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indra Deva (In Jail) Vs. the State

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Court : Allahabad

Decided On : Aug-18-1990

Reported in : 1991CriLJ2598

Judge : R.K. Saksena, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 300, 302, 304 and 326; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 480 of 1982

Appellant : indra Deva (In Jail)

Respondent : The State

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Anil Srivastava, Adv.

Judgement :

R.K. Saksena, J.

1. Indra Deva, sole appellant, stands convicted under Section 304, Part I of the Penal Code with a sentence of rigorous imprisonment for a period of 5 years, per judgment and order dated the 8th of June, 1982 passed by the, then, Sessions Judge, Barabanki in Sessions Trial No. 53 of 1981. It would not be out of place to

mention here that trial commenced on a charge of murder punishable under Section 302 of the Penal Code, the provisions of which were, however, found to be not attracted as a consequence where of the appellant was acquitted on that charge but was found guilty for committing offence of culpable homicide not amounting to murder, as stated above.

2. There was a big plot numbered as 784 in village Bamhaura Lodi within police circle, Udaipur, district Bara Banki. The area of this plot was about 24 and a half bighas and it was known as 'Jheel-ki-Zamin'. It lies within the territorial limits of Gaon Sabha Nirwan-Nagar. Yet another plot bearing number 792 known as 'Jungle-ki-Zamin' also falls within the limits of the said Gaon-Sabha and is located in the same village. Proceedings for allotment of land of these two plots were initiated and the same finally terminated sometime in January, 1976, Pattas of these two plots were given, according to law, to different persons. One of the them was Sheo Poojan (deceased) and another was Fakir Chand, father of the appellant. Each was allotted 1 bigha land in 'Jheel-ki-Zamin,' i.e. plot No. 784. These facts admit of no controversy; they are clearly borne out from the evidence of Lekhpal, Jageshwar Prasad (PW 5).

3. In this background that the deceased Sheo Poojan had been allotted 1 bigha land in 'Jheel-ki-Zamin' by the Gaon Sabha and Fakir Chand (father of the appellant) was allotted an equal area of land of the same 'Jheel-ki-Zamin' we may come to the prosecution case which, in short, is to the effect that while Sheo Poojan (deceased) and P.W. 2 Ram Autar were ploughing a piece of land, which is admittedly, in 'Jheel-ki-Zamin' (plot No. 784) on the 28th of January, 1980, the appellant, Indra Deva reached there at about 2 p.m. and impressed upon the deceased and his brother Ram Autar that the land which was being ploughed, belonged to him. He, therefore, insisted that the act of ploughing be given up. The deceased and his brother, on the contrary, maintained that the land was allotted to them by the Gaon Sabha. There was exchange of hot words and user of filthy epithets, which was immediately followed by delivery of a blow given by the appellant by a Kudal, which landed on the neck (right portion) of Sheo Poojan causing an injury, which proved fatal and the death was immediate. The prosecution claims that the appellant bolted away immediately thereafter leaving

his 'Kudal' on the scene of occurrence.

4. A report of the incident was made on the same date at about 4 p.m. at the said police station, distance being 10 kms. from the place of incident. The crime was registered and after usual investigation, the appellant was charge-sheeted as a consequence thereof he was committed to the Court of Session, where he was tried for the offence of murder.

5. The appellant denied the accusations and pleaded not guilty. We do not find any specific case of the appellant in his examination recorded under Section 313 of the Criminal P.C. The suggestions in cross-examination made on his behalf, however, go to indicate that the land which was being ploughed by Sheo Poojan was allotted to the father of the appellant in the course of the same transaction in which Sheo Poojan got it from Gaon Sabha concerned. The suggestions further indicate that the appellant was assaulted on the scene of occurrence. He suffered injuries and retaliated in self-defence.

6. The main findings of the learned trial Judge are that the land on which the incident took place was not proved by the prosecution to be the land of Sheo Poojan (deceased) and that the theory propounded in defence by making suggestion in cross-examination referred to above, had no foundation. It has been further remarked by the Court below that the accused, too, had failed to establish that the disputed land belonged to his father, or that he was in possession thereof. Accepting, however, the testimony of Ram Autar (P.W. 2) and Jhagru (P.W. 3), the learned Sessions Judge has held that fatal injury was caused by the appellant on the said date, time and place by a Kudal. After giving reasons for not accepting the prosecution version that the case falls within the ambit of Section 302 of the Penal Code, the learned Sessions Judge observed that the provisions of Sec. 304, Part I of the Code stand attracted. He has, therefore, convicted and sentenced the appellant, stated at the outset. Aggrieved by the decision, the accused has come-up in appeal.

7. The conclusion recorded by the learned trial Court about the date, time and place of occurrence, the identity of the deceased and the cause of his death, which was homicidal, were not assailed before me on behalf of the appellant.

Having considered the material on record, the medical evidence in particular, I am in perfect agreement with the court below on these points and hold that the injury suffered by Sheo Poojan was sufficient in the ordinary course of nature to cause death and the death followed as a consequence thereof.

8. This brings us to the question as to who was the author of the single injury. The claim of Ram Autar (P.W. 2) is consistent on the point that the appellant is responsible for causing injury. Not only the recitals of the first information report but the evidence of Jhagru (P.W. 3) also corroborates this claim of Ram Autar, who is real brother of the deceased. His evidence cannot be brushed, aside only on the ground that he is a relation and interested person. The land was, admittedly, lying fallow from before. No crop was ever grown therein. There is, thus, no doubt that both the brothers were engaged in ploughing the land at the relevant time. The learned counsel for the appellant drew my attention towards the injury detected by the doctor and urged that punctured wounds found in pleura and lungs cannot be ascribed to a Kudal blow. The contention has no force. A corner of Kudal may have hit that portion causing that injury exactly beneath the ribs, first and second, which were found fractured. Moreover, the possibility that fractured ribs caused the punctured wound can also not be ruled out. However, the fact that Kudal was the instrument with which the injury was caused cannot be, regard being had to the dimension of the (Sic) which finds a mention in the first information report also. It is, therefore, concluded without hesitation in agreement with the court below that the appellant had inflicted that injury on the person of Sheo Poojan.

