
(2019) 05 MP CK 0038
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 228 Of 2010

Naval Singh

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 17-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)
Indian Penal Code, 1860 — Section 34, 300, 302, 304I, 304II

Citation : (2019) 05 MP CK 0038

Hon'ble Judges : J.K. Maheshwari, J;Anjuli Palo, J

Bench : Division Bench

Advocate : Abhishek Tiwari, Som Mishra

Judgement

J.K. Maheshwari, J

1. This appeal under Section 374 (2) of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C.) arises out of the judgment of

conviction dated 21.12.2009 passed by the Sessions Judge, Dindori in Session Trial No. 17/2009 convicting the appellant for the charge under Section

302 of the Indian Penal Code (hereinafter referred to as the IPC) and sentencing him to Imprisonment for life with fine of Rs. 1000/-, in default, one

year's further R.I.

2. The case of the prosecution, in brief, is that on 5.3.2009 at about 12:00 noon at Village Nighori Imli Tola when Ram Singh (since deceased), was

passing through front of the house of the appellant, he asked him that why did he oust his father from the house. At that time, the sister of the

appellant came there and said that Ram Singh owes Rs.10/- towards her. When Ram Singh was giving Rs. 10/- to her, at that time the appellant

assaulted him firstly by lathi and thereafter by an Axe, which was lying there, on

his neck, as a result of which the neck of Ram Singh got almost detached from the body and it was clung with the skin only. Ram Singh died on the spot. Nameshwar (PW-1), who was residing in front of the house of the appellant witnessed the incident and informed to the Kotwar of the village. After reaching of the Police, Nameshwar (PW-1) lodged Dehati Nalisi on the spot. Panchanama of the dead body was prepared and other investigation was conducted by the Police. Thereafter, an offence was registered at Crime No. 30/2009 at P.S. Samnapur against the appellant. Dr. Manoj Singh (PW-8) conducted the autopsy and opined as per report Ex. P-9 that injuries were caused over the neck of the deceased by means of sharp cutting weapon, which were homicidal in nature and sufficient to cause death.

3. After completion of investigation, Challan was filed in the competent Court under Section 302 of the IPC against the appellant. Because the case was triable by the Court of Session, therefore, it was committed to the Session Court where charge under Section 302 of the IPC was framed against the appellant. The appellant abjured his guilt. In his defence it was stated that the mental condition of the appellant is not fit and he is a patient of epilepsy.

4. Learned trial Court relied upon the testimony of eye witnesses Nameshwar (PW-1), neighbour, Parvati Bai (PW-2) sister of the appellant, Ram Bai (PW-3) and Gulbas Bai (PW-4), which was corroborated by the medical evidence and arrived at the conclusion that the prosecution has proved the charge under Section 302 of the IPC against the appellant beyond reasonable doubt. The Court disbelieved the defence of the appellant that he is a patient of Epilepsy and at the time of incident, he was not in fit mental condition and observed that the medical report regarding illness has not been produced, therefore, the defence as taken by the appellant is not worthy to rely and convicted and sentenced the appellant as described hereinabove.

5. Learned Amicus Curiae appearing on behalf of the appellant referring the Medical Jurisprudence by Modi, 25th Edition, has urged that the appellant is a patient of Epileptic Psychosis. At the time of the incident, he was not in a fit mental condition. Learned counsel has further urged that in the facts of the present case, as per the statement Nameshwar (PW-1), neighbour, it is clear that the appellant was suffering from epileptic psychosis and at

the time of epileptic attack, he becomes unconscious. At the time of the incident, all of a sudden, he assaulted Ram Singh in a fit of anger. It is

admitted that if Ram Singh would not have repeatedly asked the appellant about his father, he would not have assaulted him. The conduct of the

appellant has also been clarified that after the incident, inspite of fleeing away from the spot, he remained there and was wandering here and there.

The allegation of creating fear by abuse, was found omission in his Court statement. Similar are the statements of Parvati Bai (PW-2) sister of the

appellant and the statement of Ram Bai (PW-3) and Gulbas Bai (PW-4) regarding presence and assault. Thus, looking to the aforesaid evidence, it

can safely be gathered that the accused was not a man of normal prudence and at the time of incident, without any premeditation of mind or without

having any intention to commit the murder, in a fit of anger, he assaulted to Ram Singh without taking undue advantage, therefore, the case of the

appellant comes within the purview of Exception 4 of Section 300 of the IPC and it would be a case of culpable homicide not amounting to murder. In

view of the aforesaid, the conviction of the appellant for the charge under Section 302 of the IPC be set aside and appellant may be convicted for the

charge under Section 304 II of the IPC.

6. Learned Government Advocate appearing on behalf of the State has contended that in the facts of the case where the appellant inflicted repeated

blows on the neck of the deceased by means of an Axe, which is a vital part, as a result of which his neck was almost detached with the body and it

was clung with the skin only, it is a case of full fledged murder. The trial Court has rightly convicted the appellant for the charge under Section 302 of

the IPC, therefore, this appeal is liable to be dismissed.

