Manoj Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-20-2004

Reported in : RLW2004(3)Raj1845; 2004(2)WLC76

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

Acts : Indian Penal Code (IPC) - Sections 300 and 302

Appeal No. : D.B. Criminal Appeal No. 62 of 2001

Appellant : Manoj

Respondent : State of Rajasthan

Advocate for Def. : Rizwan Alvi, Public Prosecutor

Advocate for Pet/Ap. : A.K. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

F.C. Bansal, J.

1. Appellant Manoj was indicated by learned Session Judge, Ajmer in Sessions Case No. 64/98 for having committed murder of Sandeep Sinha. The appellant has been convicted under Section 302 IPC vide judgment dated January 6, 2001 and sentenced to suffer imprisonment for life and a fine of Rs. 2,000/- and in

default of payment of fine to further undergo rigorous imprisonment for three months. Against this judgment of conviction and sentence, the prevent action for filing the appeal has been resorted to by the appellant.

2. Briefly stated the prosecution case is that PW4 Jorawar Singh Rathore S/o Bheru Singh Rathore, R/o-House No. 342/2. Krishna Colony, Ganj, Ajmer submitted a written report Ex.P3 to SHO. P.S. Ganj, Ajmer at 8.20 p.m. on 9.1.98 with the averments that Sandeep Sinha S/o Kapil Dev is residing in his house as tenant. Today at 7.15 p.m. his neighbour Manoj S/o Bansilal Yadav came at his house and he called Sandeep out of the house. For some time hot words were exchanged between them. Suddenly Manoj lifted a scissor which was lying there and inflicted injury on the testicles of Sandeep. Thereafter he and other residents of his locality took Sandeep to the hospital. His condition is precarious. On the basis of this written report Ex.P3, formal FIR Ex.P5 was written and the SHO registered a case under Section 307 IPC and investigation commenced. Jorawar Singh was examined under Section 161 Cr.P.C. by the Investigating Officer. On the intervening night of 9th and 10th January, 1998 at 1.45 a.m. Sandeep succumbed to his injuries and thereafter the investigation proceeded further for the offence under Section 302 IPC. Post-mortem examination on the dead body of Sandeep was conducted by PW11 Dr. B.K. Mathur, Medical Jurist, J.L.N. Hospital, Ajmer at 1.30 p.m. on 10.1.98 and he prepared Post- mortem Report Ex.P17. The I.O. prepared 'Panchnama' of the dead body which is Ex.P1. On reaching at the spot he prepared Site Plan Ex.P4 and seized the blood stained 'Pillow' and one pair of 'Hawai Chappal' from the spot vide Seizure Memo Ex.P7. Blood was also seized from the place of occurrence vide Seizure Memo Ex.P8. Blood stained clothes of the deceased were seized vide Ex.P10. Statements of the witnesses were recorded under Section 161 Cr.P.C. The appellant was arrested and on his disclosure statement and at his instance, scissor was recovered from his house and the I.O. prepared Recovery Memo Ex.P15. On completion of investigation, the charge-sheet was laid in the Court of Additional Chief Judicial Magistrate No. 2, Ajmer, who committed the case to the Court of learned Sessions Judge, Ajmer.

3. Learned Sessions Judge framed charge under Section 302 IPC against the appellant who denied it and claimed to be tried.

4. To prove the aforesaid charge, the prosecution examined as many as 15 witnesses. In his statement recorded under Section 313 Cr.P.C., the appellant pleaded innocence and stated that he was falsely implicated in the case. No witness in defence was however examined.

5. Learned Sessions Judge on hearing the final submissions, convicted and - sentenced the appellant Manoj as indicated here-in- above.

6. We have heard learned counsel for the appellant, learned Public Prosecutor and with their assistance, carefully scanned and scrutinized the material on record.

7. It is not in dispute that deceased Sandeep met with the homicidal death. PW11 Dr. B.K. Mathur stated on oath that on January 10, 1998 he was posted as Medical Jurist, J.L.N. Hospital, Ajmer and on that day at 1.30 p.m. he conducted post- mortem examination on the dead body of Sandeep Kumar S/o Kapil Dev Sinha, aged 20 years, by caste-Kayastha, R/o-Krishna Colony, Ajmer and found the following injuries on his person:-

EXTERNAL INJURIES

(1) Stab wound 1.5cm. x 1cm. on inguinal region obliquely placed.

