

(2014) 12 KAR CK 0062
In the Karnataka High Court
Case No : Criminal Appeal No. 1044/2011

Saravanan

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 300, 302, 304, 326

Citation : (2014) 12 KAR CK 0062

Hon'ble Judges : P.D. Waingankar, J;N. Ananda, J

Bench : Division Bench

Advocate : S. Balakrishnan, Advocate for the Appellant; Vijayakumar Majage, HCGP, Advocate for the Respondent

Judgement

N. Ananda, J.—The appellant (accused) was tried and convicted for an offence punishable under Section 302 IPC. Therefore, he is before this Court.

2. We have heard Sri. Balakrishnan, learned counsel for accused and Sri. Vijayakumar Majage, learned Government Pleader for the State.

3. After going through the evidence of prosecution witnesses and evidence of accused (D.W.2), we find that following facts have been established by prosecution and they have not been disputed by defence.

4. P.W.3-Vasanth was working as a Painting Contractor in BEML Railway Coach Division. P.W.2-Vishwanatha is younger brother of P.W.3. P.W.4-Jeeva, P.W.15-Uday, deceased-Nataraj, accused-Sharavana were working as painters with P.W.3. At this juncture, it is relevant to state that accused is the maternal nephew of P.W.3-Vasanth. P.W.3-Vasanth had taken on rent a room from P.W.1-Shanthi. He had provided the same as residence to P.W.2-Vishwanatha, P.W.4-Jeeva, P.W.15-Uday, accused-Sharavana and deceased-Nataraj. In the normal course, they would leave that room by 7.00 a.m., in the morning, they used to work in BEML and return to room around 10.00 p.m., in the night. They were

staying in room however, they were taking food elsewhere.

5. It is established from evidence of P.W.2, P.W.4 and P.W.15 and evidence of accused (D.W.2) that deceased-Nataraj met with homicidal death in the room at about 2.00 a.m. during intervening night of 18/19.07.2009. It is also established from the medical evidence that death of Nataraj was caused by dropping a grinding stone on his head. The medical evidence given by P.W.11-Dr. Bheemappa Havanoor and contents of post mortem examination report (Ex. P7) would reveal that deceased-Nataraj had suffered following injuries:--

"i) Laceration just above fragus of right ear 2 x 1 cm x bone deep.

ii) Laceration in the right temporal region 4 cms above the top of ear 4 x 1 cm x bone deep.

iii) The right temporal bone (squamous part) and right side of middle cranial fossa, the lower part of right parietal bone are all fractured in to multiple pieces of varying sizes and shapes.

iv) Membranes lacerated at the fractured sites.

v) Brain-covered by sub-dural and sub-archanoid haemorrhages all over and broth is lacerated at the fractured sites."

P.W. 11 has opined that death was due to "Coma" as a result of crush injury of the head.

6. It is also not in dispute that death was instantaneous. P.W.2-Vishwanatha, P.W.4-Jeeva and P.W.15-Uday have given consistent evidence of incident which resulted in death of deceased-Nataraj. They have deposed that on the date of incident, after completing their work they returned to their room, by then deceased-Nataraj was sleeping. During midnight of 18/19.07.2009 around 12.30, accused-Sharavana came and violently knocked the door. Deceased-Nataraj woke up and opened the bolt and scolded accused for coming late. There was a quarrel between accused and deceased which drew attention of P.W.1-Shanthi (land lady) who came to room and warned them. She also threatened that she would lodge police complaint against them. The accused, deceased and others told P.W. 1 that they will not quarrel. P.W.1-Shanthi left that place. Deceased, P.W.2, P.W.4 and P.W.15 slept. The accused was sitting near door and he was chewing pawn parag. Around 2.20 a.m. P.W.2, P.W.4 and P.W.15 heard loud sound. They woke up and switched on the light and saw the deceased-Nataraj with injuries on his head and accused was standing in the room. The accused confessed before P.W.2-Vishwanatha that he had dropped a grinding stone on the head of deceased. Thereafter, accused left that place. P.W.2-Vishwanatha informed the matter to his brother (P.W.3) who came to the room during early hours on the day. During next day early morning, P.W.1-Shanthi seen the door wherein accused and deceased was staying was little opened. She peeped in and saw the deceased with injuries to his head. In the meanwhile, Investigating Officer came to the place of incident. P.W.1-Shanthi lodged first information and

set law into motion.

