(2017) 04 MP CK 0134

MADHYA PRADESH HIGH COURT

Case No: 839 of 2004

Mr. Jasbir Bhandari	APPELLANT
Vs	
State of Madhya Pradesh & Ors	RESPONDENT

Date of Decision: April 13, 2017

Acts Referred:

- Indian Penal Code, 1860, Section 302, Section 304, Section 300, Section 304-I - Punishment for murder - Punishment for culpable homicide not amounti

Hon'ble Judges: N.K. Gupta, S.K. Awasthi

Bench: Division Bench

Advocate: A.K. Jain, R.K. Awasthi

Judgement

1. The appellant has preferred the present appeal being aggrieved by the judgment dated 30.10.2004 passed by the Additional Sessions Judge, Picchore, District Shivpuri (M.P.) in ST No.121/2004 whereby the appellant has been convicted of offence under Section 302 of IPC and sentenced to imprisonment for life with a fine of Rs.1,000/-.

2. The prosecution''s case, in short, is that on 19.04.2004, at about 5 pm, appellant Makkhan went along with his father Vikram Singh to fetch and collect "Mahua" in the forest near village Pura, Police Station Mayapur, District Shivpuri (M.P.). Thereafter, he did not come back in the night. On the next day morning, when complainant Prakash Yadav (PW-1) went into the forest in search of his father and brother then in the jungle he found appellant Makkhan who narrated the story that at about 5 pm on 19.04.2004 when he and his father i.e. deceased Vikram Singh collected Mahua and started for their home then the deceased Vikram Singh told to take two stones. When appellant took up one stone, his father told that it was not a good stone whereas appellant told that it was an appropriate stone. An argument took place and the deceased Vikram Singh gave a blow of stick to appellant

Makkhan, on which being annoyed, he pushed his father to the ground and pelted stones on him. The deceased Vikram Singh expired on the spot. Complainant Prakash Yadav (PW-1) went to his house and informed about the incident to his mother Prem Bai (PW-6) and thereafter lodged the FIR Ex.P-1 at Police Station Mayapur, District Shivpuri (M.P.). ASI Mr. Vinayak Shukla (PW-7) after completing various formalities sent the dead body of the deceased Vikram Singh for post mortem.

3. Dr. Manoj Kumar Gupta (PW-8) performed the post mortem on the body of the deceased Vikram Singh at Community Health Centre, Picchore, District Shivpuri (M.P.) and gave a report Ex.P-11. He found one lacerated wound on left forehead, another lacerated wound on left cheek. He also found a lacerated wound on the left jaw and right femur of the deceased Vikram Singh was broken. There were abrasions on both the shoulders and hip. On opening of the body, the frontal bone was found broken and meninges were also broken and congested. Front portion of the brain was lacerated and he died due to the head injury. According to Dr. Manoj Kumar Gupta (PW-8), the death of the deceased Vikram Singh was homicidal in nature and injuries were such that the deceased Vikram Singh would have died in natural course of his life.

4. ASI Vinayak Shukla (PW-7) prepared the spot map Ex.P-4. He picked up plain and blood stained soil from the spot along with some stones and prepared seizure memo Ex.P-7. Appellant Makkhan was arrested and an arrest memo Ex.P-8 was prepared. He examined various witnesses and also recovered clothes of the deceased Vikram Singh from the hospital in a sealed condition. After due investigation, the charge-sheet was filed before the Judicial Magistrate First Class, Khaniyadhana, who committed it to the court of session and ultimately it was transferred to Additional Sessions Judge, Picchore, District Shivpuri (M.P.).

5. The appellant abjured his guilt. He took a plea that his elder brother Prakash Yadav has falsely implicated him to usurp his share in the property. However, no defence evidence was adduced.

6. The trial court, after considering the prosecution''s evidence, convicted and sentenced the appellant as mentioned above.

7. We have heard the learned counsel for the parties at length.

8. After considering the prosecution''s evidence as adduced by the trial court, first of all, evidence of Dr. Manoj Kumar Gupta (PW-8) may be examined. According to him, he found so many lacerations and abrasions. He recorded the following injuries:

(1) 15cm x 6cm x 3cm size of left frontal bone & left side of forehead including left eyebrow, antemortem in nature within 24 hours due to hard & blunt object;

(2) Lacerated wound with dark blood 4x2x2cm size over left cheek, antemortem in nature within 24 hours due to hard and blunt object;

(3) Lacerated wound with dark blood 4x2x1cm size over left mandible due to hard and blunt object within 24 hours, antemortem in nature;

(4) Fracture of right femur at lower 1/3 & upper 2/3 of bone;

(5) Abrasion over right & left shoulders, 4x2cm size, antemortem in nature within 24 hours due to hard and blunt object;

(6) Abrasion over right hip 6x4cm size, antemortem in nature within 24 hours due to hard and blunt object.

