

Arjun Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Nov-02-1999

Reported in : 2000(1)MPHT429

Judge : N.K. Jain and ;Shambhoo Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302, 304I and 304II; Code of Criminal Procedure (CrPC) - Sections 428

Appeal No. : Criminal Appeal No. 764/1994

Appellant : Arjun Singh

Respondent : State of M.P.

Advocate for Def. : G. Desai, Adv.

Advocate for Pet/Ap. : R.K. Trivedi, Adv.

Judgement :

Shambhoo Singh, J.

1. This appeal is directed by the accused against the judgment & order dated 31-10-94 passed by A.S.J. Narsinghgarh in S.T. No. 149/93 whereby the appellant was convicted under Section 302 of the I.P.C. and sentenced to life imprisonment.

2. The prosecution case, in brief, was that on 10-8-93 at 4 p.m., in village Ganiyari the appellant was making fence by implanting thorny bushes in the field of the deceased Banshilal. The later came to the appellant and asked him not to put hedge there and uprooted 2-3 thorny bushes. On this, the appellant gave axe-blows to the deceased which fell on his head, as a result of which he fell down. Krishnabai (P.W. 1), the wife of the deceased, was working nearby in the field. Hearing cries, her son Raju (P.W. 4) and her brother-in-law Dolatram (P.W. 3) came there. Seeing them, the appellant ran away from the spot. Krishnabai and Dolatram took Banshilal to Police Station Narsinghgarh where Krishnabai lodged F.I.R. Ex. P-1 which was recorded by P.W. 10 S.S. Tomar, SHO P.S. Narsinghgarh. He sent Banshilal to Primary Health Centre, Narsinghgarh where Dr. Yogesh Tiwari (P.W. 6) examined him and found the following vide his report Ex. P-2 :

(1) Incised wound 5 cm x 1 cm x scalp, tissue deep over left fronto-parietal region of the head, bleeding was present.

(2) Incised wound 1 cm x cm x scalp, tissue deep near injury No. 1.

(3) Incised wound 1 cm x cm x scalp, tissue deep near injury Nos. 1 and 2.

(4) Lacerated wound 1 cm x cm x cm on upper half of right forearm.

The deceased was serious, therefore, he was referred to Hamidiya Medical Hospital. S.S. Tomar (P.W. 10) started investigation. He visited the spot and prepared spot-map Ex. P-8. He seized stained and unstained earth from the place of occurrence vide seizure memo Ex. P-9. The deceased died on 20-8- 93. S.H.O.S.S. Tomar conducted inquest and prepared inquest report Ex. P-7 and sent the dead body for post-mortem examination Dr. Ashok Sharma (P.W. 11) conducted autopsy and found the following :

(1) Incised wound 15 cm in length.

(2) Lacerated wound on the skull.

(3) Lacerated wound near injury No. 1.

(4) One abrasion on parietal eminence.

Dr. Sharma found fracture of left part of the skull in 6 cm area. Cranial fossa was broken into several pieces. The brain was lacerated and was full of pus. Dr. Sharma opined vide report Ex. P-16 that the injuries were ante-mortem. Injury No. 1 was caused by sharp edged weapon while injury Nos. 2 to 4 were caused by hard and blunt object. The appellant was arrested and axe was seized from him vide seizure memo Ex. P-10. The clothes of the deceased were also seized vide seizure memo Ex. P-12. After completion of investigation, challan was filed. The appellant pleaded not guilty and false implication. The learned trial Judge after recording evidence convicted and sentenced the appellant as stated above. Hence, this appeal.

3. Shri R.K. Trivedi, LC for the appellant, submitted that the learned Sessions Judge committed error in putting reliance on the testimony of Krishnabai, Dolatram and Raju as they were close relatives of the deceased. In alternative, he submitted that if it was held that the appellant caused injury to the deceased, then appellant could be convicted under Section 304 II I.P.C. and not under Section 302 I.P.C.. Shri Desai, learned G.A. supported the impugned judgment.

4. We considered the arguments advanced by counsel for both sides and perused the record.

5. The fact of homicidal death of Banshilal has not been disputed before us and rightly so as it is amply proved from the inquest report Ex. P-7, post-mortem report Ex. P-16 and ocular evidence produced by the prosecution.

