

(2010) 08 MP CK 0069

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 369 of 2002

Anusuiya Singh, Chhatrapati Singh, Vanshpati Singh and
Daya Prakash

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 294, 300, 302, 304, 323

Citation : (2010) ILR (MP) 1981

Hon'ble Judges : Rakesh Saxena, J; Gulab Singh Solanki, J

Bench : Division Bench

Judgement

G.S. Solanki, J.—The Additional Sessions Judge, Rewa vide impugned judgment dated 12.02.2002, in ST No. 71/2000 recording conviction of appellants/accused u/s 302/34 of IPC and u/s 323/34 of IPC (on four count), sentenced them to undergo life imprisonment and to pay fine of Rs. 1,000/- (to each) with default stipulation, and RI for 1 year (to each) respectively.

2. Being aggrieved, appellants/accused have preferred this appeal u/s 374(2) of the Code of Criminal Procedure.

3. The prosecution case, in short, is that on 7th December, 1999 at about 5.30 a.m. in village Narora, PS Chourhata, complainant, Ramashray (PW-5) went to call of nature, he saw that accused Vishwanath (acquitted) is watering the field (which is disputed between complainant and his brother), from the pump, of sister-in-law of complainant. She is also sister-in-law of Vishwanath. Then complainant Ramashray (PW-5) asked to his sister-in-law that she is distributing the water to other persons of village, but why she is not giving the same water to him, while he is ready to pay for the same. On this she replied that she will give him slipper.

4. On this altercation, accused Vishwanath stopped watering the disputed field, and went to his house but after some time he came back with Chhatrapati (A-2)

and Vanshpati(A-3). They abused and grappled with complainant. Matter was intervened and pacified by Anusuiya Singh(A-1). Then all of them went to their respective homes, except complainant Ramashray. Thereafter, when complainant was returning, just before his house Anusuiya Singh(A-1) intercepted him, abused and gave lathi blows on his chest and feet, due to which he fell down. On shouting of complainant his wife Ram Sundri(PW-6), sons Virendra (PW-7), Narendra(PW-8), Sukhendra (deceased) came to rescue him. Then Anusuiya (A-1) gave a lathi blow to Ram Sundri(PW-6) on her head. Vanshpati gave a lathi blow near the eye of Sukhendra(deceased). Anusuiya(A-1) gave a lathi blow on the right hand and head of Virendra. According to complainant, on listening the hue and cry, Vanshpati (A-3), Chhatrapati(A-2), Daya Prakash(A-4), Vishwanath and Deep Narayan, already reached from their respective houses and took part in the incident. It was further alleged that if he was not rescued by his brother-in-law, Suryapal Singh (PW-9) and other villagers he would have been killed. He further alleged that accused persons threatened him and told that today he is saved but he will be killed in future.

5. Complainant lodged a report (Ex.P-29) at out-post Noubasta of Police Station, Chourhata. Injured persons were sent to Gandhi Hospital, Rewa where Dr. S.K. Pathak(PW-10) examined them but Sukhendra(son of complainant) succumbed to his injuries at about 3 p.m. on 7.12.99. Dead body of Sukhendra was sent for post-mortem. Dr. V.K. Sharma(PW-1) performed the autopsy on the dead body and opined that death was by shock, due to intracranial haemorrhage in head. Death was homicidal in nature. He prepared post-mortem report, Ex. P-1.

6. Offence under Sections 341, 294, 323, 325, 506-B and 302 read with 34 of IPC was registered against the appellants/accused. During investigation spot map was prepared. Blood stained and normal earth was seized from the spot. Appellants/accused were arrested. Lathis were seized at the instance of appellants/accused. Clothes of deceased were received from the hospital and clothes and lathis seized from appellants Vanshpati and Anusuiya were sent for chemical examination to FSL, Sagar. The Assistant Medical Examiner found blood on lathis seized from appellants Vanshpati and Anusuiya.

7. After completion of investigation, co-accused Deep Narayan was prosecuted in Juvenile Court and appellants were charge-sheeted and committed to Court of Session.

