
(2019) 02 MP CK 0004

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 938 of 2011

Radheshyam S/o Onkarlal

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304II

Citation : (2019) 02 MP CK 0004

Hon'ble Judges : Virender Singh, J;S. C. Sharma, J

Bench : Division Bench

Advocate : A. K. Tiwari, Vikas Yadav

Judgement

Virender Singh, J

1. The appellant has preferred this appeal against his conviction under Section 302 of IPC and sentence of life imprisonment with fine of Rs.10,000/- and in default of payment of fine further to undergo rigorous imprisonment for three months recorded by Additional Sessions Judge, Susner, District-Shajapur in Sessions Trial No.48 of 2011 vide judgment delivered on 17.6.2011.

2. The prosecution case in short is that on 15.1.2011 Guman Singh (PW-2) and his brother Sujan Singh were loading thorny bushes in their Cart. Near to them crop of 'Tara Meera' was standing in their field. A cow of Radheshyam barged into their field and started grazing the crop. They pushed her back and again started loading their Cart. Sujan Singh also raised an objection before Radheshyam as to why he didn't stop his cow to enter their field. Radheshyam started abusing them and suddenly inflicted a stick on the head of Sujan Singh. Shyama also gave a blow on his head. Sujan fell unconscious. Guman took him to the hospital, where he was declared brought dead.

3. The Doctor informed the police station-Susner, District-Shajapur (Ex.P/1). The police registered merg Ex.P/15. The Police reached the hospital, called the witnesses and prepared panchanama lash (Ex.P/4 & 5). The Police also requested

the doctor for postmortem vide Ex.P/3. Dr. J.C. Parmar performed the autopsy and submitted report Ex. P/2. In postmortem it was found that the death was due to cardio respiratory arrest caused by the injury sustained on the head particularly injury No.2 sustained on the occipital area of the head. The police registered FIR Ex. P/14 at crime No.6 of 2011 under Section 302/34 of IPC against Radheshyam and Shyama. The police visited the spot, prepared spot map Ex. P/11, arrested the accused vide Ex.P/9, recovered a stick from his possession vide Ex. P/6 and also recorded the statements of the witnesses. In the investigation, co-accused Shyama was found minor, therefore, a separate charge-sheet was filed against him before the Juvenile Justice Board and charge-sheet against the present appellant was filed before the Judicial Magistrate First Class, who later on committed the same to the Sessions Court.

4. The appellant was charged, tried and convicted as stated in para 1 above.

5. The appellant has preferred this appeal on several grounds but during the argument, learned Counsel representing him has submitted that he does not want to press the merits of the appeal. His only prayer is that both the appellant and the deceased belong to the same village and the same tribe caste. The appellant comes from a very poor background. He is a shepherd and earns livelihood by grazing cattle of villagers. He neither owns any agricultural land nor the cattle. His income falls within the category of BPL (below poverty line). The incident happened all of sudden. There was no intention, preparation or premeditation on the part of the appellant. There was some altercation between both of them (deceased and the appellant) on account of a petty and very common issue in the villages of entry of cattle in the field. In this case also the incident started for this reason only. The deceased started abusing the appellant. There was some heated altercation between both of them. In that spur of moment, the appellant inflicted a lathi blow, which the villagers particularly the shepherds keep with them while grazing the cattle in the forest. As per prosecution case itself the cause of death was second blow of lathi, which was given by Shyama. The appellant has not repeated any blow or not took any advantage of the situation. The offence was not committed brutally, only after giving a blow the appellant ran away from the spot. Unfortunately, the deceased died but there was no intention on the part of the appellant to kill the deceased, therefore, the case of the appellant falls within the purview of Section 304-II and not in Section 302 of IPC and, therefore, his sentence be reduced to the period already undergone, which is now about more than 8 years.

6. Though the learned Public Prosecutor has opposed the prayer but has not controverted the facts stated by the learned Counsel for the appellant.

7. Facts stated by the learned Counsel for the appellant are well supported by the evidence produced by the prosecution and the documents available on the file. Facts of the case shows that the incident happened all of sudden. As annoyed by the entry of cow in the field, the deceased started abusing the appellant. Both the parties belong to same village. There is no evidence of any

intention, preparation or premeditation. No deadly weapon is used in the incident. The appellant has no criminal antecedent. Looking to the surrounding circumstances, the case of the appellant falls within the four corners of the ambit of the offence punishable under Section 304-II of the IPC.

8. Therefore, having regard to the law laid down by Hon'ble the Supreme Court in the case of Madhavan and Ors. Vs. State of Tamil Nadu reported in AIR 2017 SC 3847; Sikandar Ali Vs. State of Maharashtra reported in AIR 2017 SC 2614; Arjun and Anr. Vs. State of Chhattisgarh reported in AIR 2017 SC 1150; Elavarasan Vs. State and Mahesh Vs. State of M.P. reported in (1996) 10 SCC 668 the appeal is partly allowed. The judgment passed and the sentence awarded by the learned trial Court are set aside to the extent that we hold the appellant guilty for committing the offence under Section 304 part II of IPC instead of the offence under Section 302 of IPC. Considering the nature of incident and keeping in view the other facts and circumstances of the case, in our considered opinion, ends of justice would be sub served, if the appellant is awarded 10 years Rigorous Imprisonment with fine of Rs. 10,000/- awarded by the learned trial Court, therefore, the appellant is awarded 10 years RI with fine of Rs.10,000/- and in default of payment of fine, further to go RI of 1 (one) year.

9. Order of the trial Court regarding disposal of case property stands confirmed.