
(2017) 07 RAJ CK 0079
In the Rajasthan High Court
Case No : 218 of 2015

Narsinga Ram S/o Shri Jagrupa Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 28-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 374 \(2\)](#) - Power to examine the accused - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 302](#)

Citation : (2017) 07 RAJ CK 0079

Hon'ble Judges : Gopal Krishan Vyas, Manoj Kumar Garg

Bench : DIVISION BENCH

Advocate : B. Ray Bishnoj, J.P.S. Choudhary

Judgement

1. The instant criminal appeal has been filed by the accused appellant, Narsinga Ram under Section 374 (2) Cr.P.C. against the judgment dated 27.01.2015 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Barmer (Trial Court) in Session Case No.58/2013 (104/2010) (67/2010), whereby the accused appellant was convicted for offence under Section 302 of IPC and sentence of life imprisonment was imposed against him along with fine of Rs.5,000/- with default stipulation to further undergo one year additional simple imprisonment.

2. As per facts of the case, on 09.07.2010 at about 05.55 AM a written report (Ex.P/16) was submitted by the complainant Govind Singh under his thumb impression before the S.H.O., Police Station Sadar, District Barmer, stating therein that today went to Barmer along with other passengers in my jeep, where after dropping them, he went to the rented house of his real brother Tikam Singh (deceased) taken by him on rent from Bhanwarlal Deshantri. According to complainant when he reached in the house of his brother Tikam Singh, the door of the house was found opened and outside the kitchen, my brother Tikam Singh was sleeping, and accused appellant Narsinga Ram was

standing there, having an iron weight (ckV) in hand in his presence threw the said iron weight on the head of Tikam Singh, however, when complainant tried to rescue, on seeing him the accused appellant ran away from the place of occurrence. The complainant further stated that due to head injury blood came out from nose, ear and mouth and Tikam Singh died on the spot. It was further stated that Tikam Singh was residing in the rented house with Sita Bhilni, who was out of home on the date of occurrence. In the house, Puro, daughter of Sita, and son, Chunaram, were present and on hearing the hue and cry, they woke up and complainant immediately went to the house of neighbour Vakaram to give information of the incident.

3. For ready reference, Ex.P/16 written report submitted under the thumb impression of complainant is reproduced herein below:- "VERNACULAR MATTER OMITTED"

4. On the basis of aforesaid written report (Ex.P/16), formal FIR No.235/2010 was registered on 09.07.2010 at Police Station Kotwali, District Barmer, against the appellant for offence u/s 302 of IPC. During investigation, the accused appellant was arrested and after completing investigation and recording statements of eyewitnesses, charge sheet was filed against the accused appellant in the court of Chief Judicial Magistrate, Barmer, from where the case was committed to the court of Addl. Sessions Judge, Barmer, but later on transferred to the court of Special Judge, SC/ST (Prevention of Atrocities) Barmer, for trial.

5. During trial, charge under Section 302 IPC was framed against the accused appellant, but accused appellant denied the charges and prayed for trial.

6. In the trial, statements of 16 prosecution witnesses were recorded and 24 documents were exhibited from the prosecution side. After recording evidence of prosecution, the learned trial court recorded the statements of accused appellant u/s 313 Cr.P.C. and in defence 4 defence witnesses were examined including accused himself as DW.1.

7. After recording evidence, final arguments were heard. The learned trial court after considering the entire evidence of the case, held the accused appellant guilty for committing offence u/s 302 of IPC vide judgment impugned dated 27.01.2015 and passed sentence of life imprisonment along with fine of Rs.5000/- with default stipulation to undergo one year additional simple imprisonment, the said judgment is under challenge in this appeal.

8. At the threshold, learned counsel for the accused appellant submitted that although out of three eyewitnesses, viz. two witnesses, viz. PW.8 Puro Devi, and PW.10 Chunaram, who were very much present in the house, turned hostile and did not support the prosecution case, however, the learned trial court relied upon the testimony of complainant- Govind Singh (real brother of deceased) for causing injury by iron weight, convicted the accused appellant on the ground that there is no question to disbelieve his testimony, which is further corroborated by medical evidence and FSL report. But, there is no evidence on record to prove

that there was any motive or intention of the accused appellant to cause such injury, therefore, even if the entire prosecution case is accepted, then also the offence cannot travel beyond offence under Section 304 Part-I of IPC. The learned trial court, however, erroneously held the accused appellant guilty for offence under Section 302 of IPC, and therefore, the judgment impugned may kindly be modified because there is no allegation for repeated blow or undue advantage and there is no evidence of motive on record. Learned counsel or the appellant prayed that judgment may kindly be quashed or conviction may be altered to offence u/s 304 Part-I of IPC. In support of above prayer, he invited our attention towards following judgments: - 1. State of Himmachal Pradesh Vs. Ram Pal, reported in 2006 (2) SCC (Cri.) 165

