
(2018) 05 MP CK 0009

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.1313 OF 2007

Ramprasad S/O Mangilal Harizan

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 02-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304I, 304II, 323

Citation : (2018) 05 MP CK 0009

Hon'ble Judges : VIVEK RUSIA, J;VIRENDER SINGH, J

Bench : Division Bench

Advocate : M.A. Bohra, Abhinav Malhotra

Final Decision : Disposed Of

Judgement

Judgment dated 05/04/2007 passed in Sessions Trial No.155/06 by learned Sessions Judge, Rajgarh (Biaora), whereby the learned trial Court has

convicted the accused/appellant Ramprasad for the offence punishable under Sections 302 and 323 of IPC for murdering Hajarilal and causing simple

injury to his wife Chandabai and awarded life imprisonment and fine of Rs.1000/-, in default further to undergo RI for three months and fine of

Rs.100/- in default further to undergo RI for 15 days, is under challenge in the present appeal.

2. Background facts sans unnecessary details are that four bighas land adjacent to the land of the appellant was granted by the govt. to the deceased.

There was a nullah between land of both appellant and the deceased. Since last 3-4 months, the appellant was ploughing land of nullah and claiming

that this land belongs to him and on this issue, a dispute was going on between them. Another aspect, as per the prosecution was that the appellant

was having eyes on wife of the deceased, whenever he found her alone, he used

to propose her that if she becomes his wife then he will give her whole land. The immediate reason for the incident was that on the date of incident when wife of the deceased came on the field at about 5 in the evening, the appellant was grazing cattle. When she asked him not to graze cattle on the disputed land, he again proposed her to become his wife. Chandabai scolded him and came back home. In the evening at about 7-8 when her husband returned, she revealed the incident to him. On next day i.e.28/09/2006, the appellant called the Panchas of village Moyakheda and Moikhedi and asked them to resolve the pending dispute between him and the deceased. Panchas pacify both of them stating that as the crop is standing on the field let it be harvested, thereafter, they will resolve the dispute after getting the measurement done from Patwari. The appellant Ramprasad was not agreed for such proposal/composition. He started abusing and threw a stone which hit on the head of Chandabai and started bleeding. Get provoked by this, the deceased run behind the appellant, but the Panchas present there intervened and caught him and asked Ramprasad to leave the place, who obeyed the order and ran away from the spot. When the deceased saw the blood coming out from the head of his wife, he again run behind the deceased who, by that time had reached to the farm land of Keshar Singh, Chandabai, Harisingh and Premsingh also followed him. As the deceased tried to caught the appellant, he took out a knife from his pocket and inflicted it in the stomach of the deceased, who fell down there and died.

3. The matter was reported to the Police Station Khilchipur, Crime No.244/06 under Section 302 of IPC was registered and after usual investigation like preparation of a spot map, panchnama lash, postmortem, seizure of bloodstained and plain soil, clothes received from the hospital, arresting the accused, seizure of his clothes and knife used in the incident etc the police filed charge-sheet, which was ended in the conviction of the appellant as stated in para1 above.

4. Though this appeal is preferred on the various grounds challenging the merits of the case, but during argument, learned counsel appearing for the appellant submitted that he does not want to press the merits of the case. He only submitted that his limited request is to the conviction of the appellant and sentence awarded to him. He submits that though there was a dispute

between the deceased and the appellant prior to the incident but that was not much serious. The appellant was interested in resolving the dispute. He himself called the Panchas to intervene and resolve the dispute. Though there had some heated moment but Panchas intervened at the right time. They caught the deceased and asked the appellant to leave the place and without questioning their direction, he left the place. It was the appellant, who again chased him and tried to caught him. Frightened by this attempt of the deceased, he reacted and immediately acted in his self-defence. Unfortunately, the deceased sustained fatal injury on the vital organ and died. There was no intention of the appellant to cause death of the deceased, therefore, his act does not fall within the four-corners of the definition of the murder. At the most, his act can be termed as culpable homicide and he can be punished under Section 304 (Part-II) of IPC. Learned counsel submits that it would be appropriate, just and proper to convert/modify the conviction and sentence of the appellant accordingly.Â

5. Per contra, learned Public Prosecutor has vehemently opposed the prayer. His all focus is on the fact that there was a pending dispute between the appellant and the deceased. The appellant was trying to grab the land adjacent to the land allotted to the deceased and he was also eyeing his wife. To achieve both these goals, he adopted the method to eliminate the deceased from his way and he very cleverly achieved it under the guise of attempt of resolving the dispute. If his intention was to resolve the issue, then there was no reason for him to have a knife in his possession. This shows his intention. The blow given by him with such a force that before seeking any medical assistance the deceased took his last breathe on the spot. There is ample evidence to show and prove the intention, premeditation and determination of the appellant to execute the event, therefore, neither his conviction can be converted into one which is claimed by the appellant nor he is entitled for any lenient view. Learned Public Prosecutor prayed for dismissal of the appeal.

