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(2007) 05 MP CK 0032

Madhya Pradesh High Court (Gwalior Bench)

Case No: None

Basant Singh and Others	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision: May 3, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 374
- Penal Code, 1860 (IPC) - Section 11, 149, 300, 302, 304

Citation: (2007) CriLJ 3477 : (2008) 1 MPJR 74

Hon'ble Judges: Sheela Khanna, J; Abhay Gohil, J

Bench: Division Bench

Judgement

Abhay Gohil, J.

Appellants have filed this appeal u/s 374, Cr. P.C. against the judgment of conviction dated 7-1-1998 passed by the Additional Sessions Judge Sabalgarh District Morena in Sessions Trial No. 17/96, whereby convicted the appellants u/s 302/34, IPC and awarded the sentence of life imprisonment to each of them with fine of Rs. 1,000/- and in default of payment of fine, further imprisonment of two months each.

As per prosecution story, the incident took place on 12-10-1995 at about 1.30 p.m. in the noon. Deceased Noori Khan and appellants are the resident of village Battokhar under P.S. Sabalgarh. Deceased Noori was running a shop in the village. On the date of incident Siyaram, Sikandar and Kammod Singh were sitting on the shop of Noori Khan. At the same time, one Mangilal Jatav came from the side of the house of the appellant Basant Singh and demanded the pocket of ''bidi'' and match box, but Noori refused to give him saying that because he is in the company of Basant Singh and Lakkhu Rawat, therefore he will not give him ''Bidi'' and match box. At the same time, Basant Singh came at the shop of Noori and threatened him that why he is taking his name and there was wordy quarrel between them. The persons, those who were present on the spot, tried to intervene and thereafter Basant Singh went

to his house and Noori also went to his house. Noori Khan informed about the incident of wordy quarrel on his shop to his brother Tofaniya and said that because Basant Singh has quarrelled with him without any reason, therefore he will beat him. Noori Khan was under intoxication and after taking gun from his house he came back to his shop. After some time appellant Basant Singh carrying ''Kulhadi'', Dinesh Singh carrying ballam and remaining two appellants Umesh Singh and Bhansingh were carrying lathi in their hand went towards the shop of Noori and thereafter there was again wordy quarrel between them. At the same time, Bhansingh caught hold Noori Khan and Basant Singh inflicted ''Kulhadi'' blows on the head of Noori Khan, who was injured and fell down on the earth. Dinesh and Bhansingh both caught his legs and he was dragged towards the Gali, where Dinesh assaulted him by Ballam. As per prosecution story, thereafter Bhansingh and Umesh also inflicted lathi blows to the deceased Noori Khan. Hearing the noise Peeru came on the spot and had seen the incident. Peeru Khan and Tofaniya both restrained the appellant from beating but when appellants also tried to beat them, they ran away from the spot. Tofaniya also came on the spot and he had seen that Noori Khan was bleeding from his head, nose and mouth. Peeru Khan informed the incident to Bhulla Shah, brother of Noori Khan. Noori Khan died on the spot. It was also the prosecution case that the gun of Noori was also snatched by the appellants. Thereafter, Bhulla Shah along with Mansingh went to the police station and lodged FIR. Crime was registered, matter was investigated and charge sheet was filed. During trial all the appellants abjured their guilt. Their defence was that they have been falsely implicated. Noori Khan was under intoxication of liquor. He himself fell down on the earth and died and they have been falsely implicated on the basis of the groupism in the village.

In the trial, prosecution examined nine witnesses and in defence three witnesses were examined. Trial Court after considering the evidence convicted all the appellants u/s 302/34, IPC and sentenced to them for imprisonment of life and fine of Rs. 1,000/- each as aforesaid, against which all the appellants have filed this appeal.

In appeal, we have heard Shri L.S. Chouhan, learned Counsel for the appellants and Shri C.S. Dixit, learned Public Prosecutor for the respondent/State. The sole contention of the learned Counsel for the appellants is that appellant Basant Singh is in jail for more than 11 and half years and appellants No. 2 to 4 were also in jail for about 5 years. After taking us to the evidence on record, his submission is that under the facts and circumstances, of the case, the case of the appellants will not fall u/s 302, IPC and at the most the case will fall u/s 326, 325 or 304, Part II, IPC. It was also argued that the deceased was not having any Ballam injury and as per the evidence the same has been attributed to the appellant No. 3 Dinesh, Injury attributed to Umesh by the witnesses in the leg is also medically belied and the deceased was not having any injury in his leg. The injury caused by Bhansingh could be caused because of the fall on earth. He further submitted that there was no

intention and therefore his submission is that the appellants be acquittal from the charges u/s 302, IPC and they may be released on undergone jail sentence as they have suffered jail sentence as stated above.

