

Gani Mohammad Vs. State of Rajasthan

Gani Mohammad Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/755628

Court : Rajasthan

Decided On : Mar-15-1969

Reported in : 1969WLN142

Judge : Tyagi and; Lodha, JJ.

Appeal No. : D.B. Criminal Appeal No. 527 of 1966

Appellant : Gani Mohammad

Respondent : State of Rajasthan

Judgement :

Lodha, J.

1. The appellant Gani Mohammad has been convicted by the Additional Sessions Judge. Gangapur under Section 302, Indian Penal Code for causing the murder of Abdul Rashid, and has been sentenced to rigorous imprisonment for life.

2. The prosecution case is that on 8.3.1965 while deceased Abdul Rashid was offering prayer in a mosque in Dungarpada, at about 5 p.m., the accused stabbed him with a knife in the right side of his abdomen. Abdul Rashid cried out in agony and ran away from the spot. He crossed over the roof and tin - shed of the shops attached to the mosque and jumped down in the Bazar. The accused, however, followed him and attempted to give a second blow to the deceased Abdul Rashid,

who was however reached by P.W. 4 Hiralal Nai. This incident was witnessed by P.W. 2 Hamid Beg, P.W. 3. Nathulal, P.W. 4 Hiralal, P.W. 6 Habib Beg, P.W. 7 Ramjilal and P.W. 5 Manoharlal. A first information report of the occurrence was immediately lodged at the Police Station, Toda Bhim, which is at a distance of about a furlong from the place of occurrence and the Station House Officer, Bahadur Singh (P.W. 16) came to the spot and made necessary investigation. The accused was found in his house and was arrested and a blood stained knife was recovered from the pocket of his trouser, which he was wearing at that time. The trousers had also blood stains and therefore the same was taken possession by the Police Since the deceased was in a serious condition, his dying declaration Ex. P. 1 was also recorded by the Station House Officer himself and the same has been placed on the record and marked Ex. P. 1. Some marks of blood were also found on the carpet spread out in the mosque where the people had offered 'Namaz' and consequently the Station House Officer took the cuttings of the portions of the blood stained carpet in his possession. The injured Abdul Rashid while he was being taken in a bus to Jaipur breathed his last on the way and his body was therefore taken back to Todabhim. P.W. 10. Dr. Kanhyalal performed the post-mortem examination of the dead body of Abdul Rashid on 9-3-1965. Thus after completing the investigation the police challaned the accused in the Court of Munsiff-Magistrate, Hindaun for offence under Section 302, Indian Penal Code and was in due course committed to the Court of Additional Sessions Judge, Gangapur to stand trial under Section 302 Indian Penal Code.

3. It is not necessary to consider the prosecution evidence in detail and all the circumstances brought forth on the record by the prosecution to establish the guilt against the accused as the learned Counsel for the appellant has conceded that there are no sufficient grounds made out for challenging the fact that the accused had caused an injury with a knife to the deceased Abdul Rashid. However, we have looked into the relevant portions of the record and are satisfied that the prosecution has established beyond reasonable doubt by overwhelming evidence that the incident did take place in the manner alleged by the prosecution and that the accused had caused an injury with a knife to the deceased Abdul Rashid. The only question canvassed before us on behalf of the appellant is that the trial court committed an error of law in convicting the accused under Section 302, Indian

Penal Code, and 3rding to the learned Counsel at best the case against the accused can fall under Section 304 Part II, Indian Penal Code.

4. In order to appreciate the contention raised on behalf of the appellant it would be, in the first instance, necessary to examine the nature of the injury inflicted by the accused on the deceased. According to the post mortem report Ex. P. 4 and the statement of P.W. 10 Dr. Kanhyalal the deceased had the following external injury:

Oblique incised wound 1 1/4' 1/2' and communicating with abdominal cavity present in the mid-axillary line at the tenth right rib.

5. On the internal examination of the body it was found that the tenth right rib was fractured in the mid axillary line and the peritoneum contained blood fluid. The right lobe of the liver was torn and the tear was oblique and was 1' 1/2' entire thickness of the lower border.

6. Apart from the above injuries found in the abdomen there was also a fracture of the upper part of the shaft of right fibulla which according to the doctor was caused by indirect violence.

7. So far as the fracture of fibula is concerned it is even admitted by the prosecution that this was caused when the deceased jumped down in the Bazar in order save himself from the further attack by the accused.

