
(2012) 02 MP CK 0051

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 371 of 2006

Murari

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357, 374
Penal Code, 1860 (IPC) — Section 300, 302, 303, 304I, 307

Citation : (2012) 02 MP CK 0051

Hon'ble Judges : S.K. Gangele, J; Giriraj Das Saxena, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.D. Saxena, J.—This appeal u/s 374 of the Code of Criminal Procedure 1973 preferred by the accused/appellant from jail is directed against a Judgment dated 8th April 2006 in Sessions Trial No. 43/2005 recorded by the Seventh Additional Sessions Judge (Fast Track), Gohad, district, Bhind (M.P.), holding thereby the accused/appellant Murari guilty alongwith another co-accused Pradeep for committing murder of Vasudev in furtherance of their common intention which is an offence punishable u/s 302/34 of I.P.C. and sentencing him to suffer imprisonment for life with a fine of Rs. 100/- . By the same judgment, the accused also stood convicted for causing simple hurt to injured Surendra alongwith co-accused Pradeep, which is an offence punishable u/s 323/34 of I.P.C. and sentenced to suffer one year's R.I. and further for offence u/s 307/34 of I.P.C. and sentenced to suffer rigorous imprisonment of seven years with a fine of Rs. 100/- for attempting to commit murder of Rajesh alongwith co-accused Pradeep. The trial of co-accused Pradeep was conducted by the Juvenile Justice Court since he was juvenile at the time of commission of the said offence. The facts, in brief, for the adjudication of this appeal are that on 12th October 2004 at about 10 a.m., accused Murari having armed with 12 bore double barrel gun and his son Pradeep with a Mouser gun went to the house of Shri Krishna, who was father-in-law of his daughter who stood married to Rajesh. Accused

Murari expressed some doubt that his daughter was killed by administering the poison by her in-laws. On asking complainant Shri Krishna told him that his daughter is at Jabalpur and he may verify it. It is alleged that thereafter the accused opened fire from their firearms. Sons of Shri Krishna, namely, Vasudev and Rajesh with a view to save their lives fled away from the spot. Accused Murari and Pradeep chased them and during the process, both the accused fired at Vasudev which hit him causing serious injuries. During shifting of the injured Vasudev to the hospital in a Tractor trolley, he died. Complainant then got recorded a Dehati Nalish on the spot and thereafter F.I.R. was also lodged at his behest in the Police Station. Marg report was also registered. The police reached on the spot, prepared spot-map and effected seizures of the articles. The dead-body was sent to the hospital for postmortem. Injured Rajesh and Surendra were medically examined. Case-diary statements of the witnesses were recorded. Accused were arrested and weapons of crime were recovered from their possession. After investigation, the charge-sheet was filed before the criminal Court. After trial, the trial Judge convicted and sentenced the accused/appellant, as mentioned above, hence, the appeal.

2. Learned counsel appearing on behalf of accused/appellant contended that as per ocular and medical evidence, admittedly, the incident took place all of a sudden without premeditation and in the heat of passion and, therefore, the ingredients of offence "Murder" punishable u/s 302 of I.P.C. are lacking. It is contended that from the evidence on record, at the most, the appellant can be held guilty for commission of offence punishable u/s 304 Part-I of I.P.C. On the said premised submissions, it is prayed that by allowing the appeal to that extent, the accused/appellant be acquitted of the charge of "Murder" levelled against him. To support the arguments, learned counsel placed reliance on the decisions in the cases of Dayanand Vs. State of Haryana (AIR 2008 SCW 2515), Manek Ram Vs. State of Haryana (2004) SCC (Criminal) 106, and Surendra Singh @ Bittu Vs. State of Uttaranchal,

3. The learned Public Prosecutor appearing for the respondent/State, on the other hand, supported the judgment of conviction and sentence and submitted that the prosecution has succeeded in proving the guilt of the accused. Accordingly, he prayed for dismissal of the appeal.