Per contra, Shri C.S. Dixit, learned Public Prosecutor arguing for the State vehemently argued and supported the judgment of the trial Court and submitted that the appellants have rightly been convicted and there is no case for interference and the appeal is liable to be dismissed.

Bhulla Shah (P.W. 1) has lodged FIR (Ex. P/l). He is also the witness of Panchnama (Ex. P/2 and P/3). Tofaniya (P.W. 2) is the elder brother of deceased Noori Khan and the eye-witness of the incident. He had seen the incident and he has supported the prosecution version including that Basant Singh inflicted kulhadi blow on the head of the deceased and the allegation against Dinesh is that he was involved in dragging and causing injury by ballam and omnibus allegations have been made against Bhansingh, Pappu and Umesh for assaulting the deceased by Lathis. Bajeer Khan (P.W. 3) is the witness of extra-judicial confession made by the accused persons to him that they have killed Noori Khan and he has also seen them carrying kulhadi, lathi and Ballam in their hands. Peeru Khan (P.W. 4) had also seen the incident and has deposed on the same lines as stated by Tofaniya (P.W. 2). Siyaram, Sikandar and Kammod were also present on the shop, out of which prosecution has only examined Siyaram (P.W. 5), who has stated that he came later on the spot. Prosecution has not examined Sikandar and Kammod. Therefore, from the aforesaid evidence it. is clear that there is no doubt about the happening of the incident, but as submitted by the learned Counsel for the appellant, the question is that on the basis of medical evidence whether it is a case of murder or it is a case of culpable homicide not amounting to murder.
As per medical evidence of Dr. J. C. Sharma (P.W. 7), deceased has received following injuries:

1. Incised wound on right parietal region blood clots 6 x 1 x 1 cm. underlying bone fractured.

Incised wound on left side of chin 3 x l/2 x 1/2 cm. mandible fractured.

Abrasion on right side of chest 2 x 1/2 cm.

Abrasion on left thigh lat. asp. 6 x 4 cm.

Contusion over left side of chest 10 x 4 cm. 5th, 6th and 7th ribs fractured.

Doctor has categorically stated that the injury Nos. 1 and 2 were caused by sharp edged weapon and other injuries were caused by hard and blunt object. There was fracture in the right side bone of skull. Blood was also found in the skull and the chest. The clothes of the deceased were seized and handed over to the Constable. The cause of death is syncope and the nature of death is homicidal. It is admitted

position that so far as the nature of injuries is concerned, doctor has not opined that the injuries were sufficient to cause death in the ordinary course of nature. In the cross-examination doctor has stated that he cannot say that after receiving the injuries within how much time the deceased will die, but he has stated that deceased died because of the injuries and excessive bleeding. He has also accepted this suggestion that on receiving quick medical help it was possible to save him. He has also stated the injuries No. 3 and 4 could be received by falling on earth. He has also accepted that if he will fall on a hard surface of stone, he may also receive the head injury and he has also accepted that no penetrating injury was found on the body of the deceased. He has admitted that the weapons were sent by the police to him for his opinion. Developing the arguments on the basis of medical report, submission of the learned Counsel for the appellant is that the doctor has not opined that the injuries caused by the appellants were sufficient to cause death in the ordinary course of nature. Therefore, his submission is that in the absence of the aforesaid medical evidence on record, the case of the appellants will not fall u/s 302, IPC and at the most the appellants can be convicted u/s 326, 325 or 304, Part II, IPC.

It is true that in the evidence doctor has not opined about the nature of injuries. Doctor has also not stated whether the injuries were sufficient to cause death in the ordinary course of nature or not, which is a very relevant kind of opinion. In the absence of said opinion as the Supreme Court has consistently held, it is difficult to bring the case within the purview of Section 300, thirdly. For that two things are necessary that the act should be such, which likely to cause death of the person to whom the injury is caused and if it is done with the intention to cause bodily injury to any person and the bodily injury is sufficient to cause death in the ordinary course of nature, then only the case will fall within the purview of Section 300, thirdly. There must be clear intention to cause bodily injury as the offender knows to be likely to cause death and the bodily injury inflicted should be sufficient in the ordinary course of nature to cause death. In the case in hand from the evidence of the witnesses or the medical evidence it is not clear that the intention of the appellants was to commit the murder of the deceased. The another material evidence, which is required to convict the appellants u/s 300, thirdly IPC is that there must be positive medical evidence by the doctor that the injuries inflicted were sufficient in the ordinary course of nature to cause death and in the absence of such evidence it cannot be held that it is a case of clean murder with intention. On the contrary this suggestion in his cross-examination para 12, that on receiving immediate medical help he could have saved, goes to show that the doctor was also not in a position to say affirmatively that the injury was sufficient in the ordinary course of nature to cause death.

