
(2018) 08 MP CK 0100

Madhya Pradesh High Court (Indore Bench)

Case No: CriminalAppeal No.533 Of2011

Ravi Singh

APPELLANT

Vs

State Of Madhya
Pradesh

RESPONDENT

Date of Decision: Aug. 13, 2018

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 174, 300, 304II, 313, 374#Indian Penal Code, 1860 " Section 34, 302

Citation: (2018) 08 MP CK 0100

Hon'ble Judges: Prakash Shrivastava, J; Rohit Arya, J

Bench: Division Bench

Final Decision: Partly Allowed

Judgement

Rohit Arya, J

This appeal by an accused under section 374 Cr.P.C., is directed against the judgment of conviction and order of sentence dated 13/01/2011 passed in

sessions trial No.254/2009 by the Special Judge [S.C. S.T Act (Prevention of Atrocities Act, 1989), Rajgarh (Biaron) convicting the appellant under

section 302 IPC and sentenced to suffer life imprisonment with fine of Rs.2000/-and in default of payment of fine to undergo one year additional

rigorous imprisonment.

2. As per prosecution story, the daughter of Mangilal (P.W.12) Hokambai (since dead) was married to Ravi Singh (the accused) about 12 years ago

and begotten a son, namely; Ankit prior to one and half years of the incident. Her son Ankit has been suffering from boils on the face, as such,

Mangilal (P.W.12) on 01/08/2009 took his grandson alongwith his daughter (since dead). After treatment at the hospital, he left them at her inlaws

house. As Ankit was required to be taken to the hospital on the next day and he had some urgent work, he gave Rs.200/- and instructed his son

Gaurilal (P.W.9) for taking Ankit to hospital for administering injection.

By acting thereupon, Gaurilal (P.W.9) went to his sister's house and informed her that Ankit has to be taken to the hospital for administering injection.

However, the deceased refused to do so under the influence of mother-in-law and her husband/the accused. At that time, the accused physically

assaulted him with stick. To rescue him, the deceased intervened. He escaped from their house and reached his home situated at village Patri but, the

deceased received serious and grave injuries on her head inflicted by the accused resulting into her death.

In the aforesaid factual matrix, Marg Intimation under section 174 Cr.P.C., (Exhibit P/10) was lodged at the Police Station Machalpur at about 5.30

p.m., whereupon Dehati Nalishi (exhibit P/9) was recorded by Virendra Kumar Singh (P.W.11), Station House Officer of the Police Station in respect

of the alleged incident at about 12.00 p.m., under Section 302/34 of IPC to the effect that while Hokambai (since dead) was taken to hospital in an

injured condition by Fateh Singh (father-in-law of the deceased) alongwith one Narayan, she died due to the injuries caused upon her person on the

way. Ashok Verma, Naib Tahsildar (P.W.1) prepared the panchayatnama lash (exhibit P/1) on 03/08/2009 who has found three external injuries on

the person of the deceased; out of which from one injury, blood was oozing.

During investigation, Virendra Kumar Singh the Investigating Officer (P.W.11) has arrested the accused in the presence of witnesses; Kamal Singh

(P.W.3) & Girraj (P.W.5) and prepared arrest memo (exhibit P/5). On the basis of information furnished by the accused, seized the stick (lathi) made

from Babul tree used in the commission of offence (exhibit P/3). Spot map was prepared vide exhibit P/2. Also seized, simple earth, blood stained soil

etc., and FSL report is exhibit P/14. The dead body was sent for post mortem. On completion of the investigation, a charge sheet was filed against

two accused persons including the present appellant before the concerned Court. The body of deceased was sent for post mortem (exhibit P/15).

3. Dr. Pradeep Kumar Jain (P.W.4) and his team of three doctors conducted post mortem (exhibit P/15) has found; (i) the age of deceased as 25

years; (ii) eyes semi-open; (iii) pupil dilated and fixed; (iv) bleeding through both nostrils and dribbling on left cheek (v) contusion present 2 x 2 cms.,

over right frontal area of skull; (vi) contusion 3 x 3 cms., on occipital region of skull; (vii) lacerated wound 3 x 1 cms., upto bone deep on occipital area

of skull fracture with clotted blood. (viii) rigor mortis present forehead to hypostasis on back and opined that mode of death was due to shock and

intracranial haemorrhage and the cause of death was due to injuries present on occipital region of the skull. As such, deceased had suffered death

within 12-24 hours of the post mortem.

