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Court : Rajasthan

Decided On : Feb-02-2005

Reported in : RLW2005(2)Raj1285; 2005(2)WLC322

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; Indian Penal Code (IPC) - Sections 300, 302, 304, 307 and 324

Appeal No. : D.B. Criminal Appeal No. 258 of 2003

Appellant : Govind Singh

Respondent : State of Rajasthan

Advocate for Def. : Brahmanand Sandhu, Public Prosecutor

Advocate for Pet/Ap. : M.C. Taylor, Adv.

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. This appeal impugns the judgment dated January 25, 2003 rendered by learned Additional Sessions Judge No. 1 Deeg in Sessions Case No. 5/1999, whereby the appellant (herein after described as 'accused') was convicted and sentenced as

under:-

Under Section 302 IPC:

To suffer Imprisonment for life and fine in the sum of Rs. 10,000/-, in default to further suffer Simple Imprisonment for one year. Under Section 324 IPC:

To suffer simple imprisonment for six months and fine in the sum of Rs. 500/-, in default to further suffer simple imprisonment for one month. The substantive sentences were directed to run concurrently.

2. As per the prosecution story on September 8, 1998 the informant Lokendra Nath submitted a written report at Police Station Deeg stating therein that about 9.00 AM on the said day when his brother Dhanesh Chand asked his tenant Govind (accused) to pay me due rent, Govind became annoyed and inflicted knife blows on the chest and abdomen of Dhanesh. Injury with knife was also caused on the left hand of the informant by Govind. Dhanesh was immediately removed to hospital, where he was declared dead. Police Station Deeg registered a case Under Sections 302, 307 and 324 IPC and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No. 1, Deeg. Charges Under Sections 324 and 302 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 18 witnesses. In the explanation Under Section 313 Cr.P.C., the accused claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing the final submissions convicted and sentenced the accused as indicated herein above.

3. There was no dispute that the deceased met with homicidal death and this fact is amply established by the medical evidence on record. Dr. P.L. Das (Pw.14) who performed autopsy on the dead body found following ante mortem injuries (vide post mortem report (Ex.P-41):-

'(i) Stab wound-bright red smeared & clotted blood 3cm x 2cm x depth leading left thoracic cavity obliquely on anterior aspect of left chest 2cm above the nipple

(left), wound spindle shaped, margin smooth, clean cut well defined & inverted, outer angle sharp of margin of inner angle requisite abraded injury caused by sharp object.

On opening of chest cavity the intercostal muscle of 4th intercostal space cleanly cut.

On further dissection, thoracic cavity found full of blood, mediastinum found full of blood on mopping out of liquid blood from thoracic cavity. I found wound of entry on anterior aspect of pericardium on opening pericardium, pericardial sac. Found full of liquid blood. After mopping the blood of dissecting the pericardium I found wound of entry on anterior aspect of left ventricle of wound of exit on lateral wall of left ventricle size of wound of entry 2.5cm x 1/2 cm x depth leading to left ventricle of heart through & through connecting with the wound exit on lateral aspect of left ventricle.

Size of exit wound 1cm x 1/2cm margins of wound clean cut well defined & sharp angle.

Further dissection on heart all the chambers of heart is full of empty-removing the heart I saw a punctured wound with clean cut margins on inner aspect of lower lobe left pleura, pleural cavity containing liquid blood on dissecting the pleura of mopping out the liquid blood. There was wound of entry with clean cut margins angle sharp on inner surface of lower lobe of left lung. Injury caused by light sharp weapon instantaneously dangerous to life ante mortem in nature and sufficient to cause death in ordinary course of life.

(ii) Stab wound with bright red semiclotting blood with corresponding bearing cloth of size 3cm x 2cm x 3.5cm obliquely on rt. Side of anterior wall of abdomen 3cm away from umbilicus margin of wound smooth clean cut & well defined with inner angle sharp and outer angle ragged & abraded injury is simple caused by sharp weapon.

(iii) Abrasion with bright red clotted blood 1/2 cm x 1/2 cm x Rt. lumbar region of abdomen simple.