7. After hearing learned counsel for both the parties, the star witnesses of the case are Nameshwar (PW-1), Parvati Bai (PW-2) sister of the

appellant, Ram Bai (PW-3) and Gulbas Bai (PW-4). It has come in the testimony of all the aforesaid witnesses that Ram Singh, who was cousin of

appellant, was passing through front of the house of the appellant. He asked to appellant why did he oust his father from the house, at that time

Parwati Bai (PW-2) sister of the appellant came there and asked Rs. 10 towards her and when Ram Singh was giving the money to Parwati, the

appellant assaulted him. The testimony of aforesaid witnesses remained inocular

to that extent but in their cross-examination, it is admitted by them that the appellant was a patient of epilepsy and he used to suffer epilepsy fits and become unconscious. It is also admitted in cross-examination that the appellant assaulted the deceased all of a sudden in a fit of anger by means of an Axe, which was lying there and thereafter he remained on the spot and wandering here and there but did not flee away. From the aforesaid testimony, it is clear that the incident took place all of a sudden and he assaulted Ram Singh in a fit of anger without taking any undue advantage in an unusual manner though such an act may be cruel. There was no pre-meditation or motive for the appellant to commit the murder of Ram Singh. At the time of the incident, the appellant was under the control of Epileptic Psychosis, as a result of which the incident occurred.

8. As per the Medical Jurisprudence by Modi, 25th Edition, there are two stages of Epileptic Psychosis viz; Pre-Epileptic Mental Ill-health and Post-

Epileptic Mental Ill-health. Epileptic psychosis is associated with epileptic fits. This may occur before or after the fits, or may replace them, and is

known as pre-epileptic, post-epileptic and acute or psychic phases (psychomotor epilepsy). In a psychomotor seizure, a patient may become

dangerous and can make violent attacks and remain oblivious of his actions. There may be clouding of consciousness and reduced powers of

comprehension. There may even be complete amnesia for these periods. Epileptic Psychosis has been defined in Medical Jurisprudence by Modi, 25th

Edition as under:-

Epileptic Psychosis.- Epilepsy usually occurs from early infancy, though it may occur at any period of life. Individuals, who have had epileptic fits for

years, do not necessarily show any mental aberration, but quite a few of them suffer from mental deterioration. Religiosity is a marked feature in the

commencement, but the feeling is only superficial. Such patients are peevish, impulsive and suspicious, and are easily provoked to anger on the

slightest cause.

The disease is generally characterised by short transitory fits of uncontrollable mania followed by complete recovery. The attacks, however, become

more frequent. There is a general impairment of the mental faculties, with loss of memory and self-control. At the same time, hallucinations of sight

and hearing occur and are followed by delusions of a persecuting nature. They

are deprived of all moral sensibility, are given to the lowest forms of vice and sexual excesses, and are sometimes dangerous to themselves as well as to others. In many long-standing cases, there is a progressive dementia or mental deficiency.

True epileptic psychosis is that which is associated with epileptic fits. This may occur before or after the fits, or may replace them, and is known as pre-epileptic, post-epileptic and masked or psychic phases (psychomotor epilepsy). In a psychomotor seizure, a patient may become dangerous and can make violent attacks and remain oblivious of his actions. There may be clouding of consciousness and reduced powers of comprehension. There may even be complete amnesia for these periods.

9. Pre-Epileptic Mental Ill-health and Post-Epileptic Mental Ill-health are also relevant for adjudication of this case, therefore, they are reproduced as under:-

Pre-Epileptic Mental Ill-health.- Pre-epileptic mental ill-health is very common and may replace the epileptic aura, lasting in some cases for hours or even days. It is characterised by violent fits of maniacal excitement or by depression, fussiness, suspiciousness and general malaise. Hallucinations of various kinds are experienced and, owing to delusions, the patient may commit violent assault, or may bring false charges against innocent persons.

Sometimes, the patient may refuse to take any food.

Post-Epileptic Mental Ill-health-In this condition, stupor following the epileptic fits is replaced by automatic acts of which the patient has no recollections. The patient is confused, fails to recognise his own relatives and wanders aimlessly. He is terrified by visual and auditory hallucinations of a religious character and delusions of persecution, and consequently, may commit crimes of a horrible nature, such as thefts, incendiarism, sexual assaults and brutal murders. The patient never attempts to conceal them at the time of perpetration but on regaining consciousness may try to conceal them out of fear.

10. The eye witnesses Nameshwar (PW-1) neighbour, Parvati Bai (PW-2) sister of the appellant, Ram Bai (PW-3) and Gulbas Bai (PW-4), have admitted the fact that the appellant is a patient of epileptic psychosis. It is also admitted that at the time of epileptic attack, the appellant used to

become unconscious. It is also admitted that at the time of incident, all of a sudden the accused was provoked by anger and in a fit of anger he assaulted the deceased. It is also said that after committing the murder, he did not flee away from the spot but was wandering in the courtyard, therefore, looking to the conduct of the appellant, evidence brought on record by the prosecution and the symptoms of Pre epileptic mental ill-health and post epileptic mental ill-health as quoted hereinabove, it can be crystallized that at the time of incident, the appellant lost his self control due to epileptic disorder and assaulted the deceased without premeditation in the heat of passion and without having taken undue advantage in unusual manner though his act was cruel, therefore, the act of the appellant would not come within the purview of murder rather it would come within the purview of culpable homicide not amounting to murder and it would fall under Exception 4 of Section 300 of the IPC.

