

(2009) 07 MP CK 0045
Madhya Pradesh High Court
Case No: None

Shiv Charan alias Shweta and
Others

APPELLANT

Vs

The State of M.P.

RESPONDENT

Date of Decision: July 7, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 302, 304, 34

Citation: (2009) 4 MPHT 140

Hon'ble Judges: S.A. Naqvi, J

Bench: Single Bench

Judgement

S.A. Naqvi, J.

Challenge is to the judgment dated 19.05.2005 passed by Sessions Judge, Panna in S.T. No. 42/2004 whereby the appellants No. 1 Shiv Charan alias Shweta, No. 2 Mohan Singh and No. 3 Vijay Singh have been convicted u/s 304 Part 2 read with Section 34 of IPC and sentenced to undergo 10 years rigorous imprisonment and fined Rs. 15,000/-each in default 2 year rigorous imprisonment respectively.

2. The case of prosecution in a nut shell is that on 18.11.2003 in the night complainant Arjun Singh (PW 6) and Gopal Singh (hereinafter referred to "deceased") went to sleep in "khalihan" at night. They were sleeping there. In the mid night, Arjun Singh heard shout of the deceased. He saw that appellants were armed with lathis and Ballam and co-accused Mahendra Singh was also armed with lathi. They were beating his brother Gopal Singh. They also assaulted to the complainant. Shiv Charan alias Shweta was armed with Barchhi and other persons were armed with lathis. Arjun Singh rushed to the house and informed about the incident to the other family members. When they reached "khalihan" they found Gopal Singh dead. F.I.R. Ex.P/7 was lodged. Inquest memo of dead body of deceased

was prepared. Spot map was also prepared. Blood stained soil and controlled soil were seized. Accused/appellants and co-accused Mahendra Singh were arrested. Armed were seized from the appellants and co-accused Mahendra Singh. Dr. P.C. Shrivastava (PW 4) conducted autopsy of the dead body of deceased Gopal Singh. He found 18 injuries on his person as per postmortem report Ex.P/1A. Gopal Singh died by hemorrhage due to rupture of spleen.

3. Statement of witnesses were recorded u/s 161 Cr.P.C. Seized articles were sent for chemical analysis to F.S.L. Sagar. After completion of investigation, the appellants were charge sheeted. Co-accused Mahendra Singh being juvenile was tried by Juvenile Court. The case was committed to the Court of Sessions for trial.

4. Learned Trial Court framed charges u/s 302 in alternative u/s 302 read with Section 34 of IPC. The appellants abjured the guilt and pleaded innocence and false implication due to enmity.

5. Prosecution examined 12 witnesses. Defence did not choose to examine any witness.

6. After hearing learned Counsel for both the parties, perusing evidence and material on record, learned Trial Court acquitted the appellants of charge u/s 302 in alternative u/s 302 read with Section 34 of IPC, instead convicted them u/s 304 Part 2 of IPC and sentenced them as hereinabove mentioned. Being aggrieved by the impugned judgment, the appellants have preferred the appeal.

7. I have heard learned Counsel for both the parties, perused impugned judgment, evidence and material on record.

8. At the out set, Shri S. C. Datt learned Sr. counsel for the appellants submits that he is not challenging the conviction of the appellants u/s 304 Part 2 of IPC and learned trial Court did not err in convicting the appellants hence conviction of the appellants u/s 304 Part 2 of IPC is hereby affirmed.

9. Shri S. C. Datt learned Sr. counsel for the appellants relying on [Sarwan Singh and Others Vs. State of Punjab](#), and [Molu and Others Vs. State of Haryana](#), argued that jail sentence of 10 years awarded by learned trial Court to the appellants is excessive and prays to pass lesser sentence to the appellants. Contrary, the learned Panel lawyer vehemently submitted that looking to the injuries on the person of deceased Gopal Singh jail sentence awarded by learned trial Court to the appellants is justified.

10. It is true that as per evidence of Dr. P.C. Shrivastava (PW 4) deceased Gopal Singh sustained 18 injuries but only injury No. 9 and 10 were dangerous to life and were sufficient to cause death in ordinary course of nature. Most of the injuries on the person of deceased are on non-vital parts. The appellants Mohan and Vijay were armed with lathis and the appellant Shiv Charan Singh alias Shweta was armed with Barchhi. There was land dispute between the parties which is the cause of the

incident. Number of injuries on the person of deceased is not a criteria to decide quantum of punishment. In the case of Molu(supra), double murder case, injureds sustained 14 and 16 injuries on their persons respectively by dangerous weapons and appellants were sentenced to 7 years R.I. by the Apex Court. In case of Sarwan Singh (Supra), there were multiple injuries on the person of deceased and Supreme Court sentenced the appellants u/s 304 Part (1) of IPC for 5 years R.I. coupled with fine.

11. Looking to the facts and circumstances of the case and the fact that most of the injuries are on non-vital parts of deceased Gopal Singh, I am of the opinion, that if jail sentence is reduced to 7 years R.I. coupled with fine of Rs. 5,000/-to each shall sub-serve the ends of justice.

12. Consequently, the appeal is partly allowed. Jail sentence passed by learned trial Court to the appellants Shiv Charan Singh alias Shweta, Mohan Singh and Vijay Singh are hereby modified and they are directed to undergo 7 years R.I. coupled with fine of Rs. 5,000/-to each in default of payment of fine amount they will undergo 2 -1/2 years R.I. . Out of fine amount Rs. 15,000/-shall be paid to Smt. Kamlesh (PW 1) widow of the deceased Gopal Singh. The appellants are in jail.