

Sukhdev Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-15-2002

Reported in : 2002WLC(Raj)UC519; 2002(3)WLN353

Judge : Harbans Lal, J.

Appeal No. : S.B. Criminal Appeal No. 151 of 1984

Appellant : Sukhdev Singh

Respondent : State of Rajasthan

Judgement :

Harbans Lal, J.

1. This appeal has been filed by the accused appellant against the judgment dated 9.2.1984 of the learned Additional District and Sessions Judge No. 2, Alwar in Sessions Case No. 12/83 whereby the accused/appellant has been convicted of the offence Under Section 304 Part-II I.P.C. and has been sentenced to undergo R.I. for 7 years and a fine of Rs. 100/- in default of payment of which, to further undergo R.I. for one month.

2. Briefly stated, the relevant facts giving rise to this appeal are that the deceased Bilal Mev was married to Mst. Haseena r/o Odaka, who is the daughter of Mst. Asarfi. On 14.12.1982 at about 12 noon Bilal Mev was returning back for the first

time after the marriage from the place of his inlaws alongwith his wife and mother-in-law, who were sitting in a bullock cart, which was being driven by Suleman. When they were passing through the nalla of Village Mubarakpur, the accused appellant came on a bicycle from behind them whose bicycle hit Bilal on his heels whereupon Bilal asked him to drive the bicycle carefully. At this, the accused got down from the bicycle and after taking out a knife from the pocket of his pent struck Bilal on his neck as a result of which he fell down on the ground and due to profuse bleeding died on the spot. The accused ran away from there. The witnesses Deen Mohammed and Aas Mohammed who were also coming with him tried to rescue him but could not do so. Deen Mohammed informed about the incident to the former Sarpanch Sita Ram. He reported the matter to the S.H.O., P.S., Ramgarh about which an entry was made in the Rojnamcha. The police reached the spot and recorded the statement of Deen Mohammed. It was sent to the Police Station after endorsement for registration of the case with Constable Satya Narain No. 893. On its basis, F.I.R. was registered and after necessary investigation, a challan for the offence Under Section 302 I.P.C. was filed against the accused appellant, The case was committed to the Court of Sessions for trial which was made over to the trial court. The trial court framed charge Under Section 302 I.P.C. against the appellant to which he pleaded not guilty and claimed to be tried. The prosecution examined 13 witnesses and got exhibited 12 documents and 8 articles to prove its case. In his examination Under Section 313 Cr.P.C, the appellant pleaded ignorance in the evidence against him and denied that he gave any information or got the knife recovered. He alleged that the knife in question was got from the market by the police and after putting spirit on the clothes, it was besmeared with blood but he did not produce any evidence in defence.

3. After hearing both the sides, the learned trial court, vide its impugned judgment acquitted the accused of the offence Under Section 302 I.P.C. but convicted the accused of the offence Under Section 304 Part-II I.P.C. and sentenced him as indicated above.

4. Aggrieved by the 'said judgment, the appellant has filed this appeal before this Court.

5. I have heard the learned counsel for the appellant and learned P.P. on behalf of the State and have also perused the entire record.
6. Learned counsel for the appellant has not challenged the conviction of the appellant for offence Under Section 304 Part-II I.P.C. His only submission is that the appellant has remained in custody for about 1-1/2 years. He was a young man of less than 21 years of age on the date of occurrence and, therefore, he may be granted the benefit of probation.
7. Learned P.P. has in reply argued that the age of the accused-appellant on the date of occurrence appears to be more than 21 years and looking to the fact that he attacked an unarmed newly married young man, no leniency should be done to him. She has urged that in case, the Court is of the opinion that a lenient view deserves to be taken in the matter, then the appellant should be made to pay sufficient amount of fine so that the wife of the deceased may be adequately compensated.
8. I have also perused the entire record and have given my thoughtful consideration to the submissions made at the bar.
9. P.W.1 Deen Mohammed, P.W.2 Aas Mohammed, P.W.3 Mst. Haseena, P.W.4 Mst. Asarfi and P.W.5 Suleman are all eye witnesses of the occurrence. They have all stated that when they were going from their village Odhaka to Bus Stand Mubarakpur along with the deceased to see him off, the accused appellant came from behind on his bicycle and struck the deceased with his bicycle. The deceased asked him to drive the cycle carefully. At this, the accused took out the knife from the pocket of his pant and assaulted the deceased with his knife at his neck and chest. As a result of which, he had profuse bleeding and died on the spot. The accused ran away from there after taking his bicycle. Deen Mohammed P.W.1 has stated that he informed the former Sarpanch Sita Ram P.W.6 about the incident who has corroborated him in this respect and has stated that he had given telephonic information about the incident to the S.H.O., P.S. Ramgarh Narpat Singh P.W.1 which was got recorded in Rojnamcha as Ex.P/2 which has been proved by P.W.7 Tamradhwaj. P.W.13 Narpat Singh reached the spot on receiving the aforesaid information and recorded the statement Ex.P/1 of Deen Mohammed

