

Ramesh Narayan Alias Andi Vs. the State

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Court : Kolkata

Decided On : Dec-21-1998

Reported in : (1999)1CALLT383(HC),1999(1)CHN148,1999CriLJ3056

Judge : Shyamal Kumar Sen and ;Amitava Lala, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304;; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 313

Appeal No. : Criminal Appellate Jurisdiction, Crl. Appeal No. 3 of 1998

Appellant : Ramesh Narayan Alias Andi

Respondent : The State

Advocate for Def. : Shri R. Shiv Saroop, Adv.

Advocate for Pet/Ap. : Shri S.K. Mondal, Adv.

Judgement :

A. Lala, J.

1. This appeal is directed against the judgment and order passed by the learned Sessions Judge, Andaman and Nicobar Islands, Port Blair on 31st March, 1998 in Sessions Case No. 8 of 1994 giving conviction under section 302 of the Indian Penal Code, sentencing the accused to life imprisonment. The appeal is preferred

by the accused making various grounds including that the order of conviction and sentence to undergo rigorous imprisonment for life in the above said sessions case passed by the learned sessions Judge is bad in law and inoperative.

2. Although the defence case was otherwise, but Mr. S.K. Mondal, the learned counsel appearing for the accused submitted th'at they are only relying upon the prosecution's case that the offender is punishable under section 302 of the Indian Penal Code and the judgment of trial court to that extent is, according to him erroneous.

3. In support of his contentions Mr. Mondal has drawn our attention to the observation of the concluding portion of the judgment being paragraph 56 therein which speaks 'in view of the discussions in the foregoing paragraphs it is established beyond all reasonable doubt that on 13th October, 1992 at about 7 P.M. the accused Ramesh Narayan @ Andi, the victim Sattl Narayan @ Sattl and others were gambling at the Bimblitan Chowk; that in course of that gambling there was hot altercation between the accused and the deceased Sathyanarayan and in course of that altercation, the accused assaulted Sathyanarayan @ Sattl with a heavy straight 'DAH' on that right shoulder causing incised injury over shoulder Joint extending from medial side of right clavicle upto shoulder joint extending upto right nipple measuring about 8' incised, the depth was upto the pleura of the lung with sharp cut fracture of right clavicle bone, first and second ribs and causing the cut of right pleura, all underlying vessels and the death of Sathyanarayan was caused due to haemorrhagic shock following deep incised injury and that the Injury was homicidal and ante-mortem in nature. Immediately thereafter the accused was found to surrender himself with the DAH having blood stains and having blood stains on the weaving towel.

4. By referring the above part of the judgment he contended that there is a gulf of difference between the culpable homicide and murder. H's case is squarely falling under the exception 4 of the section 300 of the Indian Penal Code which says that culpable homicide is not murder, if it is committed without pre-meditation in a sudden fight in the heat of passions upon sudden quarrel and without the offender, having taken undue advantage or acted in a cruel or unusual manner.

5. In support of his contentions he has relied upon four reported judgments being :

(1) 1984 Cr LJ 478 (SC) (Tholan v. State of Tamilnadu);

(2) 1992 Cr LJ 2334 (SC) (Patel Rasiklal Bechar Bhal and others v. State of Gujarat);

(3) 1986, Cr LJ 413 (Rajasthan) (Nathu. v. State of Rajasthan) and

(4) 1985 Cr LJ 1118 (Orissa) (Bishnu Charon Das v. The State).

6. Ratio of the judgments are similar on the line.

7. So far as the first decision is concerned the ratio of the Supreme Court judgment is that the Incident occurring on spur of moment is to be considered as guilty of committing offence under section 304 Part-II of the Indian Penal Code and conviction can be altered from section 302 of the Indian Penal Code to section 304 Part-II of the Indian Penal Code in such circumstances.

8. In the second Supreme Court judgment we find that sudden quarrel with the deceased rebuking the accused and that the accused given single blow of agricultural Implement which he was carrying and such blow falling on neck of the deceased and proving to be fatal, it could not be said that the accused Intended to cause neck Injury, not liable to be convicted under section 300 and the conviction should be altered to section 304 Part-11.

9. Similarly in the third judgment it was held by the Division Bench of Rajasthan High Court that in a heat of passion, in a sudden fight without any pre-meditation the accused inflicted knife blows without any intention to cause such Injury as would be sufficient in ordinary course of nature to cause to death. In such a case exception 4 under section 300 applies and the accused is liable to be convicted under section 304 Part--I and not for the offence of murder.

10. In the fourth judgment, the Orissa High Court's Division Bench also held that a single blow on the spur of moment without intention to cause death and in such a case the offence falls under section 304 Part-11 and not under section 302 of the Indian Penal Code.

