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Court : Madhya Pradesh

Decided On : May-16-2008

Reported in : 2008(3)MPHT485

Judge : A.K. Gohil and ;Abhay M. Naik, JJ.

Appellant : Pramod Kumar

Respondent : State of Madhya Pradesh

Judgement :

Abhay M. Naik, J.

1. Story of prosecution is that on 3-11-1986 complainant Hukumchand accompanied by wife Sheela Devi visited the house of his sister situated at Kharifatak Road, Vidisha for performing 'Teeka' on the occasion of 'Bhaidooj'. His sister Keshar Bai and her husband Mishrilal were residing as tenant in the property belonging to Chandra Kumar Jain, father of the accused. They reached in the house of Mishrilal at about 10:30 p.m. when Rajesh and Dilip (both sons of Mishrilal) came back from their business of 'Chat'. They used to run their business of 'Chat' on Thela. While coming back, they collected up one fused mercury tube light from road which was broken by Pradeep who also gave beatings to Rajesh. This was informed on coming back to home to Mishrilal. Mishrilal told them that he will apprise Chandra Kumar of the incident, who will further persuade his sons to behave properly. Chandra Kumar was residing with his family on the lower floor.

Mishrilal came downstairs and apprised Chandrakumar of the incident and asked him to make his sons understand to behave properly. Suddenly Pradeep, Praveen, Pramod and Vinod appeared on the site and started abusing. They were asked to refrain from abusing. They shouted 'Maro Salon Ko'. Ballu alias Vinod has brought a knife from inside and handed it over to Pramod, who inflicted injuries on right side of the chest, left side of stomach and near the nose. Complainant Hukum Chand tried to protect him, but Pramod also inflicted injuries on him by knife on left hand and wrist. Mishrilal's sister, namely, Khumaniya Bai also made an effort to protect Dilip, but she was also injured by Pramod by the knife. Dilip Kumar became serious, so he was taken to Vidisha Hospital on handcart, whereas, complainant Hukumchand went to the Police Station Vidisha and lodged FIR. Dr. R.C. Sharma (P.W. 8) examined Dilip Kumar and found following injuries on the body of Dilip Kumar as per the report (Exh. P-8):

(1) Stab wound 1 1/4' x 3/4' transverse in 7th (left) Intercostal space in Nipple line, going towards peritoneal cavity, omentum coming out of the wound, depth of the wound could not be assessed. Fresh bleeding present.

(2) Stab wound 4' x 1 1/2' vertical on medial end of clavicle, muscle and fascia cut in the depth of the wound, going towards chest wall, medial end of clavicle seen exposed in the wound. Profuse bleeding present.

(3) Incised wound 2' long on cheek. It is brought in the end of peri circulatory failure.

Dilip Kumar succumbed to injuries and, ultimately, died on 5-11-1986 at 2:30 p.m. Post-mortem was performed and following were the findings as per the post-mortem report:

The body lying serpine on P.M. Table C head straight. Rigor mortis present. There are three injuries seen on the body which are ante-mortem:

(i) One stitched and dressed wound of length of 10 cms over the right side of the chest in upper part vertical in position extending upto the medial end of the right clavicle.

(ii) One stitched and dressed wound of length of 25 cms arrow-head in shape over abdominal paramedian in position on left side extending towards the left hypochondine region.

(iii) One stitched & dressed wound of length 2.5 cms over right cheek 2 cms away from the angle of mouth.

In the opinion of Dr. H.K. Verma (P.W. 9) the mode of death is syncope and the cause of death is excessive haemorrhage and shock due to injury to vital organ, the right lung. The time elapsed from death to post-mortem is within 24 hours.

2. After due investigation challan was submitted against Pramod Kumar, Ballu alias Vinod Kumar, Pradeep Kumar and Praveen Kumar. A private complaint was also submitted by the complainant Mishrilal against Chandra Kumar Jain. It will not be out of place to mention here that Pradeep Kumar and Praveen Kumar were discharged by this Court in Cr. Revision No. 307/96, vide order dated 15-2-1996 and Ballu alias Vinod Kumar is acquitted vide the impugned judgment by the learned Sessions Judge in S.T. No. 186/97.

