(1966) 07 MP CK 0005

Madhya Pradesh High Court

Case No: Criminal A. No. 250 of 1965

State of M.P. — APPELLANT

Vs

Mangu — RESPONDENT

Date of Decision: July 26, 1966

Acts Referred:

- Penal Code, 1860 (IPC) - Section 300, 302, 304

Citation: (1966) JLJ 1047

Hon'ble Judges: V.R. Newaskar, J; S.B. Sen, J

Bench: Division Bench

Advocate: S.L. Dubey, Addl. Govt. for State, for the Appellant; S.R. Phadnis, for the Respondent

Final Decision: Dismissed

Judgement

V.R. Newaskar, J.

Respondent Mangu S/o Kishan Bagri of Harnavda was prosecuted before the Sessions Judge, Ujjain, for the murder of his cousin Sukhram on 31-1-1965 at the village Harnavda. He was found guilty not u/s 302 I.P.C. but only u/s 304 (Part II) I.P.C. and was sentenced to three years'' rigorous imprisonment. The Respondent did not prefer any appeal against his conviction. The State, however, has preferred the present appeal against his acquittal in respect of the charge u/s 302 I.P.C.

2. The incident in the course of which Sukhram lost his life arose over a petty matter. The Respondent had borrowed Rs. 2 from him about a year prior to the date of the incident. On the date of the incident i.e. 31-1-1965 the accused had gone to the river Chambal for bathing. Before entering the river for the purpose of bathing the Respondent placed a change which he had with him of Re 1.25 in one of his shoes. His cousin Sukhram happened to reach there probably for the same purpose namely bathing. Finding the change in the shoe he pocketed that amount. The Respondent protested telling him that the money did not belong to him but it

belonged to his uncle. Sukhram thereupon asked for return of his loan of Rs. 2. The Respondent assured him that he would return the amount some time latter. This assurance did not satisfy Sukhram. He insisted upon payment of his dues before he could be asked to part with the amount of Re. 1.25 held by him. There were other persons present. They pursuaded both of them to return to the village instead of continuing to wrangle there They did so. It appears that after some time both the Respondent as well as Sukhram happened to go the river side each for a different purpose. Sukhram had gone to water his cattle whereas the Respondent was proceeding towards the jungle with an axe in his hand. The Respondent again asked Sukhram to return the amount of Re. 1.25. Shukhram did not comply. Some talk ensued between them. It is said that they also grappled with each other. The Respondent at that stage gave a blow with the axe carried by him by its blunt side on Sukhram''s head. Sukhram fell down. The Respondent then left the place with his axe. One Bhagga, who happened to pass that way, approached the fallen victim. He found him unconscious. After a short while he slightly regained consciousness. He was able to stand and get moving. The place of the incident was about 150 paces from the village site. Hardly had Sukhram gone over a distance of 50 fact when he set down. He was later on taken home where he died the same night.

3. First information report was lodged by the Chowkidar Sewa the following morning at about 5-30 A. M. at the Police Station Ingoriya which is at a distance of about 9 miles from the village Harnavda where the incident took place. The Station House Officer Charansingh went to the place of the incident, held inquest over the dead body of Sukhram and sent if for post-mortem examination. The Respondent was arrested and from him the axe Article ''A'' was seized. The dead body was examined by Dr. Ratansingh Johari of Barnagar. He found only one bruise 3"x2" over the left temporal region below which there was a depressed fracture of temporal bone 21/4" x2" in dimensions. There was extra-dural haemorrhage and injury to the middle meningeal artery. Death was due to shock and internal haemorrhage. According to Dr. Johari such death was bound to have resulted.

4. On these facts the Respondent was prosecuted.

5. The Respondent denied his complicity in the murder. The story about borrowing of Rs. 2 by him quarral over that at the river bank at an earlier stage and subsequent meeting between him and Sukhram near the cremation ground by the side of the river and giving of blows by him to Sukhram with the back side of the axe were all denied.

