

(2018) 07 MP CK 0072

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1261, 1277 Of 2010

Harun & Ors

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 174, 302, 304II, 326
Arms Act, 1959 — Section 25(1)(B), 25(1B)(B)

Citation : (2018) 07 MP CK 0072

Hon'ble Judges : Pankaj Kumar Jaiswal, J;Sunil Kumar Awasthi, J

Bench : Division Bench

Advocate : A.M.Mathur, Gagan Tiwari, Bhuwan Gautam, M.I.Ansari, N.A.Sheikh, Bhuwan Gautam

Final Decision : Partly Allowed

Judgement

The appellants have preferred the present appeals against the judgment dated 30.9.2017 passed by V ASJ, Indore in S.T.No.33/2010 whereby the

appellants have been convicted for the offence under Section 302/34 of the IPC, section 25(1-B)(B) of the Arms Act and sentenced to Life

imprisonment with fine of Rs.5,000/and R.I. for 1 year with fine of Rs.1,000/- respectively with default stipulation.

2. The prosecution case in short is that on 26.6.2009 at about 2.30 p.m. Khurram(deceased) came to Siyaganj for purchasing tiles. From there he

called Salam, through mobile, who told him that I am coming. When Khurram was taking tea at tea stall located near Bank of Baroda, the

appellants Harun, Sayed , Abid and Imran came there. The accused Harun said 'let's talk in alone'. When Khurram refused, the accused Shafi and

Babu caught hold him and the appellants Harun and Sayed gave a blow of knife on his left thigh, right knee, left hand and left side of the back, due

to which Khurram sustained injuries and blood was oozing. Gathering the crowd, the accused persons fled away. Khurram was brought to the Central

Kotwali, Indore. Police sent him to M.Y. Hospital where he was admitted for treatment. Sub Inspector, Ramnathsingh reached M.Y Hospital and

on the basis of information given by Khurram, he lodged Dehati Nalishi (Ex.P/30). He also recorded the statement of injured Khurram. On the basis

of Dehati Nalishi, an FIR at crime No. 221/2009 for the offence punishable under section 326/34 was registered against the appellants and other co-

accused persons. The investigating officer- Ramnath Singh went to the spot from where he seized blood stained soil, plain soil and motorcycle

bearing No. MP09-JS-5011 belonging to Khurram. During the course of treatment, Khurram succumbed due to his injuries at about 11.35 p.m. on

27.6.2009 despite medical aid. After receiving the information about his death, police registered an inquest under section 174 of the IPC and added the

offence under section 302 of IPC against the accused persons. Police prepared the Lash Panchnama of the deceased and his deadbody was sent for

postmortem. Dr.A.K.Langewar performed the postmortem and he opined that deceased died due to cardiorespiratory failure as a result of injuries to

the left femoral vessels of left thigh and its complication.

3. Investigating Officer, Ramsingh Singh reached on the place of occurrence and prepared a spot map(Ex.P/6). He recorded the statement of the

witnesses and thereafter appellants were arrested. On interrogation they gave information about the various weapons. On the basis of memorandum

of appellants, Police seized knife from appellants Harun and Sayed vide seizure memo Ex.P/16 for which they were having no license. The seized

properties were sent to the Regional Forensic Science Laboratory, Indore for chemical analysis. After completion of investigation, the chargesheet

was filed before the JMFC, Indore who committed the case to the Court of Sessions and ultimately it was transferred to V ASJ,

Indore.

4. The appellants abjured their guilt. They did not take any specific plea but stated that they are innocent and falsely implicated in the matter. In

defence they have not examined any witness.

5. Trial court after considering the evidence adduced by the parties acquitted the accused Shafi and Babu, however convicted and sentenced the

appellants as mentioned above.

