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State Vs. Goru and ors.

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Court : Rajasthan

Decided On : Aug-06-2009

Reported in : RLW2010(1)Raj631

Judge : A.M. Kapadia and; Deo Narayan Thanvi, JJ.

Appellant : State

Respondent : Goru and ors.

Disposition : Appeal dismissed

Judgement :

A.M. Kapadia, J.

1. These two appeals arise out of a judgment and order dated January 17, 1986 rendered by learned Sessions Judge, Bhilwara in Sessions Case No. 28 of 1985 by which the appellants of Criminal Appeal No. 45 of 1986, who are original accused No. 1 Goru and original accused No. 3 Hajari (A/1 & A/3' for short) of Criminal Appeal No. 45 of 1986 came to be convicted of the offences under Sections 325 read with Section 34 of the Indian Penal Code ('IPC' for short) and A-1 Goru Ram has been sentenced to rigorous imprisonment for three years and fine of Rs. 2,000/- and in default of payment of fine, rigorous imprisonment for three months whereas A-3 Hajari, instead of sentencing at once was accorded benefit of the Probation of Offenders Act as he was less than 21 years of age at the time of

commission of offence. Rest of the two accused A-2 Jagdish and A-4 Ramkishan alongwith above two accused namely, A-1 Goru Ram and A-3 Hajari who are respondents in Criminal Appeal No. 185 of 1986 were acquitted under Section 302 IPC.

2. Criminal Appeal No. 185 of 1986 is filed by the State under the provisions of Section 378 (3) of the Code of Criminal Procedure ('the Code' for short) challenging the acquittal of the accused of A-1 to A-4 i.e. Goru, Jagdish, Hajari and Ramkishan of the offence under Section 302 of the IPC as according to the State, offence against all the accused has been duly proved whereas Criminal Appeal No. 45 of 1986 is filed by the accused A-1 Goru and A-3 Hajari under Section 374(2) of the Code challenging the order of conviction of the offence under Section 325/34 of the IPC.

3. Since both these appeals arise out of the same judgment and order, they are heard together and are being disposed of by common judgment.

4. The basic facts of the case have been detailed in the judgment of the learned Sessions Judge, Bhilwara, therefore, it is not expedient for us to repeat the same all over again in verbatim in detail in this judgment. However, the) basic facts which are necessary to be discussed in this appeal are that:

4.1 The alleged incident has taken place on 12.12.1985 at 7.15 PM for which complainant PW.7 Gopal S/o Onkar, by caste Bhat, resident of Bhopatpura gave an oral report Ex. P/11 before the S.H.O. Police Station, Bijoliya, stating that on that day it was their turn to irrigate the field and after Surja Banjara irrigated his land, he told him that he could irrigate his land and thereafter he and his father went to canal and opened water course for irrigating the field. When he and his father were sitting near the water course and his mother, who came there and was irrigating field, at that time Goru Meena accused A-1 came there and told his father to stop irrigating the land so that he could irrigate his field on which his father replied that it was their turn to irrigate the field as such the water was flowing to their field. On hearing this reply, accused A-1 Goru started hurling abuses and after that he went away from there challenging that he would come back. It is alleged that after sometime, at about 4.30 PM, accused A-1 Goru and

his sons viz., Jagdish A-2, Hajari A-3 and Ramkishan A-4 came there armed with lathis and accused A-1 Goru gave a lathi blow on the head of his father Onkar while accused Hajari A-2 gave lathi blow on the ear of his father due to which his father Onkar fell down on the spot and thereafter all the accused gave lathi blows to Onkar, who was lying on the ground. On shouting by his father Onkar, Hazari S/o Laxman, Shambu and Kana rushed to the spot, then accused persons ran towards them also to beat them on which these persons afraid of them ran away from the scene of occurrence then accused A-3 Hajari asked other accused persons not to chase them. It is said that complainant went to village and came back at the scene of occurrence alongwith Heera and Madan Daroga and when they reached there they found that his father Onkar had succumbed to the injuries and died.