4. Heard the learned counsel for the parties. Also perused the impugned judgment and the evidence on record with a law applicable to the case at hand.

5. Shri Krishna (PW-2) deposed that on 12th October 2004 at about 10 a.m., in village Kanjoliya Ka Pura (Gadpara) he alongwith his family members was at home. At that time, accused Murari armed with 12 bore gun accompanied with two sons Pradeep with a Mauser gun and Kuldeep (bare handed) went to his residence. Accused Murari asked the witness about his daughter and expressed doubts that she was killed by him in the house after administering poison. At such a statement, the witness told that at present she is at Jabalpur, which fact may be verified by them but the accused was not satisfied with his reply. It is

alleged that thereafter all the accused hurled abuses. Apprehending about seriousness his sons Vasudev and Rajesh tried to run away from the place. The accused also chased them. Accused Murari and Pradeep fired two shots from their guns which caused serious injuries on the abdomen of Vasudev, resultantly he died on the spot. Pradeep also caused injuries by firearm to Surendra and Rajesh. Thereafter, the witness shifted his son Vasudev in an injured state to the District Hospital Bhind on a tractor-trolley. The police reached on the spot. He lodged the report "Dehati Nalish" vide Ex.P/4. on the spot. The police also prepared spot-map (Ex.P/5) and seized blood stained and simple soil and empty cartridges of 12 bore and 315 bore guns vide seizure memo (Ex.P/6). His case-diary statement was recorded at about 12 p.m. on the same day, on the spot.

6. Surendra Sharma (PW-3) deposed that on 12th October 2004, near about 10 a.m., in the morning he was alongwith his family members at his residence in village Kanjolia Ka Pura, district Bhind. At that juncture, accused Murari with his two sons Pradeep and Kuldeep came to them. They told that their daughter was killed by the witness side. When he told they are absolutely thinking wrong, accused Murari hurled abuses to him and his brother and father. He stated that the accused Murari was having country-made pistol and his minor son Pradeep was also having 315 bore rifle while his another son Kuldeep was empty handed. Accused Murari and Pradeep with intention to kill them fired by their firearms but the bullet did not hit to any person. To save themselves, he and his brothers Vasudev and Rajesh fled away from the spot. Accused Murari and his son chased them. During that process, accused Murari fired by his 12 bore gun which hit on the abdomen of Vasudev, who fell down. When the witness went to catch hold of accused Pradeep and Kuldeep, accused Pradeep gave a blow by the dint of butt of the gun which caused injuries on his head, right shoulder and right hand. He deposed that when the injured Vasudev was being shifted to the district hospital, the victim died. He was also medically examined. The body of his brother was then shifted for autopsy. In cross-examination he admitted that prior to the incident, when accused Murari asked them about his daughter they told that she is at Jabalpur. He also admitted that his brother Rajesh after leaving the daughter of accused Murari at Jabalpur came to their village. Rajesh (PW-6) brother of deceased Vasudev and an injured witness in this case, in his statement well supported the prosecution version and said that Murari also fired at him by his 12 bore gun and caused thereby injuries to his leg, ankle and chest. In cross-examination, he deposed that after marriage he shifted with his wife (daughter of accused Murari) to Jabalpur for business of selling salted items (Pakodi). He stated that at the time of incident, he went alone to his village leaving his wife at Jabalpur, where he was residing.

7. Thus, Surendra Sharma (PW-3), Ramesh Sharma (PW-4) Manoj Sharma (PW-5), and Ashok Singh (PW-7) eye-witnesses of the incident well supported the statement of complainant vis-a-vis the prosecution version in full throt.