(2) Stab wound 1.5cm. x I cm. on left lower abdomen. 3cm. above injury No. 1 and 11cm. below umbilicus-vertically placed.

For both the injuries Dr. Mathur. stated that depth could not be known before dissection of the body.

INTERNAL INJURIES

Extensive hematoma seen in layer of abdominal wall. Peritoneum was cut. One litre of blood was found in abdominal cavity. Mesentery was cut in 1/2 x 1/2 cm. area and blood was also found in the same area. There was a cut of 3cm. x 1 cm size in urinary bladder on upper part of left side.

8. Dr. Mathur further stated that in his opinion the cause of death was shock and haemorrhage caused by injury to urinary bladder and mesentery. These injuries

were ante-mortem in nature and caused by sharp weapon. He prepared Post-mortem Report Ex.P17 which bears his signature.

9. Learned counsel for the appellant has not challenged the veracity of the statement of Dr. Mathur and in our opinion also, he is a reliable witness and his testimony proves that deceased Sandeep met with the homicidal death.

10. Learned counsel for the appellant contended that except PW2 Usha Singh, who is mother of the deceased, none of the alleged eye-witnesses has supported the prosecution and they were declared hostile by the prosecution. No reliance can be placed on the testimony of PW2 Usha Singh because she was not named in the FIR Ex.P5. Learned counsel further contended that as per the statement of Dr. B.K. Mathur (PW11), there were two stab wounds on the dead body of Sandeep whereas only one injury was caused by the appellant to the deceased as stated by PW2 Usha Singh. Apart from that, PW7 Ramlal stated that on hearing hue and cry when he came out of his house he saw Sandeep lying in front of the house of Jorawar Singh and blood was oozing from his thigh. PW7 Ramlal further stated that he did not see the assailant who had caused injury to Sandeep. Learned counsel for the appellant contended that PW7 Ramlal also stated in his cross-examination that mother of Sandeep had reached on the spot after he reached there and in view of such statement of Ramlal it stands proved that PW2 Usha Singh had not seen the appellant causing injury to her son and, therefore, she was not the eye-witness of the occurrence. It was canvassed by learned counsel that if the testimony of PW2 Usha Singh is excluded then there remains no evidence to connect the appellant with the alleged crime, therefore, the appeal be allowed. Learned Public Prosecutor supported the impugned judgment.

11. PW2 Usha Singh stated that on the date of the incident at 7.00-7.30 p.m. she was preparing food in the kitchen and her son Sandeep was in the room. Appellant Manoj who was residing as their neighbour came at her house and called Sandeep in the 'Verandah' of the house. After Some time she heard hot words between Manoj and Sandeep and thereafter she went to the 'Verandah' where Jorawar Singh, Dharmendra and Balmukund also came. Usha Singh further stated that Sandeep and Manoj were exchanging hot words regarding transaction of

money and after that appellant Manoj started abusing Sandeep. She assured Manoj that whatever amount is due against Sandeep that would be paid to him tomorrow on her husband's return. In the meanwhile Manoj inflicted injury with scissor on the left thigh of Sandeep which resulted in oozing of blood. Sandeep fell down on the floor of the 'Verandah' and became unconscious. She made attempt to stop the blood with pillow but it did not stop. Having caused injury to Sandeep, appellant Manoj fled away. Thereafter Sandeep was taken to hospital in a tempo by Balmukund, Dharmendra and Jorawar Singh. She sent Jorawar Singh to lodge report at the police station. In the night at 1.00-1.30 a.m. Sandeep died in the hospital.

12. In Bhagwan Singh v. State of Madhya Pradesh (1), it was held by the Apex Court that the statement made by witness at the trial cannot be discarded on the ground that his name was not mentioned in the FIR. Therefore, the testimony of PW2 Usha Singh cannot be discarded only on this ground that she was not named in the written report Ex.P3.

13. PW2 Usha Singh is the mother of the deceased. In State of Haryana v. Ram Singh (2), the Apex Court held that:-

'Admittedly all the supposed eyewitnesses are relations of the deceased. As such they fall within a category of interested witnesses. It is not that the evidence ought to be discredited by reason of the witness being simply an interested witness but in that event the Court will be rather strict in its scrutiny as to the acceptability of such an evidence.'

