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Court : Madhya Pradesh

Decided On : May-10-2007

Reported in : 2007CriLJ3955

Judge : Abhay Gohil and ;Sheela Khanna, JJ.

Appellant : Ratiram

Respondent : State of M.P.

Judgement :

Abhay Gohil, J.

1. In Sessions Trial No. 67/96 the four persons were tried for the offences under Sections 294, 307, 341, 323/34, 302 and 302/34. Fourth Additional Sessions Judge, Gwalior vide judgment dated 21-9-1999 acquitted the three accused persons and convicted appellant Ratirarn for the offence under Section 302 of IPC and sentenced him to life imprisonment and fine of Rs. 2,000/-, in default of payment of fine further one year rigorous imprisonment. Being aggrieved with the aforesaid judgment, the appellant has preferred this appeal.

2. According to the prosecution story, on 26-9-1995 at about 10-11 a.m. in the morning at village Bhelakala under Thana Bijoli District Gwalior one Tularam was construcing platform (Chabutara). At that time Gaya Prasad s/o Maniram came and stopped him and said that the land on which he is constructing platform

belongs to him. On this, there was a quarrel between Gaya Prasad and Tularam. Layakram came on spot and tried to pacify the matter. After one hour Maniram came back from forest and started abusing. When he was abusing Ratiram came on spot carrying Lathi in his hand. He had also started abusing. Ladobai came in between. Ratiram inflicted two Lathi blows behind the neck of Ladobai and two Lathi blows on the back and she sustained injuries. Ratiram pushed Ladobai and she fell down. Layakram and Keshav both were present at the place of occurrence, who had seen the incident. Ladobai along with Layakram went to police station Bijori where she lodged FIR. On the basis of her report crime was registered under Sections 307, 341, 294 and 323/34 of IPC. In the incident Narayanibai also received injuries. She was also referred for medical examination and during treatment Ladobai died. Thereafter, Sections 302 of IPC was added in the crime. Matter was investigated and charge-sheet was filed. During trial appellant abjured his guilt and his defence was that due to family dispute between the parties he has been falsely implicated and he is quite innocent. Witness Dr. Virendra Kumar (D.W. 1) was examined in defence. The trial Court after considering the evidence on record acquitted three accused persons and convicted the appellant Ratiram against which he has preferred this appeal.

3. We have heard Shri A. K. Barua, learned Sr. counsel for the appellant and Shri M.P.S. Bhadoriya, learned Public Prosecutor for the respondent/State and perused the evidence and findings on record.

4. Shri Barua submitted that it is not a case under Section 302 of IPC as there is no evidence on record to show that the case is made out within the purview of Section 300, thirdly IPC and at the most appellant can be convicted under Section 304, Part II of IPC. As the appellant has suffered jail sentence of more than seven years, therefore, his prayer was that the offence be converted and the appellant be released on undergone sentence. On the contrary Shri M.P.S. Bhadoriya supported the judgment and submitted that the appeal is liable to be dismissed.

5. Layakram (P.W. 1) Initially supported the prosecution story and he has stated that it was Ratiram who inflicted Lathi blows to Ladobai. Layakram was also nephew of Maniram and Ladobai was mother of Talaiam. Pannalal who is father of

Layakram is brother of Maniram and at that time they were residing in the same house. Initially the evidence of this witness was recorded on 28-11-1997 and he was cross-examined but later on he was again summoned for cross-examination on 10-11-1998 and at the time in cross-examination of para 20 he admitted that we belong to the same family and their relations before the incident were very cordial and the incident took place all of a sudden. Initially, on account of construction of platform, the scuffle took place between Bhuribai and Ladobai and in that scuffle Ladobai fell down on the stones and received injuries. He also denied that police has recorded the FIR. It is submitted that when Ladobai was being taken to hospital, police came in between and obtained the thumb impression of Ladobai whereas Ladobai has not stated anything to police. Tularam (P.W. 2), who is also nephew of Maniram has not supported the prosecution and was declared hostile. He took the defence that there was some scuffle between Bhuribai and Ladobai and in that scuffle Ladobai received injury in the head and she became unconscious and subsequently died. Keshav (P.W. 3) has also deposed in the same way and has not supported the prosecution and was declared hostile. Narayanibai (P.W. 4) and Basanti (P.W. 5) have also not supported the prosecution and they were also declared hostile. J. N. Soni (P.W. 6) had performed the post-mortem of the dead body of the deceased and according to the evidence of doctor four injuries were found on the body of the deceased:

(i) Abrasion on left side of elbow in size 5 X 2 cm.

(ii) Rail pattern contusion on right side of the neck in size 8x3.5 cm.

(iii) Rail pattern contusion situated over right scapula in size 7 x 2.5 cm.

(iv) Rail patern contusion situated 3 cm below injury number (iii) obliquely vertical intero laterally in size 15 x 2.5 cm to right side flank lower chest.