8. Learned Additional Sessions Judge, framed the charge under Sections 147, 302/149, 225/149 of I.P.C. and 323/149 of I.P.C. against the appellants/accused.

9. They abjured the guilt and pleaded that on 07.12.1999 at 5.30 a.m. on hearing the hue and cry of appellant Daya Prakash, Anusuiya(A-1) went to rescue him. But he was beaten by the wife of complainant Ramsundri and his sons. Vanshpati (A-3) , Chhatrapati (A-2), Deep Narayan, also arrived there. They were also assaulted by complainant party. Anusuiya(A-1), Vanshpati and Daya Pakash received injuries and examined by Dr. S.K. Pathak(PW-10). They

also lodged the report(Ex. D-10) and examined defence witnesses Dr. Abhitabh Awasthy as DW-1 and Munna lal Bunkar as D.W-2.

10 On appraisal of the evidence on record, learned Additional Sessions Judge acquitted co-accused Vishwanath, of the charges levelled against him, but convicted and sentenced the appellants as mentioned hereinabove.

11. Learned Counsel for the appellants submitted that the trial Court erred by not appreciating the evidence in its proper perspective. The incident was not fairly investigated. The complainant party was aggressor and occurrence took place suddenly on the spur of the moment. Therefore, the finding of conviction recorded by trial Court is erroneous, and liable to be set aside.

12. On the other hand, learned Counsel for the State justified and supported the impugned judgment and the finding of the trial Court.

13. It is no longer disputed that death of Sukhendra was homicidal in nature . Dr. V.K. Sharma(PW-1) who performed autopsy on the dead body of Sukhendra found following injuries: (i) Hematoma below skull skin in right parietal temporal region to Occipital region, size 12X10 c.m.(ii) Extradural hematoma on the temporal region, size 10X8 c.m. (iii) there was fracture in temporal parietal bone, size 12 c.m. (iv) Subdural haematoma on right side of brain,(v) subarchnoid haemorrhage on both side of brain. All injuries were ante-mortem, can be caused by hard and blunt object. He opined that death of Sukhendra was caused by shock, due to intracranial haemorrhage. Death was homicidal in nature. He prepared post-mortem report(Ex. P-1).

14. Dr. V.K. Sharma, is independent witness and his testimony remained intact during cross-examination. In these circumstances, it can be safely concluded that death of Sukhendra was homicidal in nature.

15. Prosecution case rests on the testimony of four injured witnesses namely complainant Ramashray (PW-5), wife of complainant Ram Sundri(PW-6), sons of complainant Virendra (PW-7) and Narendra(PW-8).

16. We have perused the testimonies of Suryapal Singh(PW-9) and Ajay Singh (PW-11) both of them are related witness of complainant and they reside in other village. They remained unable to explain that how they came to the village of complainant. According to both of them Muneem(PW-2) was also with them. Muneem was independent witness and he did not support the versions of Suryapal Singh(PW-9) and Ajay Singh(PW-11). In this circumstances, presence of Suryapal Singh(PW-9) and Ajay Singh(PW-11) is doubtful at the place of incident. In our opinion trial Court rightly disbelieved them, we also ignore their testimonies.

17. Ramashray(PW-5) stated that there was a dispute between him and his brother regarding vacant plot which is lying adjacent to their house. Accused Vishwanath was taking water from the pump of his sister-in-law to irrigate said disputed plot. Then he told to his sister-in-law that she is distributing the water

to other persons but why she is not giving water to him even when he is ready to pay for the same. In reply she said that she will give him slipper. On this point of time, Vishwanath stopped watering and went towards his house. After some time, he returned with Vanshpati(A-3), Chhatrapati(A-2) and abused complainant and grappled with him. Anusuiya intervened and pacified them. All of them then dispersed.

