes, the seizure memo of which is Ex. P-7. The dead-body of Ramdayal was sent for post-mortem. The autopsy surgeon Dr. C.S. Chauhan (P.W. 1), found a single penetrating wound 1" x 0.2" x 3-1/2" on the right side of the chest.

The autopsy surgeon opined that deceased died on account of syncope precipitated by the extensive injury on the right lobe of the liver. The police after investigation filed the charge-sheet and the Committal Court committed the case to the Court of Session.

3. The learned Trial Judge framed charges against the appellant punishable u/s 302, IPC for committing murder of Ramdayal and further framed charge u/s 324, IPC for voluntarily causing hurt by dangerous weapon to Mahesh.

4. In order to bring home the charges the prosecution examined Dr. C.S. Chauhan (P.W. 1), who conducted autopsy of the dead-body, and Dr. Asif Khan (P.W. 2), who examined the injured Mahesh Kumar (P.W. 3). The eye-witnesses are Mahesh Kumar (P.W. 3), Phuiwar Singh (P.W. 4) who had lodged the FIR (Ex. P-5) and Lachhi Bai (P.W. 5), wife of the deceased, Satya Narayan (P.W. 6) is the witness of seizure of knife (Ex. P-7) and Gajraj Singh (P.W. 7) is the witness, who had reduced the FIR into writing. It will be relevant to mention that in the incident appellant also sustained two injuries, they are: (i) contusion below the left eye 1" x 1/2"; and (ii) lacerated wound on the back of his head measuring 1/2" x 1 /4". The injury report is Ex. D-4 which has been proved by the defence witness Dr. P.C. Khichroliya (D.W. 1).

5. The defence of accused is that due to non-providing of second betel, a heated altercation took place between him and Lachhi Bai, as a result of which Ramdayal intervened and inflicted a lathi blow on his head. The blow ensured in bleeding and thereafter Ramdayal gave the second blow. At that juncture the accused inflicted a knife blow. According to him he narrated this fact to the Police Station Officer who avoided to notice the same.

6. The Trial Court found that appellant did commit the offence punishable u/s 302, IPC by committing murder of Ramdayal and he also committed the other offence by voluntarily causing hurt by dangerous weapon like knife to Mahesh. The Trial Court consequently passed the sentence mentioned hereinabove.

7. In this appeal Shri Vijay Nayak, learned Counsel for the appellant, has contended that no case is made out tor the offence punishable u/s 302, IPC, at the most appellant could be held guilty of the offence punishable u/s 304, Part I, IPC, and as the appellant is languishing in jail for last 12 years, he may be set at liberty forthwith.

Shri A.K. Mishra, learned Dy. Advocate General on the other hand contended that no error has been committed by learned Trial Judge by passing the impugned judgment and sentence. According to him the appeal, being devoid of any substance, deserves to be dismissed.

8. After hearing the rival contentions of learned Counsel for the parties, we are of the opinion that the appeal deserves to be allowed in part as no case is made out for the offence punishable u/s 302, IPC, but the prosecution has been able to prove its

case u/s 304, Part I, IPC.

9. The prosecution has examined three eye-witnesses, namely, Mahesh Kumar (P.W. 3), Phulwar Singh (P.W. 4) and Lachhi Bai (P.W. 5). All these witnesses have categorically stated that when the appellant was showering the abuses upon Lachhi Bai, at that time Ramnath arrived and interdicted the accused from hurling abuses. The appellant did not pay any heed and abused him. Thereafter, Lachhi Bai went inside and called Ramdayal, who arrived at the spot. When Ramdayal asked why the appellant was giving filthy abuses, the accused gave a knife blow which landed on the right side of the chest of Ramdayal. When Mahesh intervened, he also sustained one simple injury upon right middle finger. In cross-examination suggestions were given to these witnesses that deceased Ramdayal had inflicted lathi blows upon the person of the accused, but the said suggestions were denied. However, on a perusal of the injury report, Ex. D-4, it is manifest that appellant did sustain two injuries as stated hereinabove. From the testimony of the eye-witnesses, it is gathered that the incident occurred in a heat of passion, it was not pre-meditated and according to the prosecution''s own case, heated exchange of words had taken place between Lachhi Bai and the appellant. Knife injury was dealt by the accused/appellant only when Lachhi Bai went and called the deceased Ramdayal. To bolster his contention reliance has been placed by Shri Nayak on the decision of the Apex Court, Jagtar Singh Vs. State of Punjab, , wherein in para 7 it has been held as under :--

"7. Undoubtedly, Dr. H.S. Gill (P.W. 2), opined that the blow on the chest pierced deep inside the chest cavity resulting in the injury to the heart and this injury was sufficient in the ordinary course of nature to cause death. The question is whether in the circumstances in which the appellant gave a blow with a knife on the chest, he could be said to have intended to cause death or he could be imputed the intention to cause that particular injury which has proved fatal ? The circumstances in which the incident occurred would clearly negative any suggestion of premeditation. It was in a sudden quarrel to some extent provoked by the deceased, that the appellant gave one blow with a knife. Could it be said that para 3 of Section 300 is attracted. We have considerable doubt about the conclusion reached by the High Court. We cannot confidently say that the appellant intended to cause that particular injury which is shown to have caused death. There was no premeditation. There was no malice. The meeting was a chance meeting. The cause of quarrel though trivial was just sudden and in this background the appellant, a very young man gave one blow. He could not be imputed with the intention to cause death or the intention to cause that particular injury which has proved fatal. Neither para 1 nor para 3 of Section 300 would be attracted. We are fortified in this view by the decision of this Court in Jagrup Singh Vs. State of Haryana, . It was subsequently followed in Randhir Singh alias Dhire Vs. State of Punjab, and Kulwant Rai Vs. State of Punjab, . Following the ratio of the aforementioned decisions, we are of the opinion that the appellant could not be convicted for having committed murder of the deceased Narinder Singh. His conviction for an offence u/s 302, IPC, and sentence of imprisonment for life are

liable to be set aside."

If the present factual scenario, is appreciated on the anvil of aforesaid ratio, we have no iota of doubt that in the absence of pre-meditation, total lack of intention, the genesis of occurrence, the bedrock of triviality and the blow inflicted, the offence could be one u/s 304, Part I of the IPC.

10. Apart from these circumstances, it is also noticeable that the prosecution has not given any explanation how the appellant sustained two above said injuries in the same incident.

11. In view of aforesaid premised reasons, we are of the opinion that Trial Court has erred in convicting the appellant of the offence punishable u/s 302, IPC. According to us, the offence committed by the accused would be one u/s 304, Part I, IPC, and accordingly he is sentenced for 10 years R.I. for the said offence. As the appellant is in jail for more than 10 years, he is directed to be released immediately, if not required in any other case.

12. The appeal is partly allowed and sentence is modified.