
(2009) 10 RAJ CK 0034
In the Rajasthan High Court
Case No : Criminal Appeal No. 404 of 1985

Hanumana Ram	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 299, 300, 302, 304, 323

Citation : (2009) 10 RAJ CK 0034

Hon'ble Judges : D.N. Thanvi, J;Arvind Mohanlal Kapadia, J

Bench : Division Bench

Judgement

Deo Narayan Thanvi, J.—These are the two appeals filed by the accused appellants Hanumana Ram and Mithu Singh alias Virendra Kumar against the same judgment of the learned Sessions Judge, Jalore, dated 25.11.1985, whereby he convicted both the accused appellants as under and are being disposed-of by this common judgment:

ACCUSED HANUMANA RAM:

Under Section 302/34 IPC

Life imprisonment alongwith a fine of Rs. 200/- & in default, to further undergo two months" R.I.;

Under Section 326 IPC

Two years" R.I. alongwith a fine of Rs. 200/- & in default, to further undergo two months" S.I.;

& u/s 447 IPC Two months" S.I.

ACCUSED MITHU SINGH:

Under Section 302 IPC Life imprisonment alongwith a fine of Rs. 200/- & in

default, to further undergo two months" R.I.;

Under Section 447 IPC Two months" S.I.; & u/s 27, Arms Act Two months" S.I.

All the substantive sentences were ordered to run concurrently.

2. Facts leading to this appeal are that on 23.10.1984 at 7.30 PM, Sawa, PW 3, uncle of deceased Bhanwar Singh filed the FIR Ex.P.4 at Police Station, Nosra, District Jalore that on the same day at about 4-5 P.M., informant Sawa Ram, his elder brother Asu Ram, Asu Ram's son Bhanwar Singh and Bhanwar Singh's wife Chandra were cultivating their field Khokhari at village Bhanwrani. Both the accused Mithu Singh and Hanumana Ram came to the field of complainant in a tractor and started abusing Bhanwar Singh. Accused Hanumana Ram inflicted "Dharia" blow on the wife of Bhanwar Singh and on being intervened by Bhanwar Singh, accused Mithu Singh fired at Bhanwar Singh, whereby Bhanwar Singh fell down. Both the accused Mithu Singh and Hanumana Ram ran away towards village Bhanwrani. One day prior to the incident, accused Hanumana Ram also abused Bhanwar Singh, who is the neighbour of the complainant's well. Injured Bhanwar Singh and Chandra were taken to the village Bhanwrani in the tractor but on the way, Bhanwar Singh died. Upon this report, the police registered a case Under Sections 302, 324, 323 and 447 read with 34 IPC and commenced investigation. On the next day, the injuries of Chandra were examined. The autopsy of the dead body of Bhanwar Singh was conducted. The recovery of cartridge, soil, clothes etc. was made. Both the accused appellants were arrested. Upon information of the accused Bhanwar Singh, 8MM single barrel rifle was recovered. The tractor bearing No. RJN 252 was also recovered and upon information of accused Hanumana Ram, "Dharia" was recovered. After completion of the investigation, chargesheet was filed against accused Mithu Singh Under Sections 302, 326, 324, 323 read with 34 IPC and u/s 27, Arms Act, whereas accused Hanumana Ram was chargesheeted u/s 302 read with 34, 326, 324 and 323 IPC in the court of learned CJM, Jalore, who committed the case to the Court of Sessions. After hearing the arguments on charge, accused Mithu Singh was charged u/s 302 & 447 IPC and 27 of the Arms Act and accused Hanumana Ram was charged u/s 302/34, 326, 324, 323 & 447 IPC. Both the accused pleaded not guilty and claimed trial. The prosecution examined 13 witnesses. The statements of the accused were recorded u/s 313 CrPC. They produced three witnesses in defence. After hearing the arguments, learned trial Judge convicted the accused appellants as above.

3. Learned Counsel for the accused appellants have not questioned the homicidal death of deceased Bhanwar Singh and also the grievous injury caused by sharp weapon on the person of Chandra wife of deceased Bhanwar Singh but their submission, which is based on the statements of accused u/s 313 CrPC, is that during the scuffle, accused Mithu Singh fired in the air but later on, injuries were inflicted with gun shot on legs and thighs. According to the learned Counsel, there was no intention on the part of the accused to kill deceased Bhanwar Singh. According to them, it is also stated in the FIR that one day prior to the

incident, accused Hanumana Ram who is said to have abused deceased Bhanwar Singh, told that he will beat him. During the course of scuffle, accused also received injuries and both the accused were of 17 years of age at the time of incident but by that time, under the Juvenile Justice Act, the age of juvenile was 16 years, which has now been raised to 18 years. Learned Counsel for the appellants have submitted that the case of the accused does not travel beyond Section 304 part II IPC and in support of their contention, they have placed reliance on a decision of the Hon'ble Supreme Court in Pappu alias Hari Om v. State of Madhya Pradesh reported in 2009 AIR SCW 2479. Learned Counsel for the accused Hanumana Ram has submitted that the accused cannot be convicted u/s 302 with the aid of Section 34 IPC because his act is only of inflicting grievous injury with sharp weapon i.e. "Dharia" on the right ring finger and rest of the injuries were simple in nature. Both the learned Counsel have further submitted that the doctor has also opined that the injuries on the person of deceased Bhanwar Singh were not sufficient in the ordinary course of nature to cause death.

4. Per contra, learned Public Prosecutor and learned Counsel for the complainant have supported the judgment of the learned trial Court.

