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State Vs. Shiv Ram

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Court : Himachal Pradesh

Decided On : Apr-08-1971

Reported in : 1971CriLJ1017

Judge : D.B. Lal, J.

Appellant : State

Respondent : Shiv Ram

Judgement :
ORDER

D.B. Lal, J.

1. This is an application in revision by the State against the order dated 9-11-1970 of the Additional Sessions Judge, Bilaspur, wherein he has declined to amend and substitute the charge Under Section 304, Indian Penal Code for which the accused, Shiv Ram-Respondent, has been committed for trial before the court of Session, The application arises in the following circumstances.

2. The prosecution case arose as a result of a report instituted by one Jiwa Nand of Kosrian Kanaita, District Bilaspur, to the effect that at about 2 a. m. on the night between 17/18th May, 1968 the accused, Shiv Ram, was found giving severe beating with 'danda' to the deceased, Baldev Singh, in the courtyard of his house, with the result that the deceased suffered many injuries of serious nature. He was

removed to the hospital and on the next day, i. e on 19-5-1968 at 1-20 p.m. he died in the hospital as a result of the injuries received by him. The post mortem examination was conducted by Dr. V. P. Sud and in the words of the learned. Sessions Judge, the following injuries were detected:

The perusal of the medical certificate issued at the time of the admission of the patient in the hospital shows 7 injuries which are lacerated wounds and multiple abrasions, bone deep injury over the right eye of the size 2 1/2'xl' xi1/2 was found. The general condition of the patient appeared poor and serious. The post mortem report shows plenty of bleeding between the skull and aponeurosis on all sides connected depressed fracture at the outer angle on right eye. Cracked fracture on the frontal bone and left parietal bone crossings. The doctor has given opinion that the death has been caused due to massive internal haemorrhage in the skull as a result of multiple fractures.

3. After some investigation, the Police sent up the case for committal proceedings for the offence Under Section 304, IPC The learned commit- ting Magistrate recorded the statement of Shrimati Jasodha (P.W. 3) the own wife of the accused who had seen the beating and she stated that upon her asking the accused had said that he had killed the deceased and they could do whatever they liked with him. Besides her, Jiwa Nand (P.W. 1) was also examined. Dr. V. P. Sud (P.W. 5) also appeared to prove the medical examination. The learned committing Magistrate found a prima facie case, in his opinion Under Section 304, IPC and he committed the accused for trial before the Sessions Court.

4. When the case came up before the learned Sessions Judge, an application was moved by the prosecution for the amendment of the charge and for its conversion for the offence of murder Under Section 302, IPC The learned Sessions Judge rejected the application and the sole ground which engaged his attention while so rejecting the application was, that the doctor, according to him, omitted to state that the injuries caused were sufficient in the ordinary course to cause death.

5. The State has felt aggrieved of the order of the learned Sessions Judge and has preferred this revision.

6. Much less to say, it is the duty of the Sessions Court to scrutinise the charge and a certain amount of vigilance is required to be exercised in relation thereto. The framing of a charge is not a mere formality and a defective charge may have serious repercussions on the ultimate result of the case. It is the duty of a Magistrate to see what offence has been committed if any, and if an offence more aggravated than the one complained of is discovered, it is no less his duty to charge the accused with the more aggravated offence. The Sessions Judge was, therefore, called upon to examine the charge carefully and to amend the same in case he could feel that the charge was not in accordance with law. In this connection, the learned Counsel for the State rightly relied Upon A.I.R. 1929 Lah 838 (Mangal Sen v. Emperor) (The State v. Babulal and Bherumal) and A.I.R. 1958 Andh Pra 380 (In re Shankarappa) which lend support to this proposition.

7. A perusal of the statement of Dr. V. P. Sud (P.W. 4) makes it clear that he found injuries Nos. 1 and 2 as grievous and dangerous to life. Multiple fractures were detected and the death was due to massive internal haemorrhage. In respect of injuries 1 and 2, the doctor was of the opinion that these were sufficient to cause death in an ordinary course. This statement of the doctor militates against the version of the learned Sessions Judge that the doctor did not state that the injuries were sufficient in ordinary course to cause the death. If the accused knew that the injury inflicted would be likely to cause death or that the injuries would be sufficient in the ordinary course of nature to cause death or that within his knowledge his beatings must, in all probability, cause death, he would be held guilty of murder Under Section 300. IPC although he may not have the intention to cause death. The learned committing Magistrate had naturally to formulate an opinion upon the evidence that was produced before him. Under Section 210. Criminal P.C. he had to satisfy this sufficient grounds for committing the accused for trial were made out and it follows logically that the charge should have been framed in consonance with those grounds so made out to the satisfaction of the learned Magistrate. The nature of injuries received, and the manner of beating given, sufficiently indicated, at any rate prima facie, that the accused had the intention of causing I such bodily injury which he knew to be I likely to cause death or which were sufficient in the ordinary course of nature to cause death. Therefore, if the facts stated by the prosecution were true the accused is likely to commit the offence of murder Under

Section 302, IPC which should be the prima facie finding for the purpose of framing the charge.

8. In my opinion, therefore, the learned Sessions Judge committed an error of judgment in refusing to amend the charge Under Section 226, Criminal P.C. It was his duty to have substituted the charge Under Section 304, IPC by the charge of murder Under Section 302 IPC This decision should not be deemed to contain any considered opinion of this Court in relation to the defence to be set up by the accused in the case.

9. The revision is, therefore, allowed and the order of the learned Sessions Judge dated 9-11-1970 is set aside. He is directed to amend the charge and substitute it with the charge Under Section 302. IPC and thereafter he should proceed with the trial of the case in accordance with law.

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