

Brijmohan Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Nov-12-2002

Reported in : 2003(2)MPHT165

Judge : Rajeev Gupta and ;Usha Shukla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 100, 300, 302 and 304

Appeal No. : Criminal Appeal No. 1162/90

Appellant : Brijmohan

Respondent : State of M.P.

Advocate for Def. : G.S. Ahluwalia, Govt. Adv.

Advocate for Pet/Ap. : Sidharth Datt, Adv.

Disposition : Criminal appeal partly allowed

Judgement :

ORDER

Rajeev Gupta, J.

1. Appellant Brijmohan stands convicted under Section 302, IPC with sentence of imprisonment for life, vide impugned judgment dated 23-10-90 passed by Sessions Judge, Hoshangabad, in S.T. No. 90/90.

2. Appellant Brijmohan has been found guilty of causing death of his real elder brother Harishankar, by causing injuries on him by means of an axe in the noon of 1-1-90.

3. Appellant's conviction is founded on the solitary eye-witness account of Ramvilas (P.W. 2), whose evidence was found corroborated by the medical evidence of Dr. V.K. Jain (P.W. 4).

4. Shri Datt, the learned Counsel for the appellant, vehemently argued that the Trial Court has erred in relying upon the solitary eye-witness account of Ramvilas (P.W. 2), whose evidence suffers from serious infirmities. The learned Counsel in the alternative placing reliance on the dictum of the Apex Court, in the case of Puttan alias Ellappan v. State of T.N., reported in 2000 SCC (Cr.) 1504, submitted that even if appellant Brijmohan is found guilty of causing those injuries on deceased Harishanker which resulted in his death, his conviction under Section 302, IPC, is not legally sustainable as deceased Harishanker came to sustain those injuries at the hands of his younger brother Brijmohan during the course of a sudden quarrel between them.

5. Shri G.S. Ahluwalia, the learned Government Advocate, on the other hand supported the impugned judgment of conviction and contended that Ramvilas (P.W. 2) is a truthful witness and the Trial Court has not committed any illegality in recording appellant's conviction on his evidence.

6. The facts that deceased Harishanker sustained injuries in the noon of 1-1-90 and died a homicidal death on account of those 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 which is more than sufficient to establish the above facts beyond any shadow of doubt. We, therefore, uphold the finding recorded by the Trial Court in that behalf.

7. True, the appellant's conviction rests on the solitary eye-witness account of Ramvilas (P.W. 2).

8. Ramvilas (P.W. 2) has categorically deposed that on the fateful day when appellant Brijmohan was cutting the bushes on his side of the 'medh', some altercation took place between him and deceased Harishanker. It is further in his evidence that during the said quarrel appellant Brijmohan dealt axe blows on the deceased ultimately resulting in his death. Nothing could be brought out in his cross-examination which may render his evidence unworthy of credence. His presence at the place of incident was quite natural. We do not find any earthly reason for this witness to implicate appellant Brijmohan falsely for the commission of murder of his own brother Harishanker. In the First Information Report (Ex. P-7), lodged by Shriram Sahu (P.W. 1), it was categorically mentioned that the incident of assault on deceased Harishankar was witnessed by Ramvilas. The medical evidence of Dr. V.K. Jain (P.W. 4) amply corroborates the ocular evidence Ramvilas (P.W. 2).

9. Thus, on a close scrutiny of the evidence of Ramvilas (P.W. 2), we are satisfied that the Trial Court has rightly believed his evidence in holding appellant Brijmohan guilty of causing those injuries on his brother Harishanker, which resulted in his death.

10. The next submission of the learned Counsel for the appellant is that in the fact situation of the present case, the above proved act of appellant Brijmohan in causing those injuries on his brother Harishanker, which resulted in his death, would not amount to the offence of 'murder' punishable under Section 302, IPC.

11. The Apex Court, in the case of Puttan alias Ellappan v. State of T. N. (supra), while considering the nature of the offence proved against the accused in that case, observed :--

'2. The facts of this case would show that the incident started when the deceased operated the disputed water course to which objection was raised by the appellant and his father. When the water course was meddled with by the deceased, prosecution case is that the appellant and his father (co-accused) attacked the deceased. This was followed by a wrangle between the deceased and the co-accused (father of the appellant) as they grappled with each other.

3. The father then called his son, the appellant for assistance. When the wife of the deceased interfered, the appellant gave her a blow with a club. Thereafter, the appellant went and procured a lethal weapon (knife) and inflicted as many as 8 injuries on the deceased, to which he succumbed.

4. The above description of the occurrence shows that the appellant might have had a right of private defence of his property to start with but the procurement of lethal weapon and the number of injuries inflicted by him would show that he has crossed all the frontiers of the right of private defence. We, therefore, alter the conviction to Section 304 Part I of the Indian Penal Code. We sentence him to undergo rigorous imprisonment for a period of 8 years (considering the number of injuries inflicted by him).'

12. Now, reverting to the present case deceased Harishanker and appellant Brijmohan were real brothers. The unfortunate incident of assault on deceased Harishanker appears to have taken place over a petty matter relating to cutting of the bushes on the 'medh' between their fields. The prosecution case at the initial stage as contained in the case diary statement (Ex. D-1) of solitary eye-witness Ramvilas (P.W. 2) was that during the course of altercation between the two brothers deceased Harishanker snatched an axe from one Chhagan Chamar and then rushed to the field of the appellant jumping over the 'bagad' and grappled with him. In the above fact situation, it was quite natural on the part of the appellant to have apprehended receiving of grievous injuries at the hands of his elder brother deceased Harishanker, who had come to his field in an aggressive mood armed with an axe. Thus, we have no manner of doubt that appellant Brijmohan was entitled to right of self-defence and he caused injuries on his elder brother Harishanker in exercise of his right of self-defence. It is a different matter that while dealing repeated blows, he might have exceeded his right of self-defence.

13. That apart, deceased Harishanker sustained injuries at the hands of his younger brother appellant Brijmohan in a sudden quarrel between them. The incident of assault on deceased Harishanker was not a pre-meditated one. The deceased too was armed with an axe at the time of the incident.

14. Thus, seen from any angle we find it difficult to hold with certainty that appellant Brijmohan while causing injuries on his elder brother Harishanker had intended to cause his death. The appellant's act of causing injuries on his elder brother Harishanker resulting in his death, therefore, would not amount to the offence of 'murder' punishable under Section 302, IPC. Nevertheless, the appellant cannot escape from the liability of his above proved act of causing injuries on his elder brother Harishanker, resulting in his death altogether. In our considered view, the above proved act of appellant Brijmohan 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.

15. As for the sentence, the learned Counsel for the appellant submitted that appellant Brijmohan was arrested in the case on 5-1-90, and after having remained in jail for a period of about 7 years was released on probation on 4-12-97.

16. On considering the relationship between appellant Brijmohan and deceased Harishanker; the background and the immediate cause of the incident; the fact that deceased Harishanker was also armed with an axe; and, had come to the field of the appellant and had grappled with him, we are of the view that the sentence already undergone by the appellant (about seven years) would be the sufficient punishment for the offence now found proved against him under Section 304, (I) IPC and would meet the ends of justice.

17. For the foregoing reasons, the appeal filed by appellant Brijmohan against his conviction and sentence is allowed in part. Appellant's conviction under Section 302, IPC and sentence of imprisonment for life are hereby set aside. Instead, the appellant is convicted under Section 304, (I) IPC and is sentenced to the period already undergone by him (about seven years).