

Sarafraj Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-12-2004

Reported in : 2004(3)MPHT122

Judge : A.K. Gohil and ;Uma Nath Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300 and 302; [Evidence Act, 1872](#) - Sections 8 and 60

Appeal No. : Criminal Appeal No. 106/96

Appellant : Sarafraj

Respondent : State of M.P.

Advocate for Def. : Deepak Shrivastava, Govt. Adv.

Advocate for Pet/Ap. : J.P. Gupta, Sr. Adv. assisted by ;A.K. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Gohil, J.

1. Appellant stands convicted under Section 302/34 of the Indian Penal Code ('Code' for short) and sentenced to life imprisonment in S.T. No. 117/94 vide judgment dated 26-3-96 by I ASJ, Vidisha, Camp Sironj.

2. Appellant and acquitted accused Nanne Khan and another accused Rajamiyan (subsequently died) were tried under Section 302/34 of the Code on the allegation that in furtherance of common intention with Sarafraj, Nannekhan and Rajamiyan they committed murder of Sudhir Bhargav (hereinafter referred to as 'deceased') on 15-1-94 at 4 P.M. Rajamiyan died during the course of the trial.

3. Prosecution story succinctly stated is that on 15-1-94, deceased was going to market from his house. When he reached on public road opposite the Gumthi of Jagannath Sahu and near the house of Dhannu Kumhar at about 4 P.M., accused Sarafraj and Rajamiyan met him, there was some wordy quarrel between them, abuses were exchanged. In the meantime other associates of Sarafraj and Rajamiyan came there and thereafter knives were taken out from the pockets and accused Sarafraj and Rajamiyan stabbed the deceased with sharp edged knives causing injuries on his right palm and both the thighs. Accused Sarafraj also attacked the deceased with his knife on right side of his head and as a result of cumulative effect of all the injuries, deceased fell on spot. As per prosecution, about 4 days before the incident Sarafraj and Rajamiyan had come on the machinery shop of Ramkumar, brother of the deceased and complained that their younger brother Sudhir had become a leader who would be dealt with. It was further alleged that on the day of incident at about 12 O'clock, the accused persons had again come to their machinery shop and threatened. According to the prosecution, Ramkumar, elder brother of the deceased was sitting at his shop, received a telephone from his house from Rekha Bhargava that the quarrel has taken place between the deceased and some persons. After receiving this information Ramkumar (P.W. 1) rushed in the direction of house of Pannalal and noticed a crowd of about twenty people there. He found the deceased lying their drenched in blood in senseless condition. Ramkumar (P.W. 1) also got shocked and sat down. The incident was seen by Suresh Pujari, Laxminarayan Saxcna, Govind and Khushilal Kachhi. Deceased was taken to hospital where he succumbed to injuries. FIR (Ex. P-1) was lodged by Ramkumar at Police Station, Latcri at 4.35 P.M. on 15-1-94.

4. Post-mortem examination of the dead body was conducted by Dr. O.P. Sahu (P.W. 10) on the same day at 4.55 P.M. He noted following injuries on the body of

the deceased :--

(1) One incised wound of size 1/2' x 1/4' x 1/4' deep on right side of head on parietal region 4' above from upper end of right ear. Mild red bleeding with clots present in wound.

(2) One incised wound of size 3' x 1/2' x 1' deep on inner aspect of right thigh 9' below from right mid inguinal point. There is severe bleeding from wound with blood clots present.

(3) One incised wound of size 1-1/2' x 1/2' x 2' deep on inner aspect of right thigh 1' below from injury No. 2. The femoral artery below wound is cut and severe red colour bleeding with clots present in wound.

(4) One incised wound of size 3' x 1/2' x 1' deep on inner aspect of right thigh 6' below from injury No. 3. There is severe blood haemorrhage from wound with clots.

(5) One incised wound of size 3/4' x 1/4' x 1/2' deep on web between index finger and middle finger of right hand. The base of right middle finger bone is fractured. Muscle is also cut. Bleeding from wound.

(6) One incised wound of size 3' x 1/4' x 1/2' deep on inner aspect of left thigh 6' above from left knee joint. There is severe red colour haemorrhage with clots in wound present.

(7) One incised wound of size 3' x 1/4' x 1/2' deep on inner aspect of right thigh 7' below from injury No. 3. Severe bleeding with clots present.