18. According, to complainant when he was returning, just before his house, Anusuiya intercepted him and gave a lathi blow on his feet and second blow on his chest. Due to which he fell down. On his hue and cry, his wife Ram Sundri(PW-6), Virendra(PW-7) and Narendra(PW-8), Sukhendra(deceased) came to rescue. Simultaneously other accused persons Chhatrapati, Vishwanath, Deep Narayan, Daya Prakash, Vanshpati came over there and encircled them. Anusuiya gave a lathi blow on the head of Sukhendra. Vanshpati gave lathi blow on the eye of Sukhendra and other accused Vishwanath, Dayaprakash and Chhatrapati also beat Sukhendra. According to complainant all the accused persons gave lathi blows to his wife Ram Sundri and his sons. Witnesses Suryapal(PW-9) and Ajaypal (PW-11) when came to rescue them then accused persons fled away saying that today he has been saved but he will be killed in future. Complainant further stated that he lodged the report(Ex.P-29). He admitted in cross-examination that in the beginning appellant Vanshpati, Chhatrapati, Daya Prakash and Deep Narayan were not present at the place of occurrence. They arrived there after hearing the hue and cry. He further admitted that all the three injuries to Sukhendra were caused by accused Anusuiya and Vanshpati. He pleaded ignorance regarding injuries of accused Vanshpati and Anusuiya.

19. Learned Counsel for the appellants vehemently argued that incident was not fairly investigated. Complainant party was aggressor and the occurrence took place suddenly. In the light of these argument we have to examine the materials placed before us.

20. It is true that accused persons were also injured in this very incident but all the prosecution witnesses viz. complainant Ramashray(PW-5), Ram Sundri(PW-6), Virendra (PW-7) and Narendra(PW-8) expressed ignorance regarding injuries found on the person of appellants/accused Anusuiya (A-1), Vanshpati(A-3) and Daya Prakash(A-4). Dr. S.K. Pathak(PW-10) deposed that he examined injuries of Anusuiya (A-1), Vanshpati (A-3) and Daya Prakash(A-4) also on 07.12.1999 and prepared MLC reports Ex. D-7,D-8 and D-9 respectively. It was done by him simultaneously when he examined and treated injured persons of complainant party. He further deposed that injuries found on the person of accused persons were caused by hard and blunt objects. According to him, he suspected fracture on the body of Anusuiya and Vanshpati therefore, he referred them to Orthopedic Department.

21. S.P. Chaturvedi(PW-12), investigating officer admitted that Daya Prakash(A-4) lodged a report of Marpeet which was registered in Rojnamcha Sanha No. 98 Ex. D-10C and he sent Anusuiya(A-1), Vanshpati(A-3) and Daya

Prakash(A-4) for their medical examination.

22. On perusal of Ex. D-10C it reveals that sister-in-law of complainant, is real maternal aunt of Daya Prakash(A-4). Daya Prakash is son of Vishwanath, in this way she(Siya devi) is sister-in-law of Vishwanath (acquitted accused). It further reveals that complainant Ramashray raised the dispute regarding field which was being watered by Vishwanath. At this point of time, Anusuiya(A-1) pacified the matter by saying that they should verify the possession on disputed plot with the help of Patwari.

23. Dharmendra Prasad Saket(PW-4) Patwari, admitted that disputed field, Arajai No. 9 is divided in three parts. No. 9/1 is recorded in the name of Shiv Balak Singh, No. 9/2 is recorded in the name of Arun Singh and No. 9/3 is recorded in the name of Soukhi Lal Singh. But all these numbers are in possession of complainant Ramashray and his brother Jay Ram Singh. It is also important to note that Vishwanath is a son of Shiv Balak Singh. In this way real dispute was regarding the possession of disputed field but unfortunately prosecution failed to place the real genesis of the incident before the Court and investigated the matter one sided.

24. The incident reported by Daya Prakash(A-4) in Sanha report (Ex.D-10C) is different to FIR (Ex.P-29). According to Ex. D-10C when matter was pacified by Anusuiya(A-1), at about 6 O" clock, complainant Ramashray returned and near his house abused Anusuiya(A-1) and grappled with him. At the same time, Ram Sundri(PW-6) and his sons Virendra Narendra and Sukhendra also came there and pelted earthen clods. On hue and cry of Anusuiya, other appellants Vanshpati , Chhatrapati and Deep Narayan rushed to rescue him.

