

Veer Singh and ors. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-10-2007

Reported in : 2008(1)MPHT334

Judge : A.K. Mishra and ;S.A. Naqvi, JJ.

Appellant : Veer Singh and ors.

Respondent : State of M.P.

Judgement :

S.A. Naqvi, J.

1. Appellants have preferred this appeal being aggrieved by impugned judgment dated 16-5-1997 passed by Additional Sessions Judge, Khurai, District Sagar in Session Trial No. 45/97, whereby appellant Veer Singh has been convicted under Sections 148, 302/149, IPC and sentenced to undergo one year R.I. and fine of Rs. 500/- in default R.I. for two months' and life imprisonment with fine of Rs. 1,000/- respectively, rest of the appellants were convicted under Sections 147 and 302/149, IPC and sentenced to undergo one year R.I. each and fine of Rs. 500/- in default R.I. for two months and life imprisonment with fine of Rs. 1,000/- each in default six months' R.I.

2. Accused Makhan has been acquitted of charges under Sections 147, 148 and 302 read with Section 149, IPC. No appeal has been preferred by State against

his acquittal.

3. Prosecution case in short is that on 18-12-96 at 9.00 a.m. Harinarayan along with Sarman Yadav. took irrigation pump on the bank of river. He has to irrigate his Khoontawala Khet, Vishal and Chhotelal accompanied them. They were installing pump at the agricultural field. Appellant Veer Singh came and obstructed them to install pump, he told that field belongs to him. Harinarayan told Veer Singh that field belongs to him and he shall install pump in his field, they want to irrigate their crops. An altercation took place. Resultantly Harinarayan alongwith others accompanied him and came back to village. On the same day at about 1.00 p.m. Harinarayan, Vishal, Mamta Rani, Sarman Yadav and Pappu were going to lodge FIR of morning incident. Vishal was having a bicycle and he was ahead of others. They reached near Khezrahar Village Bamnoura, near Ramsahay's field at about 1:30 p.m. , appellant Veer Singh armed with an axe, accused Dhaniram, Somnath, Kunwar Singh, Makhan, Kundan, Kallu, Rattu and Bhoore armed with lathi met their. On seeing complainant party, appellant Veer singh exhorted other accused persons, that they are going to lodge FIR and asked to decide their fate. Veer Singh gave an axe blow to Vishal, which landed over his left leg, Vishal fell down. Thereafter, Veer Singh assaulted Vishal by blunt side of axe and other accused persons assaulted him by Lathi. Vishal shouted, then Harinarayan, Sarman Yadav and Pappu ran to rescue him. Accused appellant fled away from the spot. Vishal sustained various injuries on his back and other parts of the body. Vishal died on the spot. Harinarayan lodged FIR (Exh. P-1) in Police Station, Bandri. Investigation set motion. Spot map (Exh. P-3) was prepared. As per seizure memo (Exh. P-4) an axe was seized from Veer Singh, a lathi was seized from Bhoore as per Exh. P-5, a lathi was seized from Kallu as per Exh. P-6, a lathi was seized from Dhaniram Exh. P-7, a lathi was seized from Makhan as per Exh. P-8, a lathi was seized from Makhan as per Exh. P-9, a lathi was seized from Rattu as per Exh. P-10 and a lathi was sized from Kundan as per Exh. P-11. Inquest memo of the dead body (Exh. P-13) has been prepared. The post-mortem of dead body of deceased Vishal was conducted by Dr. K.K. Jain (P.W. 4) he found following injuries on the person as per post-mortem report Exh. P-12:

(i) On right arm--a contusion 2' x 2'. 2' above the elbow, a contusion 1' x 1'-3' above the wrist. 1/2' x 1/6' on the wrist. Abrasion 1/4' x 1/4' on left arm. A swelling 3' x 2' - 4' above the elbow, a swelling 2' x 1' on the palm.

(ii) On right thigh--a contusion each 6' x 4' and an abrasion 1/4' x 1/4' on the anterior aspect, two abrasions 3' x 1/2' and 2' x 1/2' on the posterior aspect.

(iii) On the left thigh--three contusions each 4' x 1/2' in the middle obliquely placed, a contusion in the area of 4' x 6' on the posterior aspect.

(iv) On right leg--an abrasion 1' x 1', 3' below the knee.

(v) On the left leg--an abrasion 2' x 1', 4' below the knee, a incised wound 2' x 1' x 1/2' above the abrasion.

(vi) On the back of the chest--four abrasion each 1/2' x 1/4' on the right shoulder, an abrasion 1/2' x 1/4' on the left shoulder and three contusions each 6' x 1' longitudinally placed on the right side, a contusion in the area of 6' x 4' on the left side.

(vii) On the loin--an abrasion 6' x 4'.

