
(2019) 02 MP CK 0044

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 756 Of 2009

Daulat Singh

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)

Indian Penal Code, 1860 — Section 300, 302, 303, 304, 304I, 304II

Citation : (2019) 02 MP CK 0044

Hon'ble Judges : Sheel Nagu, J;Anand Pathak, J

Bench : Division Bench

Advocate : B.D. Sharma, Somnath Seth

Judgement

1. Being aggrieved by judgment of conviction and order of sentence dated 6th November, 2009 passed by Additional Judge of Court of Fourth Additional Sessions Judge (Fast Track) Guna in Sessions Trial No. 231/2009, appellant has preferred this Appeal under Section 374(2) of Cr.P.C. By the impugned judgment, appellant has been held guilty of offence punishable under Section 302 of IPC and sentenced to suffer imprisonment for Life alongwith fine of Rs. 500/- and in default of payment of fine, to further undergo one month additional rigorous imprisonment.

2. As per the case of prosecution on 5/4/2009 at about 5 am in the morning at village Thuniya-Kundal when complainant Nepal Singh alongwith his 12 years old son Bhikam Singh went to forest area for collection of Mahua (Bassia Latifolia, a forest produce), then appellant (who was also collecting it) came and tried to obstruct them from collecting Mahua. Nepal Singh intervened on the ground that Mahua is available over Government area, therefore, they can collect it. His son Bhikam Singh started collecting the same, but infuriated by the rejection, appellant Daulat Singh with the intention to kill Bhikam, gave a Farsa blow over the neck of Bhikam Singh, blood oozed out and he succumbed to the injury. Reacting to the shout of Nepal Singh, his brother Rajendra Singh, uncle Chandan

Singh and other villagers namely Takhat Singh and Chand Singh rushed to the spot, whereas, meanwhile appellant escaped. On intimation of death, FIR was registered at Police Chauki Maksudangarh, Police Thana Jamner and investigation started. Accused/appellant was arrested and on his information, Farsa was seized alongwith other items. Investigation completed and charge-sheet filed. After committal, matter was referred to the Sessions Court and trial started.

3. Appellant abjured his guilt and took the defence that because of shared land dispute with complainant party, he has been falsely implicated. Complainant Nepal Singh used to say that one day he would falsely implicate the appellant. In support of its case, prosecution examined as many as 12 witnesses whereas; no witness was examined on behalf of appellant in his defence.

4. Sessions Court, after considering the documents and evidence adduced by the prosecution, convicted and sentenced the appellant as mentioned hereinabove.

5. It is the submission of counsel for the appellant that case is of false implication because land dispute existed between the parties and to settle the score, a false case has been registered against the appellant.

6. He further referred the contradiction between the testimony of Nepal Singh (PW/1) in para 12 when he says that accused escaped from the spot while leaving the Farsa behind over the spot, whereas, Ex. P/9 is seizure memo. which indicates that Farsa has been seized from the house of accused. The contradiction between the seizure of Farsa from spot as narrated by PW-1-Nepal Singh and the seizure memo. Ex. P/9, belies the case of prosecution, therefore, benefit of doubt goes in favour of appellant and he deserves acquittal on this ground because prosecution has not proved the case beyond all reasonable doubts.

7. It is further submitted by counsel for the appellant that prosecution witness-Chand Singh (PW/4) referred the incident in a manner where at around 7.15 am accused was nabbed and written work was conducted over the Nala itself, whereas, Nepal Singh (PW/1) in para 1 and 2 referred that accused escaped from the spot and complainant went to the Police Chauki to repor the incident and report was lodged. Said contradictions are material contradictions and therefore, same had to be taken care of by the trial Court but by not taking into consideration, trial Court erred.

8. Counsel for the appellant, on the basis of cross-examination of eye witness Nepal Sigh (PW/1), submitted that it was a case where appellant never intended to kill the deceased. He referred the course of events in para 9; wherein, the appellant because of dispute regarding collection of Mahua, guided by sudden provocation, gave a blow of Farsa over the head of Bhikam but as Bhikam immediately maneuvered to escape, the Farsa got struck over his neck.

9. Alternatively, learned counsel for the appellant prayed for conversion of case from Section 302 of IPC to that of Section 304 Part-II of IPC.

10. Learned counsel for the State opposed the prayer made by the appellant. It is submitted that prosecution witnesses have sufficiently proved the case and therefore, appeal sans merits and deserves dismissal.

11. Heard the learned counsel for the parties and perused the record.

12. In the case in hand, the first thing which is to be ascertained is cause of death. Dr. Mukesh Sharma (PW/7) gave medical report with a specific finding that the cause of death was stabbing wound over neck by sharp cutting weapon and single injury was apparent over the person of deceased. Therefore, death was homicidal in nature.

13. In the present case, the sole eye witness is Nepal Singh (PW/1), who is father of deceased. In his examination in chief, he narrated the story and accepted the fact that a dispute regarding land was going on with the accused. Although he referred the single blow and further referred in para 12 that due to fumble, accused left the Farsa on spot and fled. He admits that police seized the Farsa from the spot. This fact is contradictory to Ex. P/9, which is seizure memo of Farsa. The said fact was reiterated by the seizure witness, Chand Singh (PW/4) when he says that Farsa has been seized from the house of accused. This is the one contradiction surfaced in the case.

