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Court : Rajasthan

Decided On : Jul-13-1989

Reported in : 1989(2)WLN212

Judge : S.S. Byas and; Farooq Hasan, JJ.

Appeal No. : D.B. Cr. Appeal No. 243 of 1987

Appellant : Gokul

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. A.K. Gupta

Judgement :

S.S. Byas, J.

1. By his judgment dated May 11, 1987, learned Additional Sessions Judge, Kishangarh-Bas (District Alwar) convicted the accused Gokul under Sections 302, 323 & 454, IPC and sentenced to him to various terms of imprisonment including that of imprisonment for life.

2. The prosecution case is short and simple and may briefly be stated. PW 1 Smt. Mangej is the widow and PW 8 Singha Ram is son of the deceased victim Chiranjilal. They all resided in village Tattarpur, P.S. Kherthal, District Alwar. Accused Gokul is also a resident of the same village At about 1.00 p.m. on 9-3

1986. PW 8 Singha Ram and his mother PW 1 Mst. Mangej washing their clothes at the public well of the village. PW 8 Singha Ram was applying soap to the clothes. Accused Gokul came there and asked Singha Ram not to wash the clothes there. Singha Ram replied that he (accused) had also washed the clothes and that he was only applying soap to the clothes. This liked asked the accused & he threw away the clothes of Singha Ram and started abusing him. The deceased Chiranjilal at that time also came there and he asked the accused as to why he was picking up quarrel with his son Singha Ram. The accused started abusing Chiranjilal and struck a blow of shoe on his head, The accused thereafter went to his house. PW 8 Singha Ram, his mother PW 1 Mst. Mangej and his father Chiranjilal came to their house. The houses of the accused and PW 8 Singha Ram are situate adjacent to each other as shown in the site plan Ex P-3. Only a wall nearly 4 feet in height separates these two houses. After 5 or 6 minutes, the accused scaled over the wall and came in the court yard of Singha Ram's house with a 'Lathi' in his hand. The accused struck a blow of this Lathi on the head of Chiranjilal. Chiranjilal fell down with profuse bleeding from his head injury. The clothes he was wearing got drenched with it. When PW 8 Singha Ram and his mother Mst. Mangej PW1 tried to intervene they too were not spared. The accused struck blows to them also with his Lathi. Chiranjilal succumbed to the injury then and there. PW8 Singha Ram went to the Police Station Kherthal and presented written report Ex. P-14 of the incident at about 4.20 p.m. on the same day. The police registered a case and proceeded with the investigation. The Station House Officer Banshidhar PW 10 arrived on the spot inspected the site and prepared the site plan and the inquest report of the victims dead body. He seized the blood stained soil from the place of incident. The post mortem examination of the victim's dead body was conducted on the same day by PW 6 Dr. Dinesh Jain, the then Medical Officer Incharge, Govt. Dispensary, Kherthal. The doctor noticed two injuries on the victim's head. The left eye of the deceased was found protruded out along with upper lid. In opinion of Dr. Jain, the death of the victim had occurred due to head injury No. 1. The injuries were stated to be ante mortem. Dr. Jain prepared the post mortem examination report Ex P-8 The accused was arrested on 16-3-86 and a Lathi was recovered in consequence of the information furnished by him. After the investigation was over, the police presented a challan against the

accused in court of Munsif and Judicial Magistrate, Kishangarh-Bas, who committed the case for trial to the court of sessions. came for trial before the learned Additional Sessions Judge who framed charges under Sections 302, 323 and 454, IPC. The accused pleaded not guilty with a fine of Rs. 1000/-, in default of the payment of fine to further undergo six months' rigorous imprisonment for the offence under Sections 302, IPC in addition to the other terms of imprisonment and fine awarded to him for the offences under Sections 323 and 454 IPC. Aggrieved against his conviction, the accused has taken this appeal.

3. We have heard Mr. A.K. Gupta, learned Counsel for the appellant and the learned Public Prosecutor Mr. O.P. Sharma. We have also gone through the case file carefully.

4. In order to prove the incident and that the accused had caused the death of Chiranjilal, the prosecution examined two eye witnesses viz. Smt. Mangei PW 1 and Singha Ram PW 8. One of them is the widow and other is son of the deceased victim. Keeping in view, the evidence of these two ocular witnesses, Mr. Gupta did not challenge the finding of these court that the accused had struck blow to the deceased victim Chiranjilal and below that when PW1 Mangei and PW 8 Singha Ram had tried to intervene and rescue Chiranjilal, they were also struck blows with a Lathi by the accused.

