

Halkai Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-22-2005

Reported in : 2005(3)MPHT317

Judge : Rajeev Gupta and ;S.K. Kulshrestha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300, 302, 304I, 307 and 308

Appeal No. : Criminal Appeal No. 2720/1998

Appellant : Halkai

Respondent : State of Madhya Pradesh

Advocate for Def. : S.K. Rai, Govt. Adv. and ;Public Prosecutor

Advocate for Pet/Ap. : Nirmala Raikwar, Adv.

Judgement :

S.K. Kulshrestha, J.

1. Both the above appeals are directed against the judgment dated 28th September, 1998, by which in Sessions Trial No. 43/98, in which both the appellants were tried for offences under Sections 302 and 307 of the IPC, the learned Ist Additional Sessions Judge, Sagar, has convicted the appellants for the said offences and sentenced each of them to imprisonment for life for offence

under Section 302, IPC and rigorous imprisonment for 10 years for offence under Section 307, IPC and they have also been sentenced to fine of Rs. 1000/- and on failure to deposit the fine, in each case, to simple imprisonment for one year. The substantive sentences have, however, been made concurrent.

2. Accused Natthu @ Natthua and Halkai are both brothers who, at the relevant time, lived in Village Chapri and who were vegetable venders. It was not disputed that on the night intervening 16/17-10-97, deceased Bhagat had gone to the house of Natthu to buy vegetables and Natthu had asked him to clear the earlier account first. The case of the prosecution, in brief, is that while at 11 in the night, Bhagat was buying vegetables in the house of the accused Natthu Lohar, Sitaram was also present. Natthu was insisting that deceased Bhagat should first clear the old dues. There ensued an altercation between Bhagat and Natthu and the deceased snatched away the vegetables which he had given to the accused. Thereupon, Bhagat slapped accused Natthu and both started grappling. When accused Halkai asked the deceased as to why he had assaulted his brother, the deceased kicked him and he fell down. Natthu then, from their adjoining 'Tapra', brought a 'gupti' and his brother Halkai and iron rod, chisel shaped at one end, and started assaulting Bhagat. Sitaram, present on the spot, tried to intervene but he was also assaulted. As a result of the assault, Bhagat Singh died on the spot. It is alleged that both the accused then dragged the dead body of Bhagat Singh and threw it in the backyard of the house. Sitaram, however, staggered towards his house and fell on the ground unconscious. On regaining consciousness, he informed his brother Bhure the details of the incident. He was brought to P.S. Banda where report was lodged. Sitaram was sent to the Government Hospital, Banda where his dying declaration was also recorded. In view of the precarious condition of Sitaram, he was sent to Tili Hospital and, therefore, though he had serious injuries, he survived. The dead body of Bhagat Singh Thakur was also sent to the hospital for post-mortem.

3. On completion of the investigation, the two accused were prosecuted. Accused Halkai and Natthu, both, denied having committed any offence. Halkai also pleaded that he was not in the house and after 3 o'clock, he had gone with his sister to Village Besli. Accused Natthu stated that Bhagat and Sitaram had gone to

his house at about 2 to buy vegetables when they were fully drunk. Bhagat Singh had asked for 5 kg. vegetables and when he enquired as to what he would do with 5 kg. and that he should take only as much as is required, he insisted on the same quantity. Then he demanded money for liquor which he refused stating that he did not have the money. Sitaram then incited him to cut his hand. Sitaram was armed with a sword. Both of them fell him down in the courtyard and sat on him. Sitaram then caused him injuries with sword on his hand. Suddenly Bhagat got up and told Sitaram to keep him pinned on the ground. Bhagat went to his house and asked for money from his sister-in-law who refused. Bhagat, therefore, beat her and she cried. He, therefore, pushed Sitaram aside and went inside his house. When he saw that Bhagat was assaulting Ganeshi, he picked up a bamboo stick and assaulted Bhagat. Bhagat then rushed outside but since there was no light, Sitaram thinking that he (Natthu) had come out, assaulted him with a sharp weapon. He also pleaded that Sitaram in the earlier days had been a mental case. Both Sitaram and Bhagat, therefore, thought that it was when he gave a blow on Sitaram's head with a bamboo stick that Sitaram ran away. It was only to save himself that Sitaram concocted a story. The learned Judge, however, on trial, found the two appellants guilty and convicted and sentenced them as stated hereinabove.

4. Learned Counsel for the appellants, while not disputing the death of Bhagat and its homicidal nature and injuries to Sitaram (P.W. 1) in the transaction as evident from the injury report Ex. P-19 of Sitaram and the post-mortem report Ex. P-20 of Bhagat, has submitted that it is a case where, even as per the prosecution story, deceased Bhagat had gone to the house of accused Natthu to purchase vegetables, as admittedly, the accused were vegetable venders. It was, therefore, not a case where any of the accused had gone to the house of the deceased with any preparation to commit an offence or for the purpose for committing the offence. It was only on account of the quarrel with regard to the money demanded by Natthu and at his insistence that the dues should be first cleared and the demand of the deceased to allow him to take the vegetables on credit and thereafter when deceased Bhagat slapped him that there ensued a quarrel between them. At that point of time, accused Halkai came there and asked the deceased as to why he had slapped his brother, but Halkai was also kicked by

him. It was on account of this provocation of grave nature that a situation suddenly emerged on account of violence of the deceased that the accused persons were deprived of the power of self-control and they countered the attack. Learned Counsel, therefore, submits that accused are entitled to acquittal and the impugned judgment deserves to be set aside.

