

Mohan Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Oct-05-2001

Reported in : 2002(1)MPHT547; 2002(1)MPLJ510

Judge : Rajeev Gupta and ;Usha Shukla, JJ.

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

Appeal No. : Criminal Appeal No. 1068/90

Appellant : Mohan Singh

Respondent : State of M.P.

Advocate for Def. : S.K. Rai, Adv.

Advocate for Pet/Ap. : Sanjeev Saxena, Adv.

Disposition : Appeal allowed

Judgement :

Rajeev Gupta, J.

1. Appellant Mohan Singh stands convicted under Section 302, IPC with sentence of imprisonment for life, vide impugned judgment dated 11-9-90, passed by Sessions Judge, Shahdol in Sessions Trial No. 47/90.

2. Appellant Mohan Singh has been found guilty of causing four external injuries on his wife Mst. Subhiya Bai by means of a sickle in the noon of 22-11-89, in his field situated in village Karpa, Distt. Shahdol.

3. Appellant's conviction is founded on the incriminating circumstances that deceased Subhiya Bai was last seen alive in the company of the appellant a few hours before her death; immediately after the incident the appellant came back to his house and left his minor daughter in the custody of his father; and body of Subhiya Bai was found next morning lying in the appellant's field. Though the prosecution also relied upon the alleged seizure of the weapon of offence 'sickle' at the instance of the appellant, but as no blood stains much less of human origin were detected on the sickle, the Trial Court did not rely upon this incriminating circumstance against the appellant.

4. Shri Sanjeev Saxena, the learned counsel for the appellant, in view of the cogent and reliable evidence of P.W. 2 Munshi Singh, P.W. 3 Shyama Bai and P.W, 4 Phuliya Bai, frankly and fairly conceded that the finding, recorded by the Trial Court, holding appellant Mohan Singh guilty of causing those four incised wounds on his wife Subhiya Bai which led to her death on account of excessive bleeding is beyond any possible challenge. The learned counsel, however, submitted that as none of the four injuries found on deceased Subhiya Bai resulted in either any corresponding fracture or damage to any internal organ and that deceased Subhiya Bai died on account of excessive bleeding, the offence against the appellant in view of the dictum of the Apex Court in the case of Kalinder Bhari v. State of Himachal Pradesh, reported in AIR 2000 SC 3618, at the most would be punishable under Section 304 (Part-II), IPC. The learned counsel further submitted that for the offence under Section 304 (Part- II), IPC, the appellant has been in custody for a period of about 12 years since his arrest on 6-12-89.

5. The facts that deceased Subhiya Bai had sustained as many as four incised wounds in the noon of 22-11 -89 and died a homicidal death on account of excessive bleeding as a result of those injuries were neither disputed by the accused at the trial nor are under challenge before us in this appeal. That apart, there is overwhelming evidence on record to establish the above facts beyond any

shadow of doubt. We, therefore, uphold the finding recorded by the Trial Court in that behalf.

6. Though Shri Sanjeev Saxena, the learned counsel for the appellant, has not challenged the finding, recorded by the Trial Court, holding the appellant guilty of causing those incised wounds on his wife Subhiya Bai by means of a sickle which led to her death, even then with a view to satisfy ourselves about the correctness of the above finding we have perused the evidence led by the prosecution at the trial, in general, and that of P.W. 2 Munshi Singh, P.W. 3 Shyama Bai and P.W. 4 Phuliya Bai, in particular. On a close scrutiny of their evidence, we are satisfied that the Trial Court has rightly arrived at the conclusion that it was the appellant and appellant Mohan Singh alone who had caused four incised wounds on his wife Subhiya Bai by means of a sickle while cutting crop in their field. We, therefore, affirm the finding recorded by the Trial Court in that behalf.

7. The next question which crops up for consideration in this appeal is about the nature of the offence proved against appellant Mohan Singh.