(8) One incised wound of size 4' x 2' x 2' deep on back of left thigh all above from mid point of left popliteal fossa. Muscles also came out from wound. Bleeding severe from wound with clots present.

(9) One incised wound size 1' x 1/2' x 1/4' on back of left buttock in centre. Bleeding mild.

(10) One incised wound of size 1/2' x 1/4' x 1/4' on back of left thigh. 3' above from injury No. 8. Bleeding mild.

It was noted that the death was within one hour of the post-mortem examination. In the opinion of doctor the death of the deceased was caused due to shock which occurred due to joint blood heamorrhages from all injuries on the dead body. The death was homicidal in nature and as per the evidence of doctor, it was the cumulative effect of all the injuries which was sufficient in ordinary course of nature to cause death.

5. Appellant was arrested on 16-1-94. Spot Map (Ex. P-11) was prepared and on the information of accused Sarafraj and Rajamiyan two iron knives were recovered of which seizure memos (Ex. P-5 and Ex. P-6) were prepared. Blood stained clothes of accused Rajamiyan and Sarafraj were also seized vide Ex. P.-8 and Ex. P-9. Clothes of the deceased were seized vide Ex. P-15. Seized articles-- knives were sent to Dr. O.P. Sahu who opined that the injuries on the body of the deceased could come by seized knives. Blood stained and simple soil was also collected from the spot and alongwith seized clothes and knives was sent for chemical examination to F.S.L., Sagar. In the report of F.S.L., blood stained soil, simple soil, full pant, shirt and underwear of the deceased, full pant, vest and knife of accused Sarafraj and knife, full pant and shirt of accused Rajamiyan were marked as A, B, C1, C2, C3, D1, D2, E, F, G1 and G2 respectively. Blood was found on articles A, C1, C2, C3, D1, D2, E, F, G1 and G2 whereas it was not found on article B. In other words blood was found on all the examined articles except simple soil collected from the spot. Statements of the witnesses were recorded and after investigation charge-sheet was filed under Section 302/34 of the Code against the accused persons.

6. After recording the evidence, of accused persons, co- accused Rajamiyan died and vide order dated 20-6-95, trial proceedings were closed against the accused Rajamiyan.

7. Prosecution examined as many as twelve witnesses. Ramkumar (P.W. 1) is the brother of the deceased. Laxman Singh Baghel (P.W. 2) is the witness of Panchnama of dead body (Ex. P- 2). Rakesh Kumar (P.W. 4) is the witness of

memorandum of recovery of knives (Ex. P-3 and Ex. P-4) and seizure memos (Ex. P-5 and Ex. P-6). Krishna Kumar (P.W. 5) is also a witness of memorandum of recovery of knives (Ex. P-3 and Ex. P-4), seizure memos (Exs. P-5 and P-6), recovery of full pant from Sarafraj (Ex. P-9) and clothes of Rajamiyan seized vide seizure memo (Ex. P-8). Suresh Sharma (P.W. 3), Govind (P.W. 6), aged about 15 years, Khushilal (P.W. 7) and Iftekhar (P.W. 8) are eye-witnesses of the incident. Avinash (P.W. 9) is an eye-witness of threatening. P.W. 10 is Dr. O.P. Sahu who had performed autopsy of the deceased. P.W. 11 is Badri Prasad Saxena, Patwari who had prepared the spot map (Ex. P-11), Mahendra Kumar Tiwari (P.W. 12), Sub-Inspector was the investigating officer who had investigated the matter. Omprakash (D.W. 1) has been examined by the appellant as a defence witness.

8. The learned Trial Court after appreciating the evidence on record acquitted co-accused Nanne Khan as the prosecution failed to prove the allegations against him beyond reasonable doubt, but, convicted the appellant under Section 302/34 of the Code and sentenced him to Life Imprisonment against which the appellant has filed this appeal. Prosecution has not filed any appeal against acquittal of Nanne Khan.

9. We have heard Shri J.P. Gupta, learned Senior Counsel and Shri S.M.A. Naqvi, learned Additional Government Advocate and have also perused the judgment and evidence on record.

