(2012) 02 MP CK 0052

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Appeal No. 52 of 2007

Majboot Singh	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision: Feb. 9, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 374
- Hindu Marriage Act, 1955 - Section 9
- Penal Code, 1860 (IPC) - Section 300, 302, 304(2), 498A

Hon'ble Judges: S.K. Gangele, J; Giriraj Das Saxena, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

G.D. Saxena, J.

This appeal u/s 374 of the Code of Criminal Procedure 1973 by the accused/appellant has been preferred against a Judgment dated 5th December 2006 in S.T. No. 259/06 by the Second Additional Sessions Judge Ashoknager (Guna) convicting thereby him for commission of offence punishable u/s 302 of I.P.C. and sentencing to undergo imprisonment for life with a fine of Rs. 2,000/-(Rs. Two thousand only).

2. In short, the facts just necessary for the decision of this appeal are that on 2nd June 06, at about 12 in the noon, Smt. Seema, wife of accused Majboot Singh started going to attend her duty towards the way of Collectorate at Ashoknagar. When she reached near cremation-ground at Aron road, accused Majboot Singh met her. He compelled her to compromise in the matter of maintenance pending against him before the criminal court. When she refused to accede his request, the accused attacked her with an Axe and caused severe injuries on neck, left shoulder, face just below ear, consequence of which, she died on the spot. The incident was visualized by a Tahsildar, Revenue Inspector and Patwari, who were passing nearby the place

in a jeep. At that time, Mahendra Kumar, brother of the deceased was also returning back from market to his house. It is alleged by him that his sister Smt. Seeema was married to accused Majboot Singh, prior to fourteen years ago and on account of matrimonial disputes between the couple, a criminal case was pending before the Court against the accused. Immediately after the incident, he lodged the F.I.R. at Police Station Ashoknagar whereupon a Crime No. 280/06 was registered against the accused commission of offence u/s 302 of I.P.C. After due investigation, the charge-sheet was filed before the Court. The learned trial Judge after recording the evidence and hearing both the sides, found the appellant guilty for the alleged offence and sentenced him accordingly, hence, this appeal.

3. The contention of the learned counsel appearing for the appellant is that the impugned judgment of conviction and sentence is against the facts as came out in the evidence and the law governing the case. It is submitted that the prosecution evidence adduced before the trial Judge is shaky and not reliable inasmuch as there are material omissions and contradictions between the ocular evidence. He stated that the presence of the complainant and his wife on the spot is doubtful and the rest of the eye-witnesses who were public servants also did not support the prosecution version. The recovery of the weapon is not proved beyond doubt. It is also contended that the incident occurred without any premeditation, at the spur of movement, hence, the appellant can not be held guilty for the alleged offence. At the most, he can be convicted for the offence punishable u/s 304 (part-II) of I.P.C. On the basis of above,it is prayed that the impugned conviction and sentence recorded against the appellant be set aside or his alternate prayer may be accepted under the facts and circumstances of the case.

4. On the other hand, learned Public Prosecutor representing the State, contended that the report of the incident was lodged by the eye-witness Mahendra Kumar Rajak (PW-1), brother of the deceased without any loss of time, who was also present on the spot. It is further stated that during investigation, the statements of eye-witness Mahendra Kumar (PW-1), R.K. Sharma, Tahsildar, Mansukh Bamania (PW-4) Patwari, Ramesh Sharma (PW-7), Patwari and Raghuveer Singh (PW-5) Revenue Inspector, who were chance witnesses were recorded and accused was also arrested on the day of incident. On 3rd June 06, the next day of incident, the weapon of crime and blood stained cloths were seized. Learned P.P. submits that the ocular evidence coupled with medical and other evidences fully supported the prosecution version and the guilt of the accused is well established beyond reasonable doubts. Hence, he prayed that by maintaining the conviction and sentence of the appellant, the appeal be dismissed.

5. Heard the learned counsel appearing for both the sides and also perused the impugned judgment and evidence on record.

6. The question for consideration is whether the impugned judgment of conviction and sentence is well founded on the facts and the evidence adduced before the trial

Judge ?

