
(2007) 01 MP CK 0057
In the Madhya Pradesh High Court
Case No : Cr.A. No. 94 of 1993

Shivlal and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 16-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2008) 1 MPJR 197

Hon'ble Judges : R.C. Mishra, J;Deepak Verma, J

Bench : Division Bench

Advocate : L.N. Sakle, for the Appellant; Aseem Dixit, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.C. Mishra, J.

This appeal has been preferred against the judgment dated 19.11.1992, passed by the Additional Sessions Judge, Multai, Betul in Session Trial No. 60/90, whereby each of the Appellants was convicted u/s 302 read with 34 of the IPC and was sentenced to life imprisonment and to pay fine of Rs. 500/-, in default of payment of fine, to suffer R.I. for six months.

The prosecution story, in short, may be narrated as under:

(a) Appellant No. 1 Shivlal (hereinafter referred to as "A1") is the younger brother of Rangsu (since deceased) and Appellant No. 2 Ranju Singh (for short "A2") is the son of the deceased from his first wife namely Kallo; the complainant Jhamlabi (PW1) being the second wife of the deceased.

(b) The relation between the deceased and the Appellants were strained in view of the dispute concerning ancestral property.

(c) On 11.11.1990 at about 10 a.m., A1 came to the house of Rangsu and

expressed his intention to cut the common wall for opening and entrance. Disagreeing with the proposal, Rangsu told him to wait till the arrival of their mother Badi Bai. However, ignoring his suggestion A1 broke the wall for installing a door therein. This led to altercation between the brothers. A2 was also standing nearby. During the scuffle and mutual abuses, A1 caught hold of Rangsu and A2 threw him on the ground by pulling his legs. Thereafter, both of them assaulted Rangsu by fists and kicks and for the purpose, A2 also rode on the chest of his father. Jhamlabai (PW1) tried to intervene but they continued with the assault by pushing her aside and saying that they were determined to kill Rangsu.

(d) After departure of the Appellants from the scene, Jhamlabai (PW1) called Gulab Patel by sending her daughter Sunita. Rangsu apprised Gulab of the misdemeanor of the Appellants. Gulab immediately sent for a doctor from Chikhali. However, by the time the doctor came, Rangsu had already breathed his last.

(e) It was on the report lodged by Jhamlabai (PW1) that a case u/s 302 read with 34 of the IPC was registered against all the Appellants at the Police Station Multai, District Betul.

(f) After inquest proceedings, the dead body of Rangsu was sent for post mortem. The Autopsy Surgeon, Dr. Vikram Kumar Sexena (PW8) expressed the opinion that the Rangsu's death was caused due to shock and haemorrhage caused by internal injuries.

(g) After completing the investigation, a charge sheet for the offence punishable u/s 302 read with S. 34 of the IPC was presented against the Appellants in the Court of JMFC, Multai, who committed the case to the Court of Sessions for trial.

On being charged with the offence punishable u/s 302 read with 34 of the IPC, the Appellants abjured the guilt and claimed to be tried. In their examinations, u/s 313 of the Code of Criminal Procedure, both of them pleaded false implication. However, no evidence was led in defence.

The prosecution sought to prove the charge by examining as many as 10 witnesses including Jhamlabai (PW1) and Gulab Rao (PW3).

On consideration of the entire evidence, the learned trial Judge, for the reasons recorded in the judgment under challenge, found the charge proved against both of the Appellants and sentenced them as already indicated hereinabove.

The legality and propriety of the impugned conviction has been assailed on various grounds including the so-called inconsistency between the medical evidence and the ocular testimony of Jhamlabai (PW1).

However, the main contention of the learned Counsel for the Appellants is that even if the prosecution case is accepted for the sake of arguments, the act of the Appellants would not travel beyond the purview of offence punishable u/s 323 or

at the most 325 of the IPC. In support of his contention, learned Counsel for the Appellants has invited our attention to the following decisions:

(i) Pannalal v. State of M.P. 1985 WN 533

(ii) State of Orissa Vs.G. Narayan Murty and Anr. 1987 (1) Crimes 711

(iii) Decision dated 11.11.06, rendered by a DB of this Court, in Cr. A 102/95 Narendra and Anr. v. State of M.P.

However, the learned Govt. Advocate contended that the act of the Appellants was well within the purview of culpable homicide not amounting to murder.

To appreciate the rival contentions, it is necessary to first advert to the medical evidence available on record. Dr. Vikram Kumar Saxena (PW8) testified that, in the postmortem on the body of Rangsu, no external injury was detected yet, on internal examination, the following internal injuries were noticed:

(i) Laceration 2 cm x 1 cm x 1 cm on anterior aspect of left lung and

(ii) Laceration 2 cm x 1/2 cm x 1/2 cm on posterior lateral aspect of middle lobe of left lung.