4. We have heard the submissions advanced at the Bar.

5. It is the evidence of informant Lokendra Nath (Pw.1) who is an injured eye witness, that when the deceased, from the chowk of the house, called the accused and demanded rent, there was Tutu- Main Main' and then the accused came out of his room and inflicted knife blows on the left side of chest and the abdomen of the deceased. When the informant attempted to intervene the accused made assault on him also with knife and caused injury on his left hand.

6. Learned counsel for the accused urged that the presence of Lokendra Nath at the time of incident was highly doubtful and no reliance could be placed on it. We were taken through the entire statement of Lokendra Nath. On weighing the testimony of Lokendra Nath closely we notice that even though he was subjected to lengthy cross examination yet his testimony could not be shattered. Dr. P.L. Das (Pw.14), who examined the injury of Lokendra Nath, deposed that Lokendra Nath vide injury report (Ex.P-3) received one incised wound measuring 3cm x 1cm x 2cm on left upper 1/3 of fore arm posteriorly below left elbow joint. Having considered the injury of Lokendra Nath and his unpolluted testimony we find him trustworthy and wholly reliable.

7. It is next submitted by the learned counsel that the evidence of Dr. P.L. Das ought to have been rejected outrightly since as per the post mortem report the duration of injuries of the deceased was more than six hours whereas at the trial Dr. P.L. Das deposed that the injuries could be inflicted within six hours. This argument appears to us as devoid on merit. Dr. P.L. Das was neither confronted with the post mortem report nor such question was asked in the cross examination,

8. After criticising the investigation from many angles learned counsel alternatively submitted that even if the prosecution case is believed in its entirety the accused could only be convicted for the offence Under Section 304 Part IIIPC. Since the accused did not intend to kill the deceased as the incident had taken place all of sudden on a petty quarrel regarding rent and the knife used was a kitchen knife. Reliance is placed on Sukh Dev Singh v. Delhi State, ((2003) 7 SCC 441 = RLW 2004(1) SC 17) Masumsha v. State of Maharashtra, (AIR 2000 SC 1876 = RLW

2000 (1) SC 173) Tarsem Singh v. State of Punjab (AIR 2002 SC 760) and Ram Gopal v. State of Rajasthan (RLR 2002(2) page 807).

9. We have considered the submissions and scanned the case law. The scope of clause Thirdly of Section 300 IPC had been considered in Virsa Singh v. State of Punjab, (1958 SCR 1495) and on analysing the said clause their Lordship of the Supreme Court explained it as under:-

'Firstly, it must establish, quite objectively, that a bodily injury is present,

Secondly, the nature of the injury must be proved; these are purely objective investigations,

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended,

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.'

Their Lordships further observed thus:-

'The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or it inflict an injury of a particular degree of

seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether intention is there or not is one of the fact and not of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.'

10. In the case on hand, as already noticed, the accused came out of his room with a knife and thrust two blows with knife on the left side of the chest and abdomen of the deceased. Even the informant, who made attempt to intervene, was not spared by the accused. The injury on the chest of the deceased was found sufficient to cause death in the ordinary course of nature. The contention of the learned counsel that the incident occurred on a spur of moment and the accused had no intention to cause a particular injury which was sufficient to cause death, is devoid of merit. On scanning the testimony of informant Lokendra Nath, we noticed that when the deceased demanded rent, the accused was inside his room and hot words were exchanged while the deceased was at the chowk and the accused was inside the room. Thereafter the accused came out of the room with knife and thrust it on the left side of the chest of the deceased. The part of the body selected for causing injury was the heart of the deceased. A glance at the post mortem report indicates that there was stab wound of the size 3cm x 2cm x depth leading to left thoracic cavity obliquely on anterior aspect of left chest 2cm above the nipple. There was a punctured wound with clean cut margins on inner aspect of lower lobe left pleura. The injury was instantaneously dangerous to life and sufficient to cause death in ordinary course of life. The circumstances would show that the accused intentionally inflicted injury and the infliction of such injury would indicate such a state of mind of the accused that he aimed and inflicted the injury with a deadly weapon. In view of the nature of the injury which was aimed at the heart of the deceased, it would be perverse to conclude that the accused did not have any intention to inflict the injury on the left side of chest of the deceased. 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 the

accused committed the offence of murder and not culpable homicide not amounting to murder. We find support from a decision of the Supreme Court rendered in *Abdul Waheed Khan v. State of A.P.* ((2002) 7 SCC 175). In this case their Lordships of Supreme Court relying upon a decision of *Virsa Singh v. State of Punjab* (supra), observed as under:-