14. Keeping in view the aforesaid principle propounded by the Apex Court, we have scanned the testimony of PW2 Usha Singh. In our considered opinion, she had seen the appellant causing injury with scissor on the person of the deceased in the 'Verandah' of the house. The incident took place in the evening in the 'Verandah' of the house where PW2 Usha Singh was residing with her family as tenant. PW4 Jorawar Singh was the landlord of that house. At the time of the incident she was preparing food in the kitchen. In our view, on hearing hue and cry she came in the 'Verandah' and saw the appellant causing one injury to the deceased. Prior to it the appellant had already caused one injury on the person of

the deceased. The presence of Usha Singh on the spot at the time of the incident was natural and, therefore, in our opinion, she is a reliable witness. It is true that on post- mortem examination two injuries caused by sharp weapon on the person of the deceased were noticed by PW11 Dr. B.K. Mathur. The testimony of PW2 Usha Singh cannot be disbelieved as argued by learned counsel for the appellant, on the ground that as per her statement only one injury was caused by the appellant to the deceased. As stated above the appellant had already caused one injury before PW2 Usha Singh came out of the main gate of the house and reached in the 'Verandah'. Apart from that, the statement of PW2 Usha Singh stands corroborated by the testimony of PW3 Ashok Kumar Sharma. PW4 Jorawar Singh Rathore, PW5 Balmukund Sharma and PW7 Ramlal. Though they have been declared hostile by the prosecution but on this ground alone their testimony cannot be totally rejected.

15. In Balu Sonba Shinde v. State of Maharashtra (3), the Apex Court held that:-

'While it is true that declaration of a witness to be hostile does not ipso facto reject the evidence and it is now well settled that the portion of evidence being advantageous to the parties may be taken advantage of-but the court before whom such a reliance is placed shall have to be extremely cautious and circumspect in such acceptance. Reference in this context may be made to the decision of this Court in State of U.P. v. Ramesh Pradesh Misra {(1996) 10 SCC 360} wherein this Court stated: (SCC p. 363, para 7).'

'It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.'

16. PW3 Ashok Kumar Sharma stated that at the time of the alleged incident he was taking food in his house situated in front of the house of Jorawar Singh. On hearing hue and cry he went to the place of occurrence where he found Sandeep in injured condition. He further stated that mother of Sandeep was pouring water on Sandeep. Ashok Kumar also stated that mother of Sandeep told him that after having inflicted injury to Sandeep, Manoj had gone. He did not see appellant

Manoj. From this statement the presence of PW2 Usha Singh at the time of the incident stands proved and it is also established, that the appellant was the person who had caused injuries to the deceased.

17. PW5 Balmukund Sharma stated that he was also residing in the house of Jorawar Singh as tenant. When he came out of his house he found Sandeep lying injured and his mother was also present there. Thereafter he took Sandeep to the hospital. Same is the statement of PW7 Ramlal. Though in his cross-examination Ramlal stated that mother of Sandeep had arrived at the spot after he reached there but in examination-in-chief it was stated by him that when he reached on the spot, the mother of the deceased was already there and it was stated by her that after having caused injury with scissor. Manoj had fled away.

18. In our view, the statement which has been given in examination-in-chief by PW7 Ramlal is true. PW4 Jorawar Singh who, had lodged the written report Ex.P3 at police station Ganj, Ajmer has also turned hostile because after the incident Usha Singh lodged a report making allegations of theft against him and on completion of investigation, police also filed chargesheet against him. PW4 Jorawar Singh admitted in his deposition that Smt. Usha Sinha was residing with her family in his house as tenant on the date of the incident. He also admitted that on 9.1.98 at about 7.15-7.30 p.m. Sandeep and Manoj were talking together in the 'Verandah' of his house. He further admitted that on having been called by Sandeep he went out of his house and found Sandeep and Manoj abusing each other. He asked them to go to their home and thereafter he came back in the house. Jorawar Singh further stated that on hearing outcries of Sandeep he went to him and found him in injured condition. It was stated by him that in his presence injury was not caused by the appellant to the deceased. He admitted that written report Ex.P3 was lodged by him at the police station.