9. Yet another finding of the court below on a very relevant issue needs a mention. The prosecution claimed that the land which was being ploughed had been allotted to Sheo Poojan, 4 years before the incident. After an evaluation of the material on record, the learned trial Judge concluded categorically that the prosecution has miserably failed to establish that Sheo Poojan was allotted that specific piece of land and was in possession thereof from before the incident. I have already shown above that this land was never cultivated earlier. I have gone through the statement of Lekhpal (P.W. 5) who has stated only about the allotment of 1 bigha land to Sheo Poojan and 1 bigha land to Fakir Chand (father of the

appellant) in 'Jheel-ki-Zamin', but his statement is silent on the point as to whether the disputed land was the portion over which he had delivered possession to Sheo Poojan or Fakir Chand. This was the crux of the matter and yet it was not extracted from him; the truth has, therefore, remained buried. The learned trial Court has rightly observed that the prosecution has not established its aforesaid version in regard to possession over the disputed land and he has on the same footing rightly concluded that the accused (appellant) has also failed to establish his possession or allotment of this land to his father Fakir Chand. I do not find any infirmity in these findings which are upheld without hesitation. 1 would further un-hesita-tingly hold in agreement with the trial Court that no right accrued to the appellant to strike; in other words; right of private defence of person or property did not accrue to the appellant in any manner what-so-ever.

10. The appellant gave a blow with a Kudal on the person of Sheo Poojan on the said date, time and place as a consequence whereof Sheo Poojan suffered an injury, which caused his death.

11. The crucial question for determination is as to what offence has been committed by the appellant. The trial Court has rightly remarked that there was no intention to kill. It, however, observed:

'He fully knew that such an injury could cause the death of Sheo Poojan. Therefore, the knowledge that such an injury, in the ordinary course of nature, would cause the death of Sheo Poojan can be attributed to Indra Deva. I, therefore, hold that Indra Deva had committed an offence punishable Under Section 304, Part I of the Penal Code.'

The learned counsel for the appellant contended that the provisions of Section 304, Part I do not stand attracted. I am inclined to accept the contention for these reasons. Part I applies only in two circumstances:--

If the act by which the death is caused is done (a) with the intention of causing death, or

(b) of causing such bodily injury as is likely to cause death.

12. Even the court below has remarked that the act was not done with the intention of causing death. Therefore, the first clause referred to above does not apply. For the Applicability of the second clause, it is, in my opinion, necessary that bodily injury was intended to be inflicted and the same was sufficient in the ordinary course of nature to cause death. If we carefully consider the nature of the injury suffered by Sheo Poojan and keep in mind the weapon of assault we can legitimately and reasonably infer that this injury was not intended to be caused. It appears that Sheo Poojan moved his head on the left side to avoid the fall of Kudal on head region and, therefore, the blow landed on soft and delicate part of the body, namely, neck causing that injury. One in standing or sitting posture cannot suffer this injury unless he moves his neck towards extreme left, thereby allowing the weapon to fall on that portion of the neck, which was affected. It, therefore, follows that this injury on neck region was not intended to be caused by the appellant. This fact takes the matter out of the ambit of Clause (b) of part I referred to above. The trial court has, in my opinion, erred in introducing the word knowledge' for the applicability of part I. To my mind Clause (i) and Clause (iii) of Section 300 of the Penal Code are dealt with in Part I of Section 304 provided it is a case of culpable homicide not amounting to murder. As a matter of fact, the word 'knowledge' appears in Part II, which mentions that if the act is done with the 'knowledge' that it is likely to cause death, he will be punished under Part II. In my view clause secondly of Section 300 speaks of cases where the offender knows that the bodily injury was likely to cause death. Example (b) given in Section 300 indicates what type of knowledge is required. It can, therefore, be safely concluded that the act was not done with the knowledge as is contemplated even by Part II of Section 304.

I 13. My considered view, therefore, is that the provisions of Section 304 of the Penal Code do not stand attracted. The court below has erred in concluding that the case squarely falls within the ambit of Part I of Section 304 of the Penal Code. Regard being had to the nature of the weapon used by the appellant, the knowledge that grievous injury could be caused by giving blow can be safely attributed to the appellant who has, thus, committed an offence punishable Under Section 326 of the I.P.C.

14. We now come to the question as to what punishment be inflicted for committng the said offence. It may be recalled that the appellant and the deceased, each, was labouring under a mistake that that portion of land of plot No. 784 had been allotted to him and, therefore, this incident took place. There was no enmity between the two of any nature whatsoever. They reside in the same village and were landless persons. A single blow was given without premeditation after an altercation had ensued. The occurrence took place more than 10 years back and the appellant has, in all probability, settled down to his normal avocation. During this period he has suffered mental agony as consequence of this incident. Regard being had to all these facts and circumstances I am of the opinion that it would not be just and proper to commit the appellant to prison again in a crime of this nature after such a long gap. The period for which he has remained in jail in this crime is, in my opinion, sufficient punishment.

15. In the result, I set aside the conviction Under Section 304 Part I and the sentence of imprisonment imposed therefor, instead convict him Under Section 326 of the Penal Code with the sentence already under-gone. The appeal is disposed of accordingly.

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