11. Now looking to the facts and circumstances in which the assault was made by the appellant by means of an Axe over the neck of the deceased, which is a vital part, the question arises for consideration is whether the case of the appellant would come within the purview of Section 304 Part I or Section 304 Part II of the IPC. In similar circumstances, the High Court of Bombay in Criminal Appeal No. 203/2008 (Ashok Ganpati Shinde Versus State of Maharashtra) decided on 2.4.2013 has observed as under:-

25. Now considering the moot question in light of the submission advanced by the learned Counsel for the appellant regarding the offence occurred at the hands of the appellant, we find that the said submission cannot be said to be devoid of merit. We are of such opinion that because the evidence of PW5 as well as the matters from the complaint Exh. 20 reveals that ensuing of quarrel on the day of incident after receipt of phone call from the house of the parents of the deceased, the evidence of PW5 has remained unshattered regarding occurrence of quarrels. The said evidence itself denotes that the said phone call was unexpectedly received on said day. The same denotes the quarrel having occurred not due to any premeditation or a plan made by the appellant. It is the prosecution case that during said quarrel deceased has used singular unrespected words to the appellant. The said aspect considered on the backdrop of the relationship in between the couple clearly reveals that the appellant was fed-up with repeated occurrence

of such events. It also reveals that the said phone call was received in spite of the fact that the deceased has returned to the house immediately after deceased has returned to the house of the appellant after 4-5 days of the said facts clearly denotes that the facts occurred on the relevant day was outcome of a sudden quarrel ensued in between the couple and during the said quarrel the appellant in a heat of anger used the axe for assaulting deceased. Now taking into consideration the number of injuries of the corpse of the deceased and nature of the said injuries also make it difficult to believe that the appellant had acted in a undue cruel or unusual manner. The aforesaid inference is further fortified from the facts of the appellant thereafter having not fled away and reported the matters to the police. All the said facets in our opinion justifies the submission of the learned Counsel for the appellant that the case of the appellant would be covered by exception No. 4 of Section 300 of I.P.C. Needless to add that the same would denote that offence occurred at the hands of the appellant cannot be covered within the four clauses of Section 300 of I.P.C. and would be covered by the provisions of Section 304, Part-I of I.P.C. We are of such a opinion as we are unable to agree with the submission canvassed that the act occurred on part of the appellant would be covered by the provisions of Section 304, Part-II of I.P.C. We are of such a view as user of weapon like axe for causing an injury on vital part like a neck would definitely reflected the intention of the appellant being of causing an injury likely to cause a death.

12. The Apex Court in the case of *State of U.P. Versus Lakhmi* reported in AIR 1998 SC 1007 has considered the same issue wherein the accused inflicted blows with a Phali (a spade like agricultural implement) on the head of the deceased, as a result of which skull of the deceased was smashed and she died on the spot. The Apex Court after considering all the facts and circumstances found that it is a fit case wherein benefit of Exception I of Section 300 may be given to the appellant.

13. Considering the aforesaid judgments of the Apex Court and the High Court of Bombay and also looking to the facts and circumstances of the case where the appellant assaulted the deceased over his neck by means of an Axe, which is a vital part, without premeditation in the heat of passion and without having taken undue advantage in unusual manner though his act was

cruel, the act of the appellant would fall under Section 304 Part I of the IPC because his case is covered under Exception 4 of Section 300 of the IPC.

14. Learned counsel for the appellant has submitted that the appellant is in custody since the date of the incident i.e. 9.3.2009 and by now he has suffered the jail sentence of more than 10 years, therefore, his sentence may be reduced to the period already undergone.

15. Considering the overall facts and circumstances of the case and since the conviction of the appellant is converted from Section 302 of IPC to

Section 304 Part I of the IPC, in our considered opinion, the jail sentence already served by the appellant would be sufficient in the facts and circumstances of the case to meet the ends of justice.

16. Accordingly, this appeal is allowed in part. The conviction of the appellant recorded by the trial Court under Section 302 of the IPC for committing

murder of Ram Singh is set aside instead the appellant is convicted for the charge under Section 304 Part I of the IPC. The sentence of Life

Imprisonment awarded to the appellant is commuted to the period already undergone i.e. more than 10 years.

17. The appellant is in jail, he be released forthwith, if not required in any other offence. Let a copy of this judgment be sent to the trial Court as well as to the Jail Authorities for compliance.

18. At the end, it our duty to record words of appreciation in favour of learned Amicus Curiae, who assisted this Court in disposal of this appeal, which was pending since 2010. His assistance is acknowledged.