14. Another contradiction, appeared in para 3 of PW/4 statement when he says accused was apprehended in the morning over the spot itself around 7.15 am and written work was conducted over Nala itself; whereas Nepal Singh (PW/1), who is an eye witness, submitted that he went around 8-9 am to Police Chauki to report the incident and thereafter FIR was registered. He further submitted in his examination-in-chief that accused left the place immediately after committing the offence. This is another contradiction which surfaced in the case.

15. Although some contradictions appeared in the case but eye witness account supported by medical opinion given by Dr. Mukesh Sharma (PW/7) established the commission of offence and the motive is also apparent because accused interrupted the collection of Mahua (by complainant) and therefore, dispute erupted because of Mahua and since both the parties already had previous dispute, same fueled sudden provocation to the appellant-accused, resulting into blow of Farsa given by him to deceased.

16. In the totality of the circumstances, it appears that appellant and complainant party are rustic villagers and they are dependent over forest produces for their livelihood. Since collection of forest produce (Mahua etc.) was source of their livelihood and their meager resources if snatched away or attempted to be snatched away then provocation is obvious and it appears that when complainant party tried to exceed the collection area allegedly from their side to the area of accused then this created sudden provocation in the mind of appellant-accused to harbour a notion that his livelihood is in danger or may be curtailed substantially, therefore, theory of sudden provocation gains ground in the present case. Here the appellant did not have any intention to kill the

deceased Bhikam because he inflicted single blow and not repeated the same. Even Nepal Singh (PW/1) has narrated the story in such a fashion in which he referred the events in para 9 that it appears that single blow was given to Bhikam but he evaded it and somehow Farsa hit the neck, therefore, intention of the appellant appears not to kill the deceased but because of sudden provocation, he wanted to teach the deceased a lesson. Despite that as per the testimony of PW/1- Nepal Singh itself, accused under the stress of incident, left the Farsa over the spot and fled. This further shows that accused was not a habitual offender and the very incident made him nervous. This aspect further goes in favour of appellant for consideration of case under Section 304 of IPC.

17. The Hon'ble Apex Court in the case of Sukhdev Singh Vs. State of Punjab, 1992 Supp (2) SCC 470 converted conviction from Section 302 to Section 304 Part II of IPC and in the case of Janab Ali Shaikh Vs. State of West Bengal, 1992 Supp (2) SCC 545 converted the sentence from Section 302 to Section 304 Part I of IPC with the aid of exceptions No.2&4 of Section 300 of IPC. Similarly, in the case of Masumsha Hasansha Musalman Vs. State of Maharastra (2000) 3 SCC 557 in the fact situation of the case, converted the sentence under Section 304 Part II of IPC. In the case of Buddhu Singh and others Vs. State of Bihar (Now Jharkhand), (2013) 3 SCC (Cri) 460, Hon'ble Apex Court converted the case from Section 302 to Section 304 Part II of IPC and Division Bench of this Court in the case of Rajesh alias Jadu S/o Babulal vs. State of M.P., 2014(1) MPLJ (Cri.) 64 with the aid of exception -4 of Section 300 of IPC, conviction under Section 302 of IPC set aside and altered to Section 304 Part I of IPC. The ratio of all these decisions is that when incident occurs in sudden quarrel without premeditation and accused gives a single blow and does not act in cruel or unusual manner, the case of accused would attract exception -4 to Section 300 of IPC. Here, in the present case, it appears that only single blow has been inflicted by appellant and no repeated blows have been given by appellant and the case appears to be of sudden provocation in heat of passion (exception -4 under Section 300 of IPC) or on the basis of sudden provocation (exception -2 of Section 300 of IPC), therefore, appellant ought to be punished for offence under Section 304 Part -II. The judgment of the Apex Court in the case of Sarman and Others Vs. State of M.P., 1993 Supp. (2) SCC 356 as well as in the case of Ranjitham Vs. Basavaraj and Others, (2012) 1 SCC 414 are worth consideration in this regard. One more aspect persuaded this Court to convert the said conviction and jail sentence under Section 300 exception-4 of IPC is the status of the appellant as rustic villager because in the agriculture field or forest area in the present case, verbal altercation and breaking of sudden quarrel, is a common phenomenon in Rural India specially, over the ploughing, possession of linhay (esM) and collection of forest produce.

18. Section 300 of IPC deals several exceptions to murder. Here exceptions 2 and 4 as contained in Section 300 of IPC are attracted where the offence has been committed without premeditation in sudden fight or in the heat of passion upon a sudden quarrel and if the offender does not take any undue advantage or act in a

cruel or unusual manner. Therefore, the case comes under Section 304 Part II of the IPC and since the appellant is in confinement since 6/4/2009 i.e. for almost 10 years, therefore, considering the conviction for the offence under Section 304 of IPC and the sentence already undergone by the appellant which comes to more than 9 years 10 months, appellant is sentenced to the sentence already undergone by him.

19. Hence, this appeal is allowed partly. Impugned judgment is modified to the extent that instead of Section 302 of IPC, appellant is convicted for commission of offence under Section 304 Part II of IPC and sentenced to the jail sentence already undergone by him. Appellant is in custody and therefore, office is directed to arrange for issuance of supersession warrant, so that the appellant may be released, without any delay.

20. A copy of this judgment be sent to the trial Court along with its record for information.