8. B.K. Parashar (PW-8) Inspector and Investigator of the crime deposed that on

12th October 2004, he was posted as SHO in the Police Station Baraso, district Bhind. He wrote a Dehati Nalish (Ex.P/4) on the report lodged by complainant Shri Krishna on the spot and registered the crime u/s 307/34 of I.P.C. and sent the same through his Head Constable Nannhe Singh for registration of the crime at the Police Station Baraso. He prepared spot map (Ex.P/5) and seized the blood soaked and simple soil from the spot alongwith two empty cartridges of 315 bore rifle and four empty cartridges of 12 bore gun from the spot vide seizure memo (Ex.P/6). He also recorded the case-diary statements of the complainant and material witnesses. On 28th October 2004, he arrested accused Murari vide arrest memo (Ex.P/8) and on production of 12 bore gun, he seized the weapon of offence from his possession vide seizure memo (Ex.P/9).

9. Harvir Singh Badhoria (PW-9) deposed that at the relevant period, he was posted as Assistant Sub Inspector in the Police Station Bhind. He conducted the inquiry in relation to Marg No. 028/2004. He issued the Safina Form (Ex.P/10) and in the presence of witnesses and after inspection of dead-body of Vasudev, he prepared the memo of dead body and sent it for postmortem vide memo (Ex.P/3-A). He also referred the injured for their medical examination.

10. Dr. K.K. Dixit (PW-1) deposed that on 12th October 2004, while he was posted as Assistant Surgeon in the District Hospital Bhind, on request memo from the Police Station City Bhind, he conducted postmortem on the body of deceased Vasudev, which was identified by Ramesh Sharma brother of deceased. As per his report (Ex.P/3), following antemortum injuries on the dead body of deceased Vasudev were noticed:

(i) Gunshot wound of entry admeasuirng 3 cm. x 3 cm. on the abdomen just above the umbilicus in mid line. Clotted blood around the wound.

(ii) Gunshot wound of exit in right side back in lumber region below the level of wound No. 1. Laterally above the lilac crest, admeasuring 3.5 cm. x 3.5 cm. Antemortum in nature.

11. As per the opinion of the doctor, mode of death of the deceased was syncope due to cardio-respiratory failure, resulted by excessive internal haemorrhage, owing to gunshot injuries. Time of death was within 12 hours from postmortem. Nature of death was homicidal.

12. Dr. K.K. Dixit (PW-1) again deposed that on the same day, he examined injured Rajendra s/o Shri Krishana and found following injuries :

(i) Gunshot entry wound on right shoulder admeasuirng.5 cm. x.5 cm.;

(ii) Gunshot wound of entry admeasuirng.5cm. x.5 cm. on upper part of left leg;

(iii) Gunshot wound of entry admeasuirng.5 cm. x.5 cm. on medial side on left ankle;

(iv) Gunshot wound of entry admeasuirng.5 cm. x.5 cm. on lateral sight of right foot; and

(v) Gunshot wound of entry admeasuirng.5 cm. x.5 cm. ant. Lat. side of right leg lower half area.

13. The above injuries as per the doctor were caused by pallets within 24 hours and the nature of injuries was said to be determined after X-ray. Said injury report is Ex.P/2, written and signed by him. On the same day, he also examined the injured Surendra Sharma and found two contusions, one on right towards distal of middle phalanxes hand admeasuring 2.5 cm. x 2.5 cm. and another on posterior side of head admeasuring 2 cm. x 2 cm. vide his report Ex/P/2. For Injury No. 1 X-ray was advised whereas Injury No. 2 was shown to be simple in nature. Both the injuries were caused by hard and blunt object within 24 hours.

14. Thus, the question under the facts of the case which once again arises for consideration is as to whether the conviction of the appellant Murari is liable to be sustained u/s 302 of I.P.C. or would it be a case fit for altering his conviction and sentence from Section 302 to Section 304 Part-I of I.P.C. ?.

15. Although we are aware of the ingredients of Section 300 defining culpable homicide amounting to murder, it would be worthwhile to recollect the exception therein specially Exception 4 to Section 300 I.P.C. which lays down when culpable homicide does not amount to murder. For facility of reference, same is quoted below:

Exception 4 to Section 300.-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''s having taken undue advantage or acted in a cruel or unusual manner.