'These observations of Vivian Bose, J. have become locus classicus. The test laid down by *Virsa Singh* case for the applicability of clause 'thirdly' is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e., (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz., that the injury found to be present was the injury that was intended to be inflicted.

Their Lordships then observed:

Thus according to the rule laid down in *Virsa Singh* case even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.'

11. The ratio indicated in the case relied upon by learned counsel for the accused is not applicable to the facts and circumstances of the instant case. In *Sukh Dev Singh v. Delhi State* (supra), the deceased (three-wheeler scooter driver) parked his vehicle opposite the gate of the office to which the accused objected and asked the deceased to take away the vehicle. The deceased ignored the objection which led to further altercations. The accused threatened the deceased that he would take the vehicle to the police station. Thereupon the deceased retorted that he would see as to what the accused do. On hearing this the accused boarded the scooter and asked the deceased to take the scooter to the police station at Adarsh Nagar. The deceased did not take the correct route and tried to proceed in a

wrong direction. The accused asked him to stop and again a scuffle took place, During the course of the scuffle, the accused took out his pistol and fired at the deceased. The bullet missed the target and instead hit the thigh of one bystander. The accused fired again and the bullet hit the deceased and he collapsed. The deceased was taken to hospital where he was declared to be dead. The defence of the accused was that besides the deceased there was another person and when he asked them to remove the vehicle for security reasons, the deceased and his companion picked up a quarrel with the accused and dragged him about 20 feet. Thereafter three or four drivers joined the deceased and his companion. They assaulted him and his shirt was torn. They snatched away his pistol and he grappled with them to recover his pistol. In this process the pistol went off. Their Lordships of Supreme Court under these circumstances observed that in the course of sudden quarrel the accused fired and the accused was convicted Under Section 304 Part II IPC.

12. In *Masumsha v. State of Maharashtra* (supra), the wife of the deceased Deubai (PW.4) admitted in the cross examination that scuffle took place between the accused and the deceased and the deceased fell on the ground. She further deposed that for considerable long time the scuffle went on and on some occasions the deceased was on the ground and on some other occasions the accused was on the ground. The accused and the deceased were overpowering each other. In these circumstances it was found that the accused had no intention to kill the deceased and after giving one blow other injuries had been caused due to scuffle. This fact was amply supported by the evidence of Medical Officer that the injuries other than the fatal injury could be caused due to scuffle. In these circumstances the accused was convicted Under Section 304 Part II IPC.

13. In *Tarsem Singh v. State of Punjab* (supra), the factual situation was that though the accused had carried sharp edged weapon, which could cause serious injuries, but from the injury report it was revealed that those weapons were never used for the purpose of causing such injuries which in knowledge of accused would cause death. Injuries were small in nature and were not deep enough so as to cause a knowledgeable death. It was further revealed that the attack was spontaneous without there being any personal or individual enmity with the

deceased. In these circumstances the accused was convicted Under Section 304 Part II IPC.

14. In *Ram Gopal v. State of Raj.* (supra), the incident took place at the spur of moment without any premeditation in sudden fight upon sudden quarrel over the issue of marking division line of their fields. There was no previous enmity between the accused and the deceased. Though there were two injuries inflicted on the head of the deceased but in the facts of the case it could not be said that the accused did take any undue advantage or acted in a cruel manner or unusual manner. In these circumstances the accused was found guilty Under Section 304 Part II IPC.

15. The prosecution in our considered opinion has established charge Under Sections 302 and 324 IPC against the accused beyond reasonable doubt and we see no infirmity in the findings arrived at by the learned trial Judge.

16. In the result the instant appeal being devoid of merit, stands dismissed.

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