11. Upon being, prima facie, satisfied with the argument and observing that the punishment is disproportionate with the offence, we have called upon the prosecution's counsel Mr. R. Shiv Saroop to satisfy the court by giving reply thereto.

12. Mr. Saroop wanted to draw out attention to the analysis of evidence leaving aside the basic question that the conclusion derived by the learned trial Judge is disproportionate with the observation. Thereupon we called upon him to explain the scope and ambit of exception 4 under section 300 of the Indian Penal Code which is the moot point according to us. Mr. Saroop contended that there are four qualifications under exception 4 of the section 300 to get relief under it which are as follows :

(I) if it is committed without pre-meditation in a sudden fight:

(II) in the heat of passion upon a sudden quarrel:

(III) Without the offenders having taken undue advantage or;

(IV) Act in a cruel or unusual manner.

13. According to him, all the four qualifications are to be fulfilled but fulfilment of any one of the conditions will not suffice. We have called upon Mr. Saroop to satisfy the court to that extent with supporting judgment but he failed to do so. On the other hand, the principles of above referred judgments do not say that all the conditions are to be fulfilled to get a relief under exception 4 of the section 300 of the Indian Penal Code. Pre-meditation is the guiding factor to draw a line in between murder and culpable homicide. Therefore if the court feels that there is slightest doubt about nature of guilt, accused will get benefit of acquittal or lesser punishment which ever is applicable in the facts and circumstances of the case and that is the basic principle of Criminal Law.

14. Main part of the prosecution case relevant for the purpose of the appeal is as follows :

'The accused Ramesh Narayan is facing the trial of the charge under section 302 of the Indian Penal Code. The case of the prosecution is that on 13.10.1992 at about 7/7.30 P.M. Madan Lall, Pawan Lall, Ramesh Narayan alias Andi of Bimblitan Bustee, the victim Sattionarayan alias Satti of Teylorabad, Mani (STS driver) of Tevlorabad were gambling at the chowk (junction of 4 roads) at Rimblitan bustee. The house of Chellamma, the sister of the complainant Dharmalingam (P.W. 1) is by the side of the chowk at a distance of 2 to 3 mtrs. The house of Chellamma was a double storeyed building. The complaint Dharmalingam, the Surpanch of Bimblitan bustee. his sister Chellama and his brother-in-law Ram Charan (P.W.4) were gossiping sitting in the verandah of the ground floor. Electric lights were burning in the verandah of the upper floor. That was a moonlight night and the street light in front of the house of Chellamma was also burning. The gamblers were gambling by lighting a candle, with cards. Some other persons were watching the gambling standing there. At about 7.30 P.M. sudeenly there was an altercation between the accused person and Satti. Hearing that altercation the complainant looked towards the chowk attentively and saw that Satti was sitting and playing cards and the accused was standing beside him and both of them were exchanging hot talks. Because of the hue and cry the exact subject matter of the conversation was not distinct. In course of that hot exchange suddenly accused assaulted Satti with a straight DAH on his right shoulder.'

15. According to the finding of the trial court 'P.W.1 Dharmalingam, who is the complainant, P.W.2 Madan Lall who is one of the gamblers, P.W.12 Rajendra Prasad and P.W.4 Ram Charan are the eye witnesses. But P.W.4 has been declared hostile by the prosecution as he denied that he saw the Incident though he admitted all other facts preceding to and following the occurrence.'

16. Relevant part of the deposition of P.W.1 is as follows :

'It is his evidence that at the Junction of the said four roads i.e. at the chowk gambling was going on with playing cards and a candle was burning at that place. Some persons were watching the gambling. When he was gossipping with his sister Chellamma some hue and cry raised from the chowk. He looked towards that chowk and he found Madan Lall (P.W.2), Pawan Lall, Andi alias Ramesh

Narayan (accused) of his bustee and the victim Sattlnarayan of Teylorabad, Manl (STS driver of Teylorabad) and some other persons at that place. He saw that the deceased Satti was sitting and other persons including the accused person Ramesh Narayan were standing. He saw accused Ramesh Narayan going on the back side of Satti with a DAH in his hand and assaulting Satti on the right shoulder. It is his further evidence that seeing that assault the persons assembled there fled away towards different directions.'