7. Let us consider the evidence on the basis of which the findings of guilt were recorded by the learned trial Judge.

8. Mahendra Kumar Rajak (PW-1) deposed that on the day of incident, his sister Seema, was going towards Collectorate and as she reached near crematorium, the accused met her, who was having an Axe in his hand. He forced her to make compromise in the criminal case relating to offence u/s 498-A I.P.C. When she refused to compromise in the criminal case, accused inflicted 3-4 blows with an Axe on her neck. She fell down on the earth. At that time, Tahsildar, Revenue Inspector and Patwaries also reached on the spot and they saw the incident by naked eyes. After receiving blows, Seema fell and died on the spot. Immediately thereafter, the witness rushed to the Police Station and lodged the F.I.R. Then, police reached on the spot and prepared the memo of dead body vide Ex.P/2 and spot map vide Ex.P/3. Seizure memo of blood stained and simple soil was prepared vide Ex.P/4. The police arrested the accused on the day of incident and seized the weapon of crime and the bloodstained clothes from accused. In cross-examination, Mahendra Kumar Rajak (PW-1) admitted that in civil case u/s 9 of the Hindu marriage Act filed by the accused, his sister made compromise with her husband but afterwards she started living with her parents as the accused did not stop committing cruelty with her wife. He deposed that his sister Seema was working as child caretaker in the residence of the Collector. After incident, on his report, the police reached on the spot after half an hour. The accused was detained on the spot by the public and he was arrested by the police.

9. Mansukh Bamnia (PW-4), was a Patwari posted in the village Tumen at Halka No.39, Raghuveer Singh (PW-5) was a Revenue Inspector, Ramesh Kumar (PW-7) was another Patwari. The witnesses aforementioned all deposed that on 2nd June 06 at about 12 p.m., while they were returning back to their headquarters and reached near the cremation-ground, they saw Majboot Singh assaulting on the person of Smt. Seema, by means of an Axe. They asked the name of the accused because they were not knowing to him. They carried the accused in a jeep up to the police station where accused was handed over to the custody of the police by the witnesses.

10. G.B. Suman (PW-8) Sub-Inspector and In-charge of the Police Station Ashoknagar deposed that on 2nd June 06 he, on the report of Mahandra Rajak recorded the F.I.R. and registered the same at Crime No.280/2006 for commission of offence u/s 302 of I.P.C. against the accused. Then, he reached on the spot and prepared the spot map (Ex.P/3) and also recorded the case-diary statements of the eye-witnesses. He prepared the memo of dead-body of Seema and sent the dead body of the deceased for performing postmortem to the District Hospital Ashoknagar. He arrested the accused Majboot Singh vide arrest memo (Ex.P/5) and on next day under custody, on information regarding weapon of crime and blood stained cloths, he prepared memorundum (Ex.P/6) and on production of weapon and clothes by

the accused, he seized the clothes and the Axe vide recovery memo (Ex.P/7). The properties relating to crime were then sent to the Forensic Science Laboratory Gwalior, vide letter (Ex.P/11).

11. Dr. D.K. Jain (PW-6) deposed that on 2nd June 06, he was posted as RMO in the District Hospital Ashoknagar (M.P.). On that day on receipt of the dead body of Smt. Seeman, wife of Majboot Singh, resident of Eidgah Mohalla, Ashoknagar which was brought by a Constable Ishtiyak No. 321 of the Police Station Ashok Nagar, he conducted autopsy and found the following injuries:

(i) There are six incised wounds on left side of neck from ear to lower part of neck from above downwards size; namely (a) 7 cm. x 1 cm. x 1 cm. with lower ear cut (b) 4 cm. x 1 cm. x 1cm. (c) 5 cm. x 1 cm. x 2 cm. with mussels and vessels cut (d) 5 cm. x 1 cm. x 2 cm. with mussels and vessels cut(e)6cm.x1cm.xdeeptospine(f) 5cm.x1 cm. x 1 cm. Clotted blood present situated anteriorly and laterally on neck.

(ii) Incised wound admeasuring 5 cm. x 2 cm. x 1 cm. over right side of neck in middle with mussels and vessels cut;

(iii) Two incised wounds admeasuring 2.5cm. X 05 cm. x 05 cm. each on both side of spine in upper part of back of chest.