4.2 On the basis of above information, FIR was registered against accused persons, which is on record as Ex. P/12. During the course of investigation ASI Kan Singh reached at the spot and after inspecting the site prepared Panchnama of the dead body of Onkar Ex. P/l, Memo of Inspection of site Ex. P/2 and Sita Plan Ex. P/3. Postmortem Examination of the dead body of Onkar was conducted on 13.2.1985 by PW.9 Dr. D.K. Ramawat, the Medical Officer. Incharge, Primary Health Centre, Bijoliya. The autopsy report is on record as Ex. P/l4. Further investigation conducted by SHO Jagpal Singh and during the course of his investigation, he arrested all the accused persons vide Ex. P/15, P/16, P/17 and P/18. On 15.2.1985, on the basis of information supplied by accused persons, Muddamal lathis were recovered on 16.2.1985 vide Memos of Recovery Ex. P/6 to 9. The Clothes of the deceased were sent to Forensic Science Laboratory for chemical analysis which were found to be stained with human blood as per the report of the FSL Ex. P/23.

4.3 On completion of investigation, chargesheet against all the accused persons came to be filed in the Court of learned Munsif & Judicial Magistrate, Bijoliya for commission of offence under Section 302 IPC, who committed the case to the Court of Sessions, Bhilwara as the offence punishable under Section 302 IPC is exclusively triable by the Court of Sessions.

4.4 The learned Sessions Judge (trial Court', for short) who conducted the case, framed charge against all the accused persons under Section 302/34 IPC which was read over and explained to them, who pleaded innocence therefore they were put to trial.

4.5 To prove the culpability of the accused, the prosecution examined in all 11 witnesses and also produced number of documents upon which heavy reliance was placed.

4.6 The trial Court thereafter recorded further statements of the accused under Section 313 of the Code. Accused A-1 Goru in his statement stated that the turn of water was his but Onkar was taking water in his turn who despite his not to do so did not stop and while walking they fell. He also denied the presence of his sons there. On behalf of the accused, DW1 Brahmanand was examined to prove the date of birth of accused A-2 Jagdish and A-4 Ramkishan.

4.7 On appreciation, evaluation and analysis of the evidence led by the prosecution witnesses, the trial Court acquitted all the accused for the offence under Section 302/34 IPC whereas convicted accused A-1 Goru and A-3 Hajari for the offence under Section 325/34 IPC. Accused A-1 Goru was sentenced to undergo rigorous imprisonment for three years and fine of Rs. 2,000/- and in default of payment of fine, rigorous imprisonment for three months whereas A-3 Hajari being less than 21 years of age at the time of commission of offence was given benefit of Probation of Offenders Act. It is this judgment and order, which has given rise to the present two appeals one at the instance of the State challenging the acquittal order recorded against all accused and the second at the instance of the accused A-1 Goru and A-3 Hajari challenging their conviction under Section 325/34 IPC.

5. Mr. K.R. Bishnoi, learned Public Prosecutor, who appears for the appellant-State in Criminal Appeal No. 185 of 1986 contended that the order of recording acquittal under Section 302 IPC is against the appreciation of evidence as there is ample evidence to show that there was intention as well as knowledge on the part of the accused to kill the deceased. The finding recorded by the trial Court is contrary to the medical evidence as well as the evidence of the eye witnesses. So,

according to him, the judgment and order impugned under the appeal deserves to be quashed and set aside by allowing the appeal filed by the State and thereby holding the accused guilty for the offence under Section 302 of IPC and punish them accordingly. He therefore urged to allow the appeal filed by State and dismiss the appeal filed by accused Goru A-1 and Hajari A-3.

