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Court : Rajasthan

Decided On : May-03-1988

Reported in : 1988WLN(UC)168

Judge : Surendra Nath Bhargava and; Gopal Krishna Sharma, JJ.

Appeal No. : D.B. Cr. Appeal No. 234 of 1985

Appellant : Babu Lal

Respondent : State of Rajasthan

Judgement :

Surendra Nath Bhargava, J.

1. This is an appeal against the judgment of learned Sessions Judge, Sikar, convicting and sentencing the accused appellant as under:

under Section 302 IPC -- Imprisonment for life and a fine of Rs. 1000/-, in

default of payment of fine, further RI for 3 months;

under Section 450 IPC -- 5 years RI and a fine of Rs. 500/- in default of

payment of fine, 2 months RI.

2. Ram Lal PW 1 submitted a written report (Ex. P. 2) at about 9-15 a.m. on 17-3-1984, stating that when after the end of Holi, in the mornine at about 4 a.m. people were enjoying by playing 'Chang' and were drinking, there was some altercation between the complainant Ram Lal and Banshi. His brother Jassa Ram(deceased) rushed towards his 'Guawadi', who was followed by Babu Lal (appellant), Dhada Ram, Banshi Ram and Sumer s/o Suen a Meena. Banshi Ram and Sumer were empty handed, Dhada Ram was having a Lathi in his hand, and Babu Lal was having an 'axe'. Sumer and Dhada Ram scuffled with Jassarm. Babu Lal inflicted an axe blow on the neck of Jassaram, as a result of which, he fell down, and the accused ran away. This incident was seen by Badri Meena PW 4, wife of Jassa Ram and several other persons.

3. On the aforesaid report, police registered FIR (Ex P 2) After usual investigation, the police submitted challan against four persons viz., Babu Lal Dhada Ram, Banshi Ram and Sumer, who committed them to the court of Sessions Judge. The Sessions Judge, after trial, acquitted co-accused Dhada Ram and Sumer and convicted Banshi under Section 302 IPC and sentenced to imprisonment already undergone, which was nearly 3 months He has not filed appeal against his conviction, whereas Babu Lal (appellant) was convicted under Sections 302 and 450, IPC and sentenced as aforesaid

4. Prosecution has examined four eye witnesses PW 1 Ram Lal PW 4 Badri Meena PW 5 Anchi and PW 6 Murli. PW 6 Murli was declared hostile as he did not support the prosecution case. PW 1 Ram Lal is the brother of the deceased. PW 4 Badri Meena is cousin of the deceased and PW 5 Mst. Anchi is the wife of deceased. Prosecution also examined PW 3 Dr. P.K. Purohit, who conducted the post mortem of the deceased Post mortem report has been exhibited and marked as Ex. P 5.

5. Ram Lal PW 1 also received some injuries, all simple caused by blunt weapon, and his injury report is Ex. P. 6.

6. Appellant Babu Lal gave information under Section 27 of the Evidence Act (vide Ex.P13), in pursuance of which the axe was recovered (vide Ex P9) which was sent to the Forensic Science Laboratory. Report received from the Forensic

Science Laboratory is Ex. P. 21, mentioning therein that human blood was found, both on the Lathi and the axe and the blood group also matched with that of the deceased.

7. We have heard learned Counsel for the parties and have also perused the record and have also gone through the judgment of the trial court.

8. In our opinion, looking to the evidence on record, it cannot be disputed that deceased Jassa Ram died as a result of injury inflicted by accused Babulal and, therefore, the only point for our consideration is as to whether accused appellant Babulal should be convicted under Section 302 IPC or he is entitled to exceptions.

9. It may be noted here that accused Babulal was only 19 years of age when he was arrested, vide Ex.P 11. It is very pertinent that the incident happened on the Holi festival which is very auspicious day, and even according to the prosecution story, people were enjoying and playing 'Chang' and drinking wine. Altercation is alleged to have taken place between Ramlal and Banshi and deceased Jassa Ram had come there. It appears that there was some constant altercation and in the heat of passion accused Babulal inflicted the fatal blow on the neck of the deceased.

10. Learned Public Prosecutor took us to the post-mortem report which shows that the accused inflicted a very severe blow. No doubt that is true but we do not find any evidence with regard to motive as to why accused Babu Lal should have murdered Jassa Ram. It was all of a sudden and without any pre-meditation or motive or enmity, that, the incident happened It is a case of single injury to the deceased and the accused Babulal did not repeat the blow, either on the deceased or any-one else. Initially, altercation started with Banshi and Jassa Ram intervened, and received injury.

11. Learned Counsel for the appellant has placed reliance on the following authorities: Hardev Singh and Anr. v. The State of Punjab : 1975 CriLJ243 ; Jagat Singh v. State of Haryana : 1976 CriLJ2002 ; Tholan v. State of Tamil Nadu 1984 Cr.LJ 478; Kesar Singh v. State of Rajasthan 1981 Raj. Criminal Cases 20; Munshi and Ors. v. State of Rajasthan 1981 Cr.LR (Raj.) 503; Badri Lal v. The

State of Rajasthan 1981 Cr.LR (Raj.) 474; and Chamru Bhudwa v. State of M.P. : AIR 1954 SC652 .

12. We have gone through the aforesaid authorities. The Supreme Court in Tholan's case (supra), has referred to several earlier cases of the Supreme Court, while convicting the accused persons in that case under Section 304 Part-II, IPC, held that though requisite intention to commit murder could not be attributed to the accused, he wielded a weapon like a knife and, therefore, he could be attributed with knowledge that he was likely to 'cause death', and, therefore, he could not be convicted under Section 302, IPC. Their Lordships of the Supreme Court convicted the accused appellant in that case, under Section 304, Part-II, IPC In the present case also, we have mentioned above, the accused appellant inflicted a single blow in the incident, as a result of some altercation between accused appellant and Banshi. Deceased Jassa Ram was only an intervener and there was no pre-meditation or motive or enmity, and looking to the age of the petitioner at the time of the incident, we are of the opinion that the accused appellant should be convicted under Section 304, Part-II.

13. In the result, we allow this appeal in part, set aside the conviction and sentence under Section 302, IPC passed against the appellant Babulal, by the trial court, instead we hold him guilty under Section 304, Part-II, IPC. Appellant is thus, convicted under Section 304, Part-II, IPC and sentenced to 5 years RI and a fine of Rs. 500/-, in default of payment of fine, three months RI. His conviction under Section 450, IPC recorded by the trial court is maintained. Both the sentences shall run concurrently.

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