Right fourth, fifth, sixth ribs were found fractured. On the left lobe of right lung a contusion measuring 2' x 1/2' was found. A contusion also found in the lower lobe of left lung measuring 1 x 1 inch. All the injuries were ante-mortem caused by hard and blunt object. Death of Vishal was caused due to shock, due to concussion of chest as a result of blows on the chest the death of Vishal was homicidal. Statements were recorded under Section 161, Cr. PC. After completion of investigation appellants were charge-sheeted the case was committed to Court of Session for trial.

4. Learned Trial Court framed charges under Sections 147, 148, 302 read with Section 149, IPC against all the accused. Appellants abjured the guilt and they pleaded innocence and false implication due to enmity. The defence of appellants is that they were busy in agricultural operation in the field. They were not involved in commission of offence.

5. Prosecution examined six witnesses. Defence did not examine any witnesses.
6. After hearing both the parties and perusing the evidence and material on record, learned Trial Court convicted appellant Veer Singh under Sections 148 and 302 read with Section 149, IPC and other appellants under Sections 147 and 302/149, IPC and sentence them as aforementioned.
7. Aggrieved by the impugned judgment appellants have preferred this appeal on the ground that learned Trial Court committed error and perversity in convicting and relying upon the evidence of prosecution witnesses. The conviction of appellants is bad, improper and incorrect. There is no eye-witnesses adduced by prosecution. All witnesses are chance witnesses. Learned Counsel for the appellants prayed to allow appeal and set aside the impugned judgment of conviction and sentences and acquit all of them from the charges levelled against them.
8. Learned Public Prosecutor supported impugned judgment and he prayed to dismiss the appeal.
9. We have heard both the parties perused the impugned judgment. Evidence and material on record.

At the outset learned Counsel for the appellants does not press the facts that the prosecution witnesses are truthful witnesses, the presence of eye-witness is established fact, appellants were armed with axe and lathis and assaulted Vishal. Vishal succumbed to the injuries. Learned Counsel for the appellants also does not challenge the fact that the death of Vishal is homicidal in nature. Consequently, we deem it proper not to appreciate the evidence of eye-witnesses, Harinarayan (P.W. 1), Pappu (P.W. 2) and Sarman Yadav in detail in this respect. On going through the evidence of these witnesses and evidence of Dr. K.K. Jain (P.W. 4) and Ashok Pandey (P.W. 5), we are of the firm view that these witnesses are truthful witnesses and their evidence is reliable and prosecution has proved beyond doubt that appellant Veer Singh assaulted on Vishal by blunt side of axe and rest of the appellants assaulted on the person of Vishal by lathis and caused injuries on the person of Vishal as enumerated in post-mortem report (Exh. P-12).

Evidence of these witnesses has not been controverted by learned Counsel for the appellants during the course of argument.

10. Relying on Shankar Singh v. State of M.R. 1997 Part I MPWN 140, Subran @ Subramanian and Ors. v. State of Kerala : 1993 CriLJ1387 , Ranjha and Anr. v. State of Punjab : 1996 CriLJ3991 , Sarwan Singh and Ors. v. State of Punjab : 1978 CriLJ1598 , Anwarun Nisha Khatoon v. State of Bihar and Ors. : (2002)IIILLJ844SC , GangadharBehera and Ors. v. State of Orissa : 2003 CriLJ41 , Laxmi Singh and Ors. v. State of Bihar : 1976 CriLJ1736 , Jayraj v. The State of Tamil Nadu : 1976 CriLJ1186 , Chuttan and Ors. v. State of M.P. : 1994 CriLJ2097 , Virsa Singh v. State of Punjab : 1958 CriLJ818 , Sita Ram and Ors. v. State of U.P. : AIR 1993 SC350 , Ramesh Kumar v. State of Bihar and Ors. : 1993 CriLJ3137 , Karam Singh v. State of Punjab, 1993 Cri. LJ 3673, Thangaiya v. State of Tamil Nadu AIR 2005 SC 1142 and Prakash Singh Badal and Anr. v. State of Punjab : AIR 2007 SC1274 , vehemently argued that injuries on the person of Vishal are non-vital part, injuries are not sufficient to cause death in ordinary course of nature. The common object of unlawful assembly was only to belabour him. Appellant Veer Singh used axe from blunt side, no essential ingredient under Section 300, IPC is proved. The intention of appellant was not to cause death of Vishal. Consequently, the case of appellants falls under Section 304, part I of IPC or at the most Section 304 Part I, IPC and does not fall under Section 302, IPC read with Section 149, IPC. Learned Counsel for the appellants also contended that in connection with common unlawful assembly expression 'in prosecution of common object' have to be strictly construed as equivalent 'in order to attain the common object'. Word 'knew' used in second branch of Section 149, IPC implies something more than possibility and it cannot bear sense of 'might have known'. Offence committed in prosecution of common object, would generally be the offence, which members of unlawful assembly knew was likely to be committed in prosecution of common object.

