

(2012) 03 CHH CK 0070
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1142 of 1996

Santosh Kumar Nishad

APPELLANT

Vs

State of Madhya Pradesh (now State of Chhattisgarh)

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 201, 300, 302, 304, 307

Citation : (2012) CriLJ 2869

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

Bench : Full Bench

Advocate : Rajendra Tripathi, for the Appellant; Arvind Dubey, Panel Lawyer, for State, for the Respondent

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 17th of June, 1996 passed in Session Trial No. 65/93 by the Second Additional Session Judge, Durg by the impugned judgment, the appellant has been convicted and sentenced in the following manner with a direction to run the sentences concurrently :--

Conviction

Sentence

u/S. 302, IPC

R. I. for life

u/S. 449, IPC

R. I. for 5 years

u/S. 201, IPC

R. I. for 1 year

u/S. 27 of the Arms Act

R. I. for 3 years

The facts, briefly stated, are as under :--

On 18-11-1992 at about 8.00 p.m., the appellant went to the quarter of Motilal Verma (deceased) and said him that Mr. Chandrakar, resident of quarter No. 111 - C is calling him. When the deceased denied, the appellant returned back. After sometime, the appellant again came to the house of the deceased and insisted him to come with him. The allegations are that when the deceased again denied, the appellant gave a knife blow on his right thigh and ran away from the quarter of the deceased. The matter was reported to the police and an offence u/S. 307, IPC was registered which was later on converted to Section 302, IPC after the death of the deceased.

In post-mortem examination, Dr. S.A. Khan (PW-1) found single stab injury 3.5 cm x 1.5 cm transversely placed on anterior aspect of upper part of right thigh. He noticed that femoral artery was cut and on the same line there were 2 small cuts on the memberane of small intestine. He opined that the cause of death was haemorrhage and shock as a result of above injury and the death was homicidal in nature. The post-mortem report is Ex. P/I.

2. Mr. Rajendra Tripathi, learned counsel appearing on behalf of the appellant has not disputed the homicidal death of the deceased. He argued that the identity of the appellant was not established. Alternatively, he also argued that it was a case of single injury and the injury caused to the appellant was not intended, therefore, an offence u/S. 302, IPC would not be made out.

3. On the other hand, Mr. Arvind Dubey, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Sessions Court.

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

5. The finding of involvement of the appellant is based on the evidence of Sunita Verma (PW-5 - daughter of the deceased), Nirmala Verma (PW-6 - wife of the deceased) and Shashikala (PW-8 - niece of the deceased). We have carefully examined the evidence of these witnesses. It comes in their evidence that they were in their house along with deceased - Motilal Verma., The appellant came there and insisted the deceased to accompany him on the pretext that Mr. Chandrakar was calling the deceased. When the deceased denied to accompany him, the appellant went back and when he again came (second time), he gave knife blow to the deceased due to which the deceased received serious injury. All the above witnesses were inmates of the house; they were watching television along with the deceased; the incident took place at about 8.00 p.m.; the appellant was well-known to these witnesses; therefore, neither the presence nor the identity of the assailant can be doubted. The version of the above witnesses

is corroborated by the contents of the F. I. R. (Ex. P/5) as also the post-mortem report (Ex. P/1). Therefore, we do not find any force in the argument advanced by learned counsel for the appellant that the identity of the appellant as the assailant was not established.

6. Now we shall consider the second argument advanced by Mr. Tripathi.

7. Mr. Tripathi has argued that the injury sustained by the deceased was not an injury intended by the appellant. In *Virsa Singh v. State of Punjab*, AIR 1958 SC 465, the Supreme Court held that "If an injury is held to have been intended by the assailant and is further found to be sufficient in the ordinary course of nature to cause death, it would attract clause Thirdly of Section 300 of the IPC and that, therefore, its author would be liable to punishment u/S. 302, IPC". Therefore, the question would be, whether the particular injury, which was caused to the deceased in the present case, was in fact an injury intended by the appellant? The solitary blow by knife was given by the appellant on right thigh of the deceased which ultimately cut right femoral artery. Definitely the appellant must not be having knowledge or even an idea that his such blow is going to cut the above artery. Even the appellant, may not be knowing that femoral artery would be at the position of the injury. We are of the view that the injury cutting the above artery by the single blow of the appellant, which proved fatal, was non-intentional.

8. In *Harjinder Singh v. Delhi Administration*, AIR 1968 SC 867, following injuries were found on the person of the deceased and the doctor opined in the following manner, we quote:--

1. A stab wound 1" x 1/4" x ? (sic) on left thigh upper and below the inguinal ligament
2. Abrasion 1" x linear on back of left fore-arms middle.

He described the other features of the injuries as follows :

The direction of the stab wound was oblique and was going medially. Sartorius muscle was cut underneath along with femoral artery and vein. Cut over major part of their diameter. There was effusion of blood in the muscles and around the track over left thigh upper end.....

He deposed that death was due to shock and haemorrhage from injury to femoral vessels by stab wound of the thigh. He further stated:

It is correct that femoral artery and vein are important main vessels of the body. The cutting of these vessels would result in great loss of blood. The cutting injuries of these vessels could result in immediate death or after short duration.

9. Applying the principles of *Virsa Singh* (supra), the Supreme Court held that in the facts and circumstances of the above case, an offence u/S. 302, IPC would not be made out and it was altered to Section 304 Part-I, IPC. The above judgments and judgment of *Laxman Kalu Nikalje v. The State of Maharashtra*,

AIR 1968 SC 1390 were further noticed in Gokul Parashram Patil Vs. State of Maharashtra, and offence in question was converted to Section 304 Part-II from Section 302, IPC.

10. On the above principles, we are of the opinion that the conviction of the appellant u/S. 302, IPC cannot be sustained and in the above facts and circumstances of the case, the appellant would be liable for punishment u/S. 304 Part-II, IPC. For the foregoing reasons, the appeal is partly allowed. The conviction and sentences awarded to appellant u/S. 302, IPC are set-aside. Instead thereof, he is convicted u/S. 304 Part-II, IPC and sentenced to the period already undergone which comes about more than 6 years. The conviction and sentences awarded u/Ss. 449 & 201, IPC and Section 27 of the Arms Act are maintained. The direction to run the sentences concurrently is also maintained.