6. The learned Session Judge, on consideration of the evidence of witnesses Bhagga, Ganga and Balu, found that it was the Respondent who had caused the injury to the deceased with the back-side of the axe at the place of the incident near the cremation ground. He also held the earlier incident at the river when the Respondent had gone for bathing established.

7. Having regard to the testimony of the eye witness Bhagga and Ganga and the medical evidence the Judge came to the conclusion that Sukhram died as a result of the injury which was deliberately caused to him by the Respondent with the help of hard and blunt object such as the back metal part of an axe.

8. The suggestion made on behalf of the Respondent about the existence of ill-will between him and the eye-witnesses Bhagga was not accepted by the learned Judge. The story about borrowing was held established on the evidence of Sukhram''s father Keshaji and his elder brother Anupa. As regards the earlier incident the learned Judge relied upon the statement of Bagdiram alias Bagdu.

9. As a result of these findings the learned Judge found the Respondent responsible for causing injury to the deceased with the back-side of his axe. The injury had resulted in the death of Sukhram. Balu''s evidence was specially referred to by the learned Judge in establishing that there had been quarral over the matter regarding money owed by the Respondent to Sukhram just before the incident took place. The learned Judge relying upon the decision in 1906 U. B. R. 33 Naga Nu Baw held that the Respondent could not possibly have known that by giving a single blow with the back-side of the metal part of the axe he would cause the death of the victim or that the injury which he would cause was sufficient in the ordinary course of nature to cause death. The learned Judge emphasised the fact that the Respondent was not expected to know the anatomical details of the human body and consequently could not be credited with the knowledge that the temporal bone and the orbital plate of the frontal bone are easily fractured as has been mentioned by Modi in his Medical Jurisprudence (13th Edition) at page 258. As a result of the above conclusions reached by him he found the Respondent guilty only u/s 304 (Part II) I.P.C. According to him all that the accused could be taken to have known that his act of giving a blow with the back metal part of the axe ''was likely to'' cause death or injury sufficient in the ordinary course of nature to cause death or to cause any injury likely to cause death or be sufficient in the ordinary course of nature to cause death'', imposed a sentence of three years rigorous imprisonment.

10. In this appeal by the State it is contended by the Additional Government Advocate Mr. Dubey that the acquittal of the Respondent u/s 302 I.P.C. was not justified on the findings reached by the Court below. The present case, according to the learned Counsel, is one which is covered by the Clause 3rdly in Section 300 I.P.C. There in clear evidence in the case that it was the Respondent who had struck Sukhram with the back side of the axe on his head causing depressed fracture. He can consequently be taken to have intended to cause him injury on a vital part of the body such as the head. According to the medical evidence the injury was sufficient in the ordinary course of nature to cause death. The case consequently is squarely covered by the decision reported in Virsa Singh Vs. The State of Punjab, .

11. Mr. S.B. Fadanis, who appeared for the Respondent, strenously contended that the causing of injury in this case cannot be said to be intentional. The Respondent

and the deceased were near relations. They had quarrel over a petty matter. The sharp side of the axe had not been used. A single injury had been caused and all that it apparently did was to cause a bruise followed by haemotoma. Consequently the conviction of the Respondent for the offence u/s 304 (Part III) I.P.C. was proper as also the sentence.

12. Two questions will prominently arise for consideration in this case, One is, whether the case was under Clause 3rdly in Section 300 I.P.C. If it is found that it does then the second question that will have to be considered is whether the Respondent can claim benefit of Exception 4 to Section 309 I.P.C.

13. As regards the first the evidence is decisive on the point that it was the Respondent who gave a blow with the back metal side of his axe upon the head of Sukhram. The lifting of weapon and bringing it down upon the head of the victim are circumstances sufficient to attribute an intention to inflict that particular injury. It cannot be said that it was either accidental or un-intentional or some other kind of injury had been intended.