6. Mr. S.G. Ojha, learned advocate, who appeared for the accused in both the appeals, contended that so far as the appeal filed by the State against all accused is concerned, there is no substance and the trial Court has rightly acquitted A-2 Jagdish and Ramkishan A-4 from all the charges as they have not committed any overtact. So far as remaining two accused A-1 Goru and A-3 Hajari are concerned, trial Court has rightly acquitted them for the offence under Section 302/34 IPC, however, erroneously convicted them under Section 325/34 IPC as according to him if the incident as alleged is proved then also as per the settled principle of medical jurisprudence no offence other than one under Section 323 of IPC is proved. According to him, so far as the homicidal death is concerned, it is not proved as there was neither intention nor knowledge on the part of the accused to kill the deceased. In an ordinary quarrel in connection with the turn of taking water accused A-1 gave lathi blow to the deceased who has died because of the rupture of spleen and there is ample evidence to show that the deceased was already having diseased spleen as well as the same was enlarged as more in weight and size and, therefore, it was vulnerable, susceptible and was capable of being ruptured in an ordinary stroke. Therefore, the judgment and order which is impugned in this appeal recording conviction of accused A-1 Goru and A-3 under Section 325/34 of IPC can never be sustained which is deserved to be quashed and set aside by allowing the appeal. Mr. Ojha fairly submitted that as the offence under Section 323 of IPC is duly proved and since accused A-1 Goru has already undergone imprisonment of more than one year, the same can be treated as substantive sentence for the offence Section 323 of the IPC and so far as accused A-3 Hajari is concerned, he has been given benefit of Probation of Offenders Act, therefore, it is not necessary to pass any order except to alter their conviction from Section 325 IPC to 323 IPC. He therefore urged to allow Criminal Appeal No. 45 of 1986 filed by the accused.

7. We have considered the submissions advanced by the learned advocates appearing for the parties. We have also perused the memo of both the appeals, impugned judgment and order, testimonial collections and the record and proceedings which have been called for by this Court while admitting both these appeals.

8. At the outset be it stated that there is no dispute with regard to the alleged incident which incident took place out of an ordinary quarrel between the complainant and the accused in connection with the turn of taking water. On re-appreciation of evidence on record of the witnesses examined by the prosecution, there is no manner of doubt that so far as accused A/2 Jagdish and A-4 Ramkishan are concerned, they have not committed any overtact in that quarrel, therefore, they have been rightly acquitted of the offences with which they were charged.

9. On further, re-appraisal of the evidence, it is seen that the root cause of incident was with regard to taking water and therefore quarrel started between complaint and accused A-1 and A-3 and in that quarrel accused A-1 enraged, started abusing and gave lathi blow to deceased Onkar and on receiving the lathi blow deceased died.

10. In the aforesaid backdrop of the scenario, now let us examine the evidence on record. After having held that alleged incident is proved, the next question which is required to be considered is as to whether the deceased died on a homicidal death or died because of rupture of spleen which was enlarged and diseased spleen.

11. In this connection, adverting to the evidence of PW.9 Dr. D.K. Ramawat, who has preformed the autopsy, has inter alia testified that the injuries other than caused on spleen were not sufficient to cause death of deceased in the ordinary course of nature. Size of the spleen of a normal healthy man is 12 cm x 7.5 cm. Spleen of the deceased was one and a half time in size than the spleen of a normal man. The multiple fractures on ribs Nos. 7, 8 and 9 of deceased were linear. When the spleen of the deceased was examined, no bone was found therein. If the spleen of a man is enlarged, then on coughing, falling down on account of slow stroke, or forced vomiting, rupture is possible. The spleen of

normal size remains below the ribs and on its becoming enlarged it may come out of ribs and due to enlargement becomes soft and pronical.

12. Ex. P/14 is the postmortem report and its column No. 8 mentions as under:

Spleen- Rupture of spleen is present, 5 cm x 1.75 cm. x 1 cm on the outer surface and 3 cm x 1 cm x .75 on upper part of inner surface. Size of spleen 17 cms x 11 cms x 4 cms.

So far as the cause of death is concerned, according to the opinion of doctor PW.9 D.K. Ramwat deceased died due to haemorrhagic shock caused by rupture of spleen.