5. We have re-appreciated the evidence on record and gone through the vital features of the case.

6. As learned Counsel for the accused appellants have not disputed the homicidal death of deceased Bhanwar Singh and also grievous injury with sharp weapon on the right ring finger of injured Chandra, therefore, the question for our determination is as to whether the act of the accused falls within the category of culpable homicide amounting to murder or not. In this regard, if we examine the testimony of Dr. Hanuman Dutt, PW 6, he has specifically stated in examination in chief itself that the injuries No. 1 and 2 were not sufficient in the ordinary course of nature to cause death because the place where the injuries have been inflicted, was not the vital part and no vein was damaged. According to the doctor, the deceased died due to excessive bleeding and the deceased could not have died immediately because of such injuries. The doctor has further stated that had there been availability of the first aid immediately, then probably he could have been saved. Both the external injuries as per the post mortem report Ex.P.9 are as under:

1. Lacerated oval wound 1/2" x 1/3" over medial aspect of middle of right thigh with its direction obliquely downwards and outwards surrounding skins blackened. This wound is going through thigh as a lacerated wound 3" x 2" as wound of exit over posterior aspect of lower part of Right thigh;

2. Lacerated oval wound 1/3" x 1/4" over medial part of Right Thigh upper part with its direction obliquely upwards and downwards left side then this wound is going backward & outwards as a wound of exit 1 1/2" x 1" over medial & lower part of Right buttock. Skin around wound of entry sight blackened.

7. From the post mortem report, it appears that both the injuries are on the right thigh, which is not a vital part and prior to this, accused fired in the air and in the FIR, it is stated that accused Hanumana Ram threatened only to beat Bhanwar Singh one day prior to the incident. Thus, it is clear that there was no intention on the part of the accused to cause death of deceased Bhanwar Singh to bring the case under the category of culpable homicide amounting to murder. The basic feature for distinguishing between Sections 299 & 300 IPC is the degree of probability. In the present case, not a single ingredient of Section 300 IPC is made out because the bullet fire was hit only on the upper part of legs i.e. thigh. In such a situation, it can safely be inferred that there was no intention of causing such bodily injury as the offender knew to be likely to cause the death of the person to whom the harm is caused. It is further strengthened from the testimony of Dr. Hanuman Dutt, PW 6 that these injuries were not sufficient in the ordinary course of nature to cause death and had the deceased received the first medical aid, he could have been saved, therefore, it is a case where at the most, it can be said that the accused Mithu Singh was having knowledge that his act was likely to cause death falling under Clause (c) of Section 299 IPC which is punishable u/s 304 part II IPC. The knowledge of the act was also not so imminently dangerous that death could have been caused by such bodily injury. Therefore, while broadly distinguishing the basic features of Sections 299 and 300 IPC, we are of the view that it is a case which falls under Clause (C) of Section 299 IPC, which is punishable u/s 304 part II IPC. We also find support for our view from the decision in Pappu alias Hari Om's case (supra) cited by the learned Counsel for the accused appellant Mithu Singh.

8. The injury of injured Chandra is also on the right ring finger which is caused by sharp weapon and grievous in nature, therefore, the conviction of the accused Hanumana Ram u/s 326 IPC has rightly been recorded. His act was also punishable u/s 304 part II IPC, as he accompanied accused Mithu Singh, who fired at deceased Bhanwar Singh on his intervention at the time of inflicting injuries on his wife.

9. Coming to the part of sentence, at the time of arrest, accused Mithu Singh was of 18 years vide arrest memo Ex.P.12 and accused Hanumana Ram was of 20 years vide arrest memo Ex.P.17, who has been convicted u/s 302 read with 34 IPC. In the statements of the accused recorded u/s 313 CrPC, the age of accused Hanumana Ram has been shown to be 17 years and that of accused Mithu Singh as 19 years. Accused appellants also received injuries during the course of incident, which is more than 25 years old. As per the school certificate produced by accused Mithu Singh, his date of birth is 14.10.66 i.e. 18 years at the time of commission of offence. Now the age of juvenile is 18 years, therefore, keeping in view the factor that both the accused were below 18 years at the time of commission of offence and the incident is 25 years old, we deem it proper that the custodial sentence will meet the ends of justice which is about sixteen months. However, we deem it proper that the sentence of fine should be enhanced and be paid to the injured Chandra, who is wife and legal heirs of

deceased Bhanwar Singh.

10. Consequently, we allow these appeals in part. While altering the conviction recorded by learned Sessions Judge, Jalore, vide his judgment dt.25.11.85 in respect of accused appellant Mithu Singh alias Virendra Kumar from Section 302 IPC to Section 304 part II IPC, he is sentenced to the period already undergone alongwith a fine of Rs. 6000/- and in default, to further undergo six months" R.I. His conviction & sentence u/s 447 IPC with two months" S.I. and also u/s 27, Arms Act with two months" S.I. are maintained. So far as accused Hanumana Ram is concerned, his conviction u/s 302 read with 34 IPC is altered to Section 304 part II IPC and he is sentenced to the period already undergone alongwith a fine of Rs. 2000/- and in default, to further undergo two months" R.I. His conviction u/s 326 IPC is maintained but he is sentenced to the period already undergone, instead of two years" R.I., with a fine of Rs. 2000/- & in default, to further undergo two months" S.I. His conviction & sentence u/s 447 IPC with two months" S.I. is maintained. All the substantive sentences shall run concurrently. Both the accused appellants, who are on bail, are directed to deposit the different amounts of fine within a period of 30 days from today, else they will serve out the sentence awarded in default of payment of fine. Fine of Rs. 6000/- on accused Mithu Singh and Rs. 4000/- on accused Hanumana Ram shall be paid to the legal heirs and wife of deceased Bhanwar Singh viz; Chandra.