

(2002) 08 AHC CK 0048

In the Allahabad High Court

Case No : Criminal Msc. Application No. 7414 of 2002

Satish Rai and Another

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 228, 482
Penal Code, 1860 (IPC) — Section 300, 302, 307, 323, 324

Citation : (2003) CriLJ 180

Hon'ble Judges : U.S. Tripathi, J

Bench : Single Bench

Advocate : Daya Shankar Mishra and Chandrakesh Mishra, for the Appellant;
A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

U.S. Tripathi, J.—This application u/s 482, Cr. P.C. has been filed for quashing the order dated 24-7-2002 passed by Additional Sessions Judge, Court No. 6, Gorakhpur in S.T. No. 178 of 2002 holding that charges u/s 302, IPC be framed against the applicants.

2. One Nagendra Rai lodged an FIR on 19-8-2001 against the applicants under Sections 308, 323, 504, IPC with the allegation that on 19-8-2001 at about 7-30 p.m. a quarrel was going on between the ladies of the families of the parties and Keshbhan Rai asked the applicant Satish Rai as to why he was not stopping ladies of his family. In it Satish Rai abusing him asked him to go away. In the meantime, the applicant Harish Rai also came and then Satish Rai started causing injuries on Keshbhan Rai with sword and Harish Rai to the complainant and Sanjai Rai by hockey stick. Keshbhan Rai became unconscious and fell down while head of Sanjai Rai was broken. The complainant received injuries on his left hand. Keshbhan Rai was shifted to the hospital of Gorakhpur.

3. On medical examination following in-juries were found on the person of Keshbhan Rai :--

- (1) Incised wound 16 cm on left side of skull, 3 cm away to left ear Advised x-ray.
- (2) Incised wound 26 cm x 10 cm on left arm 10 cm above the left elbow joint. Advised x-ray.
4. All the injuries were caused by sharp object and were fresh in duration.
5. Nagendra Rai sustained one lacerated wound 3 cm x 1 cm x bone deep in between the index and middle fingers and complained of pain on right hip.
6. After investigation the police submitted charge-sheet against the applicants under Sections 307, 324, 504 and 323, IPC.
7. Subsequently, Keshbhan Rai deceased was admitted in B.H.U. Hospital, Varanasi where he died on 19-8-2001 at 3.25 p.m. Post-mortem on his dead body was conducted on 4-10-2001 and following ante-mortem injuries were found by the Doctor.
- (1) An old healed scar mark 20 cm x 0.5 cm on the left arm and 6 cm below left shoulder joint.
- (2) An old healed scar mark on the left side head on parietal region and on opening skull subdural hematoma and pus were found present with old fracture of left side parietal bone.
8. The cause of death was coma as a result of head injury.
9. After death of deceased a supplementary charge-sheet u/s 302, IPC was submitted against the applicants on 2-1-2002.
10. The cognizance of the case was taken by the Magistrate and the case was committed to the Court of Session.
11. At the stage of charge an application was moved on behalf of the applicants accused for discharge u/s 302, IPC on the ground that no offence punishable u/s 302, IPC was made out and at the most an offence punishable u/s 304, IPC was made out.
12. The learned Sessions Judge on hearing learned counsel for the parties held that fatal injuries on the person of the deceased were caused by sword and the Doctor described the injuries as dangerous to life, therefore, in view of the nature of injuries and weapon, charge be framed u/s 302, IPC.
13. The above order of the Sessions Judge has been challenged in this application.
14. Head Sri D. S. Mishra, learned counsel for the applicants and the learned A.G.A. and perused the record.
15. The contention of the learned counsel for the applicants was that initially cognizance was taken on the charge-sheet submitted u/s 307, IPC therefore, subsequently cognizance cannot be taken on the supplementary charge-sheet

Section 302, IPC. That in any case no offence punishable u/s 302, IPC is made out on the allegations contained in the FIR and the injury report. That earlier charge-sheet was submitted u/s 307, IPC and the deceased died after about a month of the incident when he was discharged from the hospital and had come to his house. He further contended that occurrence cannot take place suddenly and no motive has been alleged in the FIR. From the allegations of the FIR it is clear that injuries were caused on the deceased when he asked the applicants to stop ladies of his family, who were quarrelling with the ladies of his (deceased) family.

16. Reliance was placed on the following decisions :--

(1) Jhallar v. State of U.P., 1992 (29) All Cri C 102.

(2) Gurdeep Singh Vs. Jaswant Singh and others, .

(3) Raisuddin v. State of U. P. 1993 (30) All Cri CC 259 (All H.C.).

(4) Mahesh Vs. State of M.P., .

(5) Camilo Vaz Vs. State of Goa, .

(6) Masumsha Hasanasha Musalman v. State of Maharashtra, 2000 Cri App R 602 : AIR 2000 SC 1874.

(7) Krishna Tiwari v. State of Bihar 2001 Cri App AR 242 : AIR 2001 SC 2410.

17. So far the question of taking cognizance on supplementary charge-sheet submitted u/s 302, IPC is concerned, the cognizance is not taken on a particular Section, but the cognizance is taken on the case as u/s 209, Cr. PC the case is committed to the Court of Session and not an offence under any of Sections or a particular accused. Any subsequent addition or deletion in the section, and accused can be made subsequent to the taking of the cognizance. The subsequent supplementary charge-sheet u/s 302, IPC shall be deemed to have been merged with the case, the cognizance of which was already taken. Therefore, the above contention that the Sessions Court had no jurisdiction to take cognizance on subsequent charge-sheet is not tenable.

