

Shankar Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-25-2005

Reported in : 2005(3)MPHT404

Judge : Deepak Verma and ;A.K. Awasthy, JJ.

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

Appeal No. : Criminal Appeal No. 34/2001

Appellant : Shankar

Respondent : State of Madhya Pradesh

Advocate for Def. : Girish Desai, Dy. Adv. General

Advocate for Pet/Ap. : None

Judgement :

A.K. Awasthy, J.

1. Being aggrieved by the judgment and order dated 29-11-2000 delivered in Sessions Trial No. 153/2000 by learned Additional Sessions Judge, Ujjain, of conviction and sentence under Section 302 of IPC for the imprisonment for life and fine of Rs. 300.00, the appellant accused has preferred the appeal.

2. The prosecution case is that on 29-4-2000 in the afternoon at about 12.00 AM when accused Shankar with Bhangada came back from Village Kota after consuming the liquor, they started quarreling in front of the houses of Gulsingh (P.W. 1), Haru (P.W. 2), Nanbhu (P.W. 3) and Sekhabai (P.W. 4) and thereafter accused Shankar shot an arrow on Bhangada which did not hit him and thereafter the second arrow was shot injuring the chest of Bhangada. The accused ran away and deceased Bhangada died instantly on the spot. FIR Ex. P-I was lodged in Police Station Gandhwani on the same day at about 4.15 PM by Gulsingh (P.W. 1) and after preparing the Panchnama of the dead body, Investigating Officer R.S. Amb (P.W. 10) sent it for the autopsy to Primary Health Centre, Gandhwani, where Dr. D.L. Dawel (P.W. 9) conducted the post-mortem and reported that on account of the penetrating wound, the heart totally ruptured which has resulted in his death. Ex. P-9 is the post-mortem report. During the investigation, the bow and arrow were seized from the possession of the accused and after recording the statements of the witnesses, the charge-sheet was filed against the accused.

3. The accused has abjured the guilt and pleaded his false implication due to enmity.

4. In appeal the correctness of the findings of the learned Trial Court was assailed and it was alleged that the offence punishable under Section 302 of the IPC is not made out against the accused.

5. Gulsingh (P.W. 1), Haru (P.W. 2), Nanbhu (P.W. 3) and Sekhabai (P.W. 4) have stated on oath that accused and deceased Bhangada came back together from Village Kota and under the influence of liquor they were quarrelling with each other and thereafter accused Shankar shot the arrow which has hit the chest of Bhangada and Bhangada died immediately on the spot. Gulsingh (P.W. 1) is the younger brother of the deceased and he is also related with the accused. Haru (P.W. 2) is father of deceased Bhangada and accused Shankar is his nephew. Nanbhu (P.W. 3) is the cousin of the deceased and the accused. Shekhabai (P.W. 4) is the wife of the deceased. The incident has taken place near the houses of these witnesses. In the cross-examination of these witnesses, there is not a single contradiction from their earlier police statement. No contradiction exist in between

the statements of these witnesses recorded on oath. All the four eye witnesses have no enmity with the accused. They are closely related with the accused and the deceased and there is the absence of any reason to falsely implicate the accused. There is nothing to corrode the credibility of the eye witnesses.

6. FIR Ex. P-I was lodged after 4 hours and 15 minutes on the same day at about 4.15 PM, in the Police Station Gandhwani. There is no contradiction or omission in the statement of the complainant (P.W. 1) and the facts described by him in FIR Ex. P-I. In the case of *Krishnan v. State*, 2003 SCC (Cri.) 1577, and in the case of *Awdesh v. State of U.P.*, : AIR 1995 SC375 , it is laid down that the fact FIR was given almost immediately rules out any deliberation to falsely implicate the person because it is not possible to concoct false story in such a short time. FIR Ex. P-I lends valuable support to the statements of the eye witnesses. The learned Trial Court has rightly believed the consistent reliable and trustworthy testimony of the 4 eye witnesses.

7. Now we have to see whether the conviction of the accused under Section 302 of the IPC, in the facts and circumstances of the case, is tenable. The accused and deceased are closely related and they went together to Village Kota to consume the liquor and when they returned back from Village Kota, the quarrel ensued. The reason of the quarrel is not clear. It appears that under the influence of the liquor they lost their head and they started quarrelling. The accused has caused the injury by arrow without prior concert or premeditation! After an arrow had hit the deceased, the attempt was not made to shoot the arrow or to cause any other injury. The accused has no apparent motive or intention to cause the death of his cousin.

8. In the case of *Kishore Singh v. State of M.P.*, : 1977 CriLJ1937 , it is laid down that the burden lies on the prosecution to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder and if the prosecution fails to discharge this onus, the charge of murder would not be made out and the case may be one culpable homicide not amounting to murder. In the case of *Bhagji v. State of M.P.*, 2004 SCC 387 : 2004 Cri.LJ 632 and in the case of *Ram Swarup v. State of Haryana*, : AIR 1977 SC664 , it is held that where the

murder was not premeditated but arose out of mutual fight and accused has not acted mercilessly, the offence falls under Section 304 Part I of the IPC.

9. The appellant and deceased are rustic villagers from Scheduled Tribes community of Bhil. They were closely related and without any enmity on account of the consumption of liquor in a sudden quarrel the single blow of the arrow was hit. In the backdrop of the law and the facts highlighted above, we held the conviction of the accused deserves to be reduced from Section 302 of the IPC to Section 304 Part I of the IPC.

10. The appeal is partly allowed. The appellant accused is convicted and sentenced under Section 304 Part I of the IPC for the rigorous imprisonment of 7 (Seven) years and conviction and sentence under Section 302 of the IPC for the imprisonment for life and fine is reduced as stated above.

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