3. Pramod Kumar has been convicted under Section 302, Indian Penal Code, and has been sentenced to imprisonment for life for having committed murder of Dilip Kumar. A fine of Rs. 1000/- has also been imposed. Pramod Kumar has also been convicted and sentenced to two years Rigorous Imprisonment under Section 324 of Indian Penal Code and fine of Rs. 500/- for causing simple injuries to Hukumchand.

4. Aggrieved by the conviction of Pramod Kumar, Cr. Appeal No. 60/2000 has been preferred. Similarly, Cr. Appeal No. 36/2001 has been preferred by the State of Madhya Pradesh against acquittal of Ballu alias Vinod Kumar after obtaining necessary leave. Both the appeals have been heard analogously, but are being decided by separate judgments.

5. Shri V.K. Saxena, Senior Advocate and Shri M.P.S. Bhadoriya, Govt. Advocate made their submissions in support of respective contentions which have been considered in the light of the material on record.

6. Shri V.K. Saxena, learned Senior Counsel contended that the learned Sessions Judge has not properly appreciated the evidence. It is not proved beyond doubt that Pramod Kumar had inflicted injuries on the body of Dilip Kumar by knife. There are major discrepancies in the evidence which have been ignored by the learned Sessions Judge. The discrepancies, if, taken into consideration in correct perspective, would make the story of prosecution untrue and Pramod Kumar deserves to be acquitted. In the alternative, it is contended that the case of Pramod Kumar falls within the ambit of Section 304 Part II of Indian Penal Code and sentence of life imprisonment is awarded in excess of jurisdiction besides being highly disproportionate.

7. It may be seen that the prosecution has examined number of eye-witnesses, namely, Mishrilal (father of deceased P.W. 1), Hukumchand (P.W. 3), Hukumchand Ahirwar (P.W. 4), Rajesh Jain (P.W. 5), Shecla Devi (P.W. 6), Keshar Bai (P.W. 7) and Khumaniya Bai (P.W. 11).

8. Dr. R.S. Sharma, who examined Dilip Kumar on 4-11-1996 has been examined as P.W. 8, who found the injuries as described hereinabove. He categorically stated that the injuries found on the body of Dilip Kumar could have been inflicted by the knife seized from the appellant. This doctor had also examined Dilip Kumar before recording of the dying declaration and had given fitness certificate which is revealed in Annexure P-11. Post-mortem was conducted by Dr. H.K. Verma, who, too, has been examined as P.W. 9. He has clearly opined that the death was caused due to the injuries received in the right side of chest which caused excessive bleeding and shock. He has further specifically stated in Paragraph 2 of his statement that injuries inflicted on the body of the deceased were sufficient in the ordinary course of nature to cause death. In Paragraph 3, he has ruled out that injuries were received by the deceased by knife due to scuffling. On the contrary, he expressly stated that such injuries could be received only if the knife is applied with intention to cause the injuries.

9. Although, Shri Saxena, learned Senior Counsel for the appellant contended that the evidence was not properly appreciated, he however, was unable to demonstrate any major discrepancy in the evidence which may vitiate the

impugned judgment. In the light of the entire material on record, I find that witnesses have given the minute details with regard to date, time and place of the occurrence and have given further full details of the manner in which knife was used by the accused. The ocular evidence is corroborated by the medical evidence. No enmity on the part of witnesses of prosecution was proved against the accused persons. Medical evidence has also established that injuries on the person of deceased were result of the knife seized from the appellant. Thus, the evidence is unimpeachable and learned First Additional Sessions Judge, Vidisha, has analysed the evidence in Paragraph 13 to Paragraph 54 of its judgment and has further found in Paragraph 55 the appellant guilty of causing injuries intentionally on vital parts of the body of Dilip Kumar which resulted into death. Appellant's learned Senior Counsel Shri V.K. Saxena did not specify any specific piece of evidence or incorrect appreciation. This being so, I do not find it necessary to reproduce the evidence and further confirm the finding of conviction recorded against the appellant for causing death of deceased Dilip Kumar, since there is no infirmity.

