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Court : Rajasthan

Decided On : Apr-11-1986

Reported in : 1987WLN(UC)669

Judge : Guman Mal Lodha and ; Gopal Krishna Sharma, JJ.

Appeal No. : D.B. Cr. Appeal No. 312 of 1977

Appellant : Naseem

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

1. A convict, Naseem, has filed this appeal against the judgment of the Sessions Judge, Kota, where by he has been convicted and sentenced as under:

Under Section 302, IPC -- Life imprisonment with fine of Rs. 200/- in default,6 months RI;Under Section 447, IPC -- Fine Rs. 100/- in default 1 month's RI.

2. The facts giving rise to this appeal are that, on September 9, 1976 at about 9.47 p.m. Abdul Gani s/o Rahmatullah lodged a report at police station, Gumanpura alleging therein that at about 9.00 p.m. his son Abdul Rasheed came from his shop and was sitting on the roof of his house with his tenant. At that time, the ladies of both the houses were quarrelling with each other. Ibrahim asked

Rahamatullah to settle the account and make the payment. When Abdul Rashid told Ibrahim that the accounts cannot be settled like this, it is said that at that time, Naseem, Shafiq, Bhanwaria, Ghasi also came on the roof of their house. Naseem, Shafiq, Bhanwaria, caught hold of him and Naseem inflicted a knife blow in the abdomen of Abdul Rashid while Shafiq and Bhanwaria inflicted injuries by stones. Bhanwaria inflicted one blow by the leg of the cot on the head of Abdul Gani. It was also said that their relations with each other were strained due to the quarrel regarding their latrine.

3. Upon this report, a case against Naseem, Shafiq, Bhanwaria, Ghasi and Rahamatullah was registered under Section 307/147/148/149, IPC and Guru Bachan Singh ASI started the investigation. Abdul Rashid was admitted in the hospital, at about 1.45 a.m. Dr. M.M. Mishra recorded the dying declaration of Abdul Rasheed who expired at 6 a.m. on 10-9-76. After his death the case was registered under Section 302/147/148/149, IPC. The body of Abdul Rashid was sent for postmortem after preparing the Panchayat-nama of the dead body. The statements of the witnesses were recorded under Section 161, Cr.PC on 10-9-76 the accused persons Naseem, Shafiq and Bhanwaria were arrested and a knife was recovered at the instance of the appellant Naseem, on September 12, 1976.

4. After completion of the investigation the charge sheet was filed against the above named accused persons before the Additional Munsif and Judicial Magistrate No. 2 (South), Kota who committed the accused persons to the court of Sessions Judge, Kota.

5. The Sessions Judge, Kota after holding the trial convicted the appellant Naseem, as mentioned above. Shafiq & Bhanwaria were also convicted by the learned Sessions Judge under Sections 323 & 447, IPC for committing criminal trespass and for causing injuries to Abdul Rasheed and Abdul Gani. Both of them have not preferred the appeal as submitted by the learned counsel for the appellant in memo of appeal.

6. Shri S.R. Surana the learned counsel for the accused appellant argued that the prosecution evidence recorded during trial is diamatrically opposite from the case as set forth in the First Information Report.

7. The first information report according so him, states that the accused came on the scene of the occurrence & the accused-appellant inflicted the knife blow in the abdomen of the deceased and the other accused inflicted stone injuries. But, Abdul Gani (PW 1), the only witness believed by the lower court stated that the other accused persons first grappled with the deceased for 10-15 minutes and inflicted injuries by throwing stones and then the accused-appellant inflicted knife blow, Shri Surana argued that the above would show that Gani was not an eye witness but the trial court has ignored this important aspect of this case. The statement of Munni (PW 3) has also been assailed by Shri Surana on the ground that it was divergent and different from the version deposed by Abdul Gani.

8. It was then argued that Akhatar (PW 3) tried to become eye witness; but, in cross-examination admitted that he had not seen beating any body and he was residing at a distance of one mile.

9. Shri Surana argued that Bundu (PW 2) has already been declared hostile. Shri Surana also submited that the dying declaration recorded by Dr. M.M. Mishra should not have been believed as there is nothing to show that the mental condition of the deceased at the time of dying declaration recording was sound.

10. Shri Surana has taken us into the entire evidence oral as well as documentary.

11. The learned Public Prosecutor has vehemently opposed the appeal. According to him, it is a case of clear stabbing on vital part with deliberate intention of causing death of the deceased, Abdul Rasheed, and neither the plea of acquittal can be accepted nor the offence can be reduced from Section 302, IPC to Section 304 or Section 325, IPC as argued by Shri Surana.

