

Mohd. Idresh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-19-2004

Reported in : 2004CriLJ1724; RLW2004(2)Raj1300; 2004(2)WLC375

Judge : Shiv Kumar Sharma and; F.C. Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Jail Appeal No. 267 of 1999

Appellant : Mohd. Idresh

Respondent : State of Rajasthan

Advocate for Def. : Rizwan Ali, Public Prosecutor

Advocate for Pet/Ap. : N.L. Gupta, Adv. and; R.L. Agarwal, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. Instant appeal has been filed by appellant Mohd. Idresh questioning the correctness of the judgment dated February 4, 1999 of learned Additional Sessions Judge. No. 1, Kota in Sessions Case No. 75/96 whereby the appellant was convicted under Section 302 IPC and sentenced to undergo imprisonment for

life and fine of Rs. 2,000/-, in default to further suffer one year's simple imprisonment.

2. In brief the prosecution case is that on receiving telephonic message that at 'Bhattji Ghat Patanpol' incident of inflicting knife occurred, Sawant Singh, SHO of Police Station Kaithunipol, Kota entered the said information in 'Roznamcha' and immediately rushed to M.B.S. Hospital where written report Ex.P5 was submitted to him with the averments that appellant inflicted injury with dagger on the left side of back of Iqbal (now deceased) as a result of which he fell down and also sustained injuries by fall. Motive behind the incident was that father of the appellant was tenant in the house of the deceased and on March 14, 1996 father of appellant was asked to vacate the house. Because of this appellant got enraged and committed the offence. On the basis of the said report, a case Under Section 307 IPC was registered and investigation commenced. During the pendency of investigation Iqbal died and the case was converted into Section 302 IPC. On completion of investigation, chargesheet was filed and in due course the case came up for trial before the learned Additional Sessions Judge No. 1, Kota. Charge for offence under Section 302 IPC was framed against the appellant who denied the charge and claimed trial. As many as 19 witnesses were examined by the prosecution in support of its case. In the explanation Under Section 313 Cr.P.C., the appellant claimed innocence. Four witnesses were examined in defence. The learned trial Judge on hearing the final submissions, convicted and sentenced the appellant as indicated here-in-above.

3. We have heard the submissions advanced before us and scanned the material on record.

4. Learned Amicus Curiae canvassed that as only one injury is attributed to the appellant, it may be inferred that the appellant had knowledge that the injury which he was going to inflict was likely to cause death. Element of intention in the act of appellant is missing as he did not repeat the injury, therefore, the case does not travel beyond Section 304 Part-II IPC. Reliance is placed on *Tersem Singh and Ors. v. State of Punjab* (1).

5. In order to appreciate the submissions, it will be appropriate at this juncture to consider the nature of injuries received by the deceased. As per post-mortem report Ex.P.24, the deceased sustained following injuries:-

EXTERNAL INJURIES

(1) Stab wound 3'x1'x Cavity deep on left lower and lateral aspect of backside chest.

(2) Abrasion 1/2'x1/2' on the forehead.

(3) Abrasion 2'x1' on right maxillary region.

(4) Abrasion 2'x1' on the right shoulder.

INTERNAL INJURIES

(1) Stab wound 3/4'x1/4'x1' an to lower lobe of left lever.

(2) Chopping of spleen upper part.

The cause of death was shock as a result of injuries to spleen and lever.

6. While dealing with a case of single injury, the Apex Court, in Jagrup Singh v. State of Haryana (2), observed that there is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304 Part-II of the Indian Penal Code.

7. In State of Karnataka v. Vedanayagam (3), it was indicated that it is fallacious to contend that wherever there is a single injury only a case of culpable homicide is made out irrespective of other circumstances.

8. Coming to the testimony of the prosecution witnesses in the case on hand, we find that Hamid Hussain (PW3) and Sheruddin (PW5) deposed that they had seen the appellant removing dagger out of the back of Iqbal mercilessly. Mohd. Shafi @ Rafiq Mohd. (PW6) in his deposition stated that appellant got penetrated the dagger just below the left side of the ribs of Iqbal and remove it forcibly. It is

established that the appellant inflicted only one injury by sharp weapon on the person of the deceased and the part of the body selected for causing injuries was left side of back just below the ribs. A glance on the post-mortem report indicates that there was a stab wound of 3'x1'x Cavity deep which caused injury on the liver and spleen.

9. Dr. Rakesh Sharma, PW17 who performed autopsy on the dead body of Iqbal, deposed that cause of death was haemorrhagic shock as a result of injuries to spleen and liver. Therefore, it can reasonably be inferred that such a solitary injury inflicted upon the deceased was sufficient to cause death in the ordinary course of nature. This circumstance would show that appellant intentionally inflicted the injury and the infliction of such injury would indicate such a state of mind of appellant that he aimed and inflicted the injury with a deadly weapon. In view of the nature of the injury, it would be perverse to conclude that appellant did not intend to inflict the injury that he did. When once the ingredient 'intention' is established then the offence would be murder as the intended injury was sufficient in the ordinary course of nature to cause death. In this view of the matter, the inevitable conclusion would be that appellant committed the offence of murder and not culpable homicide not amounting to murder.

10. We find ourselves unable to accept the contention of learned Amicus Curiae. The ratio as indicated in Tarsem Singh and Ors. v. State of Punjab (supra), is not applicable to the facts of the instant case. In that case the incident took place all of a sudden without there being any personal enmity with the deceased persons. But in the case on hand it is established from the testimony of Nanhe Khan, PW1 that appellant had motive to kill Iqbal. The infirmities shown by learned Amicus Curiae in the prosecution evidence, are minor in nature and they do not affect the truthfulness of the prosecution case.

11. For the reasons aforementioned, we do not find any merit in the appeal, it stands dismissed. The conviction and sentence awarded to the appellant by learned trial Judge are maintained.