

(2012) 02 MP CK 0063

In the Madhya Pradesh High Court

Case No : Criminal Appeal No's. 882 of 2009 and 1509 of 1994

State of Madhya Pradesh

APPELLANT

Vs

Chikki @ Chandramohan, Kara @ Kherajmal Sindhi, Gittal @
Rajendra Rai and Pappu @ Akhilesh
 Chikki @
Chandramohan, Kara @ Kherajmal Sindhi, Gittal @ Rajendra
Rai and Pappu @ Akhilesh Vs The State of Madhya Pradesh

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 304

Citation : (2012) CriLJ 2046 : (2012) 3 Crimes 331

Hon'ble Judges : Rakesh Saxena, J;M.A Siddiqui, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.A. Siddiqui, J.—Since both the appeals arise out of common judgment, hence they are being decided by this common judgment.

2. The State has filed Criminal Appeal No. 882/09 feeling aggrieved by the judgment delivered by learned Addl. Sessions Judge, Narsinghpur in Sessions Trial No. 63/92 on 5th December, 1994 by which above accused, and accused Mexi @ Rajendra Kumar (since dead), have been acquitted of the charges under Sections 148, 302 read with Section 149 of IPC, but all four appellants were convicted and sentenced u/s 304 IPC read with Section 34 of IPC to R.I. for 6 years each. Convicted accused persons have filed Criminal Appeal No. 1509/94 assailing their conviction and sentence u/s 304 IPC read with Section 34 IPC.

3. The brief facts of the case before the trial Court were that accused formed unlawful assembly with deadly weapons, and in furtherance of their common object, committed murder of Nanhu @ Ramkumar at about 3 AM on 31.3.91. It is said that deceased Nanhu @ Ramkumar had illicit relations with Babli @ Geeta (PW.16). On 30.05.91, Babli had gone to attend some marriage at Gotegaon. From marriage function, she went with deceased Nanhu @ Ramkumar. Deceased

was then chased by accused and some other persons. Since deceased was servant of Anil Jaiswal (PW.6), he also went in search of deceased. Near MPEB Colony at Gotegaon, Nanhu alias Ramkumar was seen lying in supine position, and accused Kara, armed with a sword, Maxi alias Rajendra (since dead) with Farsa, and other accused Pappu, Chikki and Gitthal with sticks were assaulting him. On raising alarm, accused persons ran away. Nanhu @ Ramkumar was brought to the police station where FIR (Ex.P.10) was lodged by Anil Jaiswal (PW.6) and police registered offence under Sections 148,307 and 149 of IPC. Nanhu @ Ramkumar was sent to hospital, but on way he succumbed to the injuries.

4. Usual investigation ensued. Accused were arrested and recoveries of incriminating articles were effected on their information. Charge sheet was filed and all the accused were charged for the offences punishable under Sections 148,302 read with Section 149 of IPC for committing murder of Nanhu @ Ramkumar.

5. Learned trial Court, after trial, acquitted Maxi @ Rajendra Kumar (since dead), but convicted the other accused persons for lesser offence u/s 304 read with Section 34 of IPC and sentenced them to undergo R.I. for six years" each. The State, aggrieved by their acquittal u/s 302 IPC, has filed Criminal Appeal 882/09 to punish the respondents under Sections 148 and 302 read with Section 149 of IPC.

6. Criminal Appeal No. 1509/94 has been filed by accused/appellants against the conviction and sentence imposed u/s 304 read with Section 34 of IPC contending that Babli @ Geeta (PW.16) was abducted by deceased Nanhu Soni @ Ram Kumar and when she was searched, it was found that an attempt was made to ravish her, so a crowd of 300-400 people who had gone in search of her, finding that deceased had confined the girl in a room and an attempt was made to ravish her by deceased as well as his companions, so in order to rescue her, in the exercise of right of private defence, and to teach lesson to deceased, the crowd gave him beating. No intention of homicidal death was there and accused persons have been falsely implicated in this case. They have not committed any offence. Whatever has been done was under the exercise of right of private defence and appellants have been falsely implicated due to old enmity. The appellants have been wrongly punished by the trial Court, even judgment of conviction and sentence u/s 304/34 IPC is against the facts and circumstances of the case and accused be acquitted from the punishment imposed on them for alleged offence punishable u/s 304/34 of IPC.