16. In order to bring a case under Exception 4 to Section 300 IPC, the evidence must show that the accused acted without any premeditation and in a heat of passion and without having taken undue advantage and he had not acted in a cruel or unusual manner. Obviously, therefore, the help of Exception 4 can be invoked only if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offender''s having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4, all the ingredients mentioned in it must be found. Examining the case from that angle, it may be seen that the deceased Murari and his son Pradeep having armed with 12 bore and Mauser guns went to the house of complainant Shri Krishna, who was father-in-law of the daughter of accused Murari because accused Murari had some doubts that his daughter who was married to Rajesh, the son of complainant, was killed by her in-laws after administering to her poison. On asking by Murari, complainant Shri Krishna told him that his daughter is at Jabalpur. Hearing this, accused Murari could not stop him and in the heat of passion, after uttering abuses opened fired in the air. Apprehending some unforeseen incident, complainant''s sons Vasudev and Rajesh left the place of his house and started going towards the road side to save their lives. Accused Murari and Pradeep chased them and then accused Murari

fired from his 12 bore gun which hit and caused injuries to Vasudev in his abdomen. When Vasudev was being shifted to the district hospital for medical treatment, he succumbed to injuries.

17. In the case of Mangesh Vs. State of Maharashtra,), the Hon. Apex court held :-

The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.

Undoubtedly, injury No. 1 had been caused on the vital part of the body of the deceased but it must also be borne in mind that when a person loses his sense he may act violently and that by itself may not be a ground to be considered against him while determining the nature of the offence. Each case is to be considered on its own facts, however, taking a holistic view of the matter. In such a case, the entire attending circumstances must be taken into consideration in order to find out the nature of the actual offence committed. (See: Kailash Vs. State of M.P., ; and Karuppusamy and Another Vs. State of Tamil Nadu,

18. Under the circumstances and keeping the settled principles of law in view that where there is no evidence on record suggesting that the accused had the intention to cause such bodily injury as he knew to be likely to cause death, he cannot be held guilty for murder within the meaning of Section 300 of I.P.C. In the present case also it is apparent that accused Murari entered into sudden and unprecedented quarrel with the deceased and the reason behind it was to know the welfare of the daughter by accused Murari, who was married to Rajesh, son of the complainant Shri Krishna. There was a grave suspicion that the complainant or his son Rajesh might have administered poison to her due to which she died. In the heat of passion upon a sudden quarrel, the accused suddenly fired at the deceased when he was running away from his house which hit on his abdomen, ultimately causing his death.

19. Hence, in the facts and circumstances, the appellant is proved to have committed the offence of culpable homicide, which is punishable u/s 304 Part-I

of I.P.C. Accordingly, the conviction of the appellant Murari is altered from Section 302 of I.P.C. to Section 304 Part-I of I.P.C. Thus, the findings of the trial court in holding him guilty of offence of murder punishable u/s 302 of I.P.C. are set aside and instead the appellant is held guilty for the commission of offence of culpable homicide not amounting to murder, punishable u/s 304 (Part-I) of I.P.C. and sentenced to undergo rigorous imprisonment of ten years with a fine of Rs. 10,000/- (Rs. Ten thousand only). The fine amount shall be deposited within a period of two months from the date of this judgment and in case of failure, the appellant shall suffer additional rigorous imprisonment of three years. By invoking the provisions of Section 357 Cr.P.C., the trial court is hereby directed to pay as a compensation to the family members of the deceased, a sum of Rs. 10,000/- (Rs. Ten thousand only), upon deposit of fine amount by the accused. It is further made clear that the period of detention, if any undergone by the accused during investigation, inquiry or trial of the case and before the date of such conviction shall be set off against the term of sentence of imprisonment imposed on him by the judgment of this court. The findings recorded by the learned trial Judge holding the accused-appellant guilty for rest of the offences committed by him are eventually upheld. In the result, the appeal stands allowed in part as held above.