

**Sunderlal Vs. State of M.P.**

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**SooperKanoon Citation :** [sooperkanoon.com/507248](http://sooperkanoon.com/507248)

**Court :** Madhya Pradesh

**Decided On :** Jan-21-2002

**Reported in :** 2002(3)MPHT571; 2002(3)MPLJ125

**Judge :** Rajeev Gupta and ;Usha Shukla, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304; [Evidence Act, 1872](#) - Sections 60

**Appeal No. :** Criminal Appeal No. 350/90

**Appellant :** Sunderlal

**Respondent :** State of M.P.

**Advocate for Def. :** Raj Kumar Verma, Panel Lawyer

**Advocate for Pet/Ap. :** S.C. Datt and ;Sidharth Datt, Advs.

**Disposition :** Appeal partly allowed

**Judgement :**

1. Appellant Sunderlal stands convicted under Section 302, IPC, with sentences of imprisonment for life and fine of Rs. 1000/-, vide impugned judgment dated 21-2-90 passed by IInd Additional Sessions Judge, Raisen in Sessions Trial No. 35/89.

2. Appellant Sunderlal has been found guilty of causing solitary incised wound on the head region of his younger brother Hari Singh by means of an axe during the course of an altercation between them in the night of 28-12-88, leading to his death the same night.

3. Appellant's conviction is founded on the solitary eye-witness account of Mishri Bai (P.W. 12), widow of deceased Hari Singh, who has categorically deposed that on the fateful night when her husband Hari Singh was abusing his elder brother appellant Sunderlal, the appellant suddenly came out and dealt one blow by means of an axe on the head region of her husband Hari Singh and, thereafter, fled away.

4. The learned Counsel for the appellant vehemently argued that the Trial Court has erred in recording the appellant's conviction on the solitary eye-witness account of Mishri Bai (P.W. 12), who being the widow of deceased Hari Singh, is an interested witness.

5. Mishri Bai (P.W. 12) has categorically deposed that on the fateful night, appellant Sunderlal dealt axe blow on the head of her husband Hari Singh resulting in his death the same night. On a close scrutiny of the evidence of Mishri Bai (P.W. 12), we are satisfied that the Trial Court has rightly believed her evidence in holding appellant Sunderlal guilty of causing the solitary incised wound on the head region of deceased Hari Singh, neither in the cross-examination of this witness nor during the course of hearing of this appeal any such material could be pointed out which may render her evidence unworthy of credence. Her presence at the time of the incident is quite natural as she was inside the house where the incident of assault on deceased Hari Singh took place. She being the widow of the deceased would be the last person to spare the real assailant of her husband Hari Singh and to falsely implicate appellant Sunderlal, who is the elder brother of her husband, as his assailant. We, therefore, do not find any substance in the above submission of the learned Counsel for the appellant.

6. The learned Counsel for the appellant placing reliance on the dicta of the Apex Court in the cases of Mahesh v. State of M.P., reported in AIR 1996 SC 3513 and Krishna Tiwary and Anr. v. State of Bihar, reported in AIR 2001 SC 2410, next

submitted that in the facts and circumstances of the present case the appellant's act of causing solitary injury on the head region of deceased Hari Singh, during the course of an altercation between them, would not amount to the offence of 'murder' punishable under Section 302, IPC.

7. In the case of Mahesh v. State of M.P. (supra) the Apex Court, while considering the nature of the offence proved against the appellant in that case, observed in para 4 :--

'4..... Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault P.W. 2 or P.W. 6 who were also present along with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of P.W. 1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception-4 to Section 300, IPC is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304, (Part-I) IPC.'

8. Then again in the case of Krishna Tiwary and Anr. v. State of Bihar (supra) the Apex Court while holding that the act of the accused, in that case of dealing two knife blows on the deceased, did not amount to the offence of 'murder' punishable under Section 302, IPC, observed in para 4 :--