7. After going through evidence of PW"s.2 to 5 and also evidence of P.W.15, we find that pre-occurrence events have not been disputed by the accused. On the other hand, accused examined himself as D.W.2 and he has admitted pre-occurrence events upto the stage of quarrel between the deceased and accused.

The accused has sought to establish that after quarrelling with the deceased, he left the room and came to the house of his elder brother (D.W. 1) in Viveknagar.

8. Therefore, the crucial point for consideration is:

"Whether the accused had left the room after dropping a grinding stone on the head of deceased or he had left the room soon after quarrelling with the deceased?"

9. As already stated, the accused is closely related to PW"s.2 and 3. The other witnesses namely P.W.4 and P.W.15 did not have any grievance or grudge against the deceased.

10. P.W.4-Jeeva has deposed; after hearing the sound, he woke up and switched on the light and found that deceased had suffered vital injuries to his head; there was grinding stone by the side of deceased; the accused confessed before him that he had dropped a grinding stone on the head of deceased due to quarrel that had taken place at about 11.30 p.m.; thereafter, accused left the room.

11. The evidence of P.W.4 and P.W.15 is more or less similar to the evidence of P.W.2.

12. The evidence of these witnesses does not reveal that they had grudge or grievance against the accused. Therefore, it can safely be inferred that accused had dropped a grinding stone on the head of deceased during midnight of 18/19.07.2009 in the wake of quarrel that had taken place at 11.30 p.m.

13. The defence evidence given by the brother of accused (D.W.1-Murali Babu) does not inspire confidence.

14. The accused has not disputed that he was in the room and he had quarreled with the deceased but, the accused wants us to believe that he had left the room after quarrelling with the deceased. The accused would not have left the room if it was a mere quarrel, more particularly, in the midnight. The accused had not gone to work on the following day. He had informed his brother (D.W.1) that due to quarrel that had taken place between him and the deceased, he had not gone to work.

15. D.W.1-Murali Babu (the elder brother of accused) has given evidence to prove that accused had reached his house at 12.30 p.m., during intervening night of 18/19.07.2009 and told him that he had quarreled with the deceased. D.W.1 had not informed the matter to P.W.3. D.W. 1 had not informed the matter to police even after the accused was arrested.

D.W. 1 has denied the suggestion that after the accused reached his house, he confessed before him that he had dropped a grinding stone on the head of deceased.

This apart, we find from the tenor of cross-examination of PW's.2, 4 and 15 that accused has sought to establish that he was not present in the room either before the incident or after the incident. The accused has sought to establish that someone had banged into room and dropped a grinding stone on the head of deceased. In our considered opinion, this defence is totally baseless.

16. During cross-examination of the accused, he has admitted that before coming to room at about 11.30 p.m., on 18.07.2009, he had consumed liquor and taken food. It is obvious that accused had reached the room in a drunken state, he had banged the door, the deceased had scolded accused for coming late. He had quarreled with the deceased. Thereafter, the accused was sitting near the door of the room chewing pan parag, which to some extent had raised the level of intoxication. The accused was not able to control his ill feelings against accused, as he was in a state of intoxication. The accused dropped a grinding stone on the head of deceased and left the room.

The learned Sessions judge on proper appreciation of evidence has recorded a finding that accused had dropped a grinding stone on the head of deceased and caused the death of Nataraj at the time and place put forth by the prosecution.