13. In view of the aforesaid evidence of PW.9 Dr. D.K. Ramawat, who conducted postmortem and prepared autopsy report at Ex. P/114, there is no manner of doubt that the deceased was having an enlarged and diseased spleen half time more than the size of a normal spleen. Thus, we have to decide which offence is proved against the accused, i.e., murder, culpable homicide not amounting to murder, grievous hurt or hurt.

14. As per Modi's Medical Jurisprudence and Toxicology, the normal spleen in an adult measues 12 x 8 x 4 cms. In some cases, the spleen decomposes earlier than the stomach and the intestines, especially if it is swollen and hyperemic from an acute infectious disease or enlarged from chronic malaria. However, it may resist putrefaction longer, if it happens to be firm and comparatively bloodless. Owing to putrefaction, the spleen becomes soft, pulpy, greenish-steel in colour, and it may be reduced to a diffluent mass within two to three days in summer. On account of its situation, rupture of a normal spleen is very rare unless caused by considerable crushing and grinding force, such as the passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a very great height; in such cases it is usually associated with injuries to other solid organs and to the ribs overlying the spleen. A normal spleen may sometimes be ruptured by the broken ends of a rib, which may be fractured by a severe kick or by a blow from a blunt weapon. A spleen subjected to traction forces may be torn from its pedicle. An enlarged spleen becomes softened and brittle. Hence it is

liable to rupture from a fall or from violence of a very slight degree. In such cases, the abdominal wall may not show any external mark of injury.

15. As per Dr. Jhala & Raju's Medical Jurisprudence, normally the spleen is very high up in the abdomen and well protected by the ribs. Thus, unless enlarged to double its size, it is not directly exposed to external injury. Penetrating injuries can certainly involve the organ. When enlarged, it is clearly vulnerable even to direct blows like kicks. Furthermore, such an enlarged organ is friable in structure and hence likely to bleed profusely. Such profuse bleeding may prove fatal and that too rapidly so. On the other hand when the spleen is of normal size and texture and found to be lacerated, the overlying side and abdominal wall must show signs of blunt injury viz., contusion. A kick on an enlarged spleen resulting in fatal haemorrhage amounts to a milder offence even of simple hurt depending on circumstantial evidence.

16. In view of the above referred to authoritative passages on Science of Medical jurisprudence it cannot be gainsaid that enlarged and diseased spleen itself is sensitive and it is vulnerable and susceptible to rupture by a slightest force. Now, therefore, the question which requires to be considered is as to whether the accused have committed the offence of culpable homicide not amounting to murder punishable under Section 304 Part II of IPC or grievous hurt punishable under Section 325 of the IPC or hurt punishable under Section 323 of the IPC.

17. A similar question arose before the Calcutta High Court way back in 1920 in the case of Emperor v. Saberali Sarkar AIR 1920 Cal 401. In that case, the accused, having found that a young man had approached his kept mistress for the purpose of having sexual intercourse with her, thought that he would be justified in teaching him a lesson by giving him a good thrashing. He accordingly sent for the brother of the young man, and in the present of the villagers gave him a good beating by kicks and blows, which resulted in his death. The deceased was of a weak constitution and had an enlarged spleen, and it appeared that when the villagers told the accused that he was about to kill the young man by his kicks and blows, he observed that the deceased was merely pretending and gave him some more strokes with a cane. The accused was thereupon charged with an offence

under Section 304. The jury found him guilty under Section 323. The Sessions Judge disagreed with the jury and being of opinion that the accused was guilty under Section 325, referred the matter to the High Court under Section 307 of the Old Code. In the aforesaid fact situation, the High Court held that in the circumstances of the case it was doubtful whether the accused had either intended or knew it to be likely that he would cause grievous hurt and as the case seemed to be on the border line between Sections 323 and 325 the accused might be given the benefit of the doubt and should be convicted of an offender under Section 423.