10. Next contention of Shri Saxena, learned Senior Counsel, seems to be quite forceful that the appellant has been wrongly convicted under Section 302 of Indian Penal Code. However, he is equally not correct in saying in ground 4 of memo of appeal that the case of the appellant would fall under Sections 324 and 326 of Indian Penal Code. Section 324 of Indian Penal Code applies when hurt is caused by the accused voluntarily by means of any instrument for shooting, stabbing or cutting or any instrument which if used as a weapon of offence is likely to cause death. In the present case, Dilip Kumar, the deceased, was injured in the late night of 3rd November, 1986, which caused his death. It was not a case of hurt or grievous hurt, therefore, neither Section 326 nor Section 324 of the Indian Penal Code would be applicable.

11. Now it is to be seen that whether the appellant has caused culpable homicidal amounting to murder of culpable homicidal not amounting to murder. Culpable homicidal murder falls under Section 300 of Indian Penal Code unless it falls within the case of exception as provided in Section 300 itself.

12. Recently, the Apex Court had an occasion in the case of Gali Venkataiah v. State of Andhra Pradesh 2008 Cri.LJ 690 to examine the scope of exception to Section 300 of Indian Penal Code. We may profitably quote Paragraphs 15 and 16 as under:

15. For bringing in operation of Exception 4 to Section 300, IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

16. The Fourth Exception to Section 300, IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for, in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated. Yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For, if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused, (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed.

To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in IPC. It takes two to make a fight. Heat of passion required that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

13. Undisputably, in the present case, there was no enmity between the parties of a degree which would have given rise to an idea of causing murder of Dilip Kumar. Appellant had not gone to the house of the deceased or complainant. On the contrary, the family members of Mishrilal Jain including the deceased came downstairs to the house of appellant's father to make deliberations in respect of the quarrel which is stated to have been picked up by sons of the Chandra Kumar. When the landlord was being persuaded about the behaviour of his sons, all the four sons appeared on the spot, there took place heated exchanges causing provocation to the accused who used the knife and inflicted various injuries which, ultimately, caused the death. It is not the case of the prosecution that the appellant entertained an idea right from the beginning to cause death of Dilip Kumar, the deceased. Thus, there was no pre-planned or premeditation and Pramod Kumar is found to have inflicted injuries by knife on account of sudden provocation caused due to the deceased visiting his house and making complaint to his father. In view of this, the case of the appellant did not fall within the definition of culpable homicidal amounting to murder.

14. In the case of Gali Venkataiah (supra), the Supreme Court was dealing with a case of single knife blow on chest of the deceased and it awarded sentence under Part I of Section 304 of Indian Penal Code since it was a case of sudden fight

without premeditation. In the present case, though there occurred a sudden fight, the appellant stabbed the deceased thrice repeatedly on vital parts. The deceased was unarmed young boy of 17 years of age. He is not proved to have exercised any force against the appellant. Appellant, thus, applied the knife for causing the bodily injuries on the person of Dilip Kumar, which were likely to cause death. Considering this factual background and in totality of circumstances, this Court is of the view that the case of the appellant falls within Part I of Section 304 of Indian Penal Code and the appellant is liable to be punished with custodial sentence of five years which would meet the ends of justice.

15. Accordingly, this appeal is allowed in part, conviction of appellant is altered from Section 302 to Section 304, Part II, IPC and the sentence of life imprisonment is reduced to the sentence of five years R.I. and the fine amount is enhanced from Rs. 1,000/- to Rs. 50,000/-. In default of payment of fine amount the appellant shall undergo further jail sentence of one year. On depositing this amount a compensation of Rs. 50,000/- be paid to the mother of the deceased. The conviction of appellant under Section 324, IPC for causing injury to injured Hukum Chand is affirmed. His jail sentence and fine amount is also affirmed. Both the sentences shall run together. Appellant is on bail. His bail bonds are forfeited. He is directed to surrender before the Trial Court to undergo remaining jail sentence. The Trial Court shall have liberty to execute the judgment.

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