5. Though it is not disputed that the death of Bhagat was homicidal, a brief reference to the evidence in this behalf is necessary. The dead body of Bhagat was sent to the hospital for post-mortem examination and report Ex. P-21 was received. The Autopsy Surgeon found as many as eight injuries on the body which were incised wounds and penetrating wounds of serious nature. As per the opinion of the Doctor, the cause of death was shock due to heavy blood loss from vital organs. Apart from the eye-witness P.W. 1 Sitaram and other witnesses as also Investigating Officer, P.W. 11 F.S. Randha, has also deposed to the death of Bhagat. According to the testimony of this witness, he had prepared inquest report Ex. P-2 and sent the body to the hospital for post-mortem. In the inquest report also, there was reference to the injuries to which the deceased succumbed.

6. Before referring to the testimony of eye-witness Sitaram (P.W. 1) reference may be made to his injuries. His injuries had been recorded in Ex. P-19 containing multiple incised wounds on head, mastoid area, neck, mandible and scapular region. P.W. 1 Sitaram has deposed that on the date of the incident, at about 11 p.m., after reaping the soyabean crop when he had come to the place of accused Natthu, who was a vegetable vender, he found that an altercation was going on between Bhagat and Natthu. Bhagat was insisting on credit sale while Natthu was insisting that first old dues be cleared then only supplies would be made on credit. Enraged by this stance of Natthu, deceased slapped the accused. This attracted the attention of co-accused Halkai who demanded an explanation from the deceased but the deceased slapped/kicked him too. Natthu then went to his house and brought a 'gupti' and assaulted Bhagat Singh. Halkai also went inside the house, brought a rod, and assaulted Bhagat Singh causing injuries on his head, over his chest and in his abdomen. When this witness asked Natthu why he assaulted Bhagat, he assaulted him also. He also clarified that the rod with which Natthu had armed himself was sharp on one side and Natthu had assaulted him

repeatedly causing injuries on his head, on his mandible, between his ears, on his hand and on his wrist. He had fallen down after so many injuries and both the accused had then caught hold of the hands of Bhagat Singh and dragged him to the end of the lane. He had then lodged the report.

7. There can be no dispute with regard to the presence of P.W. 1 Sitaram at the place of the incident as is evident from the report Ex. P-19 that he had himself been hurt in the incident. This position has not been disputed before us. On the testimony of Sitaram coupled with the medical evidence and the other evidence on record, it is patent from record that the deceased died of the injuries inflicted by the two accused.

8. Learned Counsel, however, submits that in view of the fact that there was total absence of intention to cause death initially when the deceased had come to buy vegetables and it is most unlikely that the vender would antagonize his own customers, it was only on account of the conduct of the deceased Bhagat that during altercation when he gave a slap to the accused and kicked his brother Halkai by which they felt insulted to the extent that it deprived them of the power of self-control, that the deceased was assaulted and, therefore, their act would fall within Exception 1 to Section 300, IPC.

9. Section 300 and its Exception 1 read as under :--

'300. Murder.-- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--

2ndly :-- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

3rdly :-- 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 the ordinary course of nature to cause death; or

4thly :-- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such boidly injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1. When culpable homicide is not murder.-- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.'

10. In order that a person may claim advantage of the Exception 1 to Section 300, it is necessary to show that the act of the accused does not amount to murder as he was deprived of the power of self-control on account of grave and sudden provocation. The learned State Counsel contends that a mere act of slapping by the deceased can not be construed as constituting a grave provocation. As the deceased had no justifiable cause to slap Natthu and Halkai, it is apparent that the accused persons felt insulted to the extent that it deprived them of the power of self-control. Under these circumstances, we agree with the contention of the learned Counsel that the act of the accused, in the facts and circumstances of the case, would fall within Exception 1 of Section 300.

11. Insofar as the conviction for offence under Section 307 of the IPC is concerned, the contention of the learned Counsel that for the same reason, the offence would fall under Section 308 of the IPC, has no substance. There was no provocation given by Sitaram. It is not a case of provocation on account of which injuries have been caused by mistake to another person. Sitaram had no role to play in the whole transaction and was merely a person who had come to the shop. Under these circumstances, the conviction and sentence of the person for attempting murder of Sitaram, shall remain unaffected.

12. We may also note another contention of the learned Counsel for the accused. She has submitted that the deceased had, for no rhyme or reason, slapped both the accused and, therefore, also the accused were justified in exercise of their right of self-defence in causing injuries to the deceased. We have already held that the act of the accused would fall within the 1st Exception to Section 300 and even

if we were to examine the case from the perspective suggested, it is doubtful whether the accused would succeed in proving that their act was fully covered by their right of private defence. The harm caused by the accused than the injury received would certainly suggest that accused had exceeded the right of private defence.

13. In the result, these appeals are partly allowed. While conviction of the appellants under Section 307 of the IPC and sentence of 10 years rigorous imprisonment and fine of Rs. 1000/-, in default, one year simple imprisonment, awarded to each of them, is maintained, the conviction under Section 302, IPC and the sentence of life imprisonment and fine of Rs. 1000/- awarded thereunder is set aside and, instead, each of them is convicted under Section 304(1) read with Section 34 of the IPC and sentenced to 10 years rigorous imprisonment. Both the sentences shall run concurrently.

14. If the appellants have served out their sentences as awarded to them now, they be forthwith released if not required in connection with any other matter.

15. With the above modification in the conviction and sentence, these appeals are partly allowed.