8. The doctor has stated that the cause of death was due to hameorrhage and shock resulting from the injuries and the incised wound including the fracture of the tenth rib and tear in the liver were due to the external injury in the abdomen. In his opinion this injury by a sharp weapon and was sufficient in the ordinary course of the nature to cause death. In the course of cross-examination the doctor has further stated that in his opinion the blade to the extent of 1' from the body point must have gone into the body of the deceased.

9. Learned Counsel for the appellant has placed strong reliance on Laxman Kalu v. State of Maharashtra : 1968 CriLJ1647 in support of his submission that the case is not covered by any of the Clauses of Section 300, Indian Penal Code. He

has urged that the accused did not intend to cause the death of Abdul Rashid and the injury which he intended to cause did not include specifically the tearing of the liver, and, therefore, it was also not a case of intention of causing such bodily injury as was likely to cause death or was sufficient in the ordinary course of nature to cause death. Besides the above quoted decision of their Lordships the learned Counsel has also teed reliance on *Harjinder Singh v. Delhi Administration* AIR 1968 S.C. 876, and *Emperor. v. Keamatali* AIR 1942 Cal. 426.

10. We have examined the authorities cited by the learned Counsel for the appellant and are of opinion that they are clearly distinguishable.

11. In *Laxman Kalu Nikalje's* case (*supra*) the facts were that the accused Laxman took out a knife and stabbed his brother-in-law Ramrao on the shoulder and ran away. The cause of this attack was that Laxman had insisted that his wife should accompany him by the train in the night but the parents of his wife did not consider it auspicious to send the girl at night and told Laxman that they could go in the morning. After some time Laxman and his wife's brother Ramrao had a few words and on that Laxman took out a knife and stabbed Ramrao on the shouloder and ran away. On facts their Lordships were pleased to hold that Laxman was-responsible for causing the injury to Ramrao. It was conceded by on behalf of the State before their Lordships that the case was not covered by the first and the second Clauses of Section 300, Indian Penal Code, in as much as the quarrel between Ramrao and Laxman was not as such as would have promoted Laxman to make a homicidal attack upon his brother-in-law, although the blow was given on the chest, it was not on a vital part of the chest. Therefore, the only question to which their Lordships addressed was, whether the offence can be said to be covered by the Clause third of Section 300 of the Indian Penal Code. In this connection it was observed that the Section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. It was further obsereved that this Clause is in two parts, the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one. The second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. Their Lordships held

that the first part was complied with because the injury which was intended to be caused was the one which was found on the person of Ramrao. But as regards, the second part it was held that looking at the matter objectively, the injury which Laxman intended to cause did not include specifically the cutting of the artery but to wound Ramrao in the neighbourhood of the calavicle. In this view of the matter that Lordships were pleased to alter the conviction of Laxman from Section 302 to 304, I.P.C. In our opinion, in the present case it cannot be said that the accused had no intention to make a homicidal attack upon the deceased Abdul Rashid. From the facts we have narrated above and to which no just exception can be taken the deceased was offering his prayers in a bent position and without there being any talk or exchange of words the accused suddenly appeared on the scene with a knife in his; hand and thrust it in the right side of the bely which not only fractured the tenth rib but also caused a tear of the liver. At this stage it would be also relevant to refer to the nature of the weapon which was used for inflicting this injury. We have been seen the knife with which the injury was caused and its blade is 5 1/4' long and about one inch wide. It is not an ordinary pen knife or a knife which is used for cutting vegetables but in our opinion it is a formidable and dangers weapon and it cannot be said that the injury which the accused intended to cause to Abdul Rashid did not include specifically the fracture of the rib and also injury to other vital organinx in the abdomen. Where a man stabs another in a vital part of the body such as the abdomen with such a dangerous weapon as we have in the present case, he must be held to have intended the cause the death of his victim and in the present case as stated above by the doctor the death ensued directly from the wound which resulted not only in the fracture of the tenth right rib but also tear of the liver. In such a case the person inflicting the wound be guilty of murder as the act of which the death is caused is done with the intention of causing the death.