4. The trial Judge on the basis of the material placed on record framed charge punishable under Sections 302 IPC against both the accused persons.

In addition to the aforesaid charge, charge under section 302/34 IPC has been framed against them. All the accused denied the charge and claimed to

be tried. The defence of the accused including the present appellants is of false implication and the same defence they set forth in their statements

recorded under Section 313 of the Code of Criminal Procedure, 1973.

5. The prosecution has examined as many as 12 witnesses and placed Exhibits P/1 to P/16, the documents on record. The accused have examined

two witnesses; Radheshyam (D.W.1) and Mohanlal (D.W.2) in their defence.

6. The Trial Judge while carefully examining the evidence of eye-witnesses has found that there is consistency in the statements of eye-witness

Gaurilal (P.W.9) who has also received injuries vide MLC report (exhibit P/16) and the other witnesses, i.e., father of the deceased Mangilal

(P.W.12) and the independent witness, Ashok Verma (P.W.1). On the basis of overwhelming evidence of occurrence of the incident and involvement

of the accused/appellant reached the conclusion that the death of the deceased is culpable homicide amounting to murder as the accused-appellant hit

the deceased with a stick made from Babul tree with an intent to kill her and consequently, convicted him for offence under Section 302 of IPC

sentencing him for life imprisonment. Accordingly, held that charge under Section 302 IPC has been proved against the accused/appellant as a result

of which he has been convicted and passed the sentence as mentioned hereinabove. However, he has been acquitted from the charge under Section

302 read with section 34 IPC. The Trial Court after close scrutiny of the evidence came to hold that the charge under Sections 302 and 302/34 IPC

are not proved against the co-accused, Kanchanbai and, eventually, acquitted both of them from the aforesaid charges.

7. This appeal has been preferred by the appellant assailing the judgment of conviction and order of sentence passed by the Trial Court.

8. The State of Madhya Pradesh did not chose to file any appeal against acquittal of the co-accused person under Sections 302 and 302/34 IPC and

the acquittal of the appellant under Section 302/34 IPC, hence the case has attained finality in that behalf.

9. Gaurilal (P.W.9) in para 1 of his deposition has deposed that on the fateful day he went to his sister's house to administer injection to Ankit son of

his sister at the hospital. However, his sister informed that Ankit went to the field alongwith her mother-in-law. Therefore, he went to the field and

asked them to come to the village. They did so. After reaching home, on account of some misunderstanding in the house, the mother-in-law of the

deceased tried to hit her with broom. However, his sister (since deceased) resisted him to take Ankit to the hospital. At that time, his brother-in-law

(the accused) hit him with a stick. To rescue him, the deceased intervened, however, he ran away from their house. The accused hit her with the stick

on head as a result she received various injuries on head and died. In the cross examination, the testimony of Gauruilal (P.W.9) remained intact.

Likewise, Mangilal (P.W.12) though not an eye-witness has also narrated the factual matrix given the eye witness account of incident and his

testimony has also remained intact in cross-examination. The aforesaid depositions of witnesses are well corroborated with the post mortem report as

well as the deposition of Dr.Pradeep Kumar Jain (P.W.4), who has described the injuries sustained by the deceased as stated above.

10. Learned counsel for the appellant while criticizing the impugned judgment contends that there is mis-appreciation of the evidence on record and

committed grave illegality having relied upon the testimony of the evidence led by cited witnesses including the alleged eye-witnesses, i.e., Gaurilal

(P.W.9) and Mangilal (P.W.12). According to the learned counsel, the act of commission of crime by the appellant has not been proved by the

prosecution and further there was no cogent evidence to establish the ingredients of offence under Section 302 IPC, therefore, the trial Court erred in

convicting the appellant, hence, the appeal be allowed and the appellant be acquitted from the charge.

