

Adman Dung Dung Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Mar-25-2002

Reported in : 2002CriLJ2882

Judge : R.L. Khurana, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300, 302 and 304; ;Code of Criminal Procedure (CrPC) - Sections 154 and 313

Appeal No. : Criminal Appeal No. 610 of 2001

Appellant : Adman Dung Dung

Respondent : State of H.P.

Advocate for Def. : P.M. Negi, Asstt. Adv. General

Advocate for Pet/Ap. : T.S. Chauhan, Adv.

Disposition : Appeal dismissed

Judgement :

R.L. Khurana, J.

1. The present appeal through Jail has been directed by the appellant, Adman Dung Dung, hereinafter referred to as the accused, against the judgment dated 12-10-2001 of the learned Sessions Judge, Hamirpur, in Sessions Trial No. 10 of

2001, whereby he has been convicted for the offence under Section 304 (Part-I), Indian Penal Code, and sentenced to rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/-. In default of payment of fine, he has been sentenced to undergo rigorous imprisonment for a further period of one year.

2. Briefly, the prosecution story may be thus stated. On the night intervening 21/22-10-2000 at about 12-50 a.m. PW. 1 Bhim Singh gave an information to the police on telephone about his servant Rattan Lakra having been assaulted and badly injured by the accused. Such information was duly recorded as report No. 44 (Ex. PW-7/A) in the daily diary of Police Station, Hamirpur and Head Constable Prabhu Ram along with Constable Som Raj were deputed to the spot. At about 1.45 a.m. Head Constable Prabhu Ram gave information at the Police Station on telephone that the above-said Rattan Lakra (hereinafter referred to as the deceased) had died due to the injuries inflicted on him. Such information was entered at Serial No. 46 of the daily diary, copy of which is Ex. PW- 7/B). PW. 9 Inspector Sansar Chand, the then Station House Officer. Hamirpur, accompanied by PW. 6 Head Constable Bachitter Singh and Sub inspector Balwant Singh along with other police officials went to the spot. Statement of PW. 1 Bhim Singh was recorded by PW. 9 Bachitter Singh under Section 154, Code of Criminal Procedure, on the basis of which a case for the offence under Section 302, Indian Penal Code, came to be registered vide FIR No. 195/2000 (Ex. PW. 6/A).

3. During investigation, it was revealed that PW. 1 Bhim Singh was running a factory in the industrial area Baru in District Hamirpur, under the name and style of 'Jwala Engineering Works' for the last 6/7 months. Earlier he was running a factory under the same name in the State of Orissa. PW. 1 Bhim Singh had come to Baru from Orissa on 1-10-2000 accompanied by his servant Raju Girl Bahadur (a Gorkha). The deceased had been employed by PW. 1 as a Chowkidar in his factory. On reaching Baru, PW. 1 Bhim Singh noticed the accused and his wife Sarita staying with the deceased in the factory premises. He rebuked the deceased for having allowed the accused and his wife to stay with him in the factory premises. One Bachittar Singh, an uncle of P.W. 1 Bhim Singh, who was also present at that time told PW. 1 Bhim Singh that since he was in need of a servant, he had asked the deceased to send the accused and his wife to his house

at Jogindernagar in District Mandi.

4. On 3-10-2000 the accused and his wife went to Jogindernagar along with the abovesaid Bachitter Singh. PW. 1 Bhim Singh also on the same day left for his village Gubbar at a distance of about 35 Kms. from Baru. On his return to Baru on 19-10-2000, he again found the accused and his wife staying with the deceased. He objected to their staying in the factory premises and enquired from them as to why they had come back from Jogindernagar. He was told by the wife of the accused that since they were not feeling happy and comfortable at Jogindernagar, they had come back. PW. 1 Bhim Singh, then offered the accused and his wife to accompany him to Orissa. Since the offer was accepted by the accused and his wife. P.W. 1 Bhim Singh purchased four railway tickets for himself, his wife, the accused and his wife. The journey by train was to be performed on 22-10-2000 from Una at 7 p.m.