2. Arjun Vs. State of Maharashtra reported in 2012 Cr.L.R. (SC) 506

3. Sudhakar Vs. State of Maharashtra, reported in 2012 Cr. L.R. (SC) 1025

4. Dilip Kumar Mondal & Anr. Vs. State of West Bengal, reported in 2015 (2) SCC (Cri.) 318

5. Arjun & Anr. Vs. State of Chhattishgarh reported in AIR 2017 sc 1150.

9. Per contra, learned Public Prosecutor vehemently opposed the submissions made by counsel for the appellant and submitted that it is a case in which an iron weight of 50 KG was thrown upon the head of deceased and due to said injury, the deceased died, therefore, it cannot be said that it is a case in which any error has been committed by the trial court so as to hold accused appellant guilty for offence u/s 302 IPC.

10. Learned Public Prosecutor further argued that intention can be gathered from the fact that injury was caused by heavy weight upon the vital part of body, therefore, there is no question to interfere with the findings of learned trial court whereby the accused appellant has been held guilty for committing offence under Section 302 of IPC.

11. After hearing the learned counsel for the parties, we have perused the statements of all the 16 prosecution witnesses. As per FIR, entire prosecution case is based upon testimony of three eyewitnesses viz. PW. 14 Govind Singh (real brother of the deceased and author of FIR), PW.8- Puro Devi (wife of accused appellant Narsinga Ram) and PW.10- Chuna Ram (brother-in-law of the accused appellant). Admittedly, the house in which the deceased was residing, where mother-in-law of the appellant along with his wife Puro Devi, and Chunaram were residing, and as per FIR, Puro Devi, wife of appellant and brother-in-law of accused appellant were present, but they turned hostile and did not support the prosecution case.

12. PW.7- Jethi Devi, landlady of the house, also turned hostile. As per evidence on record, the iron weight, which is alleged to be thrown upon the head of the deceased, was not taken in possession by the investigating officer but the blood found upon the said iron weight was taken upon cotton and the same was sent to

FSL. As per prosecution case, blood was found upon the weight and it was not possible to send the iron weight to FSL for examination.

13. We have also perused the FSL report dated 13.07.2010 (Ex.P/24), according to which, human blood of "B" group was found on the cotton/gauge and shirt of the deceased. It is admitted position of case that alleged iron weight which is said to be used for committing murder of deceased, was not taken in possession by the police but the fact remains that as per FIR itself while throwing the weight, accused appellant ran away from the place of occurrence. Although some whisper is there with regard to dispute in between Puro Devi, wife of accused appellant with appellant, because was not going with the appellant due to interference of the deceased, but at the same time, this Court cannot loose sight of the fact that only one injury was caused by the appellant probably on heat because deceased was not having relation with family of his in-laws, however, he was residing in the house of his in-laws as stranger, therefore, some quarrel took place in which the incident took place.

14. Therefore, we find strength in the argument of learned counsel for the appellant that finding of trial court holding the appellant guilty u/s 302 of IPC without there being evidence of motive and so also considering the fact that there is allegation of inflicting on injury on the person of deceased, thus it is fit case to alter the conviction from offence under Section 302 of IPC to offence under Section 304 Part-I of IPC.

15. The Hon"ble Supreme Court in the case of State of Himmachal Pradesh Vs. Ram Pal, reported in 2006 (2) SCC (Cri.) 165, gave following verdict to alter the conviction from offence under Section 302 IPC to Section 304 Part-I of IPC, the paras nos. 5 to 8 of the said judgment are as follows: "5.. Haviing perused the record ffor the lliimiited purpose off ffiindiing the nature off offffence,, we see that iit iis cclear ffrom the eviidence off PW- 3 hiimselfff that he and Jaiiwant consumed lliiquor beffore going to the tea stallll off the respondent hereiin to demand the money whiich was due to hiim and when they reached there the deceased went iinside the tea stallll and started quarrelliing wiith the accused persons.. Duriing the said quarrell iit iis stated that the deceased callled the accused persons as "cheat" and "beiman" and the quarrell then spiillled outside the stallll at which poiint off tiime a stiick that was carried by Choudhary Ram was snatched by PW- 3,, iin the process Choudhary Ram got iinjjured and ffellll down.. Here we must notiice the case off the deffence iis that PW- 3 assaullted Choudhary Ram whiich caused hiim ffiaciall iinjjury and notiiciing hiis ffather being assaullted the respondent iintervenend and assaullted PW- 3 ffiirst wiith a kniiffe and then assaullted the deceased twice on hiis back..