19. On close and careful scrutiny of the testimony of the aforesaid witnesses, we are of the considered view that PW2 Usha Singh gets corroboration from the version of the aforesaid witnesses. Their testimony also proves that the incident took place at about 7.30 p.m. on 9.1.98 in the 'Verandah' of the house of Jorawar Singh. Immediately before the incident, altercation took place between the

deceased and the appellant due to some dispute regarding business transaction and thereafter the appellant caused injury on the person of the deceased. Therefore, we come to the conclusion that the prosecution has succeeded in proving beyond reasonable shadow of doubt that the appellant had caused two injuries as mentioned in post-mortem report Ex.P17 with scissor on the person of the deceased Sandeep resulting in his death.

20. The appellant has been convicted under Section 302 IPC by the trial Court. Learned counsel for the appellant contended that prior to the alleged incident there was no enmity between the deceased and the appellant. The incident took place all of a sudden and as per the testimony of PW2 Usha Singh only one injury was caused by the appellant on the person of the deceased. It was also contended by learned counsel that PW11 Dr. B.K. Mathur who had conducted post-mortem examination on the dead body, did not state that the injuries found on the dead body were sufficient to cause death in the ordinary course of nature. Learned counsel further contended that the appellant had no intention to cause death of Sandeep or to cause such injury to him which was sufficient in the ordinary course of nature to cause death. It was also contended by learned counsel that if proper medical care were to be provided, the injured could have survived and, therefore, no offence under Section 302 IPC is made out against the appellant and at the most he can be held guilty for the offence under Section 304 Part 11 of the Indian Penal Code. Reliance has also been placed on the following decisions:-

(1) Masumsha Hasanasha Musaiman v. State of Maharashtra (4).

(2) Molu and Ors. v. State of Haryana (5).

21. We have given out thoughtful consideration to the aforesaid submissions. It is true that it was not stated by Dr. B.K. Mathur in his deposition that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. But PW12 Dr. R.K. Mathur, Medical Jurist, J.L.N. Hospital, Ajmer has opined that injury to the urinary bladder and mesentery was sufficient to cause death in the ordinary course of nature. We are not inclined to accept the contention of learned counsel for the appellant that the opinion of Dr. R.K. Mathur cannot be taken into consideration because of the reason that post-mortem

examination on the dead body of the deceased was not conducted by him. Dr. R.K. Mathur is a Medical Jurist posted at Govt. Hospital, Ajmer. He has vast experience of medico-legal cases and he has given his opinion after having perused the post-mortem report Ex.P17.

22. In State of Rajasthan v. Dhool Singh (6), the Apex Court has observed as under:-

'The High Court per contra came to the conclusion that the act of the respondent causing injury to the deceased which led to his death would not be one punishable under Section 302, I.P.C. but would be one falling under Section 304, Part II, I.P.C. hence modified the sentence as stated above. While coming to this conclusion the High Court held that the fact that the accused inflicted only one injury, suggests that his intention was not to cause death but it was merely to cause an injury with a sharp- edged weapon. It accepted the argument addressed on behalf of the respondent that Exception I to Section 300 would not apply to the facts of the case because the respondent did not act with an intention of causing death. For this purpose it relied on the fact that the respondent had inflicted only one blow on the deceased. It also came to the conclusion that the respondent could not even have the intention to cause such bodily injury which he knew to be likely to cause the death of the deceased. This finding of the High Court was purportedly based on the statement of the doctor who according to the High Court had not stated that the injury actually found on the neck of the deceased was sufficient in the ordinary course of nature to cause death. The High Court proceeded to come to the conclusion that in the absence of medical evidence to the above effect, it would be unsafe to hold that the injury actually found on the neck of the deceased was sufficient in the ordinary course of nature to cause death, hence it modified the conviction from Sections 302 to 304. Part II, I.P.C.

Having heard learned counsel for the parties and examined the records of the appeal we are unable to agree with the finding of the High Court both in law and on facts. The observations of the High Court that the doctor in this case has not spoken about the fact that the injury caused by the respondent would in the ordinary course be sufficient to cause death, is contrary to the actual evidence of

P.W. 10 the doctor which part of the evidence of the doctor we have extracted hereinbelow:-

'In my opinion, the cause of the death was due to the incised wound cut on the neck and the excess bleeding and the heart failure.'From the above, it is clear that the opinion of the doctor as to the cause of death was the incised cut wound on the neck which led to the excess bleeding and heart failure. This evidence has been improperly construed by the High Court as there being no opinion of the doctor in regard to the cause of death, therefore, as stated above, this finding of the High Court is contrary to the medical evidence.

