
(2003) 09 AHC CK 0290

In the Allahabad High Court

Case No : Government Appeal No's. 949 and 1135 of 1982

State of U.P.

APPELLANT

Vs

Qamar

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 304

Citation : (2004) 2 ACR 1542

Hon'ble Judges : Onkareshwar Bhatt, J;M.C. Jain, J

Bench : Division Bench

Advocate : S.K. Paul, A.G.As, for the Appellant; R.K. Rastogi and N.K. Rastogi, for the Respondent

Final Decision : Dismissed

Judgement

Onkareshwar Bhatt, J.—State of U. P. has preferred this appeal against judgment and order dated 19.1.1982 passed by the then Sessions Judge, Rampur in Sessions Trial No. 224 of 1981. By the impugned order accused-Respondent has been convicted u/s 304, Part II, I.P.C. and sentenced to six months rigorous imprisonment and to pay a fine of Rs. 1,000. In default of payment of fine one year's rigorous imprisonment has been awarded. Government Appeal No. 949 of 1982 has been admitted on the question of sentence only. In Government Appeal No. 1135 of 1982 the prayer is for setting aside the order of acquittal and for sentencing the accused in accordance with law.

2. We have heard Sri S. K. Paul, learned A.G.A. for the State, and Sri N. K. Rastogi, learned Counsel for the accused-Respondent, and perused the record.

3. Hafiz Ahmad, P.W. 2, is the father of deceased, Haneef, who was his elder son. The other son is Irshad Ahmad. The informant was living in Gher Kalandar Khan police station Ganj district Rampur. Salamat Khan is neighbour of the informant whose son is accused. Qamar, who was living with his father. The above fact is admitted to the accused. On 20.11.1980 during day time there was quarrel

amongst the children of deceased and younger brothers of accused Qamar. This fact is also admitted to accused. At about 7.15 p.m. the informant, Hafiz Ahmad along with the deceased and his other son, Irshad Ahmad was going to offer prayer in mosque which is situated in their Mohalla. Jakkan, P.W. 4, Jameel and Chandan were also present in front of the mosque. According to the prosecution case accused was also present there. The deceased enquired from the accused as to why he had assaulted his children during the day. Suddenly the accused took out a knife and stabbed the deceased in the abdomen. The deceased ran for a short distance and fell down in front of the shop of Ashfaq Khan. The accused ran away with the knife. Hafiz Ahmad, P.W. 2, and Jakkan, P.W. 4 have stated the above fact. They have also stated that in the mosque an electric bulb was emitting light. It has come in evidence that the mosque has no boundary wall, therefore, sufficient light was available on the spot. Sub-Inspector, Hansraj Singh, P.W. 6, Investigating Officer of the case, on reaching the spot found the bulb in the mosque. He has stated that its light was spreading outside. The informant, Hafiz Ahmad carried his son, Haneef along with the other son to the police station where the first information report was lodged the same day at 7.55 p.m. Haneef was sent to hospital but before he could reach there he died. On 21.11.1980 Dr. S. K. Gupta, P.W. 1 performed the post-mortem examination. He found one incised penetrating wound 3 cm. x 2 cm. x cavity deep over right side of abdomen above level of umbilicus. Omentum was protruding out from the wound. There was cut in peritoneum and in small intestine.

4. The prosecution case that Haneef was stabbed by the accused is stated by his father, Hafiz Ahmad, P.W. 2, and Jakkan, P.W. 4. The testimony of the doctor corroborates their statements. The accused has stated that he was going to prepare Biri in branch Khanakar when Haneef met him. Haneef enquired as to why he (accused) had assaulted his children. Verbal altercation took place. Thereupon the deceased, Haneef threatened to kill him (accused). He had knife for cutting Biri leaves which he extended towards Haneef. Haneef advanced towards him and he does not know where the knife hit and thereafter he ran away. The statement of the accused also corroborates the prosecution case that the deceased was hit by knife by the accused.

5. There was quarrel amongst the children of the deceased and brothers of the accused. The accusation of the deceased as to why the accused had beaten his children was uncalled for because brothers of the accused and not the accused himself had quarrelled amongst themselves. The version of the accused that the deceased advanced towards him is not convincing because no such suggestion was given to any prosecution witness. The accusation of beating his children by the accused did not justify the inflicting to knife injury to the deceased. The incident as put forward shows that there was no premeditation or planning. It appears to be a coincidence that the accused met Haneef when later enquired as to why he beat his children. The evidence that the accused chased the deceased appears to be an improvement because it is not mentioned in the first information report also. The fact remains that it is a case of single injury. The

facts and circumstances suggest that the incident had taken place all of a sudden and the accused cannot be said to have intention of causing the death of the deceased. No inference can also be drawn that the accused intended to cause such bodily injury as was sufficient in ordinary course of nature to cause death. It cannot also be inferred that the act was so eminently dangerous that it must in all probability would have caused the death or such bodily injury as is likely to cause death. The trial court was justified in holding so. The trial court in the facts and circumstance of the case held that the accused could be attributed with knowledge that the injury might cause death of the deceased and held that offence u/s 304, Part II, I.P.C. was made out. The trial court in the fact and circumstances of the case and also considering the age of the accused, which he stated to be seventeen years in his statement u/s 313, Cr. P.C., has sentenced him as indicated above. The sentence of imposition of fine awarded by the trial court was in accordance with the decision of the Supreme Court mentioned in the impugned judgment. We see no cogent and convincing reason to enhance the sentence which has been awarded by the trial court. The learned Counsel for the Respondent has stated that the accused-Respondent has served out the sentence awarded to him.

6. In view of the aforesaid discussion, the impugned judgment and order of the trial court calls for no interference. Both the appeals are liable to be dismissed and are dismissed accordingly.