
(2005) 02 MP CK 0087

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 93 of 1996

Bhawla @ Bhav Singh and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 302, 304, 323, 34

Citation : (2005) 2 JLJ 403 : (2005) 2 MPHT 312

Hon'ble Judges : Deepak Verma, J;A.K. Awasthy, J

Bench : Division Bench

Advocate : P.K. Saxena and Sunil Verma, for the Appellant; Girish Desai, Dy. A.G., for the Respondent

Judgement

A.K. Awasthy, J.—Appellants/accused have filed the appeal u/s 374 of the Code of Criminal Procedure against the judgment and order dated 18-1-1996 delivered in Sessions Trial No. 134/1994 by learned First Additional Sessions Judge, Khargone (West Nimar) of their conviction and sentence u/s 302 read with Section 34, IPC of the rigorous imprisonment of life and fine of Rs. 5,000.00 and in default of fine, further simple imprisonment of 1 year and also u/s 323 read with Section 34, IPC fine of Rs. 200.00 and in default of fine, further simple imprisonment of one month and both the sentences were directed to run concurrently.

2. The prosecution case is that on 8-2-1994 at about 7.00 p.m. in Village Mamdiya in the feast at the house of Kalu, the villagers from the nearby villages were present and when accused Bhawla demanded more mutton, then on account of the refusal to provide him more mutton, he left the party. That after some time accused Bhawla @ Bhavsingh alongwith his brothers co-accused Kashya @ Kashiram, Dhanna @ Dhannalal and Bhika reached there and accused Bhawla gave one stick blow on the head of deceased Munna, aged about 30 years. That Kalu (P.W. 1) and Jiru (P.W. 4) made an attempt to intervene but

accused Kashya, Dhanna and Bhika threw the stones and injured them. First Information Report (Ex. P-1) was lodged on 9-2-1994 in the night at about 11.45 p.m. in the Police Station, Gogawa by Kalu (P.W. 1).

3. After recording the FIR (Ex. P-1), Sub Inspector Tersingh (P.W. 7) went to the village and Panchnama (Ex. P-2) of the dead body was prepared by him and he has also drawn the spot map (Ex. P-6) and seized plain and the blood stained soil from the place of incident vide seizure memo (Ex. P-3). Dr. Naginchandra Jain (P.W. 8) has examined Kalu (P.W. 1) and Jiru (P.W. 4) on 10-2-1994 and he has found one simple lacerated wound on the occipital region of Kalu and one abrasion on the right finger of Jiru vide his report respectively Exs. P-9 and P-10. That the dead body was sent for autopsy for Primary Health Centre, Gogawa. Dr. Naginchandra Jain (P.W. 8) has conducted the autopsy and he has reported in his report (Ex. P-11) that there was a lacerated wound on the upper side of the skull of the deceased measuring 2-3/4" x 1-1/4" x deep to the muscles and it has caused the fracture of the skull. Dr. Naginchandra Jain (P.W. 8) has opined in his report (Ex. P-11) that the injury was sufficient in ordinary course of nature to cause the death. Sub Inspector Tersingh (P.W. 7) after the usual investigation has filed the charge-sheet against the accused persons under Sections 302 and 323 read with Section 34, IPC.

4. The learned Trial Court after framing the charges u/s 302 read with Section 34, IPC and u/s 323 read with Section 34, IPC has examined Kalu (P.W. 1), Radha Kishan (P.W. 2), Darbar (P.W. 3), Jiru (P.W. 4), Kailash (P.W. 5), Daulatram (P.W. 6), Sub Inspector Tersingh (P.W. 7) and Dr. Naginchandra Jain (P.W. 8). The accused have denied the statements of the prosecution witnesses and pleaded false implication due to enmity. This learned Trial Court has held that the prosecution has succeeded in bringing home the guilt against the accused persons on the basis of the statements of eye-witnesses Kalu (P.W. 1), Radha Kishan (P.W. 2), Darbar (P.W. 3) and Jiru (P.W. 4) and the accused were convicted and sentenced as stated above.

5. The appellants have assailed the conviction on the ground that the learned Trial Court has erred in convicting the accused for the offence u/s 302 read with Section 34, IPC and it is alleged that offence against accused Kashya, Dhanna and Bhika was not made out either u/s 302 read with Section 34, IPC or u/s 304 read with Section 34, IPC. That the sentence is excessive and disproportionate to the offence committed by the accused persons.

6. Dr. Naginchandra Jain (P.W. 8) has stated that on 10-2-1994 at about 8.00 a.m. he has examined the dead body of Munna and found the deep lacerated wound 2-3/4" x 1-1/4" x deep to the muscles underlying fracture of bone was visible. Dr. Naginchandra Jain (P.W. 8) has further stated that injury was ante mortem in nature and dangerous to his life and it was also sufficient to cause the death.

7. Dr. Naginchandra Jain (P.W. 8) has further stated that he has examined Kalu

(P.W. 1) and there was a lacerated wound 1-1/2" x 1/2" x 1/2" left parietal scalp which was caused by hard and blunt object. That on same day, i.e., 9-2-1994 he has also examined Jiru (P.W. 4) and he was having one abrasion 1" x 1/2" on the right middle finger which was caused by hard and blunt object. No reason exists to disbelieve the statement of Dr. Naginchandra Jain (P.W. 8). Consequently it is proved that the deceased Munna had an ante mortem injury on the middle of his head and caused the fracture of the scull and resulted in his death.

