
(2018) 07 MP CK 0063
In the Madhya Pradesh High Court
Case No : Criminal Appeal No.2424 Of 2008

Chhohe Lal @ Chhotelal

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 09-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 300, 302, 304I
Arms Act, 1959 — Section 25(1)(b)(a), 27

Citation : (2018) 07 MP CK 0063

Hon'ble Judges : S.K.Gangele, J;Akhil Kumar Srivastava, J

Bench : Division Bench

Advocate : Sushila Paliwal, Aditya Jain

Final Decision : Partly Allowed

Judgement

Conviction,Sentence

Under Section 302 of IPC,"Life imprisonment and fine of Rs.1000/-, in default
RI for 6 months.

Under Section 25(1)(b)(a) of Arms Act,"RI for 1 years and fine of Rs.500/-, in
default RI

for 3 months.

Under Section 27 of Arms Act,"RI for 3 years and fine of Rs.500/-, in default RI
for 6 months. (All the sentences to run
concurrently).

deceased by gun which was seized from the possession of the appellant.,

13. PW-13, the Doctor who performed the post mortem of the deceased verified
the fact that the deceased received a number of pellet injuries which",

were fired through a BharmarGun, hence, from the aforesaid evidence it has been proved beyond reasonable doubt that the appellant had killed the", deceased.,

14. Now, the next question is that whether the offence committed by the appellant would fall under Section 304 Part-I of IPC or whether there was", sudden provocation ?,

15. The Apex Court in the case of B.D.Khunte vs. Union of India (2015) 1 SCC 286 has held with regard to Section 300 IPC as under :,

â??12. What is critical for a case to fall under Exception 1 to Section 300 IPC is that the provocation must not only be grave but sudden as well. It is,

only where the following ingredients of Exception 1 are satisfied that an accused can claim mitigation of the offence committed by him from murder to,

culpable homicide not amounting to murder:.,

(1) The deceased must have given provocationto the accused.,

(2) The provocation so given must have beengrave.,

(3) The provocation given by the deceased musthave been sudden.,

(4) The offender by reason of such grave andsudden provocation must have been deprived of his power of self-control; and,

(5) The offender must have killed the deceasedor any other person by mistake or accident during the continuance of the deprivation of the power of,

self-control.,

â?|,

â?|,

15. It was contended by Mr. Sisodia that although between the incident that happened at noon and the shooting of the deceased at 2130 hrs. were,

separated by nearly seven hours interval, the nature of the provocation continued to be grave within the meaning of Exception 1 to Section 300 IPC.",

We find it difficult to accept that submission. Grave provocation within the meaning of Exception 1 is a provocation where judgment and reason take,

leave of the offender and violent passion takes over. Provocation has been defined by Oxford Dictionary, as an action, insult, etc. that is likely to",

provoke physical retaliation. The term grave only adds an element of virulent intensity to what is otherwise likely to provoke retaliation.â??,

16. In the present case, it is admitted fact that the deceased had entered into

the house of the appellant in the night around 10:00 Oâ?? Clock",

because the incident had taken place at that time. PW-2 in paragraph-6 of his deposition has deposed that the wife of the appellant told him that the,

deceased had illicit relationship with niece of the appellant, due to this reason, the appellant had killed the deceased.",

17. PW-3 also in paragraph-13 of his cross-examination has admitted the fact that on the date of incident, Chanda-niece of the appellant was at his",

house. She was living separately in another Mohalla alongwith her Mama. The wife of the appellant called her which proves the fact that on the date,

of incident the niece of the appellant was in the house of the appellant.,

18. PW-13 proved the fact that he noticed sperm on the penis and skin of the deceased. In Paragraph-9 of his cross-examination, he further admitted",

that he noticed signs of sexual intercourse on the body of the deceased before the death. This evidence proves the fact that the deceased had sexual,

intercourse before his death.,

19. From these circumstances and the prosecution evidence it appears that the deceased had sexual intercourse with the niece of the appellant and in,

that event the appellant had fired gun shot on the deceased. There is no evidence of cooling off period. It appears that both the acts had happened,

simultaneously. In such circumstances, in our opinion, there was sudden provocation of the appellant due to act of the deceased and under that",

provocation the appellant had killed the deceased, hence, the act of the appellant would fall under Section 304 Part-I of IPC.",

20. PW-10-Radhika Prasad Verma (Arms Clerk) deposed that there was no sanction in favour of the appellant in respect of the seized arm, hence, in",

our opinion, the trial Court has rightly convicted the appellant under Sections 25(1)(b)(a) and 27 of Arms Act and awarded proper sentence.",

21. On the basis of the aforesaid discussion, the appeal filed by the appellant is partly allowed. The appellant is in jail since 21.12.2007. As per",

judgment of the trial Court the appellant has completed more than 10 years of jail sentence including the period of remission. His conviction under,

Sections 25(1)(b)(a) and 27 of the Arms Act as well as fine amount of Rs.2,000/- is upheld. However, the conviction of the appellant under Section",

302 of IPC is altered into Section 304 Part I of IPC, he is convicted accordingly and awarded sentence of already undergone, which is more than 10",

years including remission. It is ordered that the appellant be released forthwith, if he is not required in any other case."

Appeal partly allowed.,