
(1997) 07 MP CK 0034

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 787 of 1988

Sukhlal Pawansai Dhanuker

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:

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

Citation : (1998) 1 MPLJ 470

Hon'ble Judges : S.K. Dubey, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : Kaushal Sen, for the Appellant; A.S. Gaharwar, Panel Lawyer, for the Respondent

Judgement

S.K. Dubey, J.

The appellant stands convicted u/s 302 of the Indian Penal Code and sentenced to life imprisonment for uxoricide vide judgment dated 29th April, 1988, passed in Sessions Trial No. 215 of 1986, by Second Additional Sessions Judge, Bilaspur.

The facts giving rise to this appeal are thus. The appellant along with his wife Sonkunwar Bai (since deceased) and the child were going on 12-5-1986 to the bank of river for fishing. On way, altercation took place between the two. During the altercation, the deceased slapped the accused across the face. On this, the accused took out his bow and shot an arrow on the chest of his wife. The deceased cried for help. Hearing this, Phoolmatia Bai (P.W. 1) came there. She saw Sonkunwar Bai lying near the bank of the river; blood was oozing from her chest. On asking by P.W. 1, the deceased told that her husband shot an arrow on her chest, she will not survive. Then P.W. 1 asked the accused about it. Accused told P.W. 1 that first his wife had beaten him then he shot the arrow. After telling this, the accused took up the child and ran away towards Hasdo river. P.W. 1 frightened of it went to fishermen near the river. Parents and brother of the accused were informed about the occurrence, who came and saw the child weeping near the river; but the deceased was not found. On way to the village

one Sonsai met them and told that Sonkunwar is lying in a small cottage in front of his house. All reached there and saw Sonkunwar with profused bleeding from her chest. She was not in a position to speak and died in between 3.00, 4.00 a.m. Phoolmatia Bai (P.W. 1) lodged the report (Ex. P.1) at about 7.00 p.m. on 13-5-1986 at Police Chowki Korbi. A Marg u/s 302 of the Indian Penal Code at "O" number was registered vide Ex.P. 18. Then Crime No. 31 of 1986 u/s 302 of the Indian Penal Code was registered at Police Station Pasan on 14-5-1986 vide Ex. P.17. A Panchnama Lash (Ex.P.21) was prepared on 14-5-1986. From the spot blood stained earth and controlled earth was seized vide Ex.P.3. The dead body was sent for post mortem. Dr. Bhimprasad Kanwar (P.W. 16) performed the autopsy on 15-5-1986 at about 11.15 a.m. The post mortem report is Ex.P.13. The arrow was found in the left ventricle of heart. The direction of arrow was out to in medially and downwards and backwards. It pierced through pleura and lobe of the left lung. Autopsy Surgeon did not give any definite opinion about the cause of death due to highly decomposed body.

The accused denied the charge u/s 302 of the Indian Penal Code. To prove the charge, the prosecution examined as many as 17 witnesses and exhibited 25 documents. The trial Court after appraisal of evidence convicted and sentenced the accused as aforesaid.

Ku. Kaushal Sen for the appellant and Shri A. S. Gaharwar, Panel Lawyer for the State, heard.

Death of Sonkunwar Bai was homicidal is not in dispute.

From the evidence, adduced by the prosecution, it is evident that the accused and his wife were living amicably. There was no enmity between the two. On the day of occurrence both were going for fishing. On way altercation took place between them. In that altercation, the deceased slapped the accused. Then the accused took out his arrow and shot it on her. The manner in which the occurrence took place is borne out from the statement of Phoolmatia Bai (P.W. 1) and the extra judicial confession made by the accused before Phoolmatia Bai (P.W. 1) and Dharam Sai (P.W. 7) Patel of the village Jajgi. In the circumstances, the question for consideration is whether the act of the accused amounts to murder or culpable homicide not amounting to murder.

In K.M. Nanavati Vs. State of Maharashtra, , the Supreme Court in paras 84 and 85, page 629, in respect of applicability of Exception I to section 300 of the Indian Penal Code, has observed thus:

"84. Is there any standard of a reasonable man for the application of the doctrine of grave and sudden provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values, etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilisation. It is neither possible nor desirable to lay down any standard

with precision, it is for the Court to decide in each case, having regard to the relevant circumstances:.....

The Indian Law, relevant to the present enquiry, may be stated thus:

(1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control.

(2) In India, words and gestures may also under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first exception to section 300 of the Indian Penal Code.

(3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

(4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

A Division Bench of Kerala High Court in *Madhavan v. State of Kerala*, AIR 1966 Kerala 258, in case of murder of the wife by the husband, by chopping, where the deceased threatened to leave the husband forever without obviously any prior reason removed "thali" from her neck and threw the thali on his face, it was held that the act of the wife was quite sufficient to make the husband to lose his self control and to give the accused benefit of Exception I to section 300 of the Indian Penal Code.

In the present case, the accused and the deceased are illiterate and rural rustic. Their way of life in which they live was of tribals with the traditional values in the background of the society. Tribals commonly keep bow and arrow or tangia with them in their dwelling places and whenever they go out, they keep bow and arrow with them and tangia for cutting wood. The accused and the deceased were living amicably. On the day of occurrence, both left their house with their child for fishing. On way altercation and quarrel took place. The deceased slapped the accused, at that juncture, the accused under the immediate impulse of grave and sudden provocation lost the self control, took out his arrow and shot it so as to inflict injury on the deceased. The act was not premeditated, nor from the circumstances, there was any intention to kill his wife. In the circumstances, principle test of grave and sudden provocation, whether a reasonable man belonging to the same class of society, as the accused, placed in the situation, in which the accused was placed, would be so provoked as to lose his self-control, and the provocation must be such as would upset not merely a hot tempered or highly sensitive person but one of ordinary calmness is attracted. Therefore, the appellant is entitled to benefit of Exception I to section 300, Indian Penal Code. The offence committed by him will not be a case of murder but a case of culpable homicide not amounting to murder. Therefore, we convict him u/s 304, Part-I

instead of section 302 of the Indian Penal Code. The accused was taken into custody on 18-5-1986 and since then he is in jail. He has served out the sentence of more than 11 years. Therefore, the sentence already undergone will meet the ends of justice.

In the result, the appeal is partly allowed. The appellant is convicted u/s 304, Part I, Indian Penal Code instead of section 302 of the Indian Penal Code; accordingly he is sentenced to the period of imprisonment already served out. He shall be set at liberty forthwith if not required for any other offence.