In the case of Virsa Singh Vs. The State of Punjab, Justice V. Bose, J. (as he then was) has held that to bring the case within the purview of Section 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. 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. 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 decision in this case of Virsa Singh is still being followed.

In the case of Ram Prakash Singh Vs. State of Bihar, sudden quarrel took place between two friends accused and deceased and because of hot exchange of words between the two - accused inflicted single knife injury to deceased and the said injury was not aimed at any particular part of the body of the deceased and there was no medical evidence that injury was sufficient in the ordinary course of nature to cause death, it was held that the accused is liable to be convicted u/s 304, Part II and not u/s 302, IPC.

In the case of Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Others, sudden fight took place and accused inflicted knife injury into abdomen which cut the intestine, it was held that the intention to cause death or such bodily injury is likely to cause death cannot be attributed to him, knowledge is attributable to accused that injury by knife into abdomen was likely to cause death. As it was the case of sudden fight, said act of accused would amount to culpable homicide not amounting to murder punishable under Part II of Section 304, IPC and converted the sentence from Section 302, IPC to 304 Part II.

In the case of Nadodi Jayaraman and Others Vs. State of Tamil Nadu, Apex Court has considered that since the deceased did succumb to the injuries, caused collectively, the appellants can only be held guilty of committing culpable homicide not amounting to murder.'' The act can be said to have been committed by the accused with the knowledge that it was likely to cause death or to cause such bodily injury as was likely to cause death. Two injuries can only be clothed with the intention of causing grievous hurt were punishable u/s 325/34, IPC. The Court has also considered this aspect of the matter that each of the appellants suffered imprisonment for more than five years, therefore it is not now desirable to send the appellants back to jail after they have been on bail also for more than a decade and during this period, nothing has been brought to our notice to show that they had indulged in any criminal activity. Therefore, while convicting them for the offence u/s 304, IPC, Part II, IPC, we sentence each of the appellants to suffer rigorous imprisonment for the period already undergone by them.

In the case of Ram Jattan and others Vs. State of U.P., the similar question arose before the Apex Court that to bring the case within the purview of Section 300, thirdly, prosecution must proveit in objective manner that injuries were sufficient to cause death in the ordinary course of nature and common object to cause death has

to be established and it was held that in the absence of proof by the prosecution in a objective manner that the injury caused was sufficient in the ordinarily course of nature to cause death, the same cannot be inferred unless injuries are so patient and considering the aforesaid circumstances the conviction u/s 302 read with Section 149 was converted into conviction u/s 304, Part II read with Section 149, IPC.

In the case of Kalinder Bharik Vs. State of H.P., husband killing his wife found alone in house besides deceased, accused husband not rendering any help and neighbours had to remove her to hospital, so far as the injuries are concerned, none of the injuries found on person of deceased individually or collectively sufficient to cause death. Deceased-wife dying because of excessive bleeding. It was held by the Apex Court that the case is not covered by any of four clauses u/s 300. It would remain only within the range of culpable homicide not amounting to murder and therefore the conviction was altered to Section 304, Part II of the IPC.

In the case in hand, we also find that there is no medical evidence on record that any of the injury out of five sustained by the deceased was sufficient to cause death in the ordinary course of nature. Therefore, certainly the case of the appellants will not come within the purview of Section 300 thirdly IPC and in such circumstances we are also of the considered view that the case will fall u/s 304, Part II read with Section 34, IPC. The appellant No. 1 has already suffered jail sentence of more than 11 and 1/2 years. He was in jail during trial and he is still in custody from the date of judgment, which will meet the ends of justice. Therefore, we direct to release him on undergone jail sentence. So far as the case of appellant No. 2 Bhansingh, No. 3 Dinesh Singh and No. 4 Umesh Singh is concerned, they have not caused any fatal injury to the deceased. Looking to their conduct and role assigned in the incident, it can be held that their case will also not fall u/s 300, thirdly IPC. Therefore, their conviction u/s 302/34, IPC is also converted to Section 304, Part 11/34, IPC. Appellant Bhansingh has already suffered jail sentence of around 4 and 1/2 years, appellant Dinesh has suffered jail sentence of around 3 years and 4 months and appellant Umesh suffered jail sentence of four years and 9 months and they all are on bail. They have not misused the liberty so granted. The incident took place in the year 1995 and thereafter they are regularly appearing in the Court and no untoward incident is also reported against them. Therefore we also direct to release them on undergone jail sentence. Appellant No. 1 is in jail. He be released forthwith, if not required in any other offence. Remaining appellants Bhansingh, Dinesh Singh and Umesh Singh are on bail. Their bail bonds are discharged.
Consequently, appeal is partly al- lowed and disposed of as indicated above.