11. He has also contended that all murders are culpable homicide but not vice versa. He also contended that the ingredient under Section 300, IPC are fulfilled then only an act shall be murder and thereafter exception to Section 300, IPC comes to play. If ingredient of Section 300, IPC are not fulfilled then the act of

accused persons cannot be termed as murder and it may be culpable homicide under Section 299, IPC. Ultimately, the arguments of learned Counsel for the appellants are that the case at of appellants falls under Section 304, Part II, IPC are at the most under Section 304, IPC. Learned Trial Court committed error in convicting appellants under Section 302, read with Section 149, IPC. Contrary to that learned Public Prosecutor relying upon Prabhu and Ors. v. State of M.P. : 1991 CriLJ1373 , Ambaram v. State of M.P. : 2007 CriLJ2743 , Sheikh Rafi v. State of Andhra Pradesh and Anr. : 2007 CriLJ2746 , State of Punjab v. Sanjiv Kumar @ Sanju and Ors. : 2007 CriLJ3519 and Subhash Shamrao Pachunde v. State of Maharashtra, 2006 SAR (Criminal) 114, argued that appellants committed offence under Section 302/149, IPC and learned Trial Court rightly convicted them for murder of Vishal and they cannot be convicted under Section 304 Part I, IPC or under Section 304 Part II, IPC because every members of unlawful assembly was having intention or knowledge to commit murder of Vishal. We have gone through the citations put forth by the parties and arguments advanced by learned Counsel for the parties and material on record. We have also minutely gone through the principle laid down by the Apex Court in aforementioned citations.

12. It is clear from the evidence of prosecution witnesses that at about 9.00 a.m. some altercation took place between Veer Singh and complainant party. In the noon Harinarayan, Vishal (deceased) and Ors. were going to lodge FIR of the incident. On the way to Police Station, appellants intercepted them and gave axe and lathi blows on the person of Vishal. Appellant Veer Singh was armed with axe but he gave axe blow from the blunt side of the axe on the backside of the chest of deceased Vishal, and rest of the appellants gave lathi blows on the non-vital parts of the body of deceased Vishal. It is pertinent to note that none of the appellants assaulted on the vital part of the body of deceased Vishal. Even appellant Veer Singh did not assault by sharp side of axe on the person of Vishal. If their intention would be to kill or murder Vishal then appellant Veer Singh shall have used sharp side of axe on the person of deceased, and rest of the appellants also should have assaulted on the vital part of the body of Vishal. At any stretch of imagination it cannot be gathered that appellant Veer Singh or other appellants were having intention to cause death and that if they will assault on the back of deceased Vishal, the ribs of Vishal would be fractured and penetrate in both lungs of Vishal

which shall be fatal to cause his death. Looking to the evidence, facts and circumstances of the case at the most it can be inferred that appellants were having knowledge that by their assault they can cause death of Vishal and consequently they assaulted on the person of Vishal and he died, where the accused causes bodily injury on the knowledge to commit death or with intention to cause such bodily injury as is likely to cause death. The provisions of Section 304, Part II, IPC comes into play when death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of accused person either to cause death or to cause such bodily injury as is likely to cause death. Intention or knowledge to cause the death is relevant. Under Clause Thirdly of Section 300, IPC sufficiency of injury to cause death in ordinary course of nature has to be determined objectively and is unrelated to intention of the offender. On going through evidence and injury caused on the person of deceased Vishal and on medical opinion that injuries caused on the person of Vishal were not sufficient to cause death in ordinary nature. The provisions of Section 300 and its exception from firstly to fourthly are not attracted in this case. Certainly the death of Vishal is culpable homicide is defined under Section 299 of IPC and since the intention and common object of appellant was not to murder or kill Vishal their object was to inflict injuries on the person of Vishal with the knowledge that injuries which would be caused by them, may cause death of Vishal. We are of the firm view that offence committed by appellants is not under the purview of Section 302/149, IPC but it falls under Section 304 Part II, IPC. We are the view that learned Trial Court committed error in convicting appellants under Section 302/149, IPC. Consequently, we set aside conviction of appellant under Section 302, IPC read with Section 149, IPC and convict all the appellants under Section 302, IPC read with Section 149, IPC. The conviction of appellant Veer Singh under Section 148, IPC and all other appellants under Section 147, IPC is affirmed.

13. As per above discussion, appeal has some merit. Appeal is partly allowed. All the appellants are convicted under Section 304, Part II read with Section 149, IPC instead under Section 302, IPC read with Section 149, IPC. Appellants are sentenced to undergo 10 years' R.I. and fine of Rs. 2000/- each and in default they will undergo six months' R.I. The sentence awarded under Section 148, IPC to appellant Veer Singh and under Section 147, IPC to all other appellants is hereby

affirmed. Appellant Veer Singh is in jail and rest of the appellants is on bail. They should surrender forthwith before the Trial Court to undergo remaining part of jail sentence, if they will not surrender, learned Trial Court is directed to issue non-bailable warrants against appellant Nos. 2 to 8 and send them to jail to undergo remaining part of jail sentence. If some of the appellants is released on probation, learned Trial Court is directed to proceed against him according to law.

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