6. We have heard learned counsel for the parties and perused the record.

7. Learned counsel for the appellants submit that prosecution has examined Ramesh (PW-3), Abdul Salam (PW-4), Narendra (PW-12) and Firoz

(PW-19) as eyewitnesses of the incident, however none of these witnesses have supported the case of the prosecution, therefore no direct evidence is

available on record to connect the appellants with the present crime.Â The case mainly rests upon Dehati Nalishi (Ex.P/30) lodged by deceased

Khurram and statement of Kammo Be (PW13), the wife of the deceased to whom he had given the oral dying declaration but her statement are not

consistent.Â The trial court has not considered the material omissions and contradictions in the statement of the aforesaid witness. As per Dr.

A.K.Langewar (PW14), the cause of death of deceased was an injury on the left thigh due to which there was cut of femoral vessel. It clearly

indicates that appellants were not having any intention to cause death of the deceased. Hence, no offence under section 302 IPC is made out against

the appellants but the trial court has wrongly believed the prosecution witnesses and convicted the appellants for the offence under section 302 IPC.

8. In the present case, first it is to be considered as towwhether the death of the deceased Khurram was homicidal in nature. In this connection the

statement given by Dr.A.K.Langewar (PW-14) is important who conducted the autopsy of the deceased and gave a report Ex.P/21. He found the

following injuries on the body of the deceased :-

(i) Four stitches of 6 cm. length present over left thigh anterolateral.

(ii) Eleven stitches of 19cm. length present over antero medially on left thigh.

(iii) One stitch of 1 cm length back of left thighat mid. On dissection there is sign of cutting effect of muscles, femoral blood vessels and soft tissues

by hard and sharp objects,Â Ecchymosis present, free flow of blood visible and large haemotoma also present at inner aspect.

(iv) Three stitches of 3 cm. length over right knee.

(v) Six stitches of 7 cm. length over lower abdominal region in mid, transversely placed. (vi) Two stitches of 2 cm. Length over dorsum and upper part

of left arm.

(vii) two stitches of 2 cm. length on back Left side scapular region laterally. [4, 5,

6,7 are muscle deep wound].

9. Dr. Langewar (PW-14) has opined that cause of death was cardio-respiratory failure as a result of injury to left femoral vessel of left thigh and its complications. According to him the said injury was homicidal in nature. From perusal of record, it reveals that there is no evidence on record which shows that the injuries sustained by the deceased Khurram were caused by himself or they can be sustained by him in an accident and thus, there is no reason to disbelieve the findings given by Dr. Langewar that the death of the deceased was homicidal in nature.

10. In the present case the prosecution has examined as many as four witnesses namely Ramesh (PW-3), Abdul Salam (PW-4), Narendra (PW-12) and Firoz (PW-19) as eye-witnesses of the incident but they have not stated anything against the appellants and have turned hostile and nothing has been extracted in their cross-examination conducted by the Public Prosecutor which supports the prosecution version.

11. Kammo Be (PW-13) deposed that deceased Khurram was her husband. About 8-10 days prior to the incident, the appellants/accused came to their house and they demanded Rs.10,000/- from Khurram but he refused to pay the aforesaid amount stating that currently construction work of his house is going on therefore he is not having the money. Then accused persons went back threatening him that they will see him. On the date of the incident, Khurram had gone to Siyaganj for purchasing tiles. At about 1.30-2.00 p.m. she received information on telephone that her husband sustained knife injuries and he had brought to the M.Y.Hospital, then she reached the hospital and met with her husband. Khurram told her that accused Shafi and Babu caught hold him and Harun and Sayed gave a knife blow, due to which he sustained injuries. During the course of treatment, on the next day at about 11.00 am Khurram had died.

12. Mohd. Yusuf (PW-10) stated in his examination-in-chief that at about 8-10 months ago at 4.45 p.m. he was white washing cement in the house of Khurram at the same time the accused persons came on motorcycle and demanded Rs.10,000/- from Khurram. When he refused to pay, then there was hot altercation between them and the accused persons threatened him that they will see him in the market and after 8-10 days of this, Khurram was murdered. He went to the M.Y. Hospital and found that Khurram had

sustained knife injuries.