25. Facts on record indicate that the matter was not fairly investigated and true genesis of the incident was not brought before the Court.

26. We are conscious that on mere non explanation of injuries on the body of accused persons, whole of the prosecution case can not be thrown out, but at the same time this fact and circumstance can not be altogether ignored. Keeping in mind the above facts we have examined the statements of injured witnesses Ram Sundri(PW-6), Virendra(PW-7) and Narendra(PW-8). Though all of them corroborate the version of complainant but there are some improvements and exaggerations from their respective police statements Ex. D-2,D-3 and D-4. Despite these improvements, their testimonies can not be disbelieved because they are injured persons and their presence is also well established by the report lodged by Daya Prakash(A-4), Ex. D-10. Their testimonies find support by medical evidence of Dr. S.K. Pathak(PW-10) who examined and treated them and found simple injuries on their person as well as on the body of Sukhendra(deceased). The testimony of complainant is substantially corroborated by the FIR(EX. P-29). In these circumstances, where real genesis regarding occurrence is not placed on record, one can not reach the conclusion as to who was the aggressor in the incident. Then only fact we find proved is that

the incident occurred in a sudden quarrel in which accused caused such injury to Sukhendra which resulted in his unfortunate death.

27. Chhatrapati(A-2), Vanshpati(A-3) and Daya Prakash(A-4) reached to the place of incident hearing the hue and cry. This fact also finds support from the FIR of complainant(Ex.P-29). In these circumstances, only one inference can be drawn that they committed the offence without premeditation in a sudden fight.

28. Some of injured persons admitted that Sukhendra(deceased) was beaten by Anusuiya(A-1) and Vanshpati(A-3) only. But considering the facts that all appellants gave lathi blows to the members of complainant party including deceased, other appellant can not be excluded from their vicarious liabilities for joining the common intention.

29. Now we have to see that whether incident took place in the heat of passion upon a sudden quarrel and whether any appellants/accused took undue advantage or acted in a cruel or unusual manner. As we discussed hereinabove that Anusuiya(A-1), Vanshpati(A-3) and Daya Prakash(A-4) also received injuries by hard and blunt object it means that they were also assaulted, but at the same time they had also given lathi blows to the complainant party. It shows that appellants/accused have not taken undue advantage or have acted in a cruel or unusual manner. In these circumstances, the offence committed by appellants in relation to Sukhendra(deceased) falls under exception 4 of Section 300 of IPC and they are liable to be convicted for committing culpable homicide, not amounting to murder.

30. As discussed hereinabove we are of the considered opinion that trial Court committed error in recording the conviction of appellants for the offence punishable u/s 302/34 of IPC. Therefore, we set aside their conviction and sentence u/s 302/34 of IPC and convict them u/s 304 Part II read with Section 34 of IPC.

31. In regard to sentence, on perusal of record, we find that Anusuiya(A-1), Vanshpati(A-3) are in jail from 16.11.2000 to till date i.e. about 9 years and 7 months. Chhatrapati(A-2) was in custody from 17.12.99 to 18.07.2000 and 12.12.2002 to till date i.e. about 8 years. Daya Prakash(A-4) was in custody from 09.12.99 to 03.03.2000 and 12.12.2002 to till date i.e. about 7 years and 8 months. Considering the period of their custody, if their sentences are reduced to period of sentence already undergone by them, it would meet the ends of justice. Therefore, appellants are sentenced to period of sentence already undergone by them.

32. As regard to simple injuries caused to complainant Ramashray, witnesses Ram Sundri, Virendra and Narendra, conviction and sentence recorded u/s 323/34 of IPC by the trial Court is hereby affirmed. Substantive sentences to run concurrently.

33. The appeal filed by the appellants is partly allowed to the extent mentioned

hereinabove.