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Court : Rajasthan

Decided On : Sep-15-1979

Reported in : 1981CriLJ1474

Judge : M.L. Shrimal and; K.S. Sidhu, JJ.

Appellant : Bharat

Respondent : State of Rajasthan

Judgement :

M.L. Shrimal, J.

1. Kamal, Mukhtyar Singh (since deceased) and accused-appellant Bharat went to the Punjab for some business to eke out livelihood. As the earnings were not divided between the parties, the matter was referred to the Panchayat, on March 18, 1978. No settlement, however, could be arrived at by the Panchayat. At about 7 or 8 p. m. the accused and the deceased met on the way near the house of Kamal. Mukhtyar Singh asked the accused not to precipitate quarrel and make payment of the amount of his share. Without giving any answer the accused took out a knife and thrust it into the stomach of the deceased. Mukhtyar Singh was admitted as indoor patient in the General Hospital, Alwar. P. W. 8 Dr. Prahlad Swaroop Agarawal informed the police, vide Ex. P./13, of the admission of the deceased as an indoor-patient in the Hospital. P. W. 7 Indra Kumar, S. H. O. went to the Hospital and recorded the statement of Mukhtyar Singh in the presence of

P. W. 1 Dr. Subhash Sapra. The statement has been marked Ex. P/I. A formal F. I. R. was drawn by the police on the basis of Ex. P/1, which has been marked Ex. P/10. On 21-3-1973 Mukhtyar Singh succumbed to the injury. The case was accordingly registered under Section 302, I.P.C. In the course of investigation and after his arrest accused Bharat expressed his desire to get the weapon of the offence recovered. The information memo is Ex. P/8. In consequence of the information knife Article 1 was recovered and seized under memo Ex. P/9. Autopsy on the dead body was performed by Dr. Prahlad Swaroop. In the opinion of the doctor the cause of death was a stab-wound leading to haemorrhage, shock and gangrene of intestine.

2. The police after usual investigation submitted challan against the accused in the court of the Chief Judicial Magistrate, Alwar. Ultimately the accused was tried by the learned Sessions Judge, Alwar. The prosecution examined 8 witnesses in support of its case. Accused denied his complicity in the crime. He examined one witness, Smt, Gyan Mala (D. W. 1) in support of his case. Learned Sessions Judge, placing reliance on the dying declaration, Ex. P/I corroborated by the statement of P. W. 2 Hariya as also on the injury report and marks of injuries on the shirt of the deceased held the accused guilty of the offence punishable under Section 302, I.P.C. and sentenced him to life imprisonment and to pay a fine of Rs. 100/-. Hence this appeal.

3. learned Counsel appearing for the accused has vehemently urged that Ex. P/I was recorded by the Sub-Inspector who was interested in the result of the case and as such no reliance should be placed on the same and so also on the dying declaration.

4. No doubt in the case on hand the dying declaration was recorded by the S. H. O. It was however recorded in the Hospital in presence of Dr. Subhas Sapra. The statement of the deceased to the police is admissible as a dying declaration, Kishan Singh v. State. We find no reason for not acting upon the statement of the doctor, who has stated that the statement of the deceased was recorded in his presence, that the deceased was in a fit state of mind and condition to give the statement. He also stated that Mukhtyar Singh signed the statement in his

presence. From the certificate appended at the foot of the statement of Mukhtyar Singh and the statement of P. W. 7 Indra Kumar we do not have the slightest hesitation in holding that Mukhtyar Singh was in a position to make the statement, made by him. We do not also see any merit in the argument of the learned Counsel for the appellant that the statement of Mukhtyar Singh was not made in expectation of death and as such the dying declaration was not admissible. Apart from the fact that Section 32 of the Indian Evidence Act does not require a statement to be made in expectation of death, it is clear from the evidence that the condition of Mukhtyar was rather serious at the relevant time. The dying declaration contains necessary details, such as the name of the accused, the manner of the assault and the weapon of the offence used

5. Under the English Law it is essential to the admissibility of dying declaration that the declarant should have been in actual danger of death at the relevant time and that he should have had a full apprehension of his danger. Vide para 1389, Halsburys' Laws of England, Third edition, Vol. 10. But in India no such restrictions, appear in Section 32(1) of the Evidence Act.

6. Besides, the dying declaration there is the statement of eye-witness Hariya (P. W. 2), father of deceased, whose presence on the scene of the occurrence has been mentioned in the dying declaration. No doubt, there are some contradictions in the statement of Hariya and the dying declaration but these contradictions are of minor nature which generally appear in the statements of witnesses, who are not tutored. Mere fact that the prosecution witness is generally related to the deceased would not be a sufficient ground for discrediting his testimony; See : 1972 CriLJ645 , Bai-want Singh v. State. Hariya had seen the occurrence from some distance. It is quite possible that he might have not noted the details. But we find no reason to discard his testimony. This can be read as a corroborative piece of evidence in support of the dying declaration Ex. P/I, made by the deceased. The above evidence stands corroborated by medical evidence. We, therefore, hold the accused guilty of causing an injury by a knife to Mukhtyar Singh.

7. The learned Counsel for the appellant is correct in his submission that the accused neither intended to cause the death of Mukhtyar Singh nor such bodily

injury as he knew to be likely to cause his death. It is true that the bodily injury was caused by him at the time when the deceased demanded money from the accused. It must have led to some verbal altercation between the parties. The quarrel arose all of a sudden. It cannot be said with certainty that the appellant, aimed the blow at a particular part of the body on which it fell, knowing that it would cut the arteries of the stomach. Besides, there is evidence on record that gangrene had developed. It is, therefore, not possible to hold that it was the intention of the appellant to inflict this particular injury. The appellant dealt the fatal blow with a knife but prior to that there must have been exchange of abuses between the parties. It appears that the crime was committed without premeditation in sudden quarrel in the heat of passion and without the accused having taken undue advantage or acted in a cruel or unusual manner thus bringing the case within the exception 4 to Section 300, I. P, C. with the result that the offence committed was culpable homicide not amounting to murder. The appellant, therefore, could not have been convicted under Section 302, I.P.C.

8. It now remains to consider whether the offence which he committed falls within the first part or second part of Section 304, I.P.C. when the fatal injury was inflicted by the appellant in the stomach of the deceased by only one blow given in the manner alleged by the prosecution, it could as well be that the act by which death was caused was not done with the intention of causing death or of causing such bodily injury as is likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death.

9. We accordingly allow the appeal to the extent that the conviction of the appellant under Section 302 of the Indian Penal Code and the sentence of imprisonment for life and a fine of Rs. 100/- is set aside, but the appellant is convicted under Section 304 Part II of the Indian Penal Code and is sentenced to five years' rigorous imprisonment.