13. Sub Inspector Ramnathsingh (PW-17) testified that on 26.6.2009 he had sent the injured Khurram for medical examination and treatment to M.Y.

Hospital. After that he reached the M.Y.Hospital Indore where after taking permission from the CMO, he interrogated Khurram. Khurram informed

him that on 2.30. p.m. he was going to Siyaganj by motorcycle for taking the tiles. From there he called Salam who told that he was just coming.

When he was taking tea at tea stall located near Bank of Baroda, at the same time the accused persons came and told him that they wanted to talk

him in isolation. When he refused then accused Harun and Sayed gave a knife blow on his left thigh, right knee, left knee and left side of the back, as

a result of which he sustained injuries and blood was oozing. When accused persons escaped, one auto rickshaw driver came on the spot and he

brought him to the police station. On the basis of aforesaid information, he lodged Dehati Nalishi (Ex.P/30) in which the signature of Khurram is on 'B

to B' part . He seized blood stained white colour pant of Khurram vide seizure memo (Ex.P/17). Thereafter he came to Police Station, Central

Kotwali where he registered the FIR (Ex.P/31) on the basis of Dehati Nalishi.

14. Although in the Dehati Nalishi (Ex.P/30) it is mentioned that accused Harun and Sayed inflicted knife injuries on left thigh, left knee and right knee,

left side of the back of the deceased, however when he was brought to M.Y. Hospital, he was medically examined by Dr. Alok Kumar Verma. As

per Dr. Verma (PW-22), on medical examination of deceased Khurram, he found that he had received one incised wound of 2x1 cm. on left thigh

from where blood was oozing. This injury was caused by hard and sharp object within a period of 24 hours.

15. There is inconsistency in the MLC (Ex.P/38) and Postmortem report (Ex.P/31) of the deceased. According to the postmortem report, total 8

injuries were found on the body of the deceased whereas Dr. Alok Kumar Verma, who examined the deceased just after the incident had found only

one injury on his left thigh. In this regard, Dr. Verma (PW-22) has explained that it may be possible that other injuries may have been received by the

deceased during the surgery. Dr. A.K.Langewar also accepted that it may be possible that during the surgery the other 7 injuries may be received by

the deceased. In these circumstances, it is clear that the deceased sustained

only one injury on his left thigh which was caused by sharp cutting object and as a result of injury sustained in femoral vessel of left thigh and its complication, the deceased had died. It also indicates that Khurram had exaggerated the story while recording the Dehati Nalishi (Ex.P/30).

16. Kammo Bi and Ramnath have accepted in their cross-examination that the deceased was having criminal record and near about 15 criminal cases including murder and dacoity were registered against the deceased. Learned counsel for appellants submits that deceased was hardcore criminal and he was having enmity with several persons, therefore it may be possible that some other persons had caused injury to him but due to enmity he falsely implicated the appellants in the present matter but this contention does not take place looking to the fact that appellants have not taken any plea that some other persons have murdered the deceased and due to enmity they have named them so that they may be implicated in the matter.

17. Dehati Nalishi was recorded within a period of 2 hours of the incident and at that time Khurram was in injured condition and in such a situation it is not possible that he named the appellants with an intention to falsely implicate them. Kammo Bi and Mohd. Yusuf (PW-10) deposed that appellants were demanding Rs.10,000/- from the deceased, however they have not clarified that why they were demanding the aforesaid amount and no report was lodged by Khurram about the aforesaid incident and in the Dehati Nalishi it is nowhere mentioned that appellants were demanding Rs.10,000/- from the deceased. Nothing is on record to show that there was any previous enmity between the appellants and the deceased.

18. It is born out from the record that chargesheet was filed with respect to the offence punishable under section 302 IPC and after going through the evidence, trial court has also convicted the appellants under section 302/34 of the IPC and sentenced them for life imprisonment.

