

Vijay Kumar Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : May-23-2005

Reported in : 2006CriLJ650

Judge : Lokeshwar Singh Panta and; Surjit Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302, 304 and 325; ;Code of Criminal Procedure (CrPC) - Sections 154, 161, 173 and 313

Appeal No. : Crl. A. No. 23 of 2003

Appellant : Vijay Kumar

Respondent : State of H.P.

Advocate for Def. : Som Dutt Vasudeva, Addl. A.G.

Advocate for Pet/Ap. : T. R. Chandel and; Vinay Thakur, Advs.

Judgement :

Surjit Singh, J.

1. Appellant Vijay Kumar has been convicted of an offence under Section 302 of Indian Penal Code, for allegedly committing the murder of one Rup Lal of Bharmour on 29th August, 2001, at 9 p.m. at a place called Karian in Chamba District, by the learned Sessions Judge,. Chamba. As a result of such conviction

he has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2000/- and in default of payment of fine to undergo simple imprisonment for a further period of three months. The appellant is aggrieved by the order of his conviction and punishment and so he has come up in appeal to this Court.

2. The case of the prosecution, as per record, may be summed up thus. Deceased Roop Lal was a Gorklia from Nepal and used to work at Bharmour. On 29th August, 2001 he went to village Karian, falling within the jurisdiction of Police Station, Chamba, to meet one of his compatriot, namely Tek Bahadur, who was employed as a mate or sub-contractor with one Sh. Des Raj. Around 9 p.m. in the night they together went to a nearby public call office, owned by appellant Vijay Kumar, as the deceased wanted to make a call to someone at Bharmour. In the said public call office a tumbler containing tea was lying on the counter. Accidentally respondent's hand came into contact with that tumbler and the tea in it. got spilt on the clothes of the deceased. That infuriated the deceased and he protested in a rude manner. The appellant reacted to the rudeness of the deceased and the two started quarrelling and they even had a scuffle. They were got disengaged by one Bhagat Ram, running a shop nearby. The deceased then proceeded towards the road in the company of Tek Bahadur, but kept hurling abuses. The appellant then went Inside his S.T.D. Booth and brought a piece of pipe/rod and dealt a blow on the head of the deceased with considerable force. Blood started flowing from the head of the deceased. His companion Tek Bahadur tried to help him to reach his place of residence but after walking' a distance of about 20 meters he sat down- Tek Bahadur tried to lift him but could not succeed. He then went towards his residence to arrange for some other person to help him to carry the deceased, to the hospital at Chamba. He returned after sometime in the company of one Bal Bahadur, but the deceased was not at the site where Tek Bahadur had left him. Soon Des Raj contractor with whom Tek Bahadur was employed those days, happened to pass by the road on which Tek Bahadur and Bal Bahadur were searching for him. He was in a vehicle. Tek Bahadur and Bal Bahadur went with him in his vehicle to Zonal Hospital, Chamba, in search of the deceased, but he was not there too. Thereafter they went to their respective houses and next day also they searched for the deceased but could not find him.

3. In the meanwhile on 30-8-2001 a police party, headed by ASI Naroop Singh of Police Station, Sadar Chamba, which had gone towards the place of occurrence in connection with routine patrolling, spotted the deceased lying in the bushes at a distance of 20 meters from the J.P. Company Check-Post in village Karian. The party carried the deceased, who was still alive, to the Zonal Hospital, Chamba and got him medically examined. The same day Roop Lal succumbed to the head injury. Tek Bahadur, accompanied by Bal Bahadur, also reached the Zonal Hospital. He narrated the incident to said ASI Narup Singh, who reduced his version into writing in the form of statement under Section 154 of the Code of Criminal Procedure and sent the same to police station, Sadar Chamba, for the formal registration of the case. Case was formally registered at the said Police Station, vide FIR No. 178/01. The said ASI then conducted inquest and filled in the necessary forms. Medical Officer Incharge, Zonal hospital was approached by the said ASI to conduct the post-mortem. The doctor conducted the post-mortem examination and found a lacerated, wound on tempo-frontal region of head measuring 3' x .75' x 1' having sharp edges. On opening the skull, the doctor found fracture of left-temporo frontal bone and extradural haematoma about 200cc, pressing the right side of the brain and midbrain. He opined that the time lag between the injury and the death was within 24 hours and between the death and the post-mortem it was 24 to 48 hours and that the tentative Cause of death was head injury, which led to haemorrhagic shock with cerebral compression. Final opinion was reserved to be given on receipt of the report, of the Chemical Examiner regarding viscera. At the time when the injured was taken to the hospital, he was opined to be unconscious and not fit to make a statement.

4. The appellant was taken into custody. On 2-9-2001 he was interrogated by the SHO, Police Station, Sadar Chamba, namely Inspector PW 18 Sadhu Ram. He made a disclosure statement, leading to the discovery of a piece of pipe, which had allegedly been used, by him to cause 'fatal injury to the deceased. Statements of the eye witnesses and other material witnesses, under Section 161 of the Code of Criminal Procedure, were recorded.