10. Shri Gupta argued that the prosecution has failed to prove the charges against the appellant beyond reasonable doubt, therefore, he is entitled for acquittal but alternatively he also argued on the nature of offence. He vehemently argued that it is not a case of murder under Section 302/34 of the Code, but, at the most appellant can only be convicted under Section 304, Part II of the Code. Since the appellant is in jail custody for a period of more than 9 years, he prayed that the appellant be released on undergone jail sentence to meet the ends of justice. He further submitted that Dr. O.P. Sahu has not opined that the injuries were sufficient in ordinary course of nature to cause death either individually or cumulatively, though in cross-examination the doctor has said that the cumulative effect of all the injuries could be sufficient in ordinary course of nature to cause death. He

cited *Jayaraj v. State of Tamil Nadu* (AIR 1976 SC 1519) to appreciate the distinction between the injury sufficient in ordinary course of nature to cause death and the injury likely to cause death. He further placed reliance on *Ram Jattan v. State of U.P.* (1993 AIR SCW 3841), *K. Ramakrishnan Unnithan v. State of Kerala* [(1999) 3 SCC 309], *Chhuttan alias Narendra v. The State of M.P.* (1984 Cr.LR MP 441), *Rambabu v. State of M.P.* (1985 Cr.LR MP 21), *Ahanand v. State of M.P.* (1985 Cr.LR MP 473), *Molu v. State of Haryana* (AIR 1976 SC 2499), *Sita Ram v. State of U.P.* (AIR 1993 SC 350), *Sarman v. State of M.P.* (AIR 1993 SC 400) in which cases, the offence was converted from Section 302 to Section 304, Part II of the Code after considering the nature of injuries. He also cited *State of Punjab v. Tejinder Singh* (AIR 1995 SC 2466) in which offence was altered from Section 300 to Section 304, Part I of the Code. He further placed reliance on *Asharam and Ors. v. State of M.P.* [Cr.LR (MP) 1978 SN 3 Page 5], where an offence under Section 302 was altered to one under Section 323/149 of the Code and on *Ramsingh v. State of M.P.* (1983 MPWN 269), *State of M.P. v. Bhaiyalal* (1984 MPWN 27), *Ditliya and Ors. v. State of M.P.* [Cr.LR. (M.P.) 1986 Page 17] and *State of M.P. v. Chhote Khan* (1987 Cr.LR M.P. Page 195) in which cases offence was altered to one under Section 326 of the Code.

11. In reply learned Counsel for the respondent-State supported the judgment of the Trial Court and submitted that the learned Trial Court has rightly convicted the appellant under Section 302 of the Code and it is not a case for conviction under Section 304, Part II of the Code.

12. In the well known case of *Virsa Singh v. State of Punjab* (AIR 1958 SC 465), Clause Thirdly of Section 300 of the Code came up for interpretation before the Supreme Court and Justice V. Bose held as under:--

'12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'Thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further; and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

13. Once these four elements are established by the prosecution (and of course, the burden is on the prosecution throughout) the offence is murder under Section 300 'Thirdly'. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.'

13. We have considered the forceful arguments raised by learned Counsel for the parties and also considered the evidence on record. From the aforesaid evidence, it is clear that from the evidence of Dr. O.P. Sahu (P.W. 10), who had performed M.L.C. and post-mortem examination on the dead body of the deceased, ten incised wounds were found on the body of the deceased. According to him, all the injuries were caused by sharp cutting weapons. In the cross-examination Dr. O.P. Sahu (P.W. 10) has clearly expressed his opinion that the cumulative effect of all

