

Babu Singh Vs. State

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Court : Rajasthan

Decided On : Mar-01-1995

Reported in : 1995CriLJ2439

Judge : N.L. Tibrewal and; N.K. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 107, 302 and 304II

Appeal No. : D.B. Cr. Jail Appeal No. 218/88

Appellant : Babu Singh

Respondent : State

Advocate for Def. : C.R. Jakhar, P.P.

Advocate for Pet/Ap. : Bhagwati Prasad, Adv.

Judgement :

1. This appeal is directed against the judgment dated May 10, 1988 passed by the learned Additional Dist. and Sessions Judge, No. 1, Hanumangarh (Camp Sangaria) in sessions case No. 63/87 whereby the appellant Babu Singh was convicted Under Section 302 IPC and sentenced to imprisonment for life and to pay a fine of Rs. 250/-. In default of payment of fine he was awarded further one month imprisonment.

2. The facts of the case need not to be given in detail as the learned counsel appearing for the appellant has restricted his argument on the question of offence committed by the appellant. The argument of the learned counsel is that taking into consideration all the facts and circumstances of the case, the appellant can be held liable for the offence under Section 304 II, IPC and not under Section 302 IPC. To appreciate the above argument, the necessary facts of the case may be given.

3. The incident had taken place on March 5, 1987. As per the prosecution case, at about 10 p.m. on 5-3-87 deceased Makhan Singh had gone to see 'RAMLEELA' which was going on in his village Morjand Sikhan. His nephew Kashmir Singh (P.W.2) and his wife Smt. Jasveer Kaur had also gone with him. They apprehended something wrong from the appellant Babusingh as he was seen with a 'Gandhali' a sharp edged weapon and as such they left for their house. It is alleged that when the deceased Makhan Singh reached near the shop of Dr. Vijay Kumar, the appellant gave a blow from 'Gandhali' from the back side causing injury on his head. Makhan Singh fell down after getting the injury and thereafter three-four blows were further inflicted by the appellant. On raising a cry by Kashmir Singh (P. W.2), the appellant ran away in a nearby lane, Smt. Jasveer Kaur (P.W. 1), the wife of the deceased was also following. The injured Makhan Singh was shifted to Government Hospital and P.W.2 Kashmir Singh lodged a report at Police Station Sangaria. The report is Ex. 1 which came to be lodged at 7 a.m. on March 6, 1987. Initially the case was registered Under Section 107 IPC. The injured Makhan Singh was medically examined by the Doctor at 6.30 a.m. on March 6, 1987 and he found the following three injuries, vide Ex.P.11:-

1& dqpyk gqvk ?kko 5 ls-eh- xvk/kk ls-eh- x1@4 ls-eh- tks fd ysV iSjkbVy Hkkx ij Fkk A

2& tek gqvk [kwu yykbZ fy;sgq;s 5 ls-eh- x2 ls-eh- tks fd vanj Losiqyk Hkkx ij Fkk A

3& tek gqvk [kwu yykbZ fy;sgq;s 7 ls-eh x2 ls-eh- tks fd ck;h ihB ij ch eas Fkk A

However, the injured Makhan Singh succumbed to his injuries at 10.44 a.m. and the post-mortem was conducted by the same Doctor vide post-mortem report Ex.

P-12. Inquest report Ex.P-2 was also prepared by the S.H.O. and Site Plan Ex.P-3 of the place of incident was also prepared. After completion of the investigation a charge-sheet was filed against the appellant and ultimately he was prosecuted in the Court of Additional Dist. and Sessions Judge No. 1, Hanumangarh (Camp Sangaria) and was convicted and sentenced as aforesaid. During the trial, the prosecution examined nine witnesses. P.W. 1 Smt. Jasveer Kaur is the wife of the deceased. P.W.2 Kashmir Singh is the nephew, the eye-witness of the incident. P.W.8 Dr. Nathmal Duggar examined the injuries of Makhan Singh, vide Ex.P-11 and after his death he performed post mortem of the dead body, vide Ex.P-12.

4. As stated earlier, the only argument made by the learned counsel for the appellant is that under the facts and circumstances of the case, the offence does not travel beyond 304 II IPC. To substantiate, the learned counsel contended that there was no serious motive for commission of the offence and as per the prosecution case itself prior to the incident there was a petty altercation. The learned counsel further contended that the appellant had a sharp edged weapon but as per the statement of P.W.2 Kashmir Singh, he used the reverse side of the weapon and this fact itself shows that the appellant did not intend to commit the murder of Makhan Singh. The learned counsel also contended that there was only one injury on the parietal region and the remaining injuries sustained could be caused by fall on the ground after injury No. 1 was sustained by him.

5. On the other hand learned Public Prosecutor supported the conviction of the appellant for the offence Under Section 302 IPC.

6. After giving our careful consideration to the above submissions, we are of the opinion that the contention of the learned counsel for the appellant has merit. As stated earlier, there was no serious motive behind the incident and the incident is said to be offshoot of altercation which had taken place on a very petty matter. The appellant caused only one injury on the parietal region and that too from the reverse side of his sharp edged weapon. All these facts go to show that the appellant had no intention to commit murder of the deceased and he had also no intention to cause the particular injury on the head. It was a night time and the blow given by the appellant appears to have inflicted on the parietal region. We

are, therefore, of the confirm opinion that the appellant cannot be held liable Under Section 302 IPC for causing murder of the deceased Makhan Singh and he can be held liable Under Section 304 II IPC as he caused such bodily injury which was likely to cause death of Makhan Singh. Consequently, we allow this appeal in part. The conviction and sentence of the appellant for the offence under Section 302 IPC is set aside. He is convicted Under Section 304 -II IPC. The appellant is in jail since March 5,1987 and about 8 years are going to pass since his detention. In our opinion, the sentence of imprisonment already undergone by him shall meet the ends of justice.

7. The net result of the above discussion is that the appellant is convicted under Section 304 II IPC and sentenced to imprisonment for the period already undergone by him. He is in Central Jail, Bikaner. He shall be released forthwith, if not wanted in any other case.

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