6.. On the ffacts off thiis case whiichever versiion we take iit iis cclear that iit iis the deceased and PW- 3 affter consumiing lliiquor went to the tea stallll off the accused.. When the deceased went iinside and abused the accused,, the said verbal quarrell then spiillled outside the shop when Choudhary Ram was iinjjured on the ffact eiither iintentionallly or otherwiise by PW- 3.. It iis at that

time the respondent stabbed PW-3 and the deceased.. From the above facts stand proved are (a) the deceased went with PW- 3 to the shop off the accused; (b) picked up an argument during which he abused the accused; (c) Choudhary Ram was injured first and then the respondent stabbed PW- 3 and the deceased; (d) injury was inflicted on the back off the deceased..

7.. On the above facts we are of the opinion that the High Court was justified in altering the sentence from Section 302 IPC to Section 304 Part I IPC.. We are also in agreement with the finding off the High Court that sentence off over 4 years"" RI suffered by the respondent meets the ends off justice..

8.. For the reasons stated,, this appeal fails hence dismissed.."

16. In the case of Arjun Vs. State of Maharashtra reported in 2012 Cr.L.R. (SC) 506, the Hon"ble Supreme Court gave following verdict: "17.. Considering the background facts as well as the fact that there was no premeditation and the act was committed in a heat off passion and that the appellant had not taken any undue advantage or acted in a cruel manner and that there was a fight between the parties,, we are of the view that this case falls under the fourth exception to Section 300 IPC and hence it is just and proper to alter the conviction from Section 302 IPC to Section 304 Part 1 IPC and we do so..

18.. We are informed that the appellant is in custody since 30.07.2003.. In our view,, custodial sentence off 10 years to the accused-appellant accordingly.. The appeal is accordingly disposed off,, altering the sentence awarded.."

17. In the case of Sudhakar Vs. State of Maharashtra reported in 2012 Cr. L.R. (SC) 1025, the Hon"ble Supreme Court held as under: 8.. Whatever be the subsequent versions made by P.Ws 1 and 2 before the Court,, it came out in evidence that at the time off occurrence there were only three persons,, namely,, the appellant,, P.W..1 and the deceased.. The admission off P.W..1 that the deceased had drinking habit and that whenever he was under the influence off liquor he used to create a ruckus in the house was a factor which had to be necessarily borne in mind while considering the offence alleged and proved against the appellant.. Though there is variation in the version off P.W..1,, as between the complaint and her evidence before the Court,, going by the evidence available on record,, the conclusion off the Trial Court that the appellant was responsible for the death off the deceased is unassailable.. Apart from the exclusive presence off the appellant with a weapon in his hand as deposed by P.W..2,, the other two persons were the deceased and P.W..1.. The said conclusion off the Trial Court as well as that off the High Court cannot be doubted.. Further the report off the chemical analysis Exhibits 35 and 36 also disclosed that the blood stained clothes off the appellant matched with the blood group off the deceased which were found on the clothes off the deceased himself.. Therefore,, there was

conclusiive proof to hold that it was appelllant who was responsiible ffor the siinglle stab iinjyury iinfllicted upon the deceased wiith the aid off the kniiffe seiized under Exhiibit-47.. Haviing reached the above concllusiion,, the only other questiion raised was as to whether there iis any miitiigating ciircumstance iin order to hold that the offffence woulll fallll under any off the Exceptiions to Sectiion 300 of IPC to state that it was a case off cullpablle homiicide not amountiing to murder.."