the injuries was that they were sufficient to cause death in the ordinary course of nature. It is not in dispute that due to aforesaid injuries, the deceased died within an hour, the moment he was taken to the hospital. Even, he could not get the preliminary treatment. Shri Gupta submitted that out of the aforesaid ten incised wounds, seven incised wounds were on the left and right thighs and on finger and he submitted that these seven incised wounds were not caused on the vital part of the body. As per the medical evidence, out of ten incised wounds, one incised wound was on right parietal region and another was near the right eye. It has also come in the evidence of Dr. O.P. Sahu (P.W. 10) that the deceased was in gasping condition. Therefore, we don't agree with this argument of the learned Counsel for the appellant that the seven incised wounds were caused on non-vital part of the body and they were not sufficient to cause death in the ordinary course of nature. In the cross-examination, doctor has clearly stated suo motu that the cumulative effect of the injuries was that they were sufficient in ordinary course of nature to cause death. In view of this opinion and looking to the nature of injuries, this argument does not carry any weight that the seven incised wounds were caused on non-vital parts of the body. Looking to the nature of injuries, it can be said that even if repeated injuries are caused on the non-vital parts of the body but are caused by dangerous weapons like sharp cutting objects, then death can be caused as a result of such injuries and it can be held that the injuries were sufficient to cause death in the ordinary course of nature. In such cases three things are important-- One is weapon used in the crime, another is the nature of fatal injuries caused on the body of the person and third is the result of the injuries. In the cross-examination, the appellant had not asked the doctor that in the absence of the incised wound on right parietal region and near the right eye, whether the other injuries which were caused on the non-vital parts of the body of the deceased were sufficient to cause death in the ordinary course of nature or not. If this fact was not got clarified from the doctor, it can not be said that the injuries caused on non-vital part of the body by sharp cutting weapon which was a dangerous weapon were not sufficient in ordinary course of nature to cause death. Looking to the nature of the repeated injuries caused by the appellant as has been stated in the post-mortem report (Ex. P-10-A), we find that the doctor has rightly opined on the question of nature of injuries and we also find that the cumulative

effect of all the injuries was sufficient in ordinary course of nature to cause death.

14. So far as the question of intention is concerned, as per Clause 'Thirdly' of Section 300, it is clear that if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death, then it is a clear cut case of murder. In this case, it is not a case of sudden provocation. From the evidence, it is clear that it was a pre-planned case. Accused Sarafraj was carrying knife in his pocket which was a deadly sharp cutting edged weapon. The size of the same has also been mentioned in the seizure memo which was around more than 9 cms. It is clear from Ex. P-5, seizure memo of the knife that both the sides of the knife were having sharp edges. Another knife was recovered from Rajamiyan vide Ex. P-6 which was 20.5 cms. long and 3 cms: wide. Therefore, from the nature of the knives, it is clear that they were dangerous weapons. Therefore, from the weapons also it is clear that the intention of the accused persons was to cause death. From the medical evidence, as well as from the evidence of eye-witnesses, it is clear that the appellant gave repeated blows to the deceased and caused ten incised wounds. From the overt act of the appellant, it is clear that his intention was to cause death of the deceased. Therefore, it can not be argued that motive and *mens rea* were not present. It is also clear that deceased died within an hour which clearly proves that serious injuries were caused by the accused persons to the deceased with the intention to kill him. Therefore, we find that the appellant caused injuries to the deceased with the intention to cause his death.

15. Shri Gupta mentioned several decisions on the question of nature of offence which have been cited above, but, we do not think that any of the arguments is convincing that it is not a case of murder but it is a case of culpable homicide not amounting to murder. Presence of the appellant was not doubtful. The defence was taken that the deceased used to indulge in eve-teasing. From the evidence, this was not found proved or established. The girls were also not produced in evidence.

16. After considering the entire evidence on record, we find that the prosecution has successfully proved and has established that it is a case of clear cut murder.

17. Shri Gupta, learned Counsel for the appellant submitted that Ramkumar (P.W. 1), who is the brother of the deceased had received telephone message, but, names of the assailants were not given on telephone. In view of the eye-witness account available on record, this is not a material circumstance which can create any doubt in the prosecution story. It was further argued that injury caused on head was caused by Rajamiyan who has expired. In view of the statement of eye-witness Iftexhar (P.W. 8) who has clearly stated that the injury on the head is attributed to Sarafraj, this argument does not carry any weight. It was further argued that it was a case of sudden quarrel and there was no common intention and the prosecution has not proved any motive for the incident. We find that from the evidence, this argument is not helpful to the appellant for converting the offence from Section 302 to Section 304, Part II.

18. After considering the ocular as well as the medical evidence we find that it is clearly a case of murder and comes clearly within Clause 'Thirdly' of Section 300 of the Code and the prosecution has clearly proved that the appellant caused injury to the deceased which was sufficient to cause death in the ordinary course of the nature. Thus, we find no case for interference in the findings recorded by the Trial Court.

19. Accordingly, this appeal fails and is hereby dismissed.