
(2014) 11 CHH CK 0052
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 837 of 1999

Raj Kumar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437-A — Penal Code, 1860 (IPC) -
Section 300, 302, 304

Citation : (2015) 2 CGLJ 52

Hon'ble Judges : Navin Sinha, Acting. C.J.; Manindra Mohan Shrivastava, J.

Bench : Division Bench

Advocate : Meena Shastri, Advocate, for the Appellant; R.K. Gupta, Dy.
Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, Actg. C.J.—The Appellant has been convicted under Section 302 IPC to rigorous life imprisonment by order dated 19.02.1999 of the 5th Additional Sessions Judge, Bilaspur in Sessions Trial No. 436 of 1998. The First Information Report (FIR) Exhibit P-1 was lodged by the brother of the deceased P.W. 1, Khorbakra on 22.04.1998 itself at 13.45 hours stating that a person called Santosh came and informed him that the Appellant had assaulted the deceased with a knife in the stomach on the right side. He went and saw his brother in the ward who told him that at 7.00 am the same day he had gone to demand arrears of Rs. 1,000/- from the Appellant in the fields of Chotelal. During discussion on repayment of the loan, the Appellant assaulted him. The Appellant also attempted to assault Chotelal by chasing him. The deceased died during the course of treatment and Section 302 was added subsequently.

2. Learned counsel for the Appellant submitted that the FIR talks of a loan of Rs. 1,000/- taken by the Appellant. P.W. 7, Vimla Bai, wife of the deceased mentioned the loan amount as Rs. 1,500/-. P.W. 3, Chotelal, the alleged eye witness deposed having told Shiv Prasad @ Kallu, P.W. 5, about the assault. But

P.W. 5 in his deposition did not corroborate it. The conduct of P.W. 3 in having eye witnessed the assault and then not telling anybody but staying home for two days was unnatural which raises doubts about his being an eye witness. There is no other witness to the assault and the benefit of doubt must be given to the Appellant. P.W. 7, states that the deceased told her to call Sauram, Kanak and Santosh. Kanak has not been examined. Any evidence given by P.W. 4 Santosh and P.W. 10 Sauram is therefore hearsay. When P.W. 7 asked the deceased how the assault came to be made the deceased did not disclose any name to her. The clothes and knife recovered on the memorandum of the Appellant in the F.S.L. Report Exhibit P-20 do not confirm presence of any blood. It was lastly submitted that even if the Appellant is held to be guilty, there was no intention to cause death. At best the Appellant may have been irritated because of the persistent demand from the deceased for repayment of the loan, forcing him to go to the fields of P.W. 3 and work to earn money for repayment. The assault was made in irritation only to teach a lesson on the spur of the moment pursuant to verbal duel in the fields. The conviction may at best be under Section 304 Part II IPC attributing knowledge that death was likely to be caused. The Appellant has stayed in custody for the last 6 years and 2/4 months before being released on bail. The period of custody undergone may be held to be sufficient punishment in the nature of the assault. Reliance was placed on Ankush Shivaji Gaikwad Vs. State of Maharashtra, to submit that the case comes within Exception 4 to Section 300 IPC as having been committed without premeditation in a heat of passion on sudden quarrel without taking undue advantage or acting in a cruel manner. If he had the intention to kill he would not have made a solitary assault but would have made at least one more assault to ensure death.

3. Learned counsel for the State has opposed the appeal submitting that the conviction requires no interference. The loan taken by the Appellant from the deceased is not in controversy. That the deceased, the Appellant and P.W. 3 went to the fields of the latter is also not in dispute. The deceased had taken the Appellant to the fields for work to earn money and repay his loan to the deceased. The conduct of P.W. 3 having eye witnessed the murderous assault staying at home for two days cannot be called unusual. It may have had its impaction him mentally as different persons would react differently after being an eye witness to a murderous assault. The evidence of P.W. 3 finds corroboration from that of P.W. 4 the landlord of the deceased. P.W. 7 has stated that the deceased told him to call P.W. 4 and P.W. 10. Even if, Kanak has not been examined, both these witnesses have stated that the deceased told them the name of the Appellant as the assailant. The Appellant was carrying a knife when he went to the fields under compulsion at the insistence of the deceased. There was no occasion for him to go to the fields unwillingly armed with a knife which is sufficient to hold that he went with a premeditated design and intention to assault and kill the deceased.

