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**Ramesh and ors. Vs. State of Madhya Pradesh**

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**SooperKanoon Citation** : sooperkanoon.com/504413

**Court** : Madhya Pradesh

**Decided On :** Mar-26-2009

**Reported in** : 2009CriLJ3268

**Judge** : S.L. Kochar and ;Manjusha P. Namjoshi, JJ.

**Appellant** : Ramesh and ors.

**Respondent** : State of Madhya Pradesh

**Judgement** :

**S.L. Kochar, J.**

1. The appellants, by filing this appeal under Section 374 of the Code of Criminal Procedure, have challenged their conviction under Section 302 read with Section 34 of the Indian Penal Code and consequent sentence of imprisonment for life vide judgment dated 30-11-1999 passed by the learned Third Addl. Sessions Judge, Khargone in Sessions Trial No. 235/1993.

2. According to the prosecution case, on 2-8-1993 on the eve of Raksha Bandhan festival in village Roshiya six coconuts were offered to Lord Bajrang Bali by the villagers through village Chowkidar Shri Ram (P.W. 2) and P.W. 8 Shankar Singh. Out of six coconuts, four were eaten by Shankar Singh on which Chowkidar Shri Ram admonished him, but Shankar Singh started picking up quarrel with Shri Ram. Shankar was admonished by village Sarpanch Prahlad Singh and

complainant P.W. 1 Kamal Singh. At that moment, appellant told Kamal Singh that he (Kamal Singh) was behaving like a bullie and he (the appellant) would finish him. When verbal altercation was going on, the deceased Kire Singh son of Kamal Singh also reached over there and asked Ramesh not to quarrel. Ramesh while delivering threat to see them, went to his house and along with two other appellants returned back having lathis. Appellant Ramesh inflicted a lathi blow on the head of Kire Singh because of which he fell unconscious on the spot. Appellants No. 2 Barjor Singh and Chhajju assaulted the deceased with kicks and fists. Witnesses intervened and pacified the quarrel. Kire Singh vomited three/four times. He was taken in a bullock cart to the Police Station where P.W. 1 Kamal Singh lodged the report vide Ex. P/1. Thereafter, he was sent to the hospital where he was medically examined by P.W. 14 Dr. S.S. Chouhan. His MLC report is Ex. P/27. Kire Singh was admitted in the hospital, his Bed Head ticket is Ex. P/23, proved by P.W. 12 Dr. T. H. Malik. Kire Singh died on next day on 3-8-1993 in the night at 9.50 p.m. in the hospital. On the basis of information of death, P.W. 6 Head Constable Hari Mangal Singh recorded Merg intimation report Ex. P/15 and also prepared the inquest report Ex. P/2. Dead body of Kire Singh was sent for postmortem examination which was performed by Dr. Chourey. (This doctor could not be examined in Court as he had died by that time). P.W. 13-A Investigating Officer Sub Inspector M. S. Chouhan prepared the spot map Ex. P/21 and arrested the appellants. (It appears that due to mistake in the trial Court witness No. 13 is given to two witnesses viz. P.W. 13 Dr. Rajendra Kumar Joshi and Sub Inspector M. S. Chouhan. Therefore, for the sake of convenience we have given witness No. 13-A to M. S. Chouhan). After due investigation, charge-sheet was filed against the appellants of commission of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

3. The appellants denied the charges and claimed trial. They did not examine any witness in defence whereas the prosecution has examined as many as 17 witnesses and adduced in all 30 documents to prove its case. Learned trial Court finding the prosecution case proved, convicted and sentenced the appellants as noted hereinabove.

4. Learned Counsel for the appellants has fairly contended that in view of the eye-witnesses' account at the most offence under Section 304 (Part II) of the Indian Penal Code would be made out against appellant No. 1 Ramesh and no case is made out as against appellant No. 2 Barjor Singh and No. 3 Chhajju. On the other hand, learned Counsel appearing for the State has supported the impugned judgment and finding arrived at by the learned trial Court.

5. Having heard learned Counsel for the parties and after perusing the record of the entire case, we find substance in the arguments advanced by the learned Counsel for the appellants. Admittedly there was no enmity between the appellants and the deceased. The incident occurred all of a sudden on a very trivial issue of eating four coconuts by Shankar (P.W. 8) and they entered into verbal altercation. At that very moment, Kire Singh, son of P.W. 1 Kamal Singh reached over there and asked them not to quarrel, but appellant No. 1 Ramesh went to his house and returned back with lathi. P.W. 10 Nepal Singh, an independent eyewitness has deposed that a solitary lathi blow was inflicted on the head of deceased by appellant No. 1. He has not named appellant No. 2 Barjor Singh and No. 3 Chhajju as assailants of the deceased. This witness has not been declared hostile by the prosecution, therefore, the prosecution is bound by his statement. (See Sukh Ram v. State of M.P. : AIR 1989 SC 772 : 1989 Cri LJ 838.

