
(2018) 05 MP CK 0136

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 245 OF 2009

Gendalal

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 21-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 300, 302, 307
Arms Act, 1959 — Section 30

Citation : (2018) 2 MPWN 64

Hon'ble Judges : SANJAY YADAV, J;ASHOK KUMAR JOSHI, J

Bench : Division Bench

Advocate : Vijay Singh Chauhan, B.M. Patel

Final Decision : Dismissed

Judgement

SANJAY YADAV, J

This appeal from Jail is at the instance of the appellant who is convicted and sentenced for life being found guilty of causing murder of Lakhan.

[2] The prosecution was set in motion when the complainant Baby (PW/8) with her brother-in-law Mangal Singh (PW/9) on 25/01/2008 at 10:35AM

reported at Dead House Jaya Arogya Hospital Gwalior, that she is the resident of village Gehdoli P.S. Kelia District Jalon and is living with her

husband Gendalal Jatav (the accused) at Jagjivan Nagar. That her husband Gendalal quite often beats her therefore two days ago she went to her

brother Lakhan (the deceased) who also lives in Jagjivan Nagar in a rented house. She further stated that last evening her husband Gendalal came to

the house of her brother to beat her, she was however saved with the interference of her brother and brother-in-law. Today morning her brother

Lakhan got ready to take her to her village. At that time Gendalal came, armed

with gun and said that he will see how she goes to the village. On being told by others in the neighbourhood, she decided not to go to village with her brother, who decided to go alone, and no sooner he turned around, Gendalal fired from behind. The bullet hit Lakhan on his back and came out of chest and hit Rambai (PW/4) standing behind Lakhan. Both of them fell down. The second fire by her husband hit the wall. At that moment Dataram Jatav (PW/1), Sunny Jatav (PW/6), Mangal Singh (PW/9) and she herself snatched away the gun from Gendalal in the scuffle the gun broke in two parts. The police came at the call of phone and arrested Gendalal with gun. That police brought her brother Lakhan and Rambai for treatment. Lakhan died during treatment.

[3] Dehati Nalishi (Ex-P/2) being recorded at Dead House Jaya Arogya Hospital Gwalior was later on recorded as FIR (Ex-P/3) on 25/01/2008 at

12:10PM for an offence under Sections 307, 302 IPC. Besides sending the body of Lakhan for postmortem, the investigating officer collected the

blood stained soil, prepared spot map, seized one twelve bore gun from the accused who was arrested. The forensic science laboratory report was

sought (Ex-P/16). After recording the statement of Dataram (PW/1), Sunny (PW/6), and after completing necessary investigation, police filed the

charge sheet. [4] Charges under Section 302 IPC for causing murder of Lakhan and under Section 307 IPC for causing injuries to Rambai (PW/4) by

fire arm and under Section 30 of the Arms Act were framed.

[5] Accused abjured the guilt.

[6] Prosecution examined 11 witnesses to bring home the charges. Of these Rambai (PW/4) the injured, Baby (PW/8), wife of the accused and

Mangal Singh (PW/9) were examined as eye witnesses. Dr. Yogendra Singh who performed the post mortem (Ex P/13) was examined as PW/7

whereas Dr. Neha Gupta who gave treatment to Rambai (PW/4) was examined as PW/10.

[7] The postmortem report (Ex-P/13) recorded following injuries on the deceased:-

â??(1) Wound of fire arm entry 1 x 1.5cm on back of bone at level 5th - 6th rib. Thoracic vertebra 2.5cm away left to vertebral column and 26cm

above left iliac crest with inverted margins through teared spleen forwarded to exit wound after tearing left lung through and through â?" 2x2cm ent.

(2) Would of exit 2x2.5cm left side chest 5cm above left areola on left lateral line and 3.5cm away from mid-line towards left side chest with averted margins.

-Fracture sternum level of 3rd rib.

-Fracture 3rd & 4th rib.â??

[8] In the opinion of Dr. Yogendra Singh (PW/07), the cause of death was by shock and hemorrhage due to fire arm injury to chest and vital organs.

He further opined that injuries were sufficient to cause death in ordinary course of nature. The death was homicidal. The forensic science laboratory

report (Ex-P/16) established that butt part of the gun was broken because of which the action mechanism of the gun was not in working condition;

however with necessary repairing the action mechanism can be made operative. The report further revealed that the seized bullets when

microscopically compared with firing pin were found to be fired from the said gun. And fire was from a distance of more than three feet. [9] As the

medical and forensic science laboratory evidence were found corroborating with the ocular testimony of Rambai (PW/4), Baby (PW/8) and Mangal

Singh (PW/9), the trial Court found the charges of causing death of Lakhan by fire arm by the appellant proved.

[10] Similarly in respect of the injuries to Rambai (PW/4) the trial Court on the basis of the evidence of Rambai (PW/4), Baby (PW/8) and Mangal

Singh (PW/9) corroborating with the X-ray report (Ex-P/18) and the evidence of Dr. Neha Gupta (PW/10) found the appellant guilty of attempt to murder Rambai (PW/4).

[11] Though it is strenuously urged on behalf of the appellant that the evidence on record is not enough to rope in the appellant for the charges of

murder; however, close reading of the testimony of Rambai (PW/4) who is injured, of Baby (PW/8) wife of the appellant who witnessed the entire

happenings and whose creditworthiness cannot be doubted; corroborating with medical evidence goes long way to establish that the prosecution

succeeded in bringing home the charges levelled against the appellant of causing murder of Lakhan and injuries to Rambai (PW/4). [12] It is then

contended on behalf of the appellant that since the incident had occurred at the spur of moment, the act of the appellant would be covered by

Exception (4) under Section 300 IPC.

Exception (4) under Section 300 IPC stipulates:-

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without

the offender having taken undue advantage or acted in a cruel or unusual manner.”

[13] To invoke Exception (4), four requirements must be satisfied, viz:

(i) it was a sudden fight;

(ii) there was no pre-meditation;

(iii) the act was done in heat of passion; and

(iv) the assailant had not taken any undue advantage or acted in a cruel manner.

[14] In the case at hand the prosecution story which gets established through ocular and medical evidence rule out all these four ingredients as would

reap any benefit to the appellant. Therefore, the contention that the appellant is covered by Exception (4) under Section 300 IPC is negated.

[15] Having thus considered, we do not perceive any discrepancy in the prosecution having proved the charge of murder of Lakhan and of attempt to

murder of Rambai (PW/4). The trial Court having meticulously dwelt upon the same, the impugned conviction and the sentences thereof cannot be

faulted with as would warrant any interference.

[16] In the result, appeal fails and is dismissed.