

Manik Das Vs. State of Assam

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Court : Guwahati

Decided On : May-05-2003

Judge : P.G. Agarwal and I.A. Ansari, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

Appeal No. : Criminal Appeal No. 114 of 1998

Appellant : Manik Das

Respondent : State of Assam

Advocate for Def. : PP

Advocate for Pet/Ap. : J.M. Choudhary and D. Talukdar, Advs.

Prior history : P. G. Agarwal, J. 1. Heard Mr. J. M. Choudhury, learned Senior counsel for appellant and the learned Public Prosecutor. 2. This appeal is directed against the judgment, dated 2.4.1998, passed by the Sessions Judge at Dhemaji, in Session Case No. 28 (DH)/96 and committed by the Judicial. Magistrate, 1st Class, Dhemaji, in GR Case No. 1152/95(Slp) dated 28.3.1996. 3. In Sessions Case No. 28 (DH)/96, the three accused persons were tried for commission of offence under Section 302 I.P.C. an

Judgement :

P. G. Agarwal, J.

1. Heard Mr. J. M. Choudhury, learned Senior counsel for appellant and the learned Public Prosecutor.
2. This appeal is directed against the judgment, dated 2.4.1998, passed by the Sessions Judge at Dhemaji, in Session Case No. 28 (DH)/96 and committed by the Judicial. Magistrate, 1st Class, Dhemaji, in GR Case No. 1152/95(Slp) dated 28.3.1996.
3. In Sessions Case No. 28 (DH)/96, the three accused persons were tried for commission of offence under Section 302 I.P.C. and on conclusion of the trial, learned Sessions Judge, Dhemaji, by the impugned order, convicted the appellant, Manik Das, to undergo rigorous imprisonment for life and to pay a fine of Rs. 100, in default, further rigorous imprisonment for one month under Section 302 IPC.
4. The other two accused persons, namely, Haripada Das and Harekrishna Das, the father and son duo, were convicted under Section 323 IPC and released on admonition under Section 3 of the Probation of Offenders Act and they have not filed any appeal and the present appeal is filed by the appellant Manik Das.
5. The prosecution's allegation is that on 16.9.1995 at about 6.30 P.M., a quarrel took place between the two women, namely, Soarani Das and Anjurani Das, whereupon the accused Haripada Das along the two sons, namely, Harekrishna Das and Manik Das assaulted Nikhil Das and Sudardhan Das. Nikhil Das sustained bleeding injury and he was removed to Silapathar, but he succumbed to his injuries. The appellant Manik Das made the alleged assault on Nikhil Das.
6. PW 8. Dr. S. N. Hazarika, who held the postmortem examination over the dead body of the deceased, found as follows :

'Scalp - Lacerated wound in occupational part of head about 3' x 1' x 1/2'. After opening the scalp large haematoma about 2 1/2' square is found.

Skull-A depressed fracture of about 2' diameter is detected.

Vertebra - Not seen.

Membrane-Lacerated.

Brain-Large heamatoma about 2' diameter is detected in the brain matter.'

7. The opinion of the doctor was that the injuries were ante-mortem in nature and the death was due to brain injury. In view of the oral and medical evidence on record, it is not disputed that the cause of death of the deceased, was as a result of the brain injury, caused on the person of the deceased. PWs 1, 2, 5, 6 and 7, who were present at the place of occurrence, saw the injury on the person of the deceased. PW 3, Sudarshan Das, PW 4, Anjurani Das PW 11 Kadambini Das, are the three eyewitnesses to the occurrence and they have categorically deposed that the injuries on the head of the deceased was given by the appellant Manik Das PW 9, Soarani Das was another eyewitness, but she was declared hostile to the prosecution. The trial, for the reasons mentioned in the impugned judgment, has relied upon the testimony of these three eyewitnesses.

8. On perusal of the evidence on record, we find that the evidence of these three eyewitnesses is reliable and trustworthy. There is nothing on their part to depose falsely and their evidence stands fully corroborated by the medical evidence on record. There is no discrepancy in their statement and they have supported each other on all material parts. Hence, relying on their testimony, we hold that the appellant, Manik Das, had caused the injury, which led to the death of the deceased.

9. The learned counsel for the appellant has, however, submitted that there was no intention to cause death and this being a case of single injury, the act of the accused, at best, may constitute an offence under Section 299 IPC. From the medical evidence stated above, we find that this is a case of single injury caused by a lathi.

10. Mr. J. M. Choudhury, learned Senior counsel has placed reliance on the observations made by the Apex Court in the case of Giani Ram, petitioner v. State of Haryana and Ors., (1995 Cri. LJ 4168), where in a case of single blow on head with hammer, the Apex Court held it to be an offence under Section 304 (Part II) IPC.

11. In a recent case of Mahesh Balmiki alias Munna v. State of Madhya Pradesh (2000) 1 SCC 319, the Apex Court observed - 'adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of a single blow under Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some case under Section 304 IPC and in some other cases under Section 326 IPC. The matter is required to be examined on the facts and circumstance of each case. The circumstances and the manner in which the injury has been caused and the weapon of assault, etc., are all relevant factors to determine the intention.'

12. In the present case we find that accident took place out of a quarrel between the two women that led to assault and the weapon used is a lathi, the common article available with the villagers. However, it is not a case where further assault on the deceased was prevented due to intervention of other witnesses. Nothing prevented him from giving further assault.

13. Considering the relevant aspect of the matter, we are of the view that the acts of the accused constitute of offence of culpable homicide not amounting to murder. Accordingly, the conviction is modified to one under Section 304 (Part II) IPC.

14. As regards the sentence, it is submitted that the accused person is in jail custody for more than 5 years: Hence the accused is sentenced to undergo imprisonment for the period already undergone by him. He may be released forthwith, if not wanted, with any other case.

15. Send a copy of the order to the Superintendent, Jail at Dhemaaji and to the 'Sessions Judge at Dhemaaji.

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