5. On the night intervening 21/22-10-2000 21/22-10-2000 P.W. 1 Bhim Singh after taking dinner went to bed along with members of his family and Shri S. P. Mehta, his son-in-law. The accused, his wife, the deceased and PW. 4 Raju Giri (servant of PW. 1) slept together on a double bed in one room. At about 12-30 a.m. PW. 1 Bhim Singh woke up on hearing the cries of Ms. Sarita, wife of the deceased as also with the sound of the opening of the door. On coming out in the verandah, he found Ms. Sarita weeping. On being asked as to what, had happened, Ms. Sarita told P.W. 1 Bhim Singh that her husband (the accused) had assaulted the deceased with a danda on the head and that the accused after the assault had run away. P.W. 1 Bhim Singh went inside the room and found the deceased lying on the bed in a pool of blood with a head injury. One danda was also seen lying on the bed. PW. 4 Raju Giri was found standing in the room in an absolute confused and perplex condition. PW. 1 Bhim Singh woke up his son-in-law Shri S.P. Mehta. Both of them then went to the furniture factory of one Shri Balak Ram from where necessary information was given on telephone to the police as well as the hospital. Shri Balak Ram was deputed to Hamirpur to arrange for a vehicle. By the time the police and Shri Balak Ram reached the spot, the deceased had succumbed to his injuries.

6. Investigation further revealed that on the relevant day the accused and the deceased had a quarrel over some money and Ms. Sarita, the wife of the accused resulting into the murder of the deceased by the accused.

7. During the course of investigation, one danda (the alleged weapon of offence) bloodstained 'Khes' and bed-sheet were taken into possession from the spot. A pair of 'Chappals' of the accused, which he was alleged to have left behind while running away was also taken into possession from the spot. On a hunt having been carried out for the accused, he was arrested at about 11 a.m. on 22-10-2000 at Salauni by Constable Prabhu Ram.

8. The dead body of the deceased was subjected to post-mortem, which was conducted by PW. 3 Dr. Sudershan Kumar at Zonal Hospital, Hamirpur. Following injuries were found on the person of the deceased:-

(i) A defused anti-mortem ecchymosis dull blue on the left molar eminence:

(ii) A defused anti-mortem haematoma on the left parieto temporal and occipital area;

(iii) An anti-mortem lacerated wound transversely placed with torn edges measuring 5 cm x 1/2 cm. scalp deep on the left parietal eminence. It was 5 cm above and behind the upper tip of left pinna. Clotted blood was present in the wound. Hair was torn at the edges. The wound was gaping and staining of the edges of wound was present. No foreign matter was found in the wound.

(iv) There was a depressed comminuted fracture of left occipital parietal area. The fracture was extending to the mastoid bone through outer and inner tables. Bone had been broken into multiple chips which had penetrated into the brain tissue which too was crushed; and

(v) The left hemisphere of the cerebrum underlying the fractured bones was macerated. The meninges also stood macerated. There was effusion of blood in the brain tissue and the cranial cavity. Multiple bony chips were found embedded in the brain tissue.

9. In the opinion of P.W. 3 Dr. Sudershan Kumar, the deceased had died due to massive head injury. In further opinion of PW. 3 the above noted injuries found on the person of the deceased could have been possibly caused by one blow with the danda Ex. P2 and that the head injury was sufficient in the ordinary course to cause the death.