6. P. W. 1 Kamal Singh, P.W. 4 Anand Ram and P.W. 16 Dule Singh, father, brother and brother-in-law of the deceased respectively have stated that one lathi blow was inflicted on the head of deceased by appellant No. 1 Ramesh and remaining appellants assaulted him by kicks and fists.

7. At the first instance on medical examination of deceased Kire Singh, P.W. 14 Dr. S.S. Chouhan found only one contusion on the head with a haematoma and no other injuries were found on the person of deceased, therefore, the version of independent witness Nepal Singh finds support from the medical evidence of P.W. 14 Dr. S.S. Chouhan.

8. Kire Singh died in the hospital on 3-8-1993 in the night at 9.50 p.m. and his post-mortem examination was performed on 4-8-93 at 11.00 a.m. by Dr. Chourey who issued post-mortem examination report Ex. P/24. But Dr. Chourey could not

be examined because he was no more in the world by the time when trial of the case had commenced, therefore, the post-mortem examination report of deceased Kire Singh was got proved by P.W. 13 Dr. Rajendra Kumar Joshi who has stated that the post-mortem examination report was in the hand-writing of Dr. Chourey and he was acquainted with his hand-writing and signatures. In our considered view, the contents of the post-mortem Report Ex. P/24 are relevant as per provision under Section 32 Sub-section (2) of the Indian Evidence Act which reads as under:

Section 32. 'Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant.- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1) ...

(2) or is made in course of business.- When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

9. The post-mortem examination report was issued by Dr. Chourey after performance of autopsy in discharge of professional duty, therefore, the contents thereof are relevant and can be considered as evidence. The post-mortem examination report has been rightly proved by P.W. 13 Dr. Rajendra Kumar Joshi as per requirement of Section 67 of the Evidence Act which is reproduced hereunder for the sake of convenience:

67. Proof of signature and handwriting of person alleged to have signed or written document produced.- If a document is alleged to be signed or to have been written

wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

10. It is clear from the post-mortem report Ex. P/24, MLC Report Ex. P/27 as well as the statement of P.W. 14 Dr. S.S. Chouhan that the deceased suffered only one injury on the head. There was no fracture of skull bone and deceased was unconscious right from the place of incident till he breathed his last. Dr. Chouhan has also stated so. According to the post-mortem examination report, deceased died because of head injury. There was large extradural haematoma on the right side of brain and congestion of brain membrane. The brain was also compressed on right side. Haematoma was ante-mortem in nature. The deceased died within 23 to 48 hours from the date and time of post-mortem examination i.e. on 4-8-1993 at 11.00 a.m.

11. A solitary blow was given by the appellant No. 1 in a sudden quarrel on a minor issue in a heat of passion and did not attempt to cause second blow. Looking to all the facts and circumstances of the case, it cannot be said that the appellant No. 1 had any intention to commit murder of Kire Singh or to cause any injury likely to cause his death, but at the same time, he can be attributed knowledge that because of causing lathi blow there was likelihood of death of deceased which falls within the purview of commission of culpable homicide not amounting to murder, punishable under Section 304, (Part II) of the Indian Penal Code.

12. No case is made out for conviction under Section 302 read with Section 34 of the Indian Penal Code against appellant No. 2 Barjor Singh and No. 3 Chhajju because there is no evidence available on record that they had any pre-meditation, pre-meeting of mind and pre-plan with the appellant No. 1 Ramesh to commit culpable homicide not amounting to murder. Their overt act is also not corroborated by medical evidence, therefore, they deserve acquittal, hence acquitted.

13. Resultantly, this appeal is allowed in part. Conviction and sentences of all the appellants for the offence punishable under Section 302 read with Section 34 of

the Indian Penal Code are hereby set-aside. However, the appellant No. 1 Ramesh is convicted under Section 304 (part II) of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for 5 (five) years. He is on bail. He is directed to surrender to his bail bonds before the trial Court on 29-6-2009 for undergoing the remainder part of his jail sentence. On his failure to comply with this direction, the trial Court is directed to take suitable action against him as well as his surety in accordance with law under intimation to this Court. Appellants No. 2 Barjor Singh and Chhajju are on bail. Their bail and surety bonds shall stand discharged. Officer is directed to send a copy of this judgment to the trial Court together with its record for immediate compliance.

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