19. Learned counsel for appellants submit that trial court was not accurate in recording the conviction under section 302/34 of the IPC, rather the conviction deserves to be converted into the offence punishable under section 326 or 304 (Part II) of the IPC. In this regard he has submitted that appellants had inflicted the single injury whereas they had opportunity to deal multiple places on the deceased if they had intention of committing murder or culpable homicide not amounting to murder. Further it was contended

that injury received by the deceased was on non-vital part of the body, thus according to learned counsel for the appellants, the conviction deserves to be modified. He has further pointed out the decipher lack of intention. This court may consider the circumstances leading to injury which shows that injury was on account of sudden fight and there was no pre meditation.

20. There is no doubt that statement of Dr.Alok Kumar Verma reflects only a single injury on the non-vital part of the deceased and the fact that there was a sudden fight, thereafter the injury was caused but mere presence of these circumstances are not enough to convert the offence from section 302 to section 326Â IPC. Now it is to be examined whether the case of the appellants would fall under section 304 (Part II) of the IPC. In this regard, Hon'ble Supreme Court in the matter of VirsasinghÂ Vs. State of Punjab, 1958 SC 465 has observed as under :-

â??(16).Â The learned counsel for the appellant referred us to Emperor v. Sardarkhan Jaridkhan (1) where Beaman J. says that-

where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended.

With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what

the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap. The question is not

whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he

can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not

proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it.

Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is

not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and

once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite

conclusion.- But whether the intention is there or not is one of fact and not one

of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.â??

21. Perusal of aforesaid para clearly shows that even a single injury is sufficient enough to record a conviction under section 302 IPC or section

304(Part II) of the IPC. The only distinguishable feature are 'intention' and 'knowledge'. Facts establish from the evidence that appellant had intention

to cause death and nature of injury was sufficient in ordinary course to cause death. Thus the conviction shall be recorded under section 302 of the

IPC but in the present case the circumstances which lead to infliction of injury upon the deceased clearly demonstrates that the appellants had no

premeditation to cause death of the deceased and only due to sudden fight the injury was inflicted.

22. No opinion has been given by Dr. A.K.Langewar that the injury inflicted to the deceased was sufficient to cause his death in natural course of life.

No vital part of his body was ruptured. According to Dr. A.K.Langewar the deceased succumbed due to injury of his left femoral vessel and its

complications. In such a situation in the light of the aforesaid judgment the overt act of the appellants shall fall within the purview of section 304 (Part

II) of the IPC.

23. In view of aforesaid, we find that conviction of the appellants under section 302 IPC and sentence of life imprisonment both are unsustainable and

appellants are held to be guilty for the offence punishable under section 304(Part II) of the IPC. It emerges from the record that appellants are in

custody since 26.9.2009 and they have completed 9 years of their jail sentence and in our opinion the aforesaid period of the sentence already

undergone by them will meet the ends of justice.

24. The trial Court has also convicted the appellants for the offence under Section 25 (1-B)(B) of the Arms Act. As discussed above, it is proved

beyond doubt that the knives used in the incident have been recovered at the instance of the present appellants, which they were possessing without

any license and therefore, the trial Court has rightly convicted the appellants for the offence under Section 25(1)(B) of the Arms Act.Â

25. On the basis of aforesaid discussion, the Appeals are partly allowed.

Conviction for offence under Section 25(1)(B) of the Arms Act is affirmed;
whereas the conviction under Section 302 of the IPC is altered into offence under Section 304(II) of the IPC and their sentence is reduced to the period of imprisonment already undergone by them.

26. The appellants are in jail and, therefore, the Registry is directed to arrange for issuance of a supersession warrant relating to the appellants Harun and SayedÂ so that they may be released without any delay, if they have deposited the fine amount and their detention is not required in any other criminal case.

27. A copy of the judgment be sent to the court below along with its record for information.

Let signed copy of the order be placed in the record of Cr.A.No.1261/2010 and a copy whereof be placed in Cr.Appeal No.1277/2010.