6. We have considered the rival contentions of the parties and perused the record.

7. In view of the submissions of the appellant, first we have a look at the law laid down in the field. In Annamalai Vs. State reported in 2016 CRI.L.J.

2727, the Division Bench of Madras High Court has considered the mitigating circumstances and has held in para-13 of the judgement as under:-

Now turning to the punishment, the accused is the sole bread winner of the family. He has got three brothers. He has got a big family to take

care. He has no bad antecedents. After the occurrence also, it is not reported that he was involved in any other crime. Further, there are lot of

chances for reformation. So far as the aggravating circumstances are concerned, there was no premeditation for the accused to commit the murder of

the deceased. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo

rigorous imprisonment for five years and to pay a fine of Rs.1,000/- would meet the ends of justice.

8. In Chand Khan Vs. State of M.P. reported in 2006(3) M.P.L.J. 549, the Division Bench of this Court has also converted the conviction of the

appellant in attaining facts and circumstances of the case. Para -10 & 11 of the judgment are relevant which reads thus:-

10. If the present case is considered in the light of the aforesaid decisions of the Supreme Court, it would show that the appellants caused single

injury on the head of the deceased by farsa, which is a sharp edged weapon, but unfortunately Aziz Khan (PW-11) and Ishaq Khan (PW-13) have

stated that he gave lathi blow on the head of the deceased. Even after considering this contradictory evidence it has to be taken into consideration that

it is a case of single farsa blow inflicted by only appellant Chandkhan and appellant Naseem inflicted only lathi blow on the nonvital part of the body

and in the absence of this evidence that the injury no.(i) was sufficient to cause death in the ordinary course of nature and also looking to the various

other circumstances like that the accused as well as the deceased are close relatives and the deceased was a person of criminal background and the

incident started because of the abuses made first by the deceased himself, we find that the case will not fall within the purview of section 300, Indian

Penal Code but it will fall under section 304 Part II, culpable homicide not amounting to murder.

11. consequently, appeal is partly allowed. Conviction of appellants under section 302/34 Indian Penal Code, is set aside and instead they are convicted

under section 304 part II, Indian Penal Code,

9. The Hon'ble Supreme Court has held in *Gurpal Singh v. State of Punjab*, AIR 2017 SC 471. Para 10 of the judgement reads thus:

“10. However, in the singular facts of the case and noticing in particular, the progression of events culminating in the tragic incident, we are

inclined to reduce the sentence awarded to him. Incidentally, the occurrence is of the year 2004 and meanwhile twelve years have elapsed. Further,

having regard to the root cause of the incident and the events that sequentially unfolded thereafter, we are of the comprehension that the appellant

was overpowered by an uncontrollable fit of anger so much so that he was deprived of his power of self-control and being drawn in a web of action

reflexes, fired at the deceased and the injured, who were within his sight. The facts do not commend to conclude that the appellant had the intention of

eliminating any one of those fired at, though he had the knowledge of the likely fatal consequences thereof. Be that as it may, on an overall

consideration of the fact situation and also the time lag in between, we are of the view that the conviction of the appellant ought to be moderated to

one under Sections 304 Part 1 IPC and 307 IPC. Further, considering the facts of the case in particular, according to us, it would meet the ends of

justice, if the sentence for the offences is reduced to the period already undergone. We order accordingly.”

10. The Hon'ble Supreme Court held in *Arjun and Anr. Vs. State of Chhattisgarh*, AIR 2017 SC 1150 that:

“19. The point falling for consideration is whether the conviction of the appellants under Section 302 IPC is sustainable. As discussed earlier, the

evidence clearly establishes that while Ayodhya Prasad and other witnesses were cutting the trees, there was exchange of words which resulted in

altercation and during the said altercation, the appellants attacked the deceased. Thus, the incident occurred due to a sudden fight which, in our view,

falls under exception (4) of Section 300 IPC.

20. To invoke this exception (4), the requirements that are to be fulfilled have been laid down by this Court in *Surinder Kumar v. Union Territory of*

Chandigarh (1989) 2 SCC 217 : (AIR 1989 SC 1094, Para 6), it has been explained as under:

7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was

done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.....