10. On completion of investigation the accused was sent up for trial for the offence under Section 302, Indian Penal Code. The accused was charged for such offence to which he pleaded not guilty and claimed trial. While denying the prosecution story, the accused in answer to question No. 19 of his statement recorded under Section 313, Code of Criminal Procedure, took the defence in the following terms:-

We had retired to bed in between 8.30 to 9 p.m. Rattan Lankra had taken liquor. There were two cots which constituted a double bed lying in the room. When I woke up, I saw my wife and Rattan Lankra in compromising position. He was performing sexual intercourse with my wife. I became enraged. I wanted to catch hold of him. He tried to run. His head struck against iron door of the (room. He fell down on the bed as the bed was lying nearby the door. I saw that blood had started coming out of the head of Rattan Lankra. I got scared. Therefore, I ran away. Ext. P. 2 danda belonged to Rattan Lankra. He was a mason basically. Once I had tried to use the danda for fuel for preparing the meal but Rattan Lankra did not allow him to do so. Raju was sleeping throughout. I woke up when my wife had raised an alarm, when she was subjected to sexual intercourse. On account of her raising alarm, all have awoken which included Bhim Singh also.

11. The prosecution in support of its case examined ten witnesses in all. No defence was led by the accused in spite of having been called upon to do so.

12. The learned trial Court, upon consideration of the evidence led before it, came to the conclusion that the offence under Section 302, Indian Penal Code was not made out against the accused and that only an offence under Section 304 (Part-I), Indian Penal Code, was made out. The accused was, therefore, convicted and sentenced for such offence as aforesaid.

13. The only contention raised on behalf of the accused by the learned legal Aid Counsel is that from the evidence coming on record, the fatal blow was inflicted by the accused on the spur of the moment without any pre-meditation and/or malice. There was no intention to kill as only one blow with the help of danda Ex. P2 was inflicted. Therefore, at the most, the accused can be held guilty of the offence under Section 304 (Part-II) and not the offence under Section 304 (Part-I), Indian Penal Code.

14. Section 304, Indian Penal Code, reads:-

304. Punishment for culpable homicide not amounting to murder:- Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as it likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

15. Dealing with the distinction between Part-I and Part-II of Section 304, Indian Penal Code, it has been held in *Dayal v. Union of India* AIR 1963 Him Pra 18 : (1963 (1) Cri LJ 762) that if such bodily injury as is likely to cause death is intentionally caused and results in the death of the victim the case would fall under Part-I and not under Part-II. Stated differently, Part-II comes into play when death is caused by doing an act with the knowledge that it is likely to cause death and when such act is the infliction of bodily injury and such infliction is not intentional. A person who intentionally causes bodily injury with knowledge that such act is likely to cause death must necessarily be a person who does an act with the intent to cause bodily injury likely to result in death.

16. In other words, Part-I of Section 304, Indian Penal Code applies where there is guilty intention and Part-II where there is no such intention but there is guilty

knowledge.

17. In *Rattnu v. State of H.P.* (1995) 1 Sim LC 368, the accused therein on seeing his wife lying on a cot in a compromising position with another man, lost control and kill his wife with an axe. He was tried for the offence under Section 302, Indian Penal Code. The learned trial Court on the basis of evidence coming on record held him guilty for the offence under Section 304 (Part-I), Indian Penal Code. He was accordingly convicted and sentenced to rigorous imprisonment for seven years and to pay a fine of Rs. 500/-. In appeal before this Court, a contention was raised that the offence fell under Part-II of Section 304, Indian Penal Code. It was held:-

Looking to the explanation of the accused, it appears that he was deprived of the power of self control by grave and sudden provocation when he noticed the deceased in a compromising position with Mehar Chand and killed the deceased with axe. In these circumstances, the cause would fall under Exception-I of Section 300, Indian Penal Code, as has rightly been held by the trial Court.

18. The conviction of the accused for the offence under Section 304 (Part-I) was, therefore, confirmed. The sentence of imprisonment, however, on the facts of the case, was reduced by two years.

19. The Hon'ble Supreme Court in *Mahesh Balmiki alias Munna v. State of M.P.* (2000) 1 SCC 319 : (1999 Cri LJ 4381) has held that the question with regard to the nature of the offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him.