According to Dr. Manoj Kumar Gupta (PW-8), the injury which was caused on forehead of the deceased Vikram Singh was fatal in nature because below that injury, he found a fracture of frontal bone and meninges below the wound were also found damaged. That portion of brain was lacerated and the deceased Vikram Singh died due to head injury. Dr. Manoj Kumar Gupta (PW-8) has also opined that the death of the deceased Vikram Singh could be caused by such injury in natural course of life and such death was caused within 24 hours from the time of post mortem. Looking to the time period as mentioned by Dr. Gupta (PW-8), it is apparent that the time of incident i.e. 05 pm on 19.04.2004 is duly corroborated. Time period as told by Dr. Gupta (PW-8) squarely matches with the time as mentioned in the FIR Ex.P-1. Looking to the injuries caused to the deceased Vikram Singh, such injuries could neither be caused by the deceased Vikram Singh himself nor could they be sustained due to an accident, hence, in the opinion of doctor that the death of the deceased Vikram Singh was homicidal in nature. Under these circumstances, there is no reason to discard the opinion given by Dr. Manoj Kumar Gupta (PW-8). The trial court has rightly believed on the opinion given by doctor.

9. In the present case, there is no eyewitness, hence, the entire case depends upon the circumstantial evidence. First circumstance which is proved by the prosecution was that appellant Makkhan left his house along with his father i.e. the deceased Vikram Singh to pick up some Mahua in the forest. Prakash Yadav (PW-1) and Prem

Bai (PW-6) have stated that in the noon appellant and also the deceased Vikram Singh had gone to the forest and thereafter they did not come back on that day. Prem Bai (PW-6) has accepted, in the crossexamination, that a mutual partition had taken place between Prakash Yadav and his father i.e. the deceased Vikram Singh and therefore Prakash Yadav was residing in a separate house whereas appellant Makkhan and his parents including the deceased Vikram Singh and Prem Bai (PW-6) were residing in a separate house. The appellant took a plea that a false FIR was lodged by Prakash Yadav (PW-1) so that he could usurp the part of the property which was of the appellant, however, when the partition had already taken place and no such suggestion was given to Prem Bai (PW-6), it appears that a fake defence has been taken by the appellant which is not at all possible. The deceased Vikram Singh was the father of the appellant with whom the appellant had no enmity from the past. Prem Bai (PW-6) has also stated that in the noon the appellant Makkhan and the deceased Vikram Singh happily left the house and thereafter nobody returned in the night. Looking to the statement of Prem Bai (PW-6), not only the defence of the appellant appears to be incorrect but also it appears that there was no enmity between the deceased Vikram Singh and appellant Makkhan. Under these circumstances, the evidence given by Prakash Yadav (PW-1) and Prem Bai (PW-6) is acceptable that on 19.04.2004 in the noon the appellant as well as the deceased Vikram Singh had left the house in each other''s company and the evidence of last seen as told by Prakash Yadav (PW-1) and Prem Bai (PW-6) is acceptable.

10. Second circumstance is the conduct of the appellant. It is true that the deceased Vikram Singh went along with appellant Makkhan in the noon and according to the prosecution''s evidence he died at about 5 pm and therefore there was a time gap between the fact of last seen and the time when the incident took place. However, it is stated by Prem Bai (PW-6) and witnesses Shivraj (PW-2), Dinesh (PW-3) and Mulayam (PW-4) that on the next day morning Prakash Yadav (PW-1) told them that his father and brother who had gone to fetch some Mahua did not come back home in the night and therefore they went in the forest in search of the deceased Vikram Singh and appellant Makkhan where they found the dead body of the deceased Vikram Singh and appellant Makkhan was also held there. According to the witnesses, a talk had taken place between appellant Makkhan and his brother Prakash Yadav (PW-1). Looking to the evidence of these witnesses, it would be apparent that the appellant did not come back to his house in the night and also on the next day morning he was found with the dead body of the deceased Vikram Singh. Under these circumstances, the guilty conscious of the appellant is duly proved by the witnesses that being guilty conscious appellant Makkhan did not come back to his house in the night.