5. The spot was inspected. Blood stained earth and pebbles were collected and sealed in a parcel. The site where the deceased was found in an injured state by

ASI Narup Singh, was also inspected. Some blood stained earth, shirt and handkerchief, which were lying there were taken into possession and made up into separate parcels.

6. On completion of the investigation, report under Section 173 of the Code of Criminal Procedure was filed in the Court of Chief Judicial Magistrate, who committed the case to the Court of learned Sessions Judge, Chamba and the latter charged the appellant with an offence under Section 302 of India Penal Code and on his pleading not guilty, tried him for the said offence and ultimately convicted and sentenced him, as aforesaid.

7. Grievance of the appellant, as per grounds of appeal is that the evidence has not been appreciated by the learned trial Court in the right perspective. It is alleged that the evidence of the prosecution is quite weak and shaky and does not prove the charge beyond doubt. It is also alleged that the evidence of the alleged eye witnesses, namely Tek Bahadur and Ghamand Singh is highly doubtful. In the alternative it is stated that as per prosecution version itself, the incident had taken place as a result of quarrel and scuffle on a trivial issue and the appellant happened to deal a blow on the head of the deceased in the heat of passion and that this is not a case of murder but a case of voluntarily causing grievous hurt or at the most a case of culpable homicide not amounting to murder.

8. During the course of hearing of the appeal Sh. T.R. Chandel, the learned defence counsel, candidly admitted that the evidence-led by the prosecution sufficiently proved that the respondent inflicted the injury leading to the death of Roop Lal, but urged that the circumstances in which the incident took place take; the case out of the purview of Section 302, Indian Penal Code and that the appellant can be said to have committed the -offence of voluntarily causing grievous hurt, under Section 325, Indian Penal Code or at the most the offence of culpable homicide, not amounting to murder, punishable under Section 304, Indian Penal Code.

9. The admission by the learned defence Counsel that the incident as alleged by the prosecution stands proved by the prosecution evidence apart, we have satisfied ourselves by perusing the evidence of the prosecution that the incident

had taken place in the manner, as alleged. PW 1 Tek Bahadur, who was accompanying the deceased, has very categorically stated that after the deceased and the appellant happened to have a quarrel, because of the spilling of tea on the clothes of the deceased, the appellant brought a rod/piece of iron from inside his S.T.D. booth and dealt a blow on the forehead of the deceased, as a result of which blood started flowing from his head and he sat down after running to a distance of about 20 meters. He was cross examined at length but nothing surfaced in his cross-examination suggesting that he is not a truthful witness. The testimony of PW 1 is fully corroborated by PW 2 Ghamand Singh, who runs a vegetable shop near the S.T.D. booth of the respondent. The witness has no enmity with the appellant nor does he have any motive to make false statement. Therefore, there should be no hesitation to accept his testimony as true. From certain suggestions put to PW 1 Tek Bahadur as also to PW 2 Ghamand Singh in the cross-examination, it is clear that the appellant admits that the quarrel, as testified by PW 1 Tek Bahadur had taken place. PW 2 Ghamand Singh has stated that after the blow of iron pipe/rod was given by the appellant to the deceased, the mother of the appellant came there and she took him (the appellant) to her house. In the cross-examination suggestion was made to the witness that one Bhagat Ram, another shopkeeper, had tried to disengage the deceased and the appellant, when they were quarrelling and scuffling. It was also suggested that the mother of the appellant came to the spot and took the appellant to her house. Though in the statement it is written that she took the deceased to her house, it appears that it is due to slip of tongue while dictating the statement to the Steno that the word 'deceased' has been written instead of the 'accused'. Bal Bahadur PW 3 corroborates the testimony of PW 1 Tek Bahadur to the extent that they searched for the deceased, after he had left him by the road side and went to call the witness (PW 3 Bal Bahadur) but could not locate him at or near the spot or even at the Zonal Hospital, Chamba that night. There are no material contradictions, inconsistencies or deficiencies in the testimony of these witnesses and consequently we see no reason to disbelieve the same.

10. The eye witness account testified by PW-1 Tek Bahadur and PW-2 Ghamand Singh is further corroborated by the medico legal evidence. PW-11 Dr. Raj Kumar, who conducted the medico legal examination has testified that he noticed fracture

on temporo frontal bone and extradural haematoma over the right side of the brain and mid-brain and which led to haemorrhagic shock with cerebral compression and the injury could have been caused by means of an iron rod/pipe. He also proved post-mortem report issued by him after conducting autopsy. The report is Ext. PQ. The contents of the report fully corroborate the ocular version, given by above named witnesses PW-1 Tek Bahadur and PW-2 Ghamand Singh.

11. The plea taken by the appellant in his statement under Section 313 Cr. P. C. viz., he has been falsely implicated by PW-1 Tek Bahadur and PW-2 Ghamand Singh to save the 'real culprit' is nothing but an after-thought. No suggestion was put to these two witnesses or to any other witness examined by the prosecution, including the Investigating Officer that the crime had been committed by some other person(s). On the contrary what was suggested to PW-1 Tek Bahadur is that he himself had killed the deceased, after he and the deceased consumed liquor and then had a brawl.