7. We have heard learned counsel for the parties and perused the impugned judgment and the evidence on record carefully.

8. As far as death of Nanhu @ Ramkumar is concerned, it is not disputed. As per version of Dr. S.C. Yadav (PW.2), the death was due to injuries. The version of this witness is that on 31.05.91 when he was posted as Assistant Surgeon at

Community Health Centre, Gotegaon, dead body of Nanhu @ Ramkumar, aged 24 years R/o Gotegaon was sent to him and he conducted the postmortem. Dr. S.C. Yadav (PW.2) found the following injuries on the body of Nanhu @ Ramkumar :-

- (i) Contusion 7" x 1/2" over Lt. Side Chest Transverse slightly oblique;
- (ii) Contusion 3" x 1/2" over Lt. Side of Chest starting just above Lt. Nipple towards xphoid process;
- (iii) Contusion 2" x 1/2" Lt. Side of Chest started just below injury no.(ii) towards outside (Lateral Side) transversely slightly oblique in direction;
- (iv) Contusion 4" x 1/2" obliquely placed just above umbilicus (centrally placed);
- (v) Contusion 4" x 1/2" 1" above pelvic symphysis transversely and slightly oblique up to Ltd. Iliac Crest;
- (vi) 4" x 1/2" starting from Rt. iliac crest towards abdomen (transverse slightly oblique);
- (vii) Multiple contusion over both thighs; medially and anteriorly placed.Ranging from 2 1/2" to 5 1/2" in each and 1/2" in width;
- (viii) Contusion 4" x 1/2" back of Lt. shoulder transverse;
- (ix) Contusion 5" x 1/2" Back Lt. Side starting from posterior fold of Lt. axilla downward and inward;
- (x) Contusion 4" x 1/2" starting from lower end of injury no.(ix) downward and outward;
- (xi) Contusion 4" x 1/2" Back just above Lumber region slightly oblique;
- (xii) Multiple contusions over Lateral side of Rt Thigh ranging from 1 x1/2 to varying size up to 2" x 1/2";
- (xiii) Contusion 1 1/4" x 1 1/4" just above Rt. Nipple;
- (xiv) Incised wound 1 1/2" x 1/2" x 1 1/2", 1/2" above Rt. Costal (Stab Wound) Margin (middle part) oblique;
- (xv) Incised wound 2 1/2" x 1/2" x bone deep Lt. Leg (anteriorly placed at junction of upper 1/3rd and lower 2/3rd (transverse slightly oblique);
- (xvi) Incised wound 1/2" x 1/2" x bone deep medial side of Rt. Knee Jt;
- (xvii) Incised wound 1/2" x 1/2" x 1/2" Lateral Side of Rt. Leg 2 1/2" below Rt. Knee Jt.;
- (xviii) Incised wound 2" x 1/2"x bone deep. Anteriorly placed just below Ltd. Knee Jt.;
- (xix) Contusion 6" x 1/2" over posterior auspect of Rt. forearm starting from

wrist Jt. Vertical in direction;

(xx) Multiple contusion over Lateral Side of Rt. Upper Arm and Lateral Side of Lt. Upper Arm of different size, mixed with each other;

(xxi) Contusion over Neck 7-8 no. 1/2" x 1/2" each;

(xxii) Incised wound 1" x 1/2" x bone deep at medial end of Rt. eye brow vertical;

(xxiii) Incised wound 1" x 1/2" x bone deep Lateral end of Rt. eye brow;

(xxiv) Incised wound 1/2" x 1/2"x bone deep medial end of Lt. eye brow;

(xxv) Incised wound upper lip Lt.Side. Tooth break Lt.Central Incisor Lt. Canine;

(xxvi) Fracture, mandible Central Part.