18. The next contention of the learned counsel for the applicants was that occurrence of the case took place on 19-8-2001 and the deceased died on 3-10-2001, thus, the death was not the consequence of the injuries caused on the date of occurrence and therefore, offence punishable u/s 302, IPC was not made out. This contention has also no force in view of the principle laid down by the Apex Court in the case of Patel Hiralal Joitaram v. State of Gujarat, AIR 2001 SCW 4411. In the said case, the accused poured combustible liquid on the deceased and set her on fire on 21-10-1988. Consequently the deceased sustained burn injuries. An FIR was registered on same day on the statement made to the deceased. The deceased was hospitalised on same day subsequently the deceased died on 15-11-1988. Autopsy on her dead body was taken on 15-11-1988. In the opinion of the Doctor, the death of the deceased was due to a

stroke on account of such burns and that those burns were sufficient in the ordinary course of nature to cause her death. However, the Doctor stated in his cross-examination that death of the deceased had occurred due to "septic". An argument was raised that such septic condition could have developed on account of other causes. Repelling the above contention, the Apex Court held that mere possibility of other cause supervening during her hospitalisation is not a safe premise for deciding whether she would not have died due to the burns sustained on 21-10-1988. The cause of death can be determined on broad probabilities. Further held that it is preposterous to say that deceased in this case would have been healed of the burn injuries and that she would have contacted infection through some other causes and developed septicaemia and died of that on 15-11-1988. Court of law need not countenance more academic possibilities when the prosecution case regarding death of the deceased was established on broad probabilities as sequel to the burns sustained by her.

19. In the case of Om Parkash Vs. State of Punjab, the victim was set ablaze on 17-3-1979 and she sustained burns with which she died only 13 days thereafter. The assailant was convicted of murder and the conviction was confirmed by the Apex Court.

20. Therefore, the time gap in between the date of injuries and the date of death is not material. What is material is the cause of death. If the death of the deceased occurred due to injuries sustained in the occurrence, the accused may be held liable for the murder. In the instant case as noticed above the deceased sustained two incised wounds on head and elbow. The post mortem report indicated that the seat of ante mortem injuries was the same as mentioned in the injury report. It is also apparent from the post mortem report that under injury No. 2 haematoma and pus were present with old fracture of left side parietal bone. The opinion of the Doctor was that cause of death was coma as a result of head injury. Therefore, the cause of death was the consequence of the injuries caused on the deceased on the date of occurrence. Therefore, if the death was not instantaneous and occurred after about a month it does not make any difference as the cause of death was the same injury.

21. The next contention of the learned counsel for the applicants was that the origin and genesis of the occurrence, the manner in which injury was caused and absence of motive indicate that the offence fell only u/s 304, IPC. He has also lent support from the decisions cited above. The above decisions related to the cases after trial. The case under hand was at the stage of charge. Evidence is yet to be led. The standard of evaluation and assessment of evidence at the stage of framing charge and at the final stage of decision are different. At the stage of charge, the Court has to see whether there is ground for assuming that the accused has committed an offence or whether there is sufficient ground for proceeding against the accused. If the allegations in the FIR and other evidence collected during investigation make out a prima facie offence punishable u/s 302, IPC the Court shall frame charge under said section. Whether that offence shall

be proved or not shall be considered on the basis of evidence led by the prosecution.

22. Moreover, Section 299, IPC defines "culpable homicide" as "whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

23. Explanation 2 to Section 299, IPC which has a material bearing on the point under controversy, provides that where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

24. Section 309, IPC carves out two segments, one is culpable homicide amounting to murder and the second segment consists of culpable homicide not amounting to murder. Four clauses enumerated in the section are enveloped in the first segment. What is set apart for the second segment is compendiously described as "except in the cases hereinafter excepted" from out of the first segment. For the purpose of this case the second clause of Section 300, IPC is material, which reads as under :--

"2ndly -- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused."

25. At this stage in view of the nature, dimensions and seat of injuries the weapon by which it was caused and the cause of death as opined by the doctor conducting autopsy are sufficient to make out prima facie case u/s 302, IPC. Moreover, opportunity to the applicants to bring the case within any of the four exceptions enumerated in Section 300, IPC is still open at the stage of trial and in case they are able to make out the case within any of the four exceptions enumerated in Section 300, IPC, the Court will pass order accordingly. Therefore, at this stage it cannot be said that offence fell only u/s 304, IPC, as the absence of motive and occurrence taking place suddenly are not the only criterion or basis for deciding the nature of offence. There are other factors referred to above which have to be taken into consideration, on the basis of evidence of the prosecution, for recording a finding as to which offence is made out against which of the accused. That stage has yet not come.

26. In view of my above discussions and observations I find that the learned Sessions Judge has rightly framed charge u/s 302, IPC. There is no ground for quashing the above charge in the exercise of jurisdiction u/s 482, Cr. P. C.

This application thus has no force and is liable to be rejected.

It is, accordingly, rejected.

27. However, it is made clear that trial Court shall not be impressed by any of the

observations made in the order and shall decide the case in accordance with law on the basis of evidence on record.