11. An alternate submission has also been put-forth by the learned counsel for the appellant that if this Court comes to the conclusion that the

appellant has caused injuries on the person of the deceased, the same were not intentional or premeditation or pre-planned but the act was due to

sudden provocation. According to him, since the deceased Hokambai meddled into unnecessary arguments and acting against the wishes of the

appellant, that caused appellant sudden provocation and inflicted the injuries on the head of the deceased. There was no premeditation either to cause

bodily injury or death of the deceased Hokambai. Under such circumstances, the case at the most fall within the exception 4 of section 300 IPC,

which reads as under -

“300. Murder :

Exception 1. When culpable homicide is not murder. Culpable homicide is not murder if the offender, while deprived of the power of self-control by

grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First. $\hat{A} \nrightarrow \hat{B}$, $\hat{A} \nrightarrow \hat{B}$, $\hat{A} \nrightarrow \hat{B}$

Secondly $\hat{A} \nrightarrow \hat{B}$, $\hat{A} \nrightarrow \hat{B}$, $\hat{A} \nrightarrow \hat{B}$

Thirdly $\hat{A} \nrightarrow \hat{B}$, $\hat{A} \nrightarrow \hat{B}$, $\hat{A} \nrightarrow \hat{B}$

Exception 4.- 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 having taken undue advantage or acted in a cruel or unusual manner. Explanation.- It is immaterial in such cases which party

offers the provocation or commits the first assault.

and therefore punishment under Section 302 IPC is wholly unwarranted, instead, the appellant may be held guilty for offence under Section 304 Part II

IPC. Further, the sentence may be reduced to the period already undergone by him as he has already undergone about 09 years of the sentence.

12. Per contra, learned Public Prosecutor has supported the impugned judgment and finding arrived at by the trial Court and submitted that the

conviction in question is well merited.

13. Heard.

14. Taking into consideration the evidence of Gaurilal (P.W.9), Mangilal (P.W.12) and Dr. Pradeep Kumar Jain (P.W.4), this court is of the view that

death was homicidal in nature but, there is no evidence of any premeditation of the accused appellant to cause injury upon the body of the deceased;

much less, with an intention to cause such bodily injury, which could result into death, as it has come in the evidence of Gaurilal (P.W.9) that while he

went to administer injection to Ankit to the hospital, there was resistance, the appellant took a wooden stick and hit him and to rescue him, the

deceased intervened and received the injuries on her head. Such course of event in the opinion of this court, in fact, suggests that the same provided a

sudden and grave provocation to the accused appellant which drove him to use force by inflicting injuries on the head of the deceased and, therefore,

this court finds substantial force in the submission advanced by the learned counsel for the appellant that the instant case falls under Exception IV to

Section 300 IPC. Under such circumstances, we are not in agreement with the conclusion of the trial court for conviction of the appellant under

Section 302 IPC. Therefore, this court is of the view that the present case is a case of culpable homicide not amounting to murder and, therefore, the

appellant is liable for punishment under Section 304 Part II of IPC. The aforesaid view finds support from the judgment of the Supreme Court in the

case of State Vs. Sanjeev Nanda - AIR 2012 SC 3104.

15. Consequently, the appeal is allowed in part. The conviction of the appellant under Section 302 IPC is hereby set aside, instead he is convicted

under Section 304 Part II of IPC and sentenced to 09 years RI with fine of Rs.2,000/- (Rupees two thousand only) and default stipulation [relied upon

judgment of Division Bench of this Court in the case of Premsingh s/o Lal Singh and another Vs. State of M.P., (2006) 4 MPLJ 526]

16. At this stage, learned counsel for the appellant submits that the appellant is in jail since 13/01/2011 and about 09 years period he has undergone,

therefore, he may be set at liberty. This fact is found verified with the record of the case. In the obtaining facts and circumstances, since the appellant

has undergone the sentence of about 09 years, he is directed to be released forthwith if not required in any other criminal case subject to payment of

fine amount.

17. Consequently, this appeal is allowed in part to the extent indicated hereinabove.

18. The Registry is directed to send the copy of this judgment immediately along with the record to the Trial Court for necessary compliance.