20. In *Hardev Singh v. The State of Punjab* AIR 1975 SC 179 : (1975 Cri LJ 243), it has been held (para 8):-

The tests laid down by this Court in the case of Virsa Singh v. The State of Punjab 1958 SCR 1495 : AIR 1958 SC 465: (1958 Cri LJ 818) have often been adopted as the guideline to find out whether an author of an injury which on objective test has been found to be sufficient in the ordinary course of nature to cause the death of the victim had intended to cause that particular injury which caused the death. The question in such a case which falls for determination is whether the causing of the fatal injury was accidental or unintentional or whether some other kind of injury was intended to be inflicted by the assailant. Ordinarily and generally once the existence of the injury is proved, the intention to cause it will be presumed unless the evidence of the circumstances warrant an opposite conclusion....

21. Dealing with the scope and ambit of Section 304, Indian Penal Code, the Hon'ble apex Court in Harendra Nath Mandal v. State of Bihar AIR 1993 SC 1977 : (1993 Cri LJ 2830) has held (Para 6):-

Section 304 does not create an offence but provides the punishment for culpable homicide not amounting to murder. In view of Section 299 of the Penal Code, whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. In view of Section 300 of the Penal Code, except in cases covered by the five exceptions mentioned therein, culpable homicide is murder. It is well known that if a death is caused and the case is covered by any one of the five exceptions of Section 300 then such culpable homicide shall not amount to murder. Section 304 provides punishment for culpable homicide not amounting to murder and draws a distinction in the penalty to be inflicted in cases covered by one of the five exceptions, where an intention to kill is present and where there is only knowledge that death will be a likely result, but intention to cause death or such bodily injury which is likely to cause death is absent, To put it otherwise if the act of the accused falls within any of the Clauses (1), (2) and (3) of Section 300 but is covered by any of the five exceptions it will be punishable under the first part of Section 304. If, however, the act comes under Clause (4) of Section 300 i.e. the person committing the act knows that it is so imminently dangerous that it must, in all probability cause death but without any intention to cause death and is covered

by any of the exceptions, it will be punishable under the second part. The first part of Section 304 applies where there is guilty intention whereas the second part applies where there is guilty knowledge. But before an accused is held guilty and punished under first part or second part of Section 304, a death must have been caused by him under any of the circumstances mentioned in the five exceptions to Section 300, which includes death caused while deprived of power of self-control under grave and sudden provocation, while exercising in good faith the right of private defence of person or property, and in a sudden fight in the heat of passion without premeditation.

22. In the present case, the accused by giving the blow with the danda Ex. P2 on the head, a vital part of the body of the deceased intended to cause bodily injury to the deceased. The seat of the injury being on the vital part of the body, the accused can be imparted with the knowledge that, such injury would be sufficient to cause death. Evidence is forthcoming that the injury caused to the accused was sufficient in the ordinary course to cause death. Nothing has come on the record to show that the fatal injury was accidental or unintentional or that some other kind of injury was intended to be inflicted by the accused.

23. On the basis of evidence coming on the record, the accused, therefore, stands rightly convicted for the offence under Section 304 (Part-I), Indian Penal Code.

24. A contention was raised on behalf of the accused that the sentence imposed, on the facts and in the circumstances of the case, is harsh and the same deserves to be reduced by taking a lenient view in the matter.

25. The offence under Part-I of Section 304, Indian Penal Code is punishable with imprisonment for life or imprisonment of either description for a term which may extend to ten years. The accused has been sentenced to rigorous imprisonment for a period of seven years and fine. He already stands dealt with leniently by the learned Court below. On the facts and in the circumstances of the case, no reduction in the quantum of sentence is called for.

26. As a result, the present appeal fails and is accordingly dismissed. Let a copy of the judgment be sent to the accused through Superintendent Jail, Nahan, for his

information.

27. Before parting, this Court places on record its appreciation for the valuable assistance rendered to the Court by Shri T. S. Chauhan, Advocate, the learned legal Aid Counsel.

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