

Bablu and ors. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-09-1983

Reported in : 1984CriLJ237

Judge : G.L. Oza and ;S.K. Seth, JJ.

Appellant : Bablu and ors.

Respondent : State of M.P.

Judgement :

G.L. Oza, J.

1. This is an appeal submitted by the three appellants against their conviction under Section 302 read with Section 34, Penal Code, and sentence of imprisonment for life awarded by Additional Sessions Judge, Shahdol.

2. The prosecution case at the trial was that the deceased Ganga was the real brother of Sihrital (P. W. 1) and the appellant Bablu and the two other appellants, Kodu and Rampallu alias Pallu are sons of appellant Bablu. Sankhu (P. W. 4) is the daughter of the deceased Ganga and Ramkaliya (P. W. 5) is the wife of the deceased. It is alleged that on 26-6-1979, the deceased was working in his Badi in the afternoon and suddenly, the deceased was attacked by the three appellants, by lathi, axe and spade, Sankhu (P. W. 4) saw the occurrence and raised an alarm. Thereupon, Chhedu (P. W. 3) and Ramkaliya (P. W. 5) rushed on the spot

and they were informed by Sankhu (P. W. 4) that deceased was assaulted by the appellants. These witnesses saw the deceased injured and went to inform Shrilal (P. W. 1) and Shrilal (P. W. 1) lodged the report (Exhibit P-1) at the Police Station, Kotma at about 5.45 P. M. The injured was sent to the hospital for medical examination and after examination was admitted in the hospital where he died on 27th June, 1979. After investigation, a charge-sheet was filed and the learned Court below convicted the appellants as mentioned above,

3. The learned Court below placing reliance on the testimony of Shankhu (P. W. 4) came to the conclusion that all the three appellants attacked the deceased and also came to the conclusion that on account of earlier disputes the relations were strained and on any excuse, the trouble could start. It has also been found that there was some trouble resulting in a verbal quarrel and thereafter, the incident resulted in the injuries on the person of the deceased.

4. Learned counsel appearing for the appellants contended that the evidence does not disclose as to how the trouble started between the two parties and it was also contended that it appears that the deceased himself was carrying the Fawda, which is alleged to be an instrument of offence, as he was working in the Badi. It is also contended that the injuries on the person of the deceased clearly show that the use of axe and Fawda is eliminated. It is also contended that only 3 injuries are found on the person of the injured whereas it is alleged by the prosecution witnesses that all the three appellants thrashed the deceased. It was, therefore, contended that the evidence of the prosecution witnesses does not appear to be reliable. It was also contended that it appears that on some hot exchange, the deceased himself attempted to use the Fawda which he was carrying and it was snatched from him and injury was inflicted with the bald side of the Fawda. It was, therefore, contended that the right of private defence could not be excluded, Alternatively, it was contended that in a fight on the spur of the moment, when all the three appellants were not armed, common intention to kill could not be attributed to each one of them as the evidence is not clear as to who inflicted the fatal blow on the head of the deceased and the appellants could not be convicted for an offence under Section 302 read with Section 34, I. P. C. At best, they could only be convicted under Section 325 read with Section 34.

5. Learned counsel appearing for the State, on the other hand, contended that the prosecution evidence clearly establishes that all the three persons attacked the deceased but he conceded that only 3 injuries are inflicted and all the three by a hard and blunt object. It appears that although the appellants were carrying even an axe and Fawda, they have chosen not to use the sharp side but it was contended that the attack was on vital part of the body with weapons like Fawda and the axe and, therefore, all of them are rightly convicted for an offence under Section 302 read with Section 34, I. P. C. As regards right of private defence, it was contended that there is no material on the basis of which it could be suggested that the deceased in any manner attempted or caused any injury to any one of these persons and, therefore, the Court below was right in rejecting it.

6. The learned Court below, after considering the evidence on record in great detail, came to the conclusion that there is no material to justify the conclusion of the right of private defence as there is no material on the basis of which it could be said that the deceased either caused or attempted to cause any injury to any one of the appellants.

7. Having gone through the evidence, it appears that the conclusion arrived at by the learned Sessions Judge could not be said to be erroneous. It is no doubt true that the learned Judge himself felt that as a result of some verbal quarrel on the spur of the moment, trouble started and the Fawda which was with the deceased himself may have been snatched by one of the appellants.

8. The learned Judge has considered the evidence in detail and on the basis of this evidence, it could not be contended that the appellants were not present when the incident took place nor it could be contended that they did not participate in the matter. From the discussion of the evidence by the learned Judge and the conclusions arrived at by him, it appears that on account of some wordy quarrel, the trouble started which ultimately resulted in this incident. The learned Judge also found that the Fawda of the deceased, it appears, was snatched. As regards axe, it is apparent that it was not used in the incident as there is no injury by a sharp-edged weapon nor the Fawda was used from the sharp side. These circumstances, therefore, clearly negated the case of common intention to kill or

to cause such bodily injury which is sufficient in the ordinary course of nature to cause death and, therefore, the conviction of the appellants under Section 302 read with Section 34, is not justified.

9. It is not in dispute that the evidence does not establish that any particular appellant was responsible for a particular injury. It is on this basis that it was contended that the common intention could only be to inflict grievous injury by hard and blunt object. But it is also clear that even when on the spur of the moment the three appellants inflicted injuries by hard and blunt object, knowledge could be attributed that their act may result in death and, therefore, all the 3 appellants could be convicted for an offence under Section 304, Part II read with Section 34, I. P. C.

10. In the light of the discussion above, therefore, the appeal is partly allowed. The conviction of the appellants under Section 302 read with Section 34 is set aside. Instead, they are convicted of an offence under Section 304, Part II read with Section 34, Penal Code.

11. As regards sentence, it was contended by the learned Counsel for the appellants that all the three appellants were arrested immediately after the incident i.e. in June, 1979 and since then, they are in custody. It was contended that the sentence they have already undergone would be sufficient for the offence found against them. Normally, for an offence under Section 304, Part II, a sentence of 5 years is awarded. It appears that the appellants have been in jail for about 31/2 years or a little more and with remissions it will come to about 41/2 years or a little more. Looking to these circumstances, in our opinion, the sentence already undergone will meet the ends of justice.

12. Consequently, all the three appellants are convicted of an offence under Section 304, Part II read with Section 34, Penal Code and sentenced to imprisonment already undergone. They be set at liberty forthwith, if not required in connection with any other case.