8. Now it will be discussed whether the prosecution has proved his case on the basis of the statements of eye-witnesses Kalu (P.W. 1), Radha Kishan (P.W. 2), Darbar (P.W. 3) and Jiru (P.W. 4), Kalu (P.W. 1), Radha Kishan (P.W. 2) and Darbar (P.W. 3) have stated that in the feast of the marriage, all the four accused were sitting together and when accused Bhika demanded more mutton and it was said to him that more mutton is not available, all the accused persons left the party. Kalu (P.W. 1), Radha Kishan (P.W. 2) and Darbar (P.W. 3) have further stated that after some time accused persons came there and accused Bhawla gave a stick blow on the head of Munna and when attempt was made to save him, accused Bhika and Dhanna started pelting the stones towards Jiru (P.W. 4) and others. Kalu (P.W. 1) has further stated that he went to the police station and lodged the FIR (Ex. P-1) and thereafter the dead body was sent for autopsy and the injured persons were examined by Dr. Naginchandra Jain (P.W. 8).

9. There is not a single contradiction in the statements of eyewitnesses in between their statements. They are independent witnesses and they have no reason to give the false evidence against the accused persons. The statements of these witnesses are natural and inspire the confidence.

10. The FIR (Ex. P-1) was lodged on 9-2-1994 just after 5 hours of the incident and in the FIR it is clearly indicated that accused Bhawla has given the deadly blow on the head of the deceased and other accused persons had thrown the stones. The Police Station, Gogawa is 30 Kms. away from the place of incident Mamdiya. The FIR (Ex. P-1) was promptly lodged by the injured witness Kalu (P.W. 1). There is hardly any opportunity to cook up false story against the accused persons before lodging the report (Ex. P-1). It is observed in case of Hardev Singh v. Harbhej Singh [1997 SCC 5 = (1996) 4 Crimes 216] that very fact the FIR was lodged within 3 hours of the occurrence naming accused with all details unmistakably proved the involvement of the accused in the crime as there was hardly any time to concoct any false story against the accused. Medical evidence is fully corroborating the prosecution story. Learned defence counsel has failed to point out infirmity in the statements of the aforesaid eye-witnesses. Consequently, the finding of Trial Court that accused Bhawla gave a stick blow on the head of deceased and thereafter co-accused injured the witnesses by pelting the stone is in accordance with evidence on record.

11. It is rightly submitted by learned Senior Advocate that the offence is covered by Section 304 Part II of IPC. No doubt it can not be said that in every case of single injury would show the absence of intent to kill. It will depend on the fact of

each case, type of weapon, place of injury, animosity etc. In case of Augustine Saldanha Vs. State of Karnataka, it was held that on account of single stick blow on head in the dark night, it can not be stated with certainty that accused intended to cause the death and as such he was convicted u/s 304 Part II of the IPC.

12. Facts and circumstances of this case also indicate that absence of deliberate intention to cause the death of deceased. Only one blow of ordinary stick was inflicted on the head of the deceased. There was no enmity of the accused with deceased and he had no motive to kill him. The incident has taken place on account of the refusal to provide him some mutton in the feast. The accused has not made any attempt to repeat the blow or use the axe or other deadly weapon. Thus, it is difficult to hold that prosecution has proved beyond reasonable doubt that appellant has committed offence of murder u/s 302, IPC. The offence would only come u/s 304 Part II, IPC.

13. The Apex Court in case of Suresh and Another Vs. State of U.P., dealing with the scope of Section 34 of IPC has observed that inference regarding common intention can be drawn from acts or conduct of the accused or other relevant circumstance and it can be formed previously or in the course of occurrence and on the spur of the moment. In our case co-accused has not caused any injury to the deceased. When accused Bhawla gave the fatal blow, co-accused remained at distance and silent. Co-accused were not armed with any weapon. They did not exhorted accused Bhawla to beat or kill the deceased and they remained quite at the time of incident. Stone were pelted by them when the attempt was made to chase accused Bhawla. In the aforesaid circumstances and in view of death by sudden single stick blow, it is difficult to conclude that co-accused formed the common intention and the death was caused in furtherance of their common intention. The essential ingredients to attract the applicability of Section 34, IPC not fully proved. Consequently appellant Bhawla is held guilty only u/s 304 Part II, IPC and other accused are acquitted from offence punishable u/s 302/34, IPC. The conviction u/s 323/34, IPC is confirmed.

14. Appeal is allowed partly. Appellant accused Bhawla is convicted and sentenced u/s 304 Part II, IPC to undergo the rigorous imprisonment of 6 (six) years and fine of Rs. 5,000.00, in default of payment of fine 4 months rigorous imprisonment. All appellants accused are acquitted from the offence punishable u/s 302 read with Section 34, IPC. The fine, if deposited by accused appellants, other than appellant Bhawla of Rs. 5,000/-, 5,000/- for offence u/s 302/34, IPC, be returned to them. The conviction and sentence of all appellant accused u/s 323 of Indian Penal Code is hereby maintained. The accused Bhawla be taken in custody to undergo the remaining jail sentence.