In the internal examination, Dr. Yadav (PW.2) found that there was an incised wound on the liver measuring 1" x 1/4" whole thickness at Rt. lobe, and a lacerated wound which ruptured Lt. lobe 2 1/2" x 1/2" at Margin (lower). On opening the skull, clots at base of skull and full of blood was found. Dr. Yadav further opined that injury no. 14,15,16,17,18 and 22,23,24 and 25 were caused by sharp cutting object and rest of injuries were caused by hard and blunt object. All injuries were ante mortam and Nanhu @ Ramkumar died due to cumulative effect of head injury, haemorrhage and shock due to rupture of liver. The injuries were sufficient to cause death in the ordinary course of nature, and it was opined that death was caused within 24 hours of the post mortem.

9. In view of above, homicidal death is not disputed. As per arguments advanced by learned Panel Lawyer appearing for State, it was a case of murder as has been defined u/s 300 of IPC and learned trial Court committed error in not convicting the accused for offence of murder.

On the other hand, learned counsel for accused submitted that it was not a case of murder by appellants. Crowd of 300-400 people gave blows to deceased. No unlawful assembly was formed as has been held by learned trial Court vide para 21 of impugned judgment as from the starting there were no weapons and 5 persons were not there which is necessary for forming an unlawful assembly.

10. From perusal of record, it is very much clear that prosecution examined Ramkumar (PW.1), Hemlata (PW.5), Anil Jaiswal (PW.6), Phoolsingh (PW.7), Kallobai (PW.8), Narendra Kumar (PW.9), Basori (PW.14) and Geeta (PW.16). Out of them, Ramkumar (PW.1), Narendra Kumar (PW.9) and Basori (PW.14) were declared hostile. Geeta (PW.16) who is near relative of accused has narrated in their favour.

11. Hemlata (PW.5) stated that Maxi, Chikki, Gitthal and Pappu came and made some enquiries from her brother Narendra. When Narendra said that he did not know anything, the accused started beating her brother. Accused also tried to beat the witness but she flew away. She further stated that these accused persons gave blows to Nanhu Soni and Babli.

Anil Jaiswal (PW.6) stated that deceased was his employee. On the fateful night, he had gone to attend the marriage ceremony in Sindhi community. At 11 PM, he reached there. There was whisper that his servant, Nanhu Soni, eloped with daughter of Gopi Sindhi, namely, Babli. After hearing this whisper, the witness thought that he should also search Nanhu as he was his servant. So, the witness went in search of Nanhu. When he reached in front of Dulha Dev Ki Madhiya where mercury light was on, near MPEB Power House, Nanhu Soni was lying in supine condition and accused Maxi (since dead) was beating Nanhu Soni with Farsa, Kara with sword and Chikki, Gitthal and Pappu were beating him with sticks. Accused Kara was also beating him by boots. As soon as he reached there, accused persons fled away from there. This incident happened at about 2-3 AM in the night. Thereafter the witness went straight to the police station and lodged report (P.10).

Phoolsingh (PW.7) stated that on hearing the noise, he was awakened and reached at Dulha Dev Ki Madhiya and found that mercury light was lightening and Nanhu was lying in supine condition and accused Maxi (since dead) was beating him with Farsa, Pappu, Chikki and Gitthal were beating him by sticks. At that time, Anil, Ramkumar, Basori came there shouting, so accused persons ran away. Nanhu's body was lying with full of blood and there were injuries on his whole body including head, and Nanhu was looking dead.

Kallobai (PW.8) stated that she is mother-in-law of Anil Jaiswal. She stated that all the 5 accused persons came to her house and asked about Nanhu Soni, then they went to Narendra Kewat's house. The witness saw that all accused persons entered in the house of Narendra Kewat and started beating Narendra and uttered filthy language and started breaking his house hold articles, T.V.,etc. In a small room in the house of Narendra, Babli and Nanhu were found. Babli was taken by a boy from there and Nanhu Soni was caught by Maxi and Gitthal and three persons carried Nanhu by pushing him and after about 1/2 an hour, the witness heard that Nanhu was murdered. She stated that Maxi (since dead) and Gitthal were armed with Farsa, and all other accused were having sticks. At that time, tubelight was lightening.