21. Further in the case of *Arumugam v.State, Represented by Inspector of Police, Tamil Nadu*, (2008) 15 SCC 590 : (AIR 2009 SC 331, Para 15), in

support of the proposition of law that under what circumstances exception (4) to Section 300 IPC can be invoked if death is caused, it has been

explained as under:

9.

18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken

undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all

the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the Penal

Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the

parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons

whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of

fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not

sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue

advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

11. The Hon'ble Supreme Court has laid down in *Prabhakar Vithal Gholve v. State of Maharashtra*, AIR 2016 SC 2292 that if assault on deceased

could be said to be on account of sudden fight without pre-meditation, in heat of passion and upon a sudden quarrel, Conviction of the appellant cannot

be sustained under S. 302 and altered to one under Section 304 part-I of IPC. Relevant para 7 of the judgement reads thus:

“7. In the facts and circumstances noted above, there appears merit in the submission advanced by learned counsel for the appellant that in view of

Exception 1 or Exception 4 in Section 300 of the IPC the case made out against the appellant is that of culpable homicide not amounting to murder. It

would be natural for the family members of juvenile offender Balu on hearing his cries, to rush for his help and when injury on the appellant has also

been proved there is sufficient material to infer the reasonable possibility of a grave and sudden provocation. The assault on the deceased, in absence

of intention to cause death could be on account of sudden fight without pre-meditation, in the heat of passion and upon a sudden quarrel. We therefore

feel persuaded to and do set aside the conviction of the appellant under Section 302 IPC and substitute the same with conviction under Section 304

Part I of the IPC. The certificate of imprisonment available on record discloses that the appellant has by now undergone more than 12 years of actual

imprisonment. The aforesaid period, in our estimate is sufficient to meet the ends of justice. Hence the sentence of imprisonment for life is reduced to

imprisonment for the period already undergone by the appellant. In view of such modification in the sentence, the appellant is directed to be released

from custody forthwith if not required to be kept in custody in connection with any other criminal case. The appeal stands allowed to the aforesaid

extent.”

12. In *Sikandar Ali Vs. State of Maharashtra*, AIR 2017 SC 2614, the Court altered the conviction u/s 302 IPC to one u/s 304 part-2 IPC in the

following circumstances:

“7. We have no doubt about the complicity of all the accused in the homicide of Sarfraj. A-1 attacked the deceased with the knife and caused

injury on his neck which resulted in his death. The other accused assisted him in committing the crime by holding the hands of the deceased. However,

the only question that falls for our consideration is whether the accused are liable

to be punished for an offence under Section 302 IPC. After

considering the submissions made by the counsel for the Appellants and scrutinising the material on record, we are of the opinion that the accused are

not liable to be convicted under Section 302 IPC. We are convinced that there was neither prior concert nor common intention to commit a murder.

During the course of their business activity the accused reached the dhaba where the deceased was present. An altercation took place during the

discussion they were having behind the dhaba. That led to a sudden fight during which A-1 attacked the deceased with a knife. Exception 4 to Section

300 is applicable to the facts of this case. As we are convinced that the accused are responsible for the death of Sarfraj, we are of the opinion that

they are liable for conviction under Section 304 part II of the IPC. We are informed that A-1 has undergone a sentence of seven years and that A-2

to A-4 have undergone four years of imprisonment. We modify the judgment of the High Court converting the conviction of the accused from Section

302 to Section 304 part II of the IPC sentencing them to the period already undergone. They shall be released forthwith.â??

13. The Hon'ble Apex Court laid down in *Madhavan and Ors. Vs. State of Tamil Nadu*, AIR 2017 SC 3847 that:

â??8. Notably, the High Court has not considered the issue of quantum of sentence at all, but mechanically proceeded to affirm the sentence awarded

by the Trial Court. From the factual position, which has emerged from the record, it is noticed that there was a preexisting property dispute between

the two families. The incident in question happened all of a sudden without any premeditation after PW1 questioned the appellants about their

behaviour. It was a free fight between the two family members. Both sides suffered injuries during the altercation. The fatal injury caused to

Periyasamy was by the use of thadi (wooden log) which was easily available on the spot. The appellants, on their own, immediately reported the

matter to the local police alleging that the complainant party was the aggressor. No antecedent or involvement in any other criminal case has been

reported against the appellants. Taking oral view of the matter, therefore, we find force in the argument of the appellants that the quantum of sentence

is excessive.