As per J. N. Soni the death was due to shock and hemorrhage as a result of abdominal injury. Injuries were caused by hard and blunt object and nature of death was homicidal and duration of death was within 6 hrs. to 24 hrs. since post-mortem examination. Doctor has admitted that the weapon was not referred to him for examination. He has admitted in the cross-examination that there was no

external injury on the body of the deceased and there was no sign about the oozing of the blood. The liver of the deceased was ruptured and blood was collected inside the stomach. It was argued that the doctor has not given any opinion that which injury was fatal and whether anyone of the injury was collectively sufficient to cause the death in the ordinary course of nature. Naryanibai injured witness was also examined by Dr. P.C. Mittal (P. W. 9) but Narayanibai has not supported the prosecution case and she was declared hostile.

6. Dr. Virendra (D.W. 1) was examined in defence and his version was that initially he examined Ladobai and she had only received one abrasion. She was complaining pain in the shoulder of right hand and in the waist and her general condition was poor. Me had also medically examined Bhuribai who had also received three injuries. He had also examined Maniram who had also received three injuries. From this, it is clear that there was scuffle or free fight between the parties but it is also clear that they are all the members of the same family and the dispute suddenly took place between them on account of construction of some platform and all accused persons were bare handed and they were not having any lethal weapons in their hands.

7. Considering the totality of the evidence on record, we found that in the absence of medical evidence on record to the effect that the injuries caused individually or collectively were sufficient to cause death in the ordinary course of nature the case will not fall under Section 300, thirdly IPC.

8. Though, the witnesses have not supported the prosecution evidence but the dying declaration and FIR lodged itself are available on record and the learned Counsel for the appellant has also not challenged that the incident had not taken place or the deceased had not received injuries in that incident. Therefore, the case before us whether the offence will fall under Section 300, thirdly IPC and will be punishable under Section 302 of IPC or whether it is a case of culpable homicidal not amounting to murder and will fall under Section 304, Part II of IPC. We have considered the evidence particularly the medical evidence on record and have considered the decision in the case of Virsa Singh v. State of Punjab : 1958 CriLJ818 in which it is held that to bring the case within the purview of Section

300, thirdly, it has to be proved that there was an intention to inflict that particular bodily injury and the injuries of the deceased were sufficient to cause death in the ordinary course of nature. In the case of Ram Prakash Singh v. State of Bihar AIR 1998 SC 1190 : 1998 Cri LJ 1622 sudden quarrel took place between two friends and there was not exchange of words between the two and accused inflicted single knife injury to the deceased and there was no medical evidence that injury was sufficient in the ordinary course of nature to cause death, it was held that the offence will not fall under Section 302 of IPC but under Section 304. Part II of IPC. In the case of Takhaji Hiraji v. Thakore Kubersing Chamansing : 2001 CriLJ2602 sudden fight took place and accused inflicted knife injury into abdomen was likely to cause death. As it was the case of sudden fight the Supreme Court has held that the act of the accused would amount to culpable homicidal not amounting to murder and offence was converted from 302 of IPC to 304 Part II of IPC. In the case of Nadodi Jayaraman v. State of Tamil Nadu : 1993 CriLJ426 when the injuries were caused collectively, the Court found that the offence would be of committing culpable homicide not amounting to murder. In the case of Raj Jattan v. State of U. P. : 1994 CriLJ58 Bharik v. State of H.P. : AIR 2000 SC3618 the principle of Section 300, thirdly was considered and it was held that the prosecution must prove it in objective manner that injuries were sufficient to cause death in the ordinary course of nature and common object to cause death has to be established. Though, in both the cases considering the injuries and evidence Supreme Court converted the offence from Section 302 of IPC to Section 304, Part II of IPC.

9. In the case in hand we have found that the sudden quarrel took place between the parties. They were not carrying lethal weapons. They are the family members and dispute took place only on the construction of platform. Initially some quarrel took place between two ladies Bhuribai and Ladobai and thereafter, there was wordy quarrel and exchange of abuses between the parties and suddenly lathi blows were given on the body of the deceased. Though the prosecution witnesses have not supported the prosecution story and narrated a different version of the incident but from the medical evidence as well as from the FIR which was lodged by deceased, we find that FIR version can be accepted as of a dying declaration. There is no evidence on record that the injuries caused to the deceased were

sufficient to cause death in the ordinary course of nature. Therefore, considering the totality of the facts and circumstances of the case, we are of the view that the conviction of the appellant under Section 302 of IPC is liable to be set-aside and he is liable to be convicted under Section 304, Part II of IPC. He has already suffered jail sentence of more than seven years which appears to be just and proper as the injured persons as well as the accused belong to the same family and the appellant was aged about 18 years at the time when the incident took place and facing agony of criminal proceedings since last more than 12 years.

10. Consequently, this appeal is partly allowed and conviction is converted to Section 304, Part II of IPC. As far as sentence is concerned, the appellant is sentenced to the period of sentence already undergone by him. Appellant is in jail he be released forthwith if not required in any other case.

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