18. In the case Ramakrishna Panicker v. State of Kerala AIR 1959 Ker 372, before Kerala High Court the victim was having a spleen of diseased condition which got ruptured. In the said fact situation, Kerala High Court held that when the injury is not serious and there was no intention to cause death or grievous hurt, nor did the accused have knowledge that it was likely to cause grievous hurt or death, he is guilty of causing hurt and not death even though death is caused. It was further held that therefore where from the circumstances of the case it is impossible to draw an inference that the accused would have intended to give the deceased anything more than a beating or thrashing to teach him a lesson for using foul language to him, a police officer, it would not be possible to attribute to him the requisite intention or knowledge merely because of the diseased condition of the spleen of the deceased which got ruptured. In such circumstances his conviction under Section 304 cannot stand.

19. A similar question arose before a Division Bench of Allahabad High Court in the case of Sri Prakash v. The State : 1990 Cr.LJ 486. In that case, the beating given by the accused to a child has resulted into the death of the child. However, there was no visible injuries found on the dead-body. Beating given to the child, therefore, could not be severe. On medical evidence, spleen of the child was found to be ruptured and, therefore, enlarged spleen could only be the reason of death. The accused was not knowing of the enlarged spleen of the deceased. On the fact situation, the Division Bench held that the accused could not be held guilty under Section 304 of IPC and further held that conviction will be proper under Section 3123 and not under Section 325 of IPC.

20. Applying the principles laid down by three High Courts in the above referred judgments and the passages quoted by us from the Medical jurisprudence of Dr. Modi and Dr. Jhala and Raju to the facts of the present case, it cannot escape from the conclusion that the deceased Onkar died in an ordinary incident which has resulted into quarrel between the complainant and the accused party and accused A-1 Goru and A-3 Hajari got excited and gave lathi blows to the deceased whose spleen as per the medical evidence was ruptured as it was enlarged and diseased. Therefore, neither intention nor knowledge can be attributed to the accused for causing murder or culpable homicide not amounting to murder of deceased Onkar. However, the deceased has also received multiple fractures of 7th, 8th and 9th ribs, therefore, at the most the offence under Section 325 of IPC is proved against accused A-1 Goru and A-3 Hajari.

21. In view of the aforesaid discussion, according to us the impugned judgment and order acquitting all the accused under Section 302/34 IPC and convicting accused A-1 Goru and A-3 Hajari for the offence under Section 325/34 IPC is based on sound appreciation of evidence and therefore does not call for any interference by this Court in exercise of appellate power.

22. So far as accused A-1 is concerned, he was sentenced to rigorous imprisonment for three years and fine of Rs. 2,000/- and in default of payment of fine, rigorous imprisonment for three months. It is submitted by the learned Counsel that accused A-1 Goru has already remained in custody for more than one year and the incident is of the year 1983 therefore the period of one year undergone by him may treated as substantive sentence.

23. We have given our thoughts to the submissions and we are also of the opinion that since the incident took place way back in the year 1983 and more than two and half decades have passed and the accused A-1 has remained in custody for more than one year, who gave lathi blow on the deceased in connection with a trivial matter of water turn, in such circumstances, treating the sentence undergone by him as substantive sentence, would meet the ends of justice.

24. Seen in the above context, Criminal Appeal No. 185 of 1986 filed by State challenging the order of acquittal of the accused for the offence under Section 302

IPC deserves to be dismissed and Appeal No. 45 of 1986 filed by accused A-1 Goru deserves to be allowed in part and the sentence for the offence under Section 325/34 IPC awarded of three years' rigorous imprisonment to accused A-1 Goru deserves to be reduced by awarding him imprisonment of one year which he has undergone with fine of Rs. 2000. So far accused A-3 is concerned, appeal filed by him deserves to be dismissed who has already been accorded benefit of Probation of Offenders Act.

25. For the foregoing reasons, Criminal Appeal No. 185 of 1986 is dismissed and Criminal Appeal No. 45 of 1986 is allowed in part qua sentence of accused A-1 Goru treating the period of sentence already undergone by him for the offence under Section 325/34 of IPC as substantive sentence whereas the appeal of accused A-3 Hajari, who has been accorded benefit of Probation of Offenders Act, is dismissed.

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