6. Now the question that arises for consideration is whether the appellant caused the death of the deceased Banshilal. It has come in the evidence of Krishnabai (P.W. 1), the widow of the deceased, that on the date of incident her husband Banshilal had gone to their field for bringing grass. The appellant was constructing hedge by implanting thorny bushes in their field. Her husband went to him and asked the appellant not to put fence there, it was his land. The appellant asserted that he would fence there. Her husband warned him that if he implant thorny bushes there, he would uproot them. On this, the appellant told her husband, 'you

see, after uprooting the bushes'. Thereafter, her husband uprooted one thorny bush and the appellant gave axe-blow to him which landed on his head and he fell down on the ground. She cried, hearing which her brother-in-law Dolatram and son Raju came there. The appellant ran away from the spot. Dolatram (P.W. 3) supported the testimony of Krishnabai and deposed that he heard the cries of her sister-in-law Krishnabai and he and Raju went to the field. They saw the appellant running from the place of occurrence. They saw that Banshilal was lying on the ground and blood was coming from his head. Same is the version of Raju (P.W. 4). It is true that these witnesses are near relations of the deceased. As state above, Krishnabai is wife, Raju is son and Dolatram is brother of the deceased, but on the ground of near relationship, the evidence of these witnesses cannot be discarded as near relations are the last persons to save the real culprit and falsely implicate the innocent person. No material contradictions or omissions occurred in the evidence of these witnesses. The statement of these witnesses is corroborated by medical evidence. As stated earlier, Dr. Yogesh Tiwari (P.W. 6) who examined the deceased just after the incident, found 3 incised wounds on his head. Dr. Ashok Sharma (P.W. 11) who performed post-mortem examination on the dead-body, found one incised wound on left forehead and three abrasions. The evidence of Krishnabai is further supported by F.I.R. Ex. P-1 which was lodged just after the incident. In our opinion; the evidence of these witnesses is fully reliable and the learned trial Judge rightly believed these witnesses and held that the appellant caused the death of the deceased by giving him axe-blow.

7. Now the question is as to what offence is made out against the appellant ?

8. Shri Trivedi, LC for the appellant, submitted that this incident took place at the spur of the moment. The land on which the appellant was hedging fence belonged to him and the deceased uprooted the thorny bushes, implanted by him. Under such circumstances, the appellant caused axe-blow to the deceased. He argued that the appellant could be convicted under Section 304 II of the I.P.C. and not under Section 302 I.P.C.. According to Shri Desai the appellant has rightly been held guilty of murder.

9. We considered the arguments of Shri Trivedi and Shri Desai and examined the evidence. From the statement of Krishnabai it is clear that the appellant asserted that the land belonged to him and he was putting fence there. The deceased asked him to desist from making fence. The appellant told him that he would implant thorny bushes. On this, the deceased told him that if he implanted bushes, he would uproot them. On this, the appellant threatened him that he would see how he uprooted the same. Thereupon, the deceased uprooted 2-3 thorns and the appellant gave axe-blow which landed on the head of the deceased, as a result of which he fell down. From the above evidence, it is clear that the appellant gave axe-blow without premeditation in the heat of passion upon sudden quarrel. The appellant did not take undue advantage. According to Krishnabai the appellant gave one axe-blow, the deceased fell down and the appellant ran away. She did not state that he repeated the blows. Dr. Sharma found only one incised wound on the head of the deceased. It appears that Dr. Yogesh Tiwari under some confusion stated that the deceased had 3 incised wounds as Krishnabai herself did not testify that the appellant gave repeated blows. The causing of injury with deadly weapon like axe on head- a vital part of the body and the force applied, gives inference that there was intention to cause death. But, as stated earlier, this quarrel took place at the spur of the moment and in the heat of passion the appellant caused axe-blow to the deceased without premeditation in a sudden quarrel in the heat of passion. Exception 4 to Section 300 I.P.C. would be attracted. Under such circumstances, the appellant could not be convicted under Section 302 I.P.C.. The learned trial Judge committed error in holding the appellant guilty under Section 302 I.P.C.. The offence made out against the appellant is culpable homicide not amounting to murder punishable under Section 304 I of the I.P.C..

10. In the result, the appeal is partly allowed. The conviction and the sentence imposed on the appellant under Section 302 I.P.C. is set-aside and instead he is convicted under Section 304 I I.P.C. and sentenced to 8 years R.I.. The period of incarceration shall be given set off under Section 428 Cr.P.C.