4. We have considered the submissions on behalf of the parties and perused the evidence on record. That the Appellant had taken a loan from the deceased

which he had not repaid is not in dispute. Likewise, the fact that the deceased compelled the Appellant to go and work in the fields of P.W. 3 to earn money and facilitate repayment of the loan is also not in dispute.

5. P.W. 1, brother of the deceased stated that P.W. 4 informed him of the assault on his brother. P.W. 7, wife of the deceased deposed that the deceased told her to call Santosh, Kanak and Sauram. P.W. 1 has proved lodging the FIR Exhibit P-1. The fact that in his evidence the witness stated that the assault was on the left side of the stomach whereas it was on the right side is not a very material contradiction as long as the area of the assault was the stomach. The witness also stated that the deceased informed him in the hospital ward that the Appellant had made the assault.

6. P.W. 3 deposed that the deceased and the Appellant both came to his house in the morning. The deceased told him to give some work to the Appellant when all three of them went to the agricultural fields. The Appellant asked the witness where the mud was to be dumped. The witness stepped forward to indicate the place when the deceased suddenly shouted for help and turning around the witness saw that the Appellant assaulted the deceased in the stomach. The Appellant then chased the witness also who ran away and informed Shiv Prasad @ Kallu and stayed home for two days. The witness further stated that there was no exchange of words between the Appellant and the deceased before the assault. The submission that Shiv Prasad @ Kallu in his deposition as P.W. 5 did not support the statement of witness or that the Appellant kept quiet for two days and stayed at home was a highly unnatural conduct does not impress us. A person who witnesses a murderous assault would react differently from another. His having secluded himself to his house for two days and not having told anybody about the occurrence is understandable as he may have been in a state of shock. P.W. 5 has gone hostile but in our opinion there is sufficient corroborative evidence from that of Santosh, P.W. 4 and Sauram, P.W. 10 of the deceased having named the Appellant as the assailant.

7. P.W. 7, wife of the deceased deposed that the Appellant on coming home after the assault told her to call P.W. 4 and P.W. 10. The fact that Kanak may have not been examined cannot destroy the credibility of the evidence given by the other two witnesses. We have no reason to doubt that P.W. 3 was not an eye witness to the occurrence. No suggestion has been given by the defence of any enmity because of which P.W. 3 may have been deposing falsely.

8. P.W. 5, Shiv Prasad @ Kallu deposed that P.W. 3 had told him that it was on the persuasion of the deceased that he had taken the Appellant to his fields and an altercation ensued between the deceased and the Appellant.

9. P.W. 11, Lakhanlal proved the spot map marked Exhibit P-7. P.W. 12, A.K. Khan proved the arrest of the Appellant marked Exhibit P-8 and sending of the body for postmortem marked Exhibit P-9. P.W. 13, PS. Shyam was the Investigating Officer. P.W. 14, A.K.S. Chandel proved the report received from the

Hospital marked Exhibit P-14 and the inquest report Exhibit P-15. P.W. 15. Dr. B.R. Nanda proved the postmortem report Exhibit P10A which disclosed stitched injury on the right hand side of the stomach.

10. The evidence on record leaves us satisfied that it was the Appellant who assaulted the deceased. That leaves the only question with regard to the appropriate sentence to be imposed. In *Ankush Shivaji Gaikwad Vs. State of Maharashtra*, the assault was made with an iron pipe which the Appellant carried in his hand pursuant to an altercation on the spur of the moment due to the barking of the dog. Internal examination had shown internal injury to the temporal and occipital region under the scalp and fracture on the base of the scalp. The conviction was under Section 302 IPC for imprisonment for life. The Court observed as follows:

"27. Coming back to the case at hand, we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II IPC."

11. In the present case the dispute was with regard to a sum of Rs. 1000/-. The Appellant went with the deceased to the fields to earn money and repay the loan. An altercation ensued and the Appellant in an irritated state of mind assaulted the deceased with a single blow. Nothing prevented him from making a second assault if he had the intention to kill. Rather the Appellant essentially wanted to vent his ire upon the deceased by causing pain only and not death. The order of conviction is altered to one under Section 304 Part II IPC. The period of custody undergone is held sufficient punishment in the facts of the case. The Appellant is set at liberty and discharged of his bail bonds subject to the conditions laid down in Section 437-A Cr.P.C. The appeal is allowed.