
(2011) 01 CHH CK 0021
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1246 of 1994

Raffail	Vs	APPELLANT
State of M.P. (Now State of Chhattisgarh)		RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 323, 34

Citation : (2011) 1 CG.L.R.W. 300

Hon'ble Judges : Rajeev Gupta, C.J.; Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Sharmila Singhai, for the Appellant; Akhil Mishra, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—Appellant-Raffail stands convicted u/s. 302 IPC and sentenced to undergo imprisonment for life, by the Additional Sessions Judge, Jashpurnagar vide judgment dated 30-9-94 passed in Sessions Trial No. 139/93. The facts briefly stated, are as under:-

The case of the prosecution is that on 26-3-93 Anthonis called the appellant and one Matiyas for ploughing his fields. Thereafter according to the village custom, he took them to his house for meals. There they took heavy drinks. Deceased-Kamil also came there. He also took heavy drink. Then they went to the house of the deceased. When they came back to the house of Anthonis, a quarrel took place between the appellant and the deceased and the appellant assaulted the deceased by hands. The incident was witnessed by Safiyana (PW-2 wife of the deceased) and Amrit (PW-3). After the quarrel the deceased remained alive for 4 days. He died on 30-3-93. F.I.R. (Ex.-P/6) and merge intimation (Ex.-P/7) were lodged by Joseph Lakra (PW-9) on 30-3-93. The Investigation Officer reached to the village, gave notice to the Panchas and prepared inquest (Ex.-P/8) on the body of the deceased. The dead body of the deceased was sent for postmortem to Primary Health Centre, Kansabel, where the post-mortem examination was

conducted by Dr. Y.K. Toppo (PW-4). He noticed one bluish spot on the left 9th & 10th ribs. On internal examination, it was noticed that the spleen was ruptured. He very specifically mentioned in the post-mortem report that spleen was enlarged having size of 8 x 5 x 2 inches. He opined that cause of death was shock as a result of rupture of spleen.

2. The learned Sessions Judge, relying on the testimonies of Safiyana (PW-2) and Amrit (PW-3), held that the appellant assaulted the deceased by hands & fists which resulted into rupture of spleen, therefore, he was liable for punishment u/s. 302 IPC.

3. Ms. Sharmila Singhai, learned counsel appearing on behalf of the appellant, argued that the quarrel took place when the appellant and the deceased were in drunken condition. According to the prosecution, the appellant assaulted the deceased by hands. The death of the deceased occurred after 4 days on account of rupture of spleen, which was enlarged, therefore, in the facts and circumstances of the case, an offence u/s. 302 IPC would not be made out and the appellant would be liable for punishment u/s. 323 IPC. She relied on the judgments of Ram Chandra and Others Vs. State of Uttrakhand, and Pirthi Vs. State of Haryana,

4. On the other hand, Mr. Akhil Mishra, learned Dy. Govt. Advocate appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Sessions Court.

5. We have heard the learned counsel for the parties at length and have also perused the records of the sessions case.

6. In Ram Chandra (supra), the appellants were having no weapons. They caused marpit with the deceased by kicks & feet's and the death of the deceased was caused on account of rupture of spleen. Taking all the facts and circumstances of the case into consideration, the High Court held that it could not be said that the appellants could be attributed with the knowledge that by such act they were likely to cause death of the deceased. Nor could it be said that the appellants intended to cause the particular injury which they caused. Therefore, under the above circumstances the offence could fall u/s. 323/34 IPC and not u/s. 302/34 IPC.

7. In Pirthi (supra), the appellant was unarmed. He after the quarrel, kicked the deceased on his testicles as a result of which the deceased fell down. The appellant again kicked on the testicles of the deceased. This happened on 2-4-86. The deceased was shifted to the hospital on, 4-4-86. The Doctor found a diffused swelling on the scrotum and penis and skin over the scrotum and penis was found to be blackening and gangrenous and he was treated in the hospital. Because of the gangrene the deceased died on 5-4-86. The offence was registered u/s. 302 IPC. The Doctor opined that the death was due to toxemia because of the gangrene which could be the result of the injury to the testicles. The Doctor also admitted that because of the lack of immediate medical help, the

gangrene developed. The High Court held that by giving such kicks, the appellant had knowledge that he was likely to cause the death and accordingly convicted him u/s. 304, Part-II, IPC. The Supreme Court held that admittedly the injury to the testicles was not the direct cause of death. No treatment was given for two days and it is only on 4-4-86 that the deceased was admitted in the hospital. But, unfortunately, in the meanwhile gangrene developed. Under the above circumstances, it was held that an offence u/s. 323 IPC would be made out. Therefore, the appeal was allowed and the conviction of the appellant u/s. 304 Part-II IPC and sentence of 4 years R.I. awarded thereunder were set-aside and the appellant was convicted u/s. 323 IPC and sentenced to undergo 7 months R.I.

8. Safiyana (PW-2) is the wife of the deceased. She deposed that the appellant was her dewan. Her husband had gone to the house of Anthonis for drinking hadiya (a local toxicant drink), where he was assaulted by the appellant. The incident took place on Friday. She was thinking to take her husband for treatment to the hospital on Tuesday, but her husband died on Tuesday at about 11.00 a.m. Amrit (PW-3) another eye-witness also deposed that the deceased was assaulted by the appellant by hands. They intervened and the deceased was taken to his house. The deceased died after 4 days of the incident. On appreciation of the entire evidence on record, we find that in the above incident, the appellant and the deceased quarreled after taking, heavy drinks. The appellant was unarmed. He assaulted the deceased by hands and perhaps he gave single hand blow to the deceased. According to the Autopsy Surgeon, the spleen of the deceased was enlarged. It appears that on account of shock by the blow given to the deceased by appellant by hand, the enlarged spleen of the deceased was ruptured and even after all this, the deceased was not taken to the hospital for about 4 days. On the 5th day when Safiyana (PW-2) tried to take the deceased to the hospital, he died at about 11.00 a.m. In the above facts and circumstances, it cannot be held that the appellant could be attributed with the knowledge that by such act he was likely to cause death of the deceased nor could it be said that the appellant had intended to cause death of the deceased or even the particular injury which the deceased sustained. Therefore, we are of the considered view that in the above facts and circumstances of the case, an offence u/s. 302 IPC would not be made out and the appellant would be liable for punishment u/s. 323 IPC.

9. Accordingly, we set-aside the conviction and sentence awarded to the appellant u/s. 302 IPC. Instead thereof, the appellant is convicted u/s. 323 IPC. We would have awarded full term to the appellant u/s. 323 IPC, however in the peculiar facts and circumstances that the incident took place in the year 1993, the appellant and the deceased were brothers and quarrel took place when both were in drunken condition and the appellant remained throughout on bail, we sentence him to the period already undergone which comes about 9 months in this matter. The appeal is allowed to the extent indicated above.