17. The next point for consideration is:

"Whether the acts committed by the accused would squarely attract an offence punishable under Section 302 IPC?"

18. In a decision reported in Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh, , the Supreme Court has held:--

"27. In Virsa Singh this Court held that a culpable homicide is a murder under Section 300 clause Thirdly, if the prosecution should establish four elements - (i) the presence of a bodily injury, (ii) nature of such bodily injury, (iii) intention on the part of the accused to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and (iv) the injury was sufficient to cause death in the ordinary course of nature (this part of enquiry being purely objective and inferential, nothing to do with the intention of the offender). Dealing with the question, as to how intention is to be inferred, Vivian Bose, J. succinctly stated : (SCR pp. 1500 & 1503)

"In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted....

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question."

28. The following legal position regarding single blow injury, was summed up in *Jagrup Singh v. State of Haryana* thus: (SCC pp.619-20, para 6)

"6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304 Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause firstly or clause thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death."

29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are

treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

19. In the case on hand, there was no enmity between the accused and deceased. P.W.2 has admitted that accused had not quarreled with the deceased prior to date of incident and there was no enmity between them. The accused had dropped a grinding stone, which cannot be called as a weapon of offence. He had picked up a grinding stone from the room. He had dropped the grinding stone under the cover of darkness, therefore, he could not have aimed at vital part of the body of deceased.

20. The incident of assault was preceded by a quarrel between the accused and deceased. There was no prior enmity between the accused and deceased. The incident of assault had taken place in a heat of passion. The accused had dropped grinding stone on the head of deceased without there being any intention to cause particular injury.

21. After the incident, the accused had remained in the room and he had confessed before P.W.2 that he had dropped a grinding stone on the head of deceased. Thereafter, he left the room.

22. On careful consideration of events that had preceded the incident of assault and events subsequent to the incident and from the acts committed by the accused, it can safely be inferred that accused had intention of causing death or of causing such bodily injury as is likely to cause death. The acts committed by accused would squarely attract an offence punishable under Section 304 Part-I IPC.

23. The learned Sessions Judge without noticing the events that preceded the incident of assault, reasons for assault and relationship between the accused and deceased before the incident has held the accused guilty of an offence punishable under Section 302 IPC. In our considered opinion, the impugned judgment needs modification.

24. The learned counsel for accused submits that a lenient view may be taken in the matter of sentence.

25. In the discussion made supra, we have considered the background of incident and other circumstances in favour of accused to alter the offence from Section 302 IPC to Section 304 Part-I IPC.

26. The deceased was aged about 42 years. He had responsibility of maintaining his wife and children.

27. Considering the background of incident, time and place of incident and sentence provided for an offence punishable under Section 304 Part-I IPC, we deem it proper to sentence the accused to undergo simple imprisonment for a period of 10 years and pay fine of Rs. 50,000/- in default to undergo simple imprisonment for a period of six months for an offence punishable under Section 304 Part-I IPC. We also deem it proper to direct payment of compensation of Rs. 40,000/- out of the fine amount to be deposited by the accused.

28. In the result, we pass the following:

"ORDER

The appeal is accepted in part. The impugned judgment is modified. The impugned judgment of conviction of accused for an offence punishable under section 302 IPC is set aside.

The accused is acquitted of an offence punishable under Section 302 IPC.

The accused is convicted for an offence punishable under Section 304 Part-I IPC. The accused is sentenced to undergo simple imprisonment for a period of ten years and pay fine of Rs. 50,000/- in default, to undergo simple imprisonment for a period of six months for an offence punishable under Section 326 IPC. Out of the fine amount, a sum of Rs. 40,000/- shall be paid as compensation to C.W.7-Varalakshmi (the wife of deceased).

The period of detention undergone by the accused during trial and also during post-conviction stage is given set off under Section 428 Cr.P.C.

Office is directed to send back the records along with a copy of this judgment."