He further stated that both chambers of heart were empty and Thoracic cavity was filled with Blood. In the opinion of the autopsy surgeon, Rangsu's death was the result of shock and haemorrhage caused by the injuries. These contents of his report (Ex. P-10) were not disputed in the cross-examination. According to him, even in absence of any external injury on the body of the deceased, rupture of lungs could be caused by external pressure. Thus, it was clearly established that the Rangsu met with a homicidal death.

Jhamlabai (PW1) substantially corroborated the prosecution case. According to her, after throwing Rangsu on the ground both the Appellants had sat over his chest for beating him. Although, she made improvement in her statement by saying that A1 had hit her husband with Sabbal on his back yet, this improvement alone was rightly considered as not sufficient to discard her testimony in its entirety. The medical evidence is also corroborative in view of the manner of assault. As such, no significance could be attached to the non-availability of any external injury on the body of the deceased. This apart, Gulab Rao (PW3), the son of village Patel, also proved complicity of the Appellants in causing death of Rangsu by stating that immediately before his death, Rangsu had told him that he was beaten by them only. According to him, he had accompanied Jhamlabai (PW1) to the police station.

Sub-Inspector D.K. Sakale (PW10), the scribe of FIR (Ex. P-11), corroborated that the same was lodged by Jhamlabai (PW1). The inquest panchanama, spot map, documents relating to seizure of door and dasa (a flat piece of stone) from the Appellants were also duly proved to him.

Thus, there was overwhelming evidence, in the form of direct testimony of the

wife of the deceased and the dying declaration made to the son of village Patel, sufficient to hold that the internal injuries, which proved fatal to Rangsu, were caused by the Appellants.

This brings us to the question as to what was the offence committed by the Appellants.

In Pannalal's case (supra), he had given only one or two fist blows to the deceased and the blows were followed by some grappling. Thereafter, the deceased had been able to commence his train journey from Bilaspur before ultimately succumbing to the head injuries at Katni. It was in these circumstances that the Division Bench took the view that he was guilty of the offence punishable u/s 323 of the IPC. In the Orissa case (above) one of the accused caught hold of the deceased and the other dealt a stick blow on his back and then gave some slaps and fist blows. The deceased fell down and the internal injury on chest proved mortal, in this factual scenario, learned single Judge proceeded to maintain the order of conviction u/s 323 read with Section 34 of the IPC. Lastly, the judgment in Cr.A.1026/ 1995, altering the conviction of the Appellants from S. 302 to that u/s 326 read with S. 34 of the IPC reflect altogether different set of facts.

Further, as observed in Charan Singh and Others Vs. State of Uttar Pradesh, , while interpreting a judicial precedent, particularly in a criminal trial, the following note of caution as sounded by a 5 Judge Bench, Hon''ble the Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, is to be kept in mind.

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

Accordingly, non of the precedents, cited at the Bar, is of any avail to the Appellants.

In Narhari v. State of M.P. 1960 J.L.J. 151 one of the kicks given by husband to his wife resulted in to rupture of spleen leading to death. It was held that, in absence of intention to kill, the act of the Appellant fell u/s 304 Part II of the IPC. Even in a comparatively graver form of assault, consequent to which eight of ribs were broken and the bone from one of the ribs lacerated the lung resulting into the death of victim, the Supreme Court held that the offence was punishable under the second part of Section 304 and not u/s 302 of the IPC (Risat v. State of U.P. (1969) 1 SCWR 208 referred to).

Apparently, the Appellants had no intention to kill Rangsu as none of them came

armed with any lethal weapon. However, in view of the background facts and surrounding circumstances, it is apparent that the Appellants, though not having intention to kill, had the requisite knowledge that their act may result into death of Rangsu. We are therefore, in full agreement with the learned Govt. Advocate that the act of the Appellants would fall within the definition of culpable homicide not amounting to murder.

For these reasons, the Appellants were liable to be convicted for the offence of culpable homicide not amounting to murder punishable u/s 304 Part-II read with 34 of the IPC.

Consequently, the appeal is allowed in part. The impugned conviction of the Appellants u/s 302 read with Section 34 is altered to one u/s 304 Part-II read with S. 34 of the IPC and instead of life imprisonment; each of them is sentenced to undergo rigorous imprisonment for 5 years.

Learned Counsel for the Appellant has apprised us that the Appellant has already undergone a period of more than 5 years in the jail. If that be so, the trial Court would verify the actual period undergone and inform the Appellant about the result of this appeal. In case, the period of detention undergone by the Appellant is found to be less than 5 years, he shall be committed to jail for undergoing the remaining part of the sentence.

The Appellants are on bail. They are directed to appear before the trial Court on 19th February, 2007 at 11 a.m. for the aforesaid purpose.