

Ganesh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-25-2003

Reported in : 2004CriLJ2327; 2004(1)MPHT211; 2004(1)MPLJ387

Judge : Rajeev Gupta and ;Usha Shukla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304; ;[Evidence Act, 1872](#) - Sections 3

Appeal No. : Criminal Appeal No. 184/93

Appellant : Ganesh

Respondent : State of M.P.

Advocate for Def. : S.K. Rai, Panel Lawyer

Advocate for Pet/Ap. : Neena Khera, Adv.

Disposition : Appeal partly allowed

Judgement :

Rajeev Gupta, J.

1. Appellant Ganesh stands convicted under Section 302, IPC, with sentence of imprisonment for life, vide impugned judgment dated 4-12-1992, passed by First Additional Sessions Judge, Betul in Sessions Trial No. 72/92.

2. Appellant Ganesh has been found guilty of causing multiple injuries on deceased Pundlik, by means of a piece of stone, in the morning of 8-4-92, resulting in his death.

3. Appellant's conviction is founded on the eye-witness account of Nathu (P.W. 2), Bhimrao (P.W. 3), Ramdas (P.W. 4) and Lallu (P.W. 5), who have categorically deposed that appellant Ganesh, during the course of a sudden quarrel between him and deceased Pundlik, caused multiple injuries on him by means of a piece of stone.

4. The Trial Court, on the ocular and medical evidence led by the prosecution at the trial, found that deceased Pundlik sustained multiple external injuries in the morning of 8-4-92 and died a homicidal death, on account of those injuries. Relying upon the eye-witness account of Nathu (P.W. 2), Bhimrao (P.W. 3), Ramdas (P.W. 4) and Lallu (P.W. 5), the Trial Court held accused Ganesh guilty of causing those external injuries on the deceased by means of a piece of stone, which ultimately resulted in his death. The Trial Court, on the above findings, convicted and sentenced accused Ganesh as mentioned above.

5. Ku. Neena Khera, the learned Counsel for the appellant, vehemently argued that the Trial Court has erred in recording the appellant's conviction on the eye-witness account of Nathu (P.W. 2), Bhimrao (P.W. 3), Ramdas (P.W. 4) and Lallu (P.W. 5), whose evidence suffers from serious infirmities. The learned Counsel further submitted that as there was no prior ill-will between deceased Pundlik and appellant Ganesh and that deceased Pundlik came to sustain injuries at the hands of appellant Ganesh during the course of sudden quarrel between them, when both of them were under the influence of liquor, the offence against the appellant would not be one of 'Murder', punishable under Section 302, IPC.

6. Shri S.K. Rai, the learned State Counsel, supported the impugned judgment of conviction and contended that the evidence of Nathu (P.W. 2), Bhimrao (P.W. 3), Ramdas (P.W. 4) and Lallu (P.W. 5), is sufficient to establish the charge of 'Murder' against appellant Ganesh beyond any shadow of doubt and as such the Trial Court has rightly convicted appellant Ganesh.

7. The facts that deceased Pundlik sustained multiple external injuries in the morning of 8-4-92 and died a homicidal death on account of the said injuries were neither in dispute before the Trial Court nor are under challenge before us, in this appeal. That apart, there is overwhelming ocular and medical evidence on record which is more than sufficient to establish the above facts beyond any shadow of doubt. We, therefore, uphold the findings recorded by the Trial Court in that behalf.

8. Nathu (P.W. 2) has categorically deposed that on the fateful day appellant Ganesh and deceased Pundlik were consuming liquor on the bank of Poorna river. Suddenly they indulged in a wordy quarrel and during this quarrel appellant Ganesh caused injuries on the deceased by means of a piece of stone. He stood firm in his cross-examination and nothing could be elicited by the defence which may discredit his evidence. We do not find any earthly reason for this witness to depose falsely against the accused.

9. Bhimrao (P.W. 3), Ramdas (P.W. 4) and Lallu (P.W. 5), deposing in line with the evidence of Nathu (P.W. 2), stated that it was appellant Ganesh who during the course of a sudden wordy quarrel caused injuries on deceased Pundlik by means of a piece of stone, resulting in his death. Nothing substantial could be brought out by the defence in their cross-examination which may render their evidence unworthy of credence.

10. On a close scrutiny of the eye-witness account of Nathu (P.W.2), Bhimrao (P.W. 3), Ramdas (P.W. 4) and Lallu (P.W. 5), we do not find any infirmity whatsoever in their evidence. They are truthful witnesses and their evidence has rightly been believed by the Trial Court, in holding appellant Ganesh guilty of causing those injuries on deceased Pundlik by means of a piece of stone, which ultimately resulted in his death.

11. The next question which crops up for our consideration in this appeal is about the nature of the offence proved against appellant Ganesh.

12. Admittedly, there was no prior ill-will between deceased Pundlik and appellant Ganesh. It has come in the evidence that both of them were consuming liquor on the bank of river Poorna. This would further indicate that the relations between the

two were quite cordial and intimate. A sudden quarrel appears to have flared up between the two while they were consuming liquor, which led to the unfortunate assault on deceased Pundlik at the hands of his friend appellant Ganesh, which ultimately resulted in his death. True, the Autopsy Surgeon found multiple external injuries on the body of the deceased, but the appellant is not said to have used any conventional weapon in causing injuries on the deceased. According to the prosecution, appellant Ganesh who was under the influence of liquor suddenly picked up a piece of stone lying there and dealt blows on the deceased.

13. On a cumulative consideration of the above-mentioned broad features of the case, we find it difficult to hold with certainty that appellant Ganesh while causing those injuries on his friend deceased Pundlik, by means of a piece of stone during the course of the sudden quarrel between them, had intended to cause his death. The above proved act of appellant Ganesh, therefore, in our considered view would not amount to the offence of 'Murder' punishable under Section 302, IPC. Nevertheless, appellant Ganesh can not escape from the liability of his above proved act altogether. The above proved act of the appellant 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, Part II of the IPC.

14. As for the sentence, on considering the background, nature and manner of the incident and the number and nature of the injuries found on the deceased, we are of the considered view that appellant Ganesh deserves full dose of rigorous imprisonment for 10 years, for the offence now found proved against him under Section 304, Part II of the IPC.

15. For the foregoing reasons, the appeal, filed by appellant Ganesh against his conviction and sentence, is partly allowed. Appellant's conviction under Section 302, IPC and sentence of imprisonment for life are hereby set aside. Instead, appellant Ganesh is convicted under Section 304, Part II, IPC, and is sentenced to rigorous imprisonment for 10 years.

16. Appellant Ganesh has all along been in custody, since his arrest on 13-4-92. The appellant as such has already undergone whole of the sentence of rigorous

imprisonment for 10 years, now awarded on his conviction under Section 304, Part II, IPC. We, therefore, direct that appellant Ganesh be set at liberty forthwith, if not wanted in connection with any other case.

Criminal Appeal partly allowed.

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