'4. In our view, there is much substance in the contentions raised by the learned Senior Counsel for the appellants. From the evidence on record it is apparent that incident took place all of a sudden. It has been admitted by the prosecution witnesses that prior to the incident relations between the brothers were cordial. It has been specifically stated by informant Anil Tiwary (P.W. 7), in his cross-examination that they were having best of relations with the accused prior to the incident. He has also denied the suggestion that there was property dispute between them. The witness has also admitted that the appellant Krishna Tiwary

came empty handed and that incident took place because they scolded Manoj Kumar and deceased removed him from the middle of the door. He has also stated that after coming down Krishna Tiwary caught hold the collar of Paramhans and asked him why his cleaner was beaten. So, it is apparent that some quarrel took place between the deceased and Krishna Tiwary. At that moment, it is alleged that Krishna Tiwary uttered the word 'assault' and thereafter Dadan Tiwary inflicted two knife blows. It is true that first knife blow proved fatal; with regard to the second knife blow, admittedly, it is a simple injury which is skin deep. From the record, it is apparent that the prosecution has suppressed the evidence of other witnesses, particularly that of Manoj Kumar who was the cause of quarrel. However, taking the prosecution case as it is, it is apparent that the role played by A-1 is absolutely limited. Therefore, the Trial Court has convicted him by resorting to Sections 109 and 111 of IPC. Further, it is admitted that relationship between brothers and the family members was cordial prior to the incident. The incident took place all of a sudden and without any premeditation. Manoj, cleaner of the appellant was standing in the middle of the door and the ladies of the house were having obstruction in coming and going out from the house, therefore, he was scolded by deceased and removed from that place by use of force. It appears that he conveyed something, which has not come on record because Manoj is not examined, to the appellants. Appellants came down and the quarrel took place between deceased and Krishna Tiwary (A-1). In such a sudden quarrel and in heat of passion, appellant No. 2 son of Krishna Tiwary, A-1, inflicted a fatal blow to the deceased. Further, he has not acted in any cruel or unusual manner nor he has taken any undue advantage. Hence, at the most appellant No. 2 would be liable to be convicted for the offence punishable under Section 304, Part-I, IPC and the appellant No. 1 for the offence under Section 304, Part-I read with Section 109 and Section 111, IPC.'

9. Now, reverting to the present case we gather from the evidence of Mishri Bai (P. W. 12), that it was the foolish act of deceased Hari Singh himself, of abusing his elder brother appellant Sunderlal, which led to unfortunate assault on the deceased resulting in his death. Admittedly, the deceased came to sustain solitary injury on his head region during the course of an altercation between the two brothers. Even according to the prosecution appellant Sunderlal did not make any

attempt to deal any further blow on the deceased. It has also come in the evidence of Mishri Bai (P.W. 12) that her husband deceased Hari Singh was in the habit of taking liquor frequently and then used to quarrel with every one. To us, it appears that the appellant in a spontaneous and natural reaction to the persistent act of his younger brother, deceased Hari Singh, of abusing the appellant in the presence of other family members including Mishri Bai (P.W. 12) got annoyed and came out with an axe with a view to teach him a lesson and in the heat of passion dealt only one blow on his younger brother, which unfortunately proved fatal.

10. In the abovementioned factual matrix of the case, we find it difficult to hold that appellant Sunderlal, while dealing solitary blow by means of an axe on the head region of his younger brother Hari Singh, intended to cause his death. Thus, the above proved act of appellant Sunderlal, of dealing solitary axe blow on the head region of deceased Hari Singh resulting in his death, in our considered view would not amount to the offence of 'murder' punishable under Section 302, IPC. Nevertheless, appellant Sunderlal cannot escape from the liability of his above proved act altogether and his above act would certainly amount to the offence of 'Culpable Homicide not amounting to Murder' and in the fact situation of the present case would be punishable under Section 304-I, IPC.

11. As for the sentence, in our considered view sentence of rigorous imprisonment for 10 years, in the facts and circumstances of the present case, would be the sufficient punishment for the offence found proved against appellant Sunderlal under Section 304-I, IPC, and would meet the ends of justice.

12. For the foregoing reasons, the appeal filed by appellant Sunderlal, against his conviction and sentences, is allowed in part. Appellant's conviction under Section 302, IPC and sentences of imprisonment for life and fine of Rs. 1,000/- are hereby set aside. Instead, he is convicted under Section 304-I IPC and is sentenced to rigorous imprisonment for 10 years.

13. From the records, we gather that appellant Sunderlal has all along been in custody since his arrest on 29-12-88, and as such has already undergone whole of the sentence of rigorous imprisonment for 10 years, now awarded on his conviction under Section 304-I, IPC. We, therefore, direct that appellant Sunderlal

be set at liberty forthwith, if not wanted in connection with any other case.

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