Narendra Kumar (PW.9), though denied the fact of incident, but stated that he saw that his house hold articles and T.V.etc. were lying scattered.

Basori (PW.14) stated that there was Barat of Sindhi community and Baratis were beating Nanhu.

Gita (PW.16) stated that she had gone to attend the marriage of her brother. Nanhu Soni and his 3-4 companions appeared there and they abducted her at the point of knife. Nanhu wielded the knife and confined her in a room and attempted to ravish her. Within 5-10 minutes, some persons came outside and broke the door and gave beating to Nanhu, then she went away from there. Though she did not say against the accused persons, but from her statement it is very much clear that it was due to her that the incident took place.

12. Learned counsel for State submitted that version of Anil Jaiswal (PW.6) is fully supported by prompt FIR (P.10) as well as it is corroborated by statement of Hemlata (PW.5), Kallobai (PW.8) and Dr. S.C. Yadav (PW.2).

Per contra, learned counsel for accused submitted that Gita (PW.16) narrated that she was abducted by the deceased and his colleagues and attempt was made to ravish her, so a crowd of 300-400 persons went in search of Babli @ Gita (PW.16) and when they found that she was kept in confinement and attempt was made to ravish her, they gave beating to deceased in order to teach him lesson. Due to enmity, accused persons have been falsely implicated in this case. In the alternative, it has also been urged on behalf of the accused that there was no pre-meditation and no unlawful assembly was formed and since the girl of Sindhi community was found with deceased Nanhu so it gave sudden grave provocation to accused, there was no intention to commit murder, though it was a homicidal death.

13. Learned counsel for State submitted that as far as right of private defence is concerned, though Geeta @ Babli (PW.16) has been examined by the prosecution un-necessarily or to help the defence, but from the circumstances and evidence of Anil Jaiswal (PW.6) and love letters, it is very much clear that the girl eloped with deceased out of her own consent in the night. As soon as the girl was taken away from the clutches of deceased Nanhu, no right of private defence was there and story to ravish the girl has been falsely put forth in order to save the accused persons.

14. Learned counsel for accused submitted that as the girl was found in the company of deceased Nanhu in the mid night and that too in a room, so this fact gave sudden grave provocation to accused, and deceased was beaten, but unfortunately, due to injuries sustained by him, he died. He submitted that in these circumstances conviction of accused persons u/s 302 IPC was not possible. Even if they are held to be liable u/s 304 Part-I of IPC, punishment of six years" is more than enough as the incident took place almost 21 years ago.

Learned Panel Lawyer appearing for State submitted that leniency in imposing the punishment has already been shown by the trial Court and accused have been convicted u/s 304 IPC and sentenced only for six years" R.I., therefore, they should not be treated with leniency any more.

15. As far as the facts are concerned, it is very much clear that girl of accused side was found in the company of deceased and naturally it would have given sudden grave provocation to accused to teach a lesson to deceased, but since deadly weapons such as sword and Farsa were used and too many injuries were caused, it is apparent that intention to cause death was there, so this case will fall within the ambit of exception 4 to Section 300 of IPC. Since, accused persons dealt numerous blows to deceased which proved fatal, it has to be held that appellants acted with the intention of causing death making them liable to be punished u/s 304 Part I of IPC.

16. As per above discussion, in our opinion, learned trial Court has rightly appreciated the evidence of both sides and has come to conclusion that offence u/s 304 read with Section 34 of IPC is made out. So, we uphold the judgment of conviction and sentence passed by learned trial Court. No interference is called for in both the appeals. Both the appeals being devoid of merits are hereby dismissed.

A copy of this judgment be kept in record of Criminal Appeal No. 1509/1994.