

Nathoo Badai Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Dec-05-2000

Reported in : 2001(1)MPHT199; 2001(2)MPLJ698

Judge : Mr. C.K. Prasad and ;Fakhruddin, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300, 302, 304-I and 324;

Appeal No. : Criminal Appeal No. 171/89

Appellant : Nathoo Badai

Respondent : State of M.P.

Advocate for Def. : Shri S.K. Gangarde, Penal Lawyer

Advocate for Pet/Ap. : Shri Ajit Singh and ;Ms. Seema Singh, Advs.

Disposition : Appeal Partly Allowed

Judgement :

Fakhruddin, J.

1. Appellant being aggrieved by his conviction under Section 302 of the Indian Penal Code and sentence of life imprisonment, passed by the Ist Addl.Sessions Judge, Tikamgarh, by judgment dated 9-12-88, in Sessions Trial No. 114/87, has preferred this appeal.

2. Briefly stated prosecution story is that the incident had occurred on 17-7-1987 at about 10 a.m. The cattle belonging to the complainant party had gone for grazing in the field of accused persons. Sukko Bai, daughter of accused Jalam chased the cattle to the field of Ramcharan, owing to which a sudden quarrel took place between Baijnath and Sukko Bai. Sukko Bai threw stone on Baijnath, on which Baijnath slapped her and a scuffle took place. Sukko Bai went to her house and narrated the incident. Thereafter, accused persons armed with Lathi, Kholia and Kulhadi came to the scene of occurrence and started assaulting the complainant party. Baijnath sustained injury and Ramcharan who had come there was also beaten by Jalam by means of Kholia, appellant Nathu by Kulhadi and accused Munna by lathi.

3. Report of the incident was lodged by Ramcharan at 10 O'clock on the same day. Initially the offence was registered under Section 324/34, IPC. Ramcharan was sent for medical examination at Jatara. Thereafter, he was shifted to District Hospital, Tikamgarh, Ramcharan died on 23rd July, 1987 owing to head injury. Autopsy was conducted by Dr. N.K. Chourasiya (P.W. 7). Police after investigation, submitted the charge-sheet. Appellant has denied his involvement in the offence and his plea is that he has been falsely implicated in the case. His plea further is that he has acted in the right of private defence of his person and property. Two defence witnesses were also examined.

4. Dr. H.N. Mishra (P.W. 12) examined the injured Ramcharan and found following injuries on his person :--

(a) Injury on the right side of forehead 3x2 cm.

(b) Skull bone fracture injury.

(c) Lacerated wound on the centre of the head measuring 2 1/4 x 1/2 cm.

(d) Abrasion on left side back 6 x 3 cm. In the opinion of the doctor the injuries were caused by sharp edged weapon.

5. P.W. 15 Dr. G.P. Choubey in his deposition has stated he had taken the X-ray of the deceased and found fracture of the right frontal skull bone. His report is Ex.

P-19-A.

6. Mr. Ajit Singh with Ms. Seema Singh, learned counsels appearing on behalf of the appellant read out the evidence of P.W. 10 Baijnath and submitted that from the evidence of Baijnath (P.W. 10), what emerges is that the incident had occurred in the field of Jalam where the catties were grazing and when it was objected to by Jalam's daughter Sukkobai, P.W. 10 Baijnath slapped Jalam's daughter Sukkobai. It was also pointed out from Paragraph 2 that Munna had also come to the field with an axe where the quarrel was going on. He gave blows from the reverse side of the axe to the complainant party. Munna also received injury on his person. It is submitted that Natthu also came there and he also threw the complainant Baijnath on the ground. Thereafter deceased Ramcharan also came there and he first slapped Baijnath and then to Munna. When Ramcharan slapped Munna at that moment Jalam gave Kholia blow on the head of deceased Ramcharan. Jalam exhorted Nathu who gave axe blow on the head of the deceased and thereafter Munna also gave a lathi blow which hit the head of the deceased.

7. Learned counsel contended that the quarrel had taken place in the field of Jalam. The complainant party were the aggressors. Injuries were received by both the parties, as admitted in Paragraph 5 by Munna and Nathu and for which the explanation furnished is not plausible. It is contended that from the material on record, under the facts and circumstances, it is a case where there is no pre-meditation which has also been found by the Trial Court. It is also contended that there was an altercation between the parties and in the sudden fight, the deceased was given a Kulhadi blow by the appellant which fell on his head.

8. Learned counsel for the appellant further contended that the evidence of Dr. N.R. Chourasiya (P.W. 7) clearly indicates that nature of injury and the medical evidence on record go to show that the injury sustained by the deceased was not sufficient to cause death. He pointed out, from the evidence of P.W. 12 Dr. H.N. Mishra, Paragraph 2 of his deposition that the injuries sustained by the deceased were by hard and blunt object whereas the injury on the head was caused by sharp edged weapon which was grievous in nature. It was also submitted that the death was not instantaneous but had occurred after 7 days. Reliance has been

place on a decision in the case of Mahesh v. State of M.P. (AIR 1996 SC 3513) wherein, it has been held as follows :--

'4. From a perusal of the evidence, we find that when the appellant arrived along with the cattle at the field there was no pre-meditation for the assault. At the spot, there was an altercation between the parties and in the sudden fight, after the deceased objected to the grazing of the cattle, when possibly hot words or even abuses were exchanged between the parties, the appellant gave a single blow with the pharsa on the head of the deceased. The statement of the appellant and the suggestions given on his behalf to the prosecution witnesses that there was an attempt to assault the deceased with a Parena, which was with the deceased, does not appear to be improbable. Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault P.W. 2 or P.W. 6 who were also present along with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of P.W. 1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception 4 to Section 300, IPC is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304 (Part-I), IPC. The Trial Court, under the circumstances, was justified in convicting him for the said offence and the High Court, in our opinion, fell in error in interfering with it and that too without dispelling any of the reasons given by the Trial Court. The judgment of the High Court convicting the appellant for an offence under Section 302, IPC cannot be sustained and we accordingly set it aside and instead convict the appellant for the offence under Section 304 (Part-I), IPC.'

9. The contention of the learned counsel is that the assault on the deceased was made during the sudden quarrel and there was no pre-meditation and as such, the offence would clearly fall under Section 304 Part-I of the IPC.

10. Having given our thoughtful consideration and the discussions held above as also the finding recorded by the learned Trial Judge what emerges is that catties had entered into the field and when objected to, Jalam's daughter was slapped. The quarrel took place in Jalam's field, the deceased himself had slapped P. W. 10 Baijnath. Further, it is a case of a single Kulhadi blow which took place during the scuffle. The medical evidence of P. W. 12 Dr. R.C Mishra is also to the effect that the injury which is attributed is grievous. Even otherwise, what we have noted is that the two accused persons have also received injuries. The prosecution has failed to explain injuries on the person of accused. Having thus considered the entire material, we are of the opinion that the appellant did not intend to cause death of the deceased nor had a knowledge that the injury caused would result into his death. P.W. 12 Dr. R.C. Mishra has also not opined that the injury sustained by the deceased could cause death in the ordinary course of nature.

11. Having taken into consideration the entire scenario and material available on record, we are of the opinion that the offence would be one under Section 304 Part-I and not under Section 302 of the Indian Penal Code. Learned defence counsel pointed out that he has undergone jail sentence of about 9 years and thereafter he was released on bail.

12. The appeal is partly allowed. The appellant is held to be guilty for offence under Section 304 Part-I of the IPC. We sentence him to the period already undergone by him. Bail bond and surety bond are discharged.

13. Criminal Appeal partly allowed