In regard to the finding of the High Court that the prosecution has not even established that the respondent herein had acted with an intention of causing death of the deceased we must note that the same is based on the fact that the respondent had dealt a single blow which according to the High Court took the act of the respondent totally outside the scope of Exception I to Section 300, I.P.C. Here again we cannot agree with the finding of the High Court. The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft. in length on a vital part of body namely the neck. This act of the respondent though solitary in number had severed sternoclinoid muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edged weapon would cause death. Such an injury in our opinion not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing death of the victim. The reasoning of the High Court as to the intention and knowledge of the respondent in attacking and causing death of the victim, therefore, is wholly erroneous and cannot be sustained.

Mr. Kochar, learned senior counsel as amicus curiae however, supported the judgment of the High Court..... Learned counsel then pleaded that according to the evidence of the doctor the cause of death was not only due to the injury inflicted by the respondent but was the cumulative effect of bleeding and heart failure, therefore, it is not possible to come to the conclusion that a single injury caused by the respondent could be the cause of death of the victim. We are unable to accept this argument. The cause of death as explained by the doctor is primarily due to the injury caused by the respondent. Bleeding and the consequential heart failure are the effects of such injury, therefore, they cannot be treated as different causes of death. Learned counsel then submitted that according to the doctor, if proper medical care were to be provided, the injury could have survived? This, in our opinion, is a hypothetical answer given by the doctor and is not something which is applicable to the facts of this case. Even otherwise we are not in agreement with the views expressed by the doctor that with the injury like the one suffered by the victim, in the normal course he could have survived. Section 300 does not contemplate such a situation of miraculous survival. On the contrary, it contemplates an ordinary situation and that is why the Legislature had advisedly used the words: 'bodily injury as the offender knows to be likely to cause death.' Therefore, from an understanding of the legislative intent of Section 300, I.P.C., in our opinion, a culpable homicide becomes murder if the attacker causes an injury which he knows is likely to cause death and, of course, consequent to such injury, the victim should die. In the instant case, all these ingredients have been established by the prosecution beyond all reasonable doubt.'

23. The above decision of the Apex Court is fully applicable to the instant case. It is not a case of single injury but two injuries with sharp weapon were caused by the appellant on the person of the deceased. One stab wound was on left inguinal region and another stab wound was on lower part of the abdomen. On dissection of the body it was also found that there was extensive hematoma seen in layer of abdominal wall. Peritoneum was cut. One litre of blood was found in abdominal cavity. Mesentery was cut in 1/2 x 1/2 cm. area and blood was also found in the same area. There was a cut of 3cm. x 1cm. size in urinary bladder on upper part of left side. It was also stated by Dr. Mathur that both the injuries were ante-mortem

in nature and caused by sharp weapon. It was further stated by him that the cause of death was shock and haemorrhage caused by injury to urinary bladder and mesentery.

24. In view of repetition of blows, injuries caused by sharp weapon on the vital part of the body of the deceased and the aforesaid observations made by Hon'ble the Supreme Court, we are of the opinion that the appellant is guilty for the offence under Section 302 IPC.

25. The rulings cited by learned counsel do not help the appellant. In Masumsha Hasanasha Musalman v. State of Maharashtra (supra), only one serious injury was caused by the accused to the deceased and, therefore, in view of other facts of the case also, the Apex Court came to the conclusion that the accused-appellant cannot be held guilty for the offence under Section 302 IPC but he is liable under Section 304 Part II IPC. In Molu and Ors. v. State of Haryana (supra), injuries received by the deceased persons were caused by blunt weapon like lathis and were of minor character. Furthermore, the injuries were not on any vital parts of the body and injuries on the scalp were very superficial. In these circumstances, the Apex Court observed that the accused had committed an offence under Section 304 Part II IPC and not one under Section 302 IPC. But in the instant case, two serious injuries on the vital part of the body of the deceased were caused by the appellant with scissor. Therefore, both the decisions cited by learned counsel are of no help to the appellant.

26. From the above discussions, we come to the conclusion that the appellant has rightly been convicted and sentenced under Section 302 of the Indian Penal Code by the trial Court and, therefore, this appeal deserves to be rejected.

27. In the result, the appeal of the appellant Manoj is dismissed. The judgment of his conviction and sentence dated January 6, 2001 passed by learned Sessions Judge, Ajmer stands confirmed.