9. We may usefully refer to the decision of this Court (one of us, Justice Dipak

Misra speaking for the Court) in the case of Gopal Singh v. State of Uttarakhand (2013) 7 SCC 545 : (AIR 2013 SC 3048) enunciated the necessity to adhere to the principle of proportionality in sentencing policy. In paragraphs 18 and 19 of the said decision, the Court observed thus:

18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasize, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalized judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated here-in-before and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.

19. A Court, while imposing sentence, has to keep in view the various complex matters in mind. To structure a methodology relating to sentencing is

difficult to conceive of. The legislature in its wisdom has conferred discretion on the Judge who is guided by certain rational parameters, regard been

had to the factual scenario of the case. In certain spheres the legislature has not conferred that discretion and in such circumstances, the discretion is

conditional. In respect of certain offences, sentence can be reduced by giving adequate special reasons. The special reasons have to rest on real

special circumstances. Hence, the duty of Court in such situations becomes a complex one. The same has to be performed with due reverence for

Rule of the collective conscience on one hand and the doctrine of proportionality, principle of reformation and other concomitant factors on the other.

The task may be onerous but the same has to be done with total empirical rationality sans any kind of personal philosophy or individual experience or

any a-priori notion.

10. Considering the above and keeping in mind the facts of the present case, the nature of the crime, subsequent conduct of the appellants, the nature

of weapon used and all other attending circumstances and the relevant facts including that no subsequent untoward incident has been reported against

the appellants and the mitigating circumstances, we are inclined to modify the sentence period in the following terms:-â??

14. It is the case of the prosecution itself that there was a petty dispute between the deceased and the appellant. Land was allotted to the deceased

adjacent to the land of the appellant much prior to the incident i.e.4 years back. No any earlier incident is reported due to reasons put forth by the

prosecution. Admittedly, there was nullah between the land of both the appellant and the deceased. The appellant never ploughed the land of the

deceased as claimed by the learned Public prosecutor, but he ploughed the land of nullah which was, even as per prosecution case not belonging to the

deceased but it was a neutral land. The deceased was raising objection for alleged possession of the appellant on this neutral land but even then the

appellant never tried to resolve this issue by adopting any unlawful method. Even immediately before the incident he himself called the Panchas, which

shows his interest was to settle the dispute which was continuously being raised by the deceased. When the Panchas were trying to resolve the issue,

it appears some altercation took place and in the heated spur of moment, he threw a stone which caused simple injury to the wife of the deceased. It

is the case of the prosecution that the deceased get angry and tried to assault the appellant. The Panchas intervened at the right time. They caught the deceased and asked the appellant to leave the place. The appellant did not question the direction of the Panchas. He followed their direction and left the place and reached at a distance up to the farmland of Kesharsingh. It was the deceased, who after getting free from the grip of the Panchas, again chased the appellant and tried to caught him. Reaction of the appellant was natural to the apprehension may arrive in the mind of common prudent man in the given circumstances of the case. He reacted the attempt of the deceased to caught him and in his attempt to resist and foil the attempt of the deceased, he used much power than required. We are in total disagreement of the contention of the learned Public Prosecutor that evidence is available on record to show the intention, preparation or pre-meditation of the accused to commit the offence. If the intention of the appellant would have to cause the death of the deceased, he could have used the knife at the time of the incident instead of using a stone and throwing it without targeting any person. The appellant never repeated the blow even when he was having opportunity to do so. The appellant has no criminal history. No brutality appears in the incident, therefore, in our considered opinion the act of the appellant falls under the purview of Section 304 Part-II of IPC instead of Section 302 of IPC.

15. Consequently, the appeal is partly allowed. So far as the offence of the death of the deceased is concerned, the appellant is held guilty for the offence under Section 304 PartII of IPC instead of Section 302 of IPC. Considering the nature of the incident, age of the appellant and other facts and circumstances of the case, we find that the ends of justice would be achieved by awarding sentence of imprisonment already undergone, therefore, the appellant is held guilty for the offence under Section 304 part-II of IPC and he awarded imprisonment for the period already undergone with fine as awarded by the learned trial Court. For rest of the offence i.e. Section 323 of IPC and sentence awarded by the learned trial Court are hereby confirmed. Appellant be set at liberty forthwith, if not required in any other case.

16. The order of the trial Court regarding disposal of the property is hereby confirmed.

17. With the aforesaid, the appeal is partly allowed and disposed of.