

Gula Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-17-2003

Reported in : 2003(3)MPHT339; 2003(3)MPLJ419

Judge : S.K. Seth, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304 and 325; [Evidence Act, 1872](#)
- Sections 32, 32(1), 45, 60 and 154

Appeal No. : Criminal Appeal No. 476/92

Appellant : Gula

Respondent : State of M.P.

Advocate for Def. : A. Salim, Panel Lawyer

Advocate for Pet/Ap. : L.R. Bhatnagar, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Seth, J.

1. This is an appeal by the appellant against his conviction under Section 325, Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for short) and sentence of 3 years Rigorous Imprisonment plus fine of Rs. 2000/- and in default 1 month

Simple Imprisonment. Out of the fine amount Trial Court awarded a sum of Rs. 1500/- as compensation to Harkubai, widow of the deceased Rupa. Initially, appellant was arraigned for having committed culpable homicide not amounting to murder, an offence punishable under Section 304-II of the IPC, however, at the conclusion of trial, he was convicted for voluntarily causing grievous hurt, an offence punishable under Section 325, IPC.

2. Prosecution case in brief was as under:--

On 3-4-1989, the appellant accused Gula along with deceased Rupa were travelling together in a bus from Rajgarh to Dhuleet. After alighting at Dhuleet around 6.30 in the evening, the appellant inquired about his bicycle from the Rupa who informed the appellant that the bicycle has been taken by his father. This piece of information led to a scuffle between the appellant and the deceased and during this scuffle the appellant kicked the deceased in the stomach. According to the prosecution Bhima intervened in the matter and escorted Rupa to his house. Later on, Rupa complained of pain in his stomach to his wife Harkubai and brother Nandlal. As a result, they gave him home treatment. After lapse of three- four days when pain did not abate, they on 9-4-1989 reported to Police Chowki, Rajgarh to get Rupa medically examined. Same day at Primary Health Centre, Dr. S.L. Podwal examined Rupa. Upon examination, he found no external injury but in view of pain in abdomen, he referred Rupa to District Hospital, Dhar for X-ray and further treatment. According to prosecution story, at Dhar, Rupa was advised treatment at Indore. However, before necessary finances could be arranged, Rupa died on 12-4-1989. After death of Rupa, at the instance of Nandram, FIR (Ex. P-7) was recorded at Police Station, Sardarpur on 17-4-1989 which set in motion the investigation. After completion of investigation, a charge sheet was filed in the Court for prosecution of the appellant and he was put to trial in ST. No. 108/90 before the Camp Court at Sardarpur of 1st Additional Sessions Judge to the Court of Sessions Judge, Dhar. At trial, appellant abjured his guilt and submitted that he has been falsely implicated.

3. Learned Sessions Judge framed charge against the appellant for an offence under Section 304 Part II, IPC. On the basis of the prosecution evidence,

learned Trial Court came to the conclusion that the no offence under Section 304 Part II of the IPC has been made out against the appellant. Instead the appellant was found guilty of committing an offence under Section 325, IPC for which he was convicted and sentenced as mentioned above.

4. Shri L.R. Bhatnagar, learned Counsel appearing for the appellant strongly contended that the finding of conviction recorded by the Trial Court is not supported by prosecution evidence led by the prosecution during the course of trial and as such, the appellant deserves to be acquitted. Alternatively, learned Counsel submitted that appellant has already undergone sufficient punishment, therefore, the appeal be partially allowed as the sentence already undergone.

5. Shri A. Salim, learned Penal Advocate, appearing for the State supported the judgment of the Trial Court and submitted that no interference is warranted with the conviction and sentence of the appellant. According to him testimony of Harkubai widow of deceased (P.W. 5) and Nandram, brother of deceased (P.W. 1) are sufficient to maintain the conviction of the appellant.

6. I have heard Counsel for the parties at length and perused the record of the Trial Court. A close perusal of evidence on record shows that the prosecution has examined three eye-witnesses to the alleged incident. Surprisingly, no one of them supported the prosecution case and they were declared hostile and confronted with their respective case diary statements. Thus the testimony of the three eye-witnesses is open to serious doubts. Three eye-witnesses are Bhima (P.W. 2), Galia (P.W. 6) and Shivshanker (P.W. 8). Harkubai (P.W. 5), widow of deceased Rupa and Nandram (P.W. 1) brother of the deceased speak of the stomach pain reported by Rupa and further steps taken in the matter of treatment. Dr. Podwal (P.W. 3) who examined Rupa on 9-4-1989 did not notice any external injury on the person of deceased and for the pain in abdomen had referred him to District Hospital, Dhar for X-ray and further treatment as per his report Ex. P-2. What treatment was administered to deceased Rupa from 9-4-1989 to 12-4-1989 when he died, prosecution has not led any medical evidence and the Court has been kept in absolute dark. Dr. V.K. Sharma (P.W. 10) who performed the autopsy found no clinical evidence of any external injury on the dead-body. As per post-

mortem report (Ex. P-6), stomach was distended and containing fluid and deceased died of shock due to Peritonitis caused by perforation. In his deposition, this witness admitted that internal injury found on the person of deceased could be caused by excessive drinking or over dose of aspirin but he was categorical that administering fist blows or kicks could not cause the type of injury that he found at post-mortem, without a corresponding penetrating external wound, which is conspicuously missing. From the evidence of this witness, it is clear that cause of death is in no way connected with the act violence attributed to the appellant. When it is not proved that the deceased died as a result of injury received in the incident propounded by the prosecution, statement of deceased cannot be said to be statement as to cause of his death or to any circumstances that resulted in his death. Thus the evidence of Nandram (P.W. 1) and Harkubai (P.W. 5) do not further the prosecution case. That deceased Rupa complained to them about kicks in stomach by accused does not come in the category of direct evidence or in the category of dying declaration that are relevant under Section 32 of the Evidence Act. In *Motisingh and Anr. v. State of Uttar Pradesh*, AIR 1964 SC 900, the Supreme Court observed as under:--

'Clause (1) of Section 32 of the Evidence Act makes a statement of a person who has died relevant only when that statement is made by a person as to cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause or that person's death come into question.'

7. As indicated above, when Rupa is not proved to have died as a result of the injury alleged to have received in the incident, his statement cannot be said to be the statement as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. The evidence given in this behalf by P.W. 1 and P.W. 5 is hearsay and is not relevant under Section 32(1) of the Evidence Act. So their evidence has to be excluded.

8. I, thus, find that there is no convincing proof on record to connect the accused with the injury, if any, suffered by the deceased and that he and he alone gave a kick or kicks in the stomach of the deceased.

9. From the above discussions, I am clearly of the view that the conviction and sentence of the appellant cannot be sustained. The appeal is therefore, allowed. The conviction and sentence rendered by the Trial Court are hereby set aside. The fine, if paid, be refunded to the accused. Bail bond, furnished by the appellant and surety are hereby discharged. Order accordingly.

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