(iv) Incised wound admeasuring 2.5 cm. x 1 cm. x deep to mussels over left arm upper 1/3rd;

(v) Contusion of size 5 cm x 2 cm. over left arm upper 1/3rd;

(vi) Contusion of size 5 cm. x 2.5 cm. over left shoulder;

(vii) Incised wound of size 5 cm. x 2 cm. x deep to left side of back of neck; and

(viii) Incised wound over right arm upper 1/3rd admeasuring 5 cm. x 0.2 cm. 0.2 cm. Clotted blood present."

12. All the above injuries were antemortem in nature and except Injury Nos. 5 & 6, rest 6 of the injuries were caused by sharp edged object within 6 to 24 hours of the examination. As per the opinion of the doctor, the cause of death was result of shock due to excessive hemorrhage from incised wounds on the neck and these injuries, were sufficient to cause the death of the deceased, in the ordinary course of nature. The said postmortem report is Ex.P/8, written and signed by him.

13. On perusal of the statement of Dr. D.K. Jain (PW-6) as well as the postmortem report, it is proved that on 2nd June 06, deceased Smt. Seema received eleven antemortem injuries by a sharp edged object,which were grave in nature, causing her death.

14. It is true that accused was husband of deceased who was in confrontation in matrimonial matters, criminal cases and maintenance cases pending before the court of law. It is also true that all of a sudden the accused met his wife who was

going on duties when he asked her to make compromise in criminal cases as well as in maintenance. On her refusal, the accused inflicted as many as eleven injuries over her body resulting her spontaneous death at public place in the broad daylight in the presence of many persons. This shows barbaric and brutal act on the part of the accused towards his helpless wife, leaving no chance for her to save herself. It is also true that other eye-witnesses of the incident though they were chance witnesses working as Revenue Officer in the of the Collector of the district and the deceased was also working as child caretaker in residence of the Collector, but there is no rhyme or reason for them to falsely implicate the accused in the alleged commission of crime. On that account the evidence of witnesses Mahendra Kumar Rajak (PW-1), brother of deceased and other witnesses such as Mansukh Bamnia (PW-4), Patwari, posted in the village Tuman at Halka No. 39, Raghuvir Singh (PW-5), Revenue Inspector, and Ramesh Kumar (PW-7), another Patwari of Halka No.41 of the village should not be discarded especially when their testimony finds support from the medical evidence and recovery of the weapon of crime, i.e. an Axe, at the behest of the accused.

15. At this juncture, it would be relevant to refer the decision in the case of Mahesh Vs. State of M.P. (2011) 9 SCC 626 wherein it is held :-

The witnesses who were examined were relatives of the deceased and therefore, there is no ground and reason why they should be disbelieved. There is also no reason why they would not speak the truth so as to see that the actual guilty persons are convicted. Evidence of a close relation can be relied upon provided it is trustworthy. Such evidence is required to be carefully scrutinized and appreciated before resting of conclusion to convict the accused in a given case.

16. As regards the question whether the offence committed by the accused falls within the category of Murder of culpable homicide not amounting to the murder, in the case of Suchand Bouri Vs. State of West Bengal, it has been observed by the Apex court:

To answer the question as to whether the offence, on the facts of the case, is "murder" or "culpable homicide not amounting to murder", we must see whether the case is squarely covered within Clause Thirdly of Section 300, IPC or the accused is entitled to the benefit of Exception 4 of Section 300 IPC.

It would be preposterous to assume any proposition in law that in a case of solitary blow on a vital part of the body that results the death, the offence must necessarily be reduced to culpable homicide not amounting to murder. Legal position has been most appropriately summed up, which has now become a classic statement with regard to exposition of Section 300 "Thirdly", by Vivian Bose, J., in Virsa Singh Vs. The State of Punjab, Vivian Bose, J., analysed Section 300 "Thirdly" by laying down that the prosecution must prove the following facts before it can bring a case u/s 300 "Thirdly.

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

Learned Judge further went on to observe

Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder u/s 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."

The tests laid down by this Court in Virsa Singh have been consistently followed by the Courts as providing the guidelines when an issue regarding the nature of offence whether murder or culpable homicide not amounting to murder is raised before the Court.