11. Third circumstance is the extra-judicial confession as made by the appellant before his brother Prakash Yadav (PW-1). According to Prakash Yadav (PW-1), appellant confessed his guilt that since his father gave a blow of stick to him, he

became annoyed and pelted various stones upon him first and a heavy stone was pelted on his head thereafter. Though such confession was made amongst Shivraj (PW-2), Dinesh (PW-3) and Mulayam (PW-4) but witnesses Shivraj (PW-2), Dinesh (PW-3) and Mulayam (PW-4) have partly turned hostile. Shivraj (PW-2) and Dinesh (PW-3) have stated that when the talk took place between Prakash Yadav (PW-1) and appellant Makkhan they were sitting slightly away and thus they could not hear the confession as made by appellant Makkhan but soon after their talks witness Prakash Yadav informed about the confession made by appellant Makkhan. Mulayam (PW-4) has stated that he did not go in the forest along with Prakash Yadav (PW-1) or Dinesh (PW-3). It is possible that witnesses would have been trying to save appellant Makkhan but looking to the evidence of Shivraj (PW-2) and Dinesh (PW-3) that soon after the talks that took place between Prakash Yadav (PW-1) and the appellant, Prakash Yadav (PW-1) told about the extra-judicial confession and the appellant did not deny. Prem Bai (PW-6), mother of the appellant and wife of the deceased Vikram Singh, has accepted that appellant was an angry young man and he was in the habit of assaulting his wife when quarrel used to take place between them, however, Prem Bai (PW-6) has stated that she was informed by Prakash Yadav (PW-1) about the extra judicial confession made by appellant Makkhan.

12. The appellant could not prove any reason so that his brother Prakash Yadav would have stated against him falsely. In cross-examination of complainant Prakash Yadav (PW-1), nothing could be brought in favour of the appellant. Prakash Yadav (PW-1) could not turn hostile because he had lodged the FIR Ex.P-1. The incident took place on 19.04.2004 at about 5 pm but the complainant had no knowledge about the incident. On 20.04.2004, when he went to the forest in the morning and saw the dead body of the deceased Vikram Singh then he learnt about the murder of his father and soon after that at about 10:30 he lodged the FIR Ex.P-1 at Police Station Mayapur, District Shivpuri (M.P.). The testimony of witness Prakash Yadav (PW-1) is duly corroborated by the timely lodged FIR and the medical evidence as given by Dr. Manoj Kumar Gupta (PW-8). Hence, it is proved beyond doubt that appellant confessed before complainant Prakash Yadav (PW-1) i.e. his brother that he killed his father by pelting stones and he also told the reason about such killing.

13. It is obvious that extra-judicial confession is to be made before the person who is in confidence of the accused and though complainant Prakash Yadav (PW-1) brother of the appellant was residing separately but he had good relations with appellant and when appellant Makkhan and his father i.e. the deceased Vikram Singh did not come back home, Prakash Yadav (PW-1) was sent by Prem Bai (PW-6) in their search and therefore looking to the relations of appellant Makkhan and complainant Prakash Yadav (PW-1), the appellant could confess before complainant Prakash Yadav (PW-1). In this connection, the judgment passed by the Apex Court in the case of "Dharma Vs Nirmal Singh Bittu and Another" [AIR 1996 SC 1136] may be referred in which it is held that a Sarpanch being a man of authority it was nothing unnatural

in the accused approaching him and apprising him as to what he had done. In the light of this judgment, it was natural for the appellant to confess before his own brother Prakash Yadav (PW-1). In the case of "Narayan Singh and others Vs State of M.P." [AIR 1985 SC 1678], it is held that it is not open to any court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who spoke to such a confession. In the present case, confession was made by the appellant before his real brother and soon after such confession witnesses Shivraj (PW-2) and Dinesh (PW-3) have accepted that complainant Prakash Yadav (PW-1) told about the confession made by the appellant and the appellant did not discard his confession and thereafter complainant Prakash Yadav (PW-1) had lodged FIR Ex.P-1 on the basis of that extra-judicial confession. Under these circumstances, where the extra-judicial confession is a substantive piece of evidence, conviction could be recorded on the basis of that evidence only. However, it is proved beyond doubt that the appellant left with his father for fetching Mahua in the noon on 19.04.2004. He did not come back to his house in the night due to guilty conscious and on 20.04.2004 he was found near the dead body of his own father and he confessed to his brother Prakash Yadav (PW-1) about the incident. Under these circumstances, the chain of circumstantial evidence is complete and the trial court has rightly found that it was the appellant who pelted stone upon his father i.e. the deceased Vikram Singh causing his death.