17. Relevant part of the deposition of P.W.2 is as follows:

'P.W.2 is Madan tail. It is his evidence that on 13.10.1992 at about 7/7. 15 P.M. gambling was going on at the chowk in front of the house of Ram Charan in their bustee. The night was a moonlit night. Electric light was burning in the verandah of the first floor of the house of Ram Charan. Street light at the chowk was also burning. He has categorically stated that he, Rajendra Prasad alias Ranjan. Manl, Andl, Sattl and others were playing cards. Some persons were present there to see the gambling. He has deposed that Andl was losing the gambling again and again. Sattlnarayan and Ranjan were winning in the gambling. Ultimately Andl kept a note of the denomination of Rs. 50/- on the ground. Thereafter Sattl was throwing cards. The game went in favour of Satti. It is his further evidence that the accused Ramesh Narayan alias Andl then told that Sattl was betraying and he (Andl) tore the playing cards into pieces, kicked the candle which was burning at that place and the flame of the candle was extinguished, They all stood up. SatU was still sitting on the ground. The accused standing took out a DAH from his waist and hit the deceased SatU with full force on the right shoulder.'

18. Relevant part of the deposition of P.W.12 is as follows :

'He came out of his house, took a pan from a shop and then went to the place of gambling and there he found the accused Ramesh Narayan alias Andi, Satti Narayan alias Sattl, Manl, Madan Rajan were gambling. It is his further evidence that the accused picked up some cards from the bundle and kept Rs.50/- as bet. From the evidence of P.W.2, we get that the game was known as ANDAR BAHAR. He (P.W.12) has also corroborated that the game was known as ANDAR BAHAR. He corroborated the evidence of P.W.2 that the game went in favour of Sattl and

the accused then demanded back the money but Sattl refused to give the money. Then the accused told SatU that he betrayed and when SatU refused to pay back the money, Andl stood up, tore the playing cards, kicked the candle which was burning and the flame of the candle extinguished and Andl told Sattl that he will teach him a lesson. Then he took out a DAH from his waist and assaulted Sattl on the right shoulder.'

19. There is no necessity to incorporate any of the deposition of P.W.4 since he has become hostile and not deposed anything with regard to actuality of the Incident.

20. The observation of the trial Judge is as follows:

'That the gambling was going on at the chowk at the relevant time is not denied. The accused in answer to question No. 6 at the time of his examination has admitted that gambling was going on and he was a participant in the gambling. It is also established from the evidence of P.W.1, P.W.2 and P.W.12 that P.W.2 and P.W.12 were the gamblers. The accused at the time of his examination under section 313 Cr.PC has not denied that P.W.2 and P.W.12 were the gamblers along with himself, the victim Sattinarayan and others. So, P.W.4 and P.W.12 in an unequivocal language have stated that in the gambling the accused was losing and the victim was gaining and in the last game there was hot altercation between the victim and the accused and in course of that altercation the accused stood up, kicked the candle which was burning and tore the playing cards and assaulted Satti by a DAH.'

21. Further observation of the trial Judge is as follows :

'Thus from the evidence discussed above it is clearly established that on 13.10.1992 at about 6.30/7 P.M. gambling was going on at the chowk of Bimbltan bustee and the accused, the victim Sattl Narayan, Madan Lall (P.W.2), P.W.12 and others were the gamblers. It is also established that in course of that gambling there was altercation between the victim and the accused and in course of that altercation the accused assaulted the victim with a straight DAH on the right shoulder and immediately thereafter the accused surrendered before the in-charge

of the Pahargaon out post with the DAH.'

22. The opinion of the doctor should not have escaped from the notice in coming to the conclusion and, therefore, the relevant portion of the doctor's opinion as recorded under the judgment of the trial Judge is given hereunder.

The doctor opined that the presence of the single Incised Injury over right shoulder by sharp weapon 8' in size deep in cut upto pleura. Death was due to haemorrhagic shock following deep Incised injury and the death was homicidal in nature. He also opined that the Injury was antemortem in nature and this single injury is sufficient to cause death of a person.'

23. In the premises, the learned trial Judge came to the following conclusion :

'From the evidence available on the record it appeared that the murder was not a premeditated one. In course of gambling there was hot altercation between the accused and the deceased and in the midst of that altercation the accused assaulted the deceased. Considering this fact and considering the fact that the accused is a familyman having two small children, I am of the opinion that justice will be sufficiently met if the accused is sentenced to life imprisonment Accordingly the accused Ramesh Narayan, alias Andi is sentenced to life imprisonment'

24. Under such circumstances and by apprising the main factual aspect that the pre-meditation is absent everywhere, we are of the view that the learned Sessions Judge, made an error in passing the order of punishment for life imprisonment finding the accused guilty in respect of the charge of murder under section 302 Instead of holding that the accused is guilty of culpable homicide and punishable under section 304 Part-II of the Indian Penal Code.

25. Therefore, we set aside the judgment and order passed by the learned Sessions Judge, Andaman and Nicobar Islands, Port Blair by altering the conviction from section 302 of the Indian Penal Code to section 304 Part-II of the Indian Penal Code. Accordingly, the accused will be sentenced for imprisonment for ten years. The appeal is accordingly disposed of.

S. K. Sen, J.

26. I agree.

27. Appeal disposed of

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