8. True, there is no eye-witness account as to how and in what circumstances deceased Subhiya Bai came to sustain four incised wounds, by means of a sickle, at the hands of her husband in the noon of 22-11-89. The prosecution has not led any evidence to show that the relations between the husband and the wife were not cordial. To us, it appears that some quarrel must have taken place between the husband and the wife on account of some petty domestic matter which led to the unfortunate assault on the poor wife. It further appears that the appellant, after committing the foolish act of causing injuries on his wife Subhiya Bai by means of a sickle, got panicky and instead of providing timely medical aid to his injured wife fled away from the place of occurrence with his minor daughter. The medical evidence reveals that none of the four incised wounds resulted either in any corresponding fracture or damage to any internal organ. In the opinion of the Autopsy Surgeon, Subhiya Bai died on account of excessive bleeding from the injuries sustained by her.

9. In somewhat similar factual matrix, the Apex Court in the case of *Kalinder Bharik v. State of Himachal Pradesh*, reported in AIR 2000 SC 3618, while

considering the nature of the offence proved against the husband accused in that case who was alleged to have caused as many as nine external injuries, including four incised wounds, on his wife leading to her death on account of excessive bleeding, observed in paras 5 to 8:

'5. But, then the more important question is whether accused is liable to be convicted under Section 302 of Indian Penal Code. When the post-mortem examination was conducted on 7-11-95 P.W. 1 Doctor Jagdish Gupta has noted the following ante-mortem injuries:--

- (1) Contusion over right breast, 2 cm x 2 cm.
- (2) Contusion over middle of forehead, 3 cm x 2 cm.
- (3) Contusion over right scapular region, 3 cm x 3 cm.
- (4) Contusion just below left scapular, 3 cm x 2 cm.
- (5) Two contusions over lower back, 3 cm x 2 cm each.
- (6) Multiple small abrasions over both lips.
- (7) Five teeth from upper jaw missing with fracture alveolus.
- (8) Four clean incised wounds behind left ear over left parietal area. 1', 2 -1/2', 1 - 1/2' skull deep.
- (9) Lacerated wound over middle of skull, 1' in size skull bone -normal.

6. All the internal organs were found normal. The skull was also found normal. According to the Doctor the death could be due to excessive bleeding.

7. None of the injuries can be said to be individually or collectively sufficient in the ordinary course of nature to cause death. This is a case where death became the consequence because of excessive bleeding. Therefore, it is not a case which can be brought under any one of the four clauses under Section 300 of IPC. It would remain only within the range of culpable homicide not amounting to murder.

8. We, therefore, alter the conviction to Section 304, Part II of the IPC. In the circumstances of the case we impose a sentence of rigorous imprisonment for seven years.'

10. Now, reverting to the facts of the present case as stated above deceased Subhiya Bai was found to have sustained four incised wounds. All the internal organs were found normal. The Autopsy Surgeon did not notice any fracture. In his opinion, Subhiya Bai died on account of the excessive bleeding. None of the injuries found on Subhiya Bai can be said to be individually or collectively sufficient in the ordinary course of nature to cause death. Thus, in our opinion the above proved act of appellant Mohan Singh in causing four incised wounds on his wife Subhiya Bai by means of a sickle leading to her death on account of excessive bleeding would not amount to the commission of the offence of 'murder' punishable under Section 302, IPC. Nevertheless, the appellant cannot escape from the liability of his above act altogether. In our considered view, the above act of the appellant would certainly amount to the offence of 'culpable homicide not amounting to murder' and in the facts and circumstances of the present case would be punishable under Section 304 (Part-II), IPC.

11. As for the sentence, in our considered view rigorous imprisonment for seven years, in the facts and circumstances of the case would be the sufficient punishment for the offence found proved against appellant Mohan Singh under Section 304 (Part-II), IPC, and would meet the ends of justice.

12. For the foregoing reasons, the appeal, filed by appellant Mohan Singh, against his conviction and sentence is allowed in part. Appellant's conviction under Section 302, of the Indian Penal Code, and sentence of imprisonment for life are hereby set aside. Instead, the appellant is convicted under Section 304 (Part-II), of the Indian Penal Code, and is sentenced to rigorous imprisonment for seven years.

13. Appellant Mohan Singh has all along been in custody since his arrest on 6-12-89, and as such has already undergone whole of the sentence of rigorous imprisonment for 7 years, now awarded on his conviction under Section 304 (Part-II), of the Indian Penal Code. We, therefore, direct that appellant Mohan Singh be set at liberty forthwith, unless wanted in connection with some other case.