5. The contention raised by Mr. Gupta is a short one and to the nature of offence. It was argued that the houses of the accused and the deceased Chiranjilal were situated side by side adjacent to each other as shown in the site plan Ex.P 3. Only a wall 4 feet in height separated these two houses. The accused and the deceased were living amicably with no quarrel between them. The relations between them were sweet. The incident took place on a trivial matter of washing the clothes. The accused had no motive to kill Chiranjilal. All that took place was at spur of the moment. The blow on the head was inflicted by the accused without any premeditation. According to the two eye witnesses, the accused struck only one blow to the deceased victim on his head. No doubt the head injuries were stated to be sufficient in the ordinary course of nature to cause death by Dr. Jain PW6. Both the witnesses have suppressed as to why the accused entered the

house of Chiranjilal after when he had retired to his house . The probability is that Chiranjilal abused the accused after he went to his house and the accused could no, bear those abuses. He thus became hot headed and landed a blow with the Lathi on the victim's head. Keeping these facts and circumstances in view, the offence made out does not travel beyond Section 304, Part-II, IPC. It was argued that the accused was wrongly convicted under Section 302, IPC.

6. It was on the other hand contended by the learned Public Prosecutor that one of the injuries found on the victim's head was sufficient in the ordinary course of nature to cause death according to Dr. Jain PW 6. The injury was intentionally inflicted. As such the case is covered by clause. Thirdly of Section 300, IPC and the accused was, therefore, rightly convicted under Section 302, IPC. We have taken the respective submissions into consideration.

7. Admittedly, the houses of the deceased victim and the appellant are situate side by side adjacent to each other with a wall separating them as shown in site plan Ex. P 3. The wall separating the bouses is only 4 feet in height and it is not at all difficult for one to scale over it. It appears that when the accused threw away the clothes of PW 8 Singha Ram, the deceased Chiranjilal came and there took place an exchange of abuses between them. The accused retreated to his house. It further appears that Chiranjilal went to his house but did not stop abusing the accused. The accused could not digest the abuses and got suddenly flared up. He lifted a Lathi, scaled over the wall and came in the courtyard of the victim's house. It was in these circumstances, that be struck one blow with his Lathi to Chiranjilal and unfortunately that blow fell on bead of the victim. PW 1 Mst. Mangej and PW 8 Singha Ram have categorically stated that the accused struck only one blow on the bead of Chiranjilal.

8. There was absolutely nothing which served as a motive to the accused to kill Chiranjilal. The quarrel took place over a trivial matter of washing the clothes at the public well. Certainly this could not be taken to be a sufficient motive for the accused so as to drive him to kill Chiranjilal. The relations between them before this incident were quite cordial and sweet. All that took place was at the spur of moment. The accused lost head because he could not with stand the abuses

burled by the deceased Chiranji Lal. In these circumstances, it cannot be said that the accused ever intended to kill Chiranjilal.

9. In Jagrup Singh v. State of Haryana : 1981 CriLJ1136 , the injury was inflicted on the head of victim with the blunt side of Gandasi. The injury was inflicted by the accused in the heat of the moment without premeditation. It was held that applying clause Thirdly of Section 300 to such a case would be illegal and unjustified. Conviction of accused was altered from Section 302 to that under Section 304, Part-II, IPC.

10. In Kulwant Bai v. State of Punjab AIR 1982 SC 128 the accused inflicted one blow with a dagger in epigastrium area of the victim resulting in his death. There was absence of prior enmity between the accused and the victim. It was held that clause Thirdly of Section 300 would not be attracted in such a case and the offence would fall under Section 304, Part-II.

11. In Hari Ram v. State of Haryana : 1983 CriLJ346 the accused thrust the prong of the jelli into the victim's chest. The victim fell down and died. No intention to kill was apparent. The injury was no doubt found sufficient in the ordinary course of nature to cause death. Their Lordships found that on the evidence it did not appear that there was any intention to kill the victim and held that the facts made out an offence under the Second Part of Section 304, IPC.

12. Reverting to the case in hand, it belongs to the category of cases alluded above. There was no enmity or ill feeling between the appellant and his brother. It is a case of solitary blow and single injury. Every injury inflicted on the head is not sufficient in the ordinary course of nature to cause death. It is not a case where clause Thirdly of Section 300 can be safely applied. We are, therefore, unable to maintain conviction of the appellant under Section 302, IPC. In as much as the death has been caused, the accused can be imputed with the knowledge that his act was likely to cause death. The offence committed by the accused, therefore, falls under the Part-II of Section 304, IPC as the act was done with knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death.

13. In the result, the appeal of accused Gokul is partly allowed. His conviction under Section 302, IPC and the sentence awarded to him thereunder are set aside. Instead he is convicted under Section 304, Part-II, IPC and is sentenced to seven years' rigorous imprisonment with a fine of Rs. 5,000/- in default of payment of fine to further undergo two years' like imprisonment. His conviction under Sections 323 and 454 together with the sentences passed thereunder are maintained. In case the amount of fine is realised, a sum of Rs. 4,000/- (Rs. Four thousand only) out of it will be paid as compensation to the victim's widow Smt. Mangej PW 1. The substantive sentences shall run concurrently. The accused is already in jail, serving the sentence. The period of detention undergone by him during investigation, trial, injury and thereafter will be set off against the term of imprisonment imposed on him.

14. The appeal shall stand accordingly disposed of.