The determinative factor in Section 300 ''Thirdly'' is the intentional injury which must be sufficient to cause death in the ordinary way of nature. It is immaterial whether the offender had knowledge that an act of that kind will be likely to cause death. The offender''s subjective knowledge of the consequences is irrelevant. The result of the intentionally caused injury must be viewed objectively. To find out whether the offender had intention to cause such bodily injury which in the ordinary course of nature was sufficient to cause death, the diverse factors need to be kept in mind

such as: the force with which the blow has been dealt with, the type of weapon used, the vital organ or the particular spot of the body targeted, the nature of the injury caused, the origin and genesis of the crime and the circumstances attendant upon the death. [Jagrup Singh Vs. State of Haryana, ; and Ramashraya and Another Vs. State of Madhya Pradesh,]."

In so far as the facts of the present case are concerned, the accused appellant had a strong feeling of annoyance against Sarbeswar as he thought that Sarbeswar being a village chowkidar was helping Sanatan with whom the accused had a boundary dispute. On a day preceding the incident, the accused had threatened to behead Sarbeswar and his son. The accused went armed with a deadly weapon like knife to the place of occurrence where Sarbeswar, his brothers and other family members were sitting and inflicted blow by that weapon on the chest of Sarbeswar. The injury that Sarbeswar suffered clearly shows that knife was used by the accused with a considerable force and injury was caused on a vital part of the body. It is true that the injury was inflicted on Sarbeswar when he intervened while his brother Bisweswar was being assaulted but the force with which Sarbeswar has been stabbed by knife, the intention of causing such bodily injury is obvious. The said injury was sufficient in the ordinary course of nature to cause death. The stab injury inflicted on the chest of Sarbeswar by the accused was surely not accidental or unintentional. The act of the accused is squarely covered by Section 300 ''Thirdly''.

For the invocation of Exception 4 to Section 300, IPC, it has to be probabilised by the defence that the death is occurred : (i) in a sudden fight;(2) without pre-meditation; (3) the act was committed in a heat of passion; and (4) the offender had not taken any undue advantage or acted in a cruel manner. The existence of all the four requisites must be probabilised. In absence of existence of any of the four requisites, Exception 4 has no application. By means of judicial decisions, the expression "sudden fight" occurring in Exception 4 of Section 300, though not defined, has been explained. "Sudden fight" implies mutual provocation; a bilateral transaction in which blows are exchange -the fight is not per se palliating circumstance, only an unpremeditated fight is such. The expression "heat of passion" has been explained by the Courts to mean that there is no time for passion to cool down. The act must have been committed in a fit of anger. Unfortunately, in the present case none of the four requisites of Exception 4 exists much less all the four requisites. The instant case is not a case of sudden fight nor the act can be said to have been committed in a heat of passion. As a matter of fact, the appellant had a pre-existing malice against the deceased. The appellant is not at all entitled to the benefit of Exception 4.

17. As discussed above, the evidence of eye-witnesses in the present case showed that the accused launched a brutal assault on his wife, just immediately after receiving refusal to shake hands with him in the criminal as well as compromise matters, pending against him, resulting in eleven incised wounds and two

contusions on her person were inflicted, causing her instantaneous death. It is also seen that the evidence of eye-witnesses was found trustworthy and corroborated by the medical evidence and also strengthened by prompt lodging of the F.I.R. In such a situation, in the opinion of this court, where such type of evidence has come on record, certainly the case would be covered by Clause Thirdly of Section 300 and in that eventually the conviction of accused u/s 302 would be proper. The medical evidence showed that except two or three, all the injuries were situated on the neck region. In such a factual matrix, in our view, both the components necessary for invoking clause Thirdly of Section 300 I.P.C. exist in the instant case. Since the accused inflicted grievous injuries on the person of the deceased, the conviction of him for the offence punishable u/s 302 of I.P.C. is held proper. The present case is not a case of sudden fight nor the act has been done in a heat of passion. As a matter of fact, the appellant had a previous existing malice against the deceased. In such a scenario, the facts of the present case are quite distinguishable and the case of Aalam Khan and another Vs. State of M.P., would have no application to it.

18. Resultantly, the appeal fails and is dismissed accordingly.