14. This takes us further to consider whether the in jury inflicted was sufficient in the ordinary course of nature to cause death. Evidence of Dr. Johari clearly indicates that the death was bound to have been caused due to the sort of the injury that the Respondent had inflicted upon his victim. This is nothing else than saying that the injury was sufficient in the ordinary course of nature to cause death. It actually caused death within a short time of its infliction. Beaman, J., had expressed an opinion in the case reported in Emperor v. Sardarkhan ILR 47 Bombay 27, that where the death is caused by a single blow it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended. With this opinion the Supreme Court did not agree in the case of Virsa Singh Vs. The State of Punjab, . According to Vivian Bose, J., who delivered the judgment of the Court, intention of an assailant and the seriousness of the injury caused to the victim are matters which are quite distinct and separate. The learned Judge of the Supreme Court held that where there is nothing beyond the injury and the fact that the Appellant had inflicted it the only possible inference would be that the assailant intended to inflict that injury. In such a case it is not relevant to consider whether the assailant knew the seriousness of the injury or intended serious consequences flowing from it.

15. It is, therefore, plain that the Respondent''s act in causing the death of Sukhram can properly fall under the third Clause of Section 300 I.P.C. and therefore punishable u/s 302 I.P.C. unless he can claim the benefit of Exception (4) to Section 300 I.P.C That Exception is:

Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender''s having taken undue advantage or acted in a cruel of unusual manner.

(1) There was no premeditation.

(2) There was a sudden quarrel followed by a fight.

(3) Passion rose in the course of it.

(4) The accused person had neither taken undue advantage nor had acted in a cruel or unusual manner.

16. There was in this case the morning incident which served as the back-ground. The evidence of eye-witnesses does indicate that the accused and the deceased actually met again at the cremation-ground each having gone for his own and different purpose. Quarrel did take place after an initial exchange of words over the taking of money (Re. 1.25) by Sukhram and the latter''s dues from the former. But there is no evidence that any fight had taken place. Moreover the accused was armed while the deceased was not. The circumstances were therefore not such that they placed the accused on equal footing with the deceased.

17. In these circumstances it cannot be said that the accused has succeeded the in discharging burden which rested upon him to bring his case under Exception (4) to Section 300 I.P.C. which alone is relevant. Section 105 of the Evidence Act clearly indicates that it is for the accused person to make out circumstances which would bring the case under any of the Exceptions-general or special. It is contended on his behalf that the eye-witness Bhagga had stated to the Police that there had been grappling. This suggested initial fight before the axe was used. But this statement was not accepted by Bhagga as true and although the accused can use the statement for contradiction as provided u/s 162 of the Code of Criminal Procedure he cannot rely upon it as substantive evidence. There is no other substantive material to establish fight. Both the eye-witnesses speak of quarrel having taken place between the accused and the deceased but no fight and the accused thereupon gave a blow with an axe in his hand and that too on the vital part of Sukhram''s body.

18. I would, therefore, hold that the accused has failed to make out that his case is covered by Exception (4) to Section 300 I.P.C. No other Exception is relevant.

19. It has already been held that the case squarely falls under Clause 3rd by in Section 300 I.P.C. The order of his acquittal u/s 302 I.P.C. and conviction u/s 304 (Part II) I.P.C. therefore deserves to be set aside and he deserves to be convicted u/s 302 I.P.C.

20. Having regard to the circumstances narrated above lesser penalty under that section of imprisonment for life need be imposed.

21. Ordered accordingly.

22. The State had preferred also a revision petition in case this Court were to confirm the conviction of the Respondent u/s 304 (Part II) I.P.C. for enhancement of

sentence from three years'' rigorous imprisonment to a higher measure.

23. Since we have allowed the State appeal and have converted the Respondent''s acquittal from one u/s 304 (Part II) I.P.C. into a conviction u/s 302 I. P. C. and imposed a sentence for imprisonment for life no question for enhancement of sentence u/s 304 (Part II) I.P.C. survives.

24. The Criminal Revision No. 258 of 1965 is accordingly dismissed.