14. Learned counsel for the appellant has submitted that the case of the appellant falls within the purview of Section 304 of IPC because the appellant never intended to kill his own father and when due to a small discussion relating to appropriateness of a stone which was to be taken to home, the deceased Vikram Singh gave a blow of a stick to the appellant then he lost his temper and pelted stones upon the deceased Vikram Singh, however, the remaining injuries were simple in nature whereas only a femur was found broken and injury caused on forehead was fatal in nature. According to him, the case falls within the purview of Exception (1) of Section 300 of IPC. However, if facts of this case are examined then it cannot be said that the deceased Vikram Singh gave a powerful blow of the stick to the appellant when the discussion took place for picking up for a particular stone. Hence, the reaction of the appellant may not fall within the purview of sudden or grave provocation. If the appellant was annoyed with the behaviour of his father then no grave provocation was given to the appellant by his father. However, in case of "K.M. Nanavati Vs. State of Maharashtra" [AIR 1962 SC 605], it is held by the Apex Court that the test of "grave and sudden" provocation is whether a reasonable man belonging to the same class of society as the accused, placed in a similar situation in which the accused was placed would be so provoked as to lose his self control. Words and gestures may, under certain circumstances, cause grave and sudden provocation so as to attract that exception. The mental background created by any previous act of the victim may be taken into consideration in ascertaining whether the subsequent

act could cause grave and sudden provocation for committing the offence, but the fatal blow should be clearly traced to the influence of the passion arising from that provocation and not after the passion had cooled down by lapse of time or otherwise, giving room and scope for premeditation and calculation.

15. In this case, a long discussion took place between appellant Makkhan and his father i.e. the deceased Vikram Singh pertaining to picking up of a particular stone and thereafter the deceased Vikram Singh gave a blow of stick to the appellant. Appellant Makkhan who was the son of the deceased Vikram Singh would have lost his temper when his father was simply not convinced by his discussion but he gave a blow of stick to a matured son and therefore the provocation which was received by the appellant was sudden and if he would have lost his temper where he did not intend to kill his father and he pelted some small stones causing simple injuries first and thereafter he pelted a big stone causing fracture of frontal bone and damage to the brain etc. then in the absence of intention of the appellant, in the light of the aforesaid judgments rendered by the Hon''ble Apex Court, it can be considered that the appellant killed his father due to sudden provocation. Sudden and grave provocation is to be considered on the basis of the factual position of each case. A son who was residing with his father and serving him and who was short-tempered then on his service if the father was not satisfied and he was not convinced after due discussion and also he gave a blow of stick to a major and matured son for his overt act then it was natural that a short tempered son would have lost his temper and therefore it can be observed in the present case that appellant killed his father due to sudden provocation given to him and also insulted the appellant though he served his father in a better position. He went along with his father to pick up Mahua to his house but his father insisted to take two stones to the house and selection of stone was challenged by his father and thereafter a blow of stick was given to the appellant. Hence, the submission of the learned counsel for the appellant can be accepted and the conviction can be recorded only for offence under Section 304-I of IPC.

16. So far as the sentence is concerned, the appellant has killed his father under sudden passion on account of losing his temper and he has remained in custody for more than 12 years. Under such circumstances, looking to the overt act of the appellant, his custody period and also the circumstances under which the incident took place it would be appropriate to impose the jail sentence which is equivalent to his custody period.

17. On the basis of the aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. His conviction as well as sentence recorded by the trial court under Section 302 of IPC is hereby set aside, however, he is convicted of offence under Section 304-I of IPC under the same head of charge and sentenced to the period of jail sentence equivalent to his custody period, however, there is no

relaxation in fine amount. Appellant is directed to deposit the fine amount i.e. Rs.1,000/- as imposed by the trial court. Since his period of custody is over, he may be released from jail, if the appellant deposits fine amount. If fine amount is not deposited then the appellant shall undergo two months'' additional rigorous imprisonment.

18. Appellant is in jail and therefore the Registry is directed to prepare and issue the supersession warrant accordingly.