
(2002) 08 SC CK 0045
In the Supreme Court Of India
Case No : Criminal Appeal No. 975 Of 2001

Mukesh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 307, 326

Citation : (2002) 3 ACR 2712 : (2002) 6 JT 310

Hon'ble Judges : N. Santosh Hedge, J; B. P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant along with his lady friend, Jyoti was charged under Sections 302 and 307 IPC read with Section 34 IPC for having committed the murder of one Ramkaran Mishra and also for inflicting injuries on one Narendra Kumar, PW2 on 26.6.1995 between 8.30 p.m. and 10 p.m. at Indore. Learned additional sessions judge, Indore found the said Jyoti not guilty of the offence alleged against her hence acquitted her, while the appellant was found guilty of the offence u/s 302 IPC hence sentenced him to undergo imprisonment for life for having committed the murder of said Ramkaran Mishra. He also found the appellant guilty for the offence u/s 307 IPC and sentenced him rigorous imprisonment for 7 years for having caused injuries with the intention to cause death of Narendra Kumar, PW2.
2. The appellant's appeal before the High Court of Madhya Pradesh having failed he is before us in this appeal by leave. However, it should be noticed that on 18.9.2001 leave was granted limited to the question of nature of the offence only.
3. The prosecution case briefly is that on 26th of June, 1995, the appellant and his lady friend, Jyoti had gone to the Hotel Dhariwaf at Sikh Mohalla, Indore for having their dinner. At that time it is stated that the appellant had consumed alcohol. There an unintended quarrel between the appellant on one hand and Narendra Kumar, PW2 and Ramkaran Mishra, the deceased on the other started

in regard to the preference in service of food to them. Consequent of which the prosecution alleges that the appellant whipped out a knife stabbed on PW2 on the left scapular region causing bleeding injury. Subsequently, he stabbed Ramkaran Mishra in his upper arm, chest as well as his abdomen and consequent to which Ramkaran Mishra dropped dead. PW7 who examined PW2 found an incised wound 3 and 4 cms. on left scapular region and in the deceased, PW8 who conducted the post mortem, inter alia, found the following injuries.

"3. One cut wound on the left upper portion of the arm below the elbow on the bottom of the size of 5x2.5x3 cm.

4. One inserted wound in the chest from the front portion at 4 cm. from the nipple and on the upper portion oblique of 3 x 1.5 cm. size. Its upper edge was narrow and was spread over of 0.5 cm. on the lower portion. The lower edge of it was comparatively wide and was lacerated with bluish colour. Whereas other edges of this wound were in clearly cut position. This injury has been sustained in the large artery in the portion of the chest on the outer side and was deep in the cavern upto the inner side of the chest. In the large artery the size of this wound was 0.5 x 0.3 cm. In both the caverns blood was filled, which on the left side was upto 500 ml. And in the right side upto 250 ml., out of which there was some clots of blood. The whole depth of this wound was 8.5 cm. and this injury was oblique injury from outer side to the inner side.

5. One inserted wound on the left side 16 cm. below the exile on the lower bottom in the midst in oblique condition of the size of 3 x 8 cm. was present. The upper portion of this was narrow and outer portion of this was comparatively wider. The wider edge was bluish colour and was lacerated. The edges of this wound were appeared to be clearly cut. This injury was sustained in the abdomen in the left side and has crossed the lever, and in the lever the size of this injury was 1.8 x 0.8 cm. which by going inner side had become narrower. In the abdomen cavern 50 ml. blood was present, out of which some were in the frozen clots of the blood.

4. Shri Ranjan Mukherjee, learned amicus curiae appearing for the appellant contended before us that assuming that the prosecution has established the incident as put forward by it and assuming injuries suffered by the deceased and PW2 are as alleged by the prosecution is true. Even then according to the learned counsel act of the accused can not be construed as amounting to murder as punishable u/s 302 IPC nor the injury on PW2 would amount to offence u/s 307 IPC. His contention is that it is the incident in question, even according to the prosecution had occurred suddenly therefore the offence if at all would come under exception 4 of Section 300 IPC which reads thus:

"Culpable homicide is not murder if it is committed without premeditation in 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."

5. According to the learned counsel that the present incident in question was

without premeditation in a sudden fight. He also submitted that the appellant had not taken any undue advantage of the victim nor has acted in a cruel or unusual manner. He submitted that after the deceased fell down after his attack he did not further attacked him which shows that assuming the deceased died due to the injuries caused by him same will not be an act punishable u/s 302 IPC. In support of his case the learned counsel has strongly relied on the case of Sukhbir Singh Vs. State of Haryana, wherein this Court held: "All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner." Based on the said finding this Court in that case had reduced the sentence of the appellant from one u/s 302 IPC to u/s 302 (Para 1) IPC. The learned counsel submitted that the fact situation in this appeal is almost identical with the case of Sukhbir Singh (supra). Therefore, the appellant herein is also entitled for the same benefit.

6. Ms. Vibha Datta Makhija, learned counsel appearing for the state submitted that an examination of the evidence of the prosecution clearly shows that the injuries caused are of such gravity that the artery of the deceased has been cut. It is also seen from 4th injury that the liver and spleen were also damaged by the injury inflicted by the appellant, therefore, it should be construed that the appellant at least had the knowledge by his act he would in all probability would cause the death of the deceased. She further argued that in fact the deceased fell down and died immediately after the attack. Therefore, the act of the appellant cannot come under exception 4 to Section 300.

7. We have examined the material on record and we do notice that injuries 4 and 5 inflicted by the appellant are grievous but the same was caused even according to the prosecution in a sudden fight without any motive. As a matter of fact the deceased and PW2 were total strangers to the appellant. It is also seen from the evidence that after attacking the deceased and deceased having fallen down the appellant did not attack any further. Therefore, we think that facts of Sukhbir case (supra) is almost similar to the case in hand, therefore, the appellant is entitled for the same benefit. We also notice that in the absence of any motive to kill the injury suffered by the PW2 also cannot be treated as having inflicted with an intention to kill. Therefore, conviction of the appellant u/s 307 IPC also cannot be sustained.

8. For the reasons stated above we allow this appeal and modify the sentence from Section 302 IPC to 304 part I and sentence the appellant to undergo rigorous imprisonment for a period of 7 years. In regard to the offence u/s 307 IPC we convert it to one u/s 326 IPC and award a sentence of rigorous imprisonment for 5 years. We direct both the sentences to run concurrently. If

the appellant has served out the time he shall be entitled to the benefit of the sentence already undergone.

9. We must record our appreciation of the assistance rendered by Shri Ranjan Mukherjee, advocate to the Court as learned amicus curiae and we direct the payment of Rs. 750/- as fee to him.