P.W.1 and sent it to the Police Station with Satya Narayan P.W.8 for registration of the F.I.R. where upon F.I.R. Ex.P/3 was registered. Vinod Singh P.W.10 was the ASI at P.S., Ramgarh who has proved that Satya Narayan P.W.8 had come, with the statement of Deen Mohammed P.W.1 whereupon he registered the F.I.R. Ex.P/3 on 14.12.1992. P.W. 13 Narpat Singh has proved that he conducted the investigation in this case and seized the blood stained articles, arrested the appellant and recovered the blood stained knife on the basis of recovery statement given by him Under Section 27 of Indian Evidence Act. He has also proved that the post mortem of the dead body was got conducted by Dr. C.P. Wadhwa P.W. 12 who has corroborated this fact and has proved the post mortem report Ex.P/5. According to him, the deceased Bilal had received a stab wound 1-1/2 cm x 1/2cm x 2-1/2cm on the left side of neck anteriorly and an abrasion 1cm x 1/4 cm on the right side of chest anteriorly and he died due to server haemorrhage resulting from the injury to left common carotid artery and he died within 24 hours of the examination. He has also stated that the clothes namely, shirt, baniyan, dhoti, kachha, pair of shoes and socks were blood stained which were seized, sealed and handed over to the police and the injury No. 1 was sufficient in the ordinary course of nature to cause death.

10. All these witnesses have been cross-examined at length but nothing material has been elicited so as to render their testimony unreliable or unworthy Of trust. From the prosecution evidence that has come on record, it is sufficiently proved that the appellant inflicted injury on his vital part of body i.e. neck as a result of which he died on the spot due to profuse bleeding. It has come in the evidence of the prosecution witnesses namely, P.W.1 Deen Mohammed and Asharfi P.W.4 that they had no previous enmity and the incident occurred all of a sudden without any premeditation and, in the heat of passion resulting from a sudden altercation due to hitting of bicycle of the accused-appellant with the foot of the deceased. Therefore, the case is squarely covered within the exception 4 provided in Section 300 I.P.C. and it is clearly a case of culpable homicide not amounting to murder punishable Under Section 304 Part-II I.P.C. There is no valid and cogent reason to interfere with the finding of guilt recorded against the appellant.

11. The learned trial court has rightly found the accused appellant guilty and convicted him for this offence. The judgment of the learned trial court deserves to be confirmed.

12. So far as the contention of learned counsel regarding punishment is concerned, it is evident from the facts of the case that the appellant was around 21-22 years of age at the time of occurrence although there is no definite evidence on record to show his exact age. The occurrence took place as back as in the year 1982 and since then about 20 years have elapsed. It would, therefore, be not desirable to send him to jail after about two decades. He has already spent about 1-1/2 years in custody and, therefore, the ends of justice would be met if his sentence of imprisonment is reduced to already undergone and the sentence of fine is enhanced to Rs. 7,000/-.

13. In the result, the appeal is partly allowed, the conviction of the appellant for the offence Under Section 304 Part-II I.P.C. is upheld but the sentence is reduced to already undergone and a fine of Rs. 7,000/-in default of payment of which he shall undergo further Rigorous Imprisonment for two years. He is allowed three months' time to deposit the fine in the trial court, failing which he shall be arrested and sent to jail to serve out the sentence as modified above. In case, the fine is recovered, Rs. 5,000/- shall be paid to the wife of the deceased as compensation.