12. Coming to argument of the learned defence counsel (Shri T.R. Chandel, Advocate) that this is not the case of murder under Section 302 of the Indian Penal Code, but one culpable homicide not amounting to murder under Section 304 of the Indian Penal Code, the evidence of the prosecution itself indicates that the appellant happened to commit the crime on account of sudden and grave provocation and also in the heat of passion on a sudden quarrel. It is true that the quarrel started due to the spilling of the tea on the cloth of the accused (deceased) on account of accidental hitting of the tumbler by the appellant, but we are of the considered view that for attraction of exception 1 to Section 300 regarding grave and sudden provocation, it becomes irrelevant as to whose act of commission or omission led to the quarrel, especially when the starting act of omission or commission of the quarrel is accidental, as in the present case. It has come in the testimony of PW-1 Tek Bahadur as also PW 2 Ghamand Singh that both the deceased and the appellant hurled abuses at each other and that the deceased, even after having withdrawn from the STD booth, of the appellant kept hurling abuses. PW-2 Ghamand Singh goes to the extent of saying that the two, i.e. the deceased and the appellant even grappled with each other. It was in this given situation that the appellant went inside the booth, brought the rod/iron pipe and

dealt a blow on the head of the deceased which proved fatal.

13. The Hon'ble Supreme Court in V. Sreedharan v. State of Kerala 1992 Cri LJ 701 converted the conviction from the one under Section 300 to one under Section 304 Part-I, in the facts and circumstances, which were similar to those of the present case. In that case, the deceased went to the house of the accused, when the latter and his mother were taking food. The deceased also demanded food, to which the accused's wife objected. The deceased then went out on the road, outside the house of the accused, challenged the latter to come out. The accused followed him with a dagger, chased him to a distance of about 81 feet and dealt a blow of dagger which led to the death of the deceased. It was held that the incident was the result of provocation which the accused got in the heat of passion upon a sudden quarrel and hence the accused was not guilty of murder but of culpable homicide not amounting to murder punishable under Part-I of Section 304 of the Indian Penal Code.

14. There is yet another ruling of the Hon'ble Supreme Court, which applies to the facts of the present case. The citation is : 2004 CriLJ632 Bagdi Ram v. State of Madhya Pradesh. The facts were that accused Bagdi Ram had started constructing a wall. That was objected to by one Mangilal, on the ground that the construction would obstruct the passage to his house. This led to altercation. The accused and his sons hurled abuses at Mangilal and also assaulted him. The incident attracted the sons of Mangilal including the deceased, who tried to intervene to rescue Mangilal. Accused Bagdi Ram dealt a blow of 'Gainti' (pick-axe) on the head of the deceased, which ultimately proved fatal. The Hon'ble Supreme Court held that there was an altercation and exchange of brick bats and when tempers ran high, in the heat of passion, upon sudden quarrel, the accused (Bagdi Ram) assaulted the deceased, who was no doubt unarmed, but without premeditation and gave only one blow which indicated that he did not intend to cause the death of the deceased. The Hon'ble Supreme Court endorsed the view of the High Court that the case was covered by Exception 4 to Section 300 of the Indian Penal Code and that the accused was guilty of an offence under Section 304 Part-I of the Indian Penal Code and not one under Section 302 of the Indian Penal Code.

15. The aforesaid two decisions of the Hon'ble Supreme Court are squarely applicable to the facts of the present case. Consequently, we accept the argument of the learned defence counsel that the case is one of culpable homicide not amounting to murder punishable under Section 304 of the Indian Penal Code and not murder punishable under Section 302 of the Indian Penal Code. Resultantly, we hold the appellant guilty of the offence under Section 304 Part-I of the Penal Code instead of the offence under Section 302 of the Indian Penal Code, as held by the learned trial Court.

16. As a sequel to the above discussion and finding, the appeal is partly accepted and the judgment of the learned trial court is modified to the extent that the conviction and, sentence of the appellant for offence under Section 302 of the Indian Penal Code as awarded by the learned trial Court is set aside and instead the appellant is convicted of the offence under Section 304, Part-I of the Indian Penal Code.

17. As regards the sentence part, looking to the over all facts and the circumstances of the case including the young age of the appellant (he got his age recorded as 21 years on 21 -1 -2002 when the charge was framed), as also the fact that the appellant has been in custody initially, as an under trial and now as prisoner ever since his arrest on 30-8-2001, we feel that the ends of justice will be met, if he is sentenced to undergo imprisonment for a term equivalent to the detention/ imprisonment already undergone by him, the total period of which comes out around quarter to four years and to pay Rs. 10,000/- fine and in default of payment of fine to undergo rigorous imprisonment for a further period of nine months. We order accordingly.

18. The appeal stands disposed of in the aforesaid terms.