12. In Harjinder Singh's case (supra) the injuries found on the person of the deceased were a stab wound 1' 1/4 ' on left thigh, and an abrasion 1' linear on back of left fore-arms middle. The weapon of offence was a pen-knife., and the evidence indicated that while the accused was trying to assault one Dalip Kumar, the deceased intervened, the appellants finding himself one against the two took out a knife and stabbed the deceased. In these circumstances their Lordships

came to the conclusion that it cannot be said with any definiteness that the appellant aimed the blow at the particular part of the thigh knowing that it would cut the artery. It was also observed that the appellant had not used the knife while he was engaged in the fight with Dalip Kumar but it was only when he felt that the deceased also came up against him that he whipped out the knife. In these circumstances their Lordships were pleased to hold that it cannot be said that it has been proved that it was the intention of the appellant to inflict this particular injury on this particular place, and, therefore, it was held that Clause (3) of Section 300, I.P.C. did not apply. In the present case as we have already stated above the accused dealt the blow with a big knife into the abdomen a vital and vulnerable part of the body, without there being any occasion for acting in that manner, and, therefore, the present case is altogether distinguishable from Harijinder Singh's case (*supra*).

13. Coming to the Calcutta case the learned Judge held that the incident of stabbing took place very suddenly and spontaneously. There was no previous meditation about the matter and neither the accused nor his associates went to the place, of occurrence armed in any way. The knife with which the injury was caused was a pocket knife which the accused used to carry with him in the ordinary course and there was an attack on the accused himself when he suddenly remembered that he had a knife with him and therefore he took it out and used it in the heat of the moment. In these circumstances it was found that there was a grave and sudden provocation on account of which the whole incident took place, and, therefore, the learned Judge was pleased to observe that it cannot be said that the accused had any of the intention or requisite knowledge necessary to support a charge of murder under Section 302 of the Indian Penal Code.

14. The present case is based on an altogether different set of facts and in our view none of the cases relied upon by the learned Counsel has application to the facts and circumstances of the present case. It appears that the accused came armed to the mosque with a knife and took the deceased unawares by attacking him while the latter was offering prayer in a bent position and stabbed him in the abdomen. We are definitely of the opinion that no other intention can be attributed to the accused in these circumstances except one of causing the death. We are

supported in this conclusion of ours by the fact that even after the deceased tried to run away from the mosque to save his life by jumping down from the roof of the shops, the accused chased him and wanted to inflict another blow but he could not do so on account of the intervention of the passer-by Hiralal. Nevertheless, this act on the part of the accused gives us an indication as to the state of his mind.

15. We are also of the opinion that in any case the accused intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The doctor, who has already mentioned in the earlier part of this judgment, has clearly stated that the injury was sufficient in the ordinary course of nature to cause death, and therefore the case is also covered by the Clause thirdly to Section 300, I.P.C. Looked at from any point of view there is no escape from the conclusion that the act of the accused clearly falls under Section 300, Indian Penal Code. Learned Counsel for the appellant, however, submitted that if efficient medical treatment had been given immediately, the deceased may have survived, and in support of this contention he has invited our attention to that part of the statement of Dr. Kanhyalal where he has stated that 'in the absence of efficient medical treatment the injury was sufficient in the ordinary course of nature to cause the death'.

16. The statement is not very happily worded probably that what the doctor meant was that even though the injury was sufficient in the ordinary course of nature to cause the death yet the victim could have survived if he had efficient medical treatment in time. In our opinion the submission of the learned Counsel is not correct. If the probability of death is very great the requirements of Clause third are satisfied and the fact that a particular individual may by the fortunate accident of his having secured specially skilled treatment, or being in possession of a particular strong constitution have survived an injury which would prove fatal to the majority of persons subjected to, it is not enough to prove that such an injury is not sufficient 'in the ordinary course of nature' to cause death. If a person knowingly causes injuries which are more likely to cause death than not in the ordinary way, his offence falls under either the second or third clause, of Section 300, Indian Penal Code, and, therefore, in our opinion this part of the statement of the doctor would not in any way lessen the gravity of the crime but as we have already stated

above, apart from the applicability of the third Clause of Section 300, I.P.C. the case of the accused falls under the main para of Section 300, I.P.C., as in our opinion the act by which the death was caused in the ordinary course was done with the intention of causing the death.

17. Our conclusion, therefore, is that the accused-appellant has rightly been convicted under Section 302, I.P.C. and no interference is called for with the conviction and sentence passed by the lower court. We, therefore, uphold the conviction and sentence and dismiss this appeal.

18. Learned Counsel prayed that this case must be certified as a fit one for appeal to the Supreme Court. In our view the decision of the case has turned on facts and the position of law which we have set out above is well settled and we, therefore, do not consider it a fit case for grant of leave to appeal to the Supreme Court. The prayer is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com