18. The Hon"ble Supreme Court in the case of Dilip Kumar Mondal & Anr. Vs. State of West Bengal, reported in 2015 (2) SCC (Cri.) 318 held as infra: - "24.. In order to iinvoke Exceptiion 4 to Sectiion 300 Indian Penall Code,, it must be ffurther shown that the offffender has not taken undue advantage or acted iin a cruell or unusuall manner.. The Appellllants are said to have iinfllicted iinjuriies wiith henso and dau.. By a perusall off Ext.. P6 post-mortem certiifficate,, it iis seen that the deceased sustaiined one inciised iinjyury on the back which has caused iinjyury to scapulla and spiinall cord and another inciised wound over the back jjust bellow the riight scapulla causiing iinjyury to the riight llung and plleura.. Insoffar as the iinjuriies caused to Ranjjiit Debnath and Santosh Debnath,, there iis no sufffficiient eviidence as to the alllleged iinjuriies caused to them.. As ffar as PW-10- Niikhiill Debnath iis concerned,, he was diischarged ffrom the hospiitall affter giiviing ffiirst aid treatment iindiicatiing thereby that the iinjyury was not griievous.. Consiideriing the iinjuriies,, iin our viiew,, it cannot be said that the accused have taken undue advantage off the siituatiion.. The inciident was not premediitated and the scufffflle between the partiies lled to the causiing off iinjuriies to the deceased Nriipen Debnath and consiideriing the ciircumstances off the case,, iin our viiew,, the offffence woulll fallll Under Sectiion 300 Indian Penall Code Exceptiion 4 and the conviictiion off the Appellllants iis to be modiiffied and alltered Under Sectiion 304 Part I IPC.."

19. In the case of Arjun & Anr. Vs. State of Chhattishgarh reported in AIR 2017 sc 1150, the Hon"ble Court held as infra: "22.. The accused,, as per the versiion off PW-6 and eye wiitness account off other wiitnesses,, had weapons iin their hands,, but the sequence off events that have been narrated by the wiitnesses onlly show that the weapons were used duriing alltercatiion iin a sudden ffiight and there was no premediitatiion..

Injuriies as refflected iin the post-mortem report allso suggest that appellllants have not taken undue advantage or acted iin a cruell manner.. Thereffore,, iin the ffact siituatiion,, exceptiion (4) under Sectiion 300 IPC iis attracted.. The inciident took pllce iin a sudden ffiight as such the appellllants are entiitled to the benefiit under Sectiion 300 exceptiion (4) IPC..

23.. When and iiff there iis iintent and knowllledge,, then the same woulll be a case off Sectiion 304 Part I IPC and iiff it iis onlly a case off knowllledge and not the iintentiion to cause murder and bodiilly iinjyury,, then the same woulll be a case off Sectiion 304 Part II IPC.. Injuriies/inciised wound caused on the head ii..e.. riight pariietall regiion and riight temporall regiion and allso occiipitall

region,, the injuries indicate that the appellants had intention and knowledge to cause the injuries and thus it would be a case falling under Section 304 Part I IPC.. The conviction of the appellants under Section 302 read with Section 34 IPC is modified under Section 304 Part I IPC..

As per the Jail Custody Certificates on record,, the appellants have served 9 years 3 months and 13 days as on 2nd March,, 2016,, which means as on date the appellants have served 9 years 11 months.. Taking into account the facts and circumstances in which the offence has been committed,, for the modified conviction under Section 304 Part I IPC,, the sentence is modified to that of the period already undergone..

24.. In the result,, conviction of the appellants under Section 302 IPC read with Section 34 IPC is modified as conviction under Section 304 Part I IPC and the sentence is reduced to the period already undergone and these appeals are partly allowed accordingly.. The appellants are ordered to be released forthwith unless required in any other case..

25.. Fee of the learned Amicus is fixed as per Rules.."

20. So far as present case is concerned, there is no allegation of repeated infliction of injury on the person of deceased and incident took place due to anger which is evident from the fact that there is no evidence of motive on record, therefore, the accused appellant is guilty for offence under Section 304 Part-I of IPC and not for offence u/s 302 IPC.

21. Upon assessment of entire evidence in the light of aforesaid judgments, we are of the view that the finding recorded in the impugned judgment by the learned trial court so as to hold accused appellant guilty for offence u/s 302 IPC deserves to be altered under Section 304 Part-I of IPC.

22. Consequently, this criminal appeal is hereby partly allowed. The conviction and sentence passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Barmer in Session Case No. 58/2013 (104/2010) (67/2010) for offence u/s 302 of IPC is hereby altered under Section 304 Part-I of IPC and the sentence is reduced to seven years" rigorous imprisonment. The order of fine is hereby maintained.