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Munna Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-25-1984

Reported in : 1984WLN(UC)251

Judge : S.C. Agarwal, J.

Appeal No. : S.B. Cr. (Jail) Appeal No. 85 of 1984

Appellant : Munna

Respondent : State of Rajasthan

Judgement :

S.C. Agarwal, J.

1. This appeal has been filed from jail by appellant Munna againu The judgment dated 1st February, 1984 passed by the Addl Sessions Judge, No. 1, Kota in sessions case No. 27 of 1982 By the judgment aforesaid, the appellant has been convicted of the offence under Section 307. IPC and has been sentenced to rigorous imprisonment for a period of two years and to pay a fine of Rs. 100/- and in dt. fault of payment of fine to undergo rigorous imprisonment for a period of six months.

2. The case of the prosecution is that on 6th May, 1982 Jafar Mohd. PW 1 lodged a report at police station Makbara, Kota wherein it was stated that while he was

passing in front of the shop of Mashook Ali Panwala, the appellant Munna ran away after inflecting injury with unknown object as a result of which he sustained injuries on his right side. After completing the investigation, the police filed a charge-sheet against the appellant and the appellant was committed for trial to the court of sessions for the offence under Section 307 IPC. The appellant pleaded not guilty and claimed to be tried.

3. The prosecution in support of its case examined Jafar Mhod. PW 1, Mashook Ali PW 2, Abdul Rahim PW 6 as eye-witnesses of the occurrence. Mashook Ali and Abdul Rahim did not support the prosecution case. The case of the prosecution rests mainly on the testimony of Jafar Mohd PW. 1. Jafar Mohd has stated that immediately after sustaining the injuries, he had seen the appellant running away and that he was also seeing in the back while he was running. Jafar Mohd, has also stated that Sabir, brother of the appellant, has earlier assaulted him. In addition to the aforesaid evidence of Jafar Mohd there is evidence with regard to the recovery of the knife on the basis of information given by toe appellant from his house. The said recovery has been proved by Sadik Hussain PW. 5 and Siiri Narain PW. 7; the investigating officer. The injuries on the person of Jafar Mohd. have bee a proved by Dr. Y.K. Sharma PW. 6 who had examine the said injuries and has proved the injury report Ex. P.6 the operation note Ex. P.7 and the X-ray report Ex P.8. The aforesaid evidence shows that Jafar Modh. has sustained following injuries.

Stab wound 1/4' x 1/8' x cavity deep vertical on Rt. Illiac fossa.

The Addl. Sessions Judge has placed reliance on the testimony of Jafar Mohd and on the basis of the said evidence he has found that the appellant had inflicted injury upon the person of Jafar Mohd. The Addl. Sessions Judge has further found that the said injury had been inflicted with intention to cause death. The Addl. Sessions Judge, therefore, convicted the accused-appellant for the offence under Section 307 IPC and awarded sentence referred to above.

4. I have heard Shri Bhartiya, who has addressed the Court as amicus curiae, on behalf of the appellant and the learned Public Prosecutor for the State. I have also perused the evidence on record. In my opinion reliance can be placed on the

testimony of Jafar Mobd. PW 1 and on the basis of the said evidence which finds corroboration from the evidence of Sadik Hussain PW 5 and Shri Snivnarain PW 7 with regard to the recovery of the knife from the possession of the appellant on the basis of the information given by him, it is established that it was the appellant who had inflicted the injury found on the person or Jafar Mohd.

5. The question that next arises is with regard to the offence that can be said to have been committed by the accused-appellant. The submission of Shri Bhartiya was that in the facts and circumstances of the case, the only offence which can be said to have been committed was falling under Section 308 IPC and that the Addl. Sessions Judge has erred in convicting the eccused-appellant for the offence under sectian 307 IPC In this connection Shri Bhartiya has invited my attention to the statement of Dr. Y.K. Sharma PW 6 and has pointed out that Dr. Y.K, Sharma stated that the injury sustained by Jafar Mohd was sufficient to cause death,, but it has not been, Mated by Dr. Sharma that the said injury was sufficient in the ordinary course of nature to cause death.

6. I have perused the statement of Dr. Y.K. Sharma and I find that during the course of examination-in-chief he has stated that the injury found after operation could result in death. Dr. Sharma has not stated that injury that was found on the person of Jafar Mohd was sufficient in the ordinary course of nature to cause death. In the circumstances it cannot be said that if Jafar Mohd had died, the appellant would have been guilty of the offence under Section 302 IPC. In the facts and circumstances of the case offence that would have been made out against the appellant in case Jafar Mohd has died, would have been culpable homicide not amounting to murder punishable under Section 304 IPC in as much as the appellant could only be attributed with the intention to cause an injury which was likely to cause death. The conviction of the appellant for the offence under Section 307 IPC cannot, therefore, be sustained and he can only be held guilty for the offence punishable under Section 308 IPC.

7. On the question of sentence, it has been pointed out that the appellant was arrested on 12th June, 1912 and has remained in custody during the course of investigate i as well as trial. The appellant has thus undergone imprisonment for

nearly two years. In the facts and circum-stances of the case, I am of the opinion that the ends of justice would be served if the sentence of imprisonment already undergone by him is awarded to the appellant for the offence under Section 308 IPC.

8. In the result the appeal is allowed. The conviction and sentence for the offence under Section 307 IPC are set aside and instead he is convicted for the offence under Section 308 IPC and sentenced to the period of imprisonment already undergone by him. The appellant is in jail. He may be released forthwith.

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