12. We have given a very thoughtful consideration to the rival contentions of the learned counsel for the parties and have perused the relevant record.

13. We must at the very out set state that we are not at all impressed in respect of the submissions that Abdul Gani (PW 1) was not an eye witness, nor we feel that the statement of Abdul Gani (PW 1) can be discarded on account of the alleged divergent and the discrepancies between the genesis of the incident as given in

the First Information Report and as recorded in the statement of this witness.

14. In our opinion, the statement of Abdul Gani PW 1 inspires confidence. However, there is no doubt that Abdul Gani PW 1 has admitted that the previous enmity between the parties was settled before four months when petition took place among the brothers and everything was settled by metes and bounds and their sons had nothing to do about the partition. The above would show that there was no existing enmity between the parties. It has also been proved that the quarrels between the women folks a few hours before the incident had no proximate connection with the incident.

15. The evidence of Abdul Gani PW 1 is corroborated by the dying declaration Ex.P.2 also and there is no reason to disbelieve the dying declaration which has been proved to be true and voluntary and recorded when the deceased was having full consciousness even to give true statement.

16. There was some dispute when the money was demanded from Abdul Gani which he owed to Ibrahim. This led to a quarrel between them. The accused was present. The deceased and the accused are cousin brothers.

17. It was a quarrel between Abdul Gani and Ibrahim in which the accused was involved suddenly. In a sudden and unpremeditated fight, the accused inflicted injuries. It is also significant that the accused only inflicted one injury and did not repeat it. This would certainly bring it in case of culpable homicide not amounting to murder, under Section 304, Part-II, IPC.

18. In Tholan v. State of Tamil Nadu 1984 CAR 121, their Lordship of the Apex Court held that the offence falls under Section 304, IPC when only one blow on vital part was inflicted. Similar view was taken in the decision in Mohan Singh v. State of Rajasthan (1982 R. Cr. C 208), Jagdish v. State of Rajasthan (1979 WLN (UC) 307); Boriya Alias Jagmal Khan ve. State of Rajasthan (1983 RLW 646).

19. In Durga Shanker v. State of Rajasthan (1979 WLN (UC) 230), this Court observed that in a case where only one blow on left side of chest and injuries by knife are not of dangerous character the accused is guilty under Section 334, Part-

II if there is a sudden quarrel in heat of passion.

20. In Munna Sharma vs, State of Rajasthan 1983 RLW 253) where in incident took place without premeditation and accused inflicted injuries by scissor lying on the spot in sudden fight & heat of passion, this Court held that case falls under Section 304 Part-II, IPC.

21. In support of his contention that the dying declaration recorded by Dr. M.M. Mishra should not have been believed as there is nothing to show that the mental condition of the deceased was sound, Shri Surana relied upon the decisions in Darshan Singh v. State of Punjab (1983 Cr. L.J. 1385); Balak Ram v. State of UP (1974 Cr. L.J. 1486); and Ram Nath v. State of Madhya Pradesh : AIR 1953 SC420). In Darshan Singh v. State of Punjab (supra) it was observed as under:

When from the medical evidence on record it was found that the vital organs of the deceased like pettioneum, stomach and spleen were completely smashed, he could not be said to be in a fit state of mind and body to make any kind of cogent or credible statement relating to the circumstances which resulted in his death.

But it has got no application here in this case.

22. Shri Surana has prayed that the accused-appellant had remained in jail for one year and 11 months and, therefore, he must be released on the sentence undergone.

23. We are of the opinion that the present one is not a case of the nature where the accused appeallant can be released on the sentence already undergone. A precious life has been taken by the accused by striking a knife blow. We feel that in such matters it would be misplaced leniency if the accused is released on the sentence already undergone;

24. We, therefore, convert the conviction of the accused from Section 302, IPC to Section 304, Part-II, IPC and sentence him to undergo five years' rigorous imprisonment, with fine of Rs. 200/- in default six months RI and to the above extent the impugned judgment is modified.

25. The accused-appellant's conviction & sentence under Section 302 IPC are set aside. The accused appellant is on bail. He shall surrender forthwith to his bail bounds. The trial court is directed to take steps to get the accused-appellant arrested and send him to jail, after forfeiture of the bail bonds, to serve out the sentence passed by this court under Section 304, Part-II IPC as mentioned above, and that one upheld by this court under Section 447 IPC.

26. This appeal is allowed to the extent above only.

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