

THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

11

Cr.A.No.585/2007

Onkar vs. State of M.P.

Cr.A. No.694/2007

Laxman and Kalu vs. State of M.P.

DIVISION BENCH : HON'BLE MR.JUSTICE S.C. SHARMA AND
HON'BLE MR. JUSTICE S.K. AWASTHI

CRIMINAL APPEAL NO. 585 / 2007

Onkar vs. State of Madhya Pradesh

CRIMINAL APPEAL NO. 694 / 2007

Laxman and Kalu vs. State of Madhya Pradesh

Shri Anil Ojha, learned counsel for the appellant - Onkar

Smt. Sharmila Sharma, learned counsel for the appellants - Laxman & Kalu

Smt. Archana Kher, learned Public Prosecutor for the respondent/State.

JUDGMENT

(Delivered on 28th of February, 2018)

Per: Justice S.K. Awasthi :

Since the present appeals are connected matter and arise out of common judgment dated 24.4.2007 passed by the IV Additional Sessions Judge, Dewas in Sessions Trial No.77/2006, they are being decided by the present common judgment.

2. The appellants have preferred the present appeals against the judgment dated 24.4.2007 passed by the IV Additional Sessions Judge, Dewas in Sessions Trial No.77/2006, whereby they have been convicted for commission of offence punishable under Section 302 read with

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Section 34 of the IPC and sentenced to undergo life imprisonment with fine of Rs.1,000/- each with default stipulation.

3. Brief facts of the case are that, on 26.1.2006, at around 6 p.m., when complainant Champalal was standing at grocery shop of Mukesh, at the same time Babu s/o Rhumal came towards Chainsingpura Mohalla in hurry and informed him that accused Onkar Bhilala, Kalu Bhilala and Laxman Bhilala are beating his brother-in-law Rhumal by stick. On hearing this, he along with his brother Sikdar, Naharsingh, Pratap and other villagers rushed to the field of Babu where they saw that his brother-in-law was lying on the ground. Upon asking, he stated that on festival of Makarsankranti, there was a quarrel took place between Onkar and Madiya Bhilala at village Kadudiya in which he intervened and said to the Onkar that do not beat Madiya on the festival. Due to which, today Onkar called him and said that he wants to talk with him. When he was coming from village kadudhiya, Onkar, Laxman and Kalu Bhilala met him on the mid way and they gave lathi blows on him and dragged him to the field of Babu, where also they caused injuries to him. During this fight, Onkar caught hold of his hand; therefore, he could not escape. Then, Champalal took him to the house of Sikdar by a bullock-cart where after drinking water he succumbed. Thereafter complainant lodged *dehati-nalishi*. On the basis of the *dehati-nalishi*, the Police registered Crime No.15/06 for offence punishable under Section 302 read with 34 of the IPC against the accused / appellants.

4. During the investigation, Sub Inspector of police station Uday Nagar Mr. N.K. Suryavanshi prepared *lash panchnama* (Ex.P/2). The dead body was sent for postmortem examination. Spot map (Ex.P/9)

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was prepared on the instructions of complainant Champalal. The statements of the witnesses were recorded and the accused persons were arrested. Memorandum under Section 27 of the Evidence Act of the accused Kalu and Laxman were recorded and on their information, sticks of teakwood were seized. All the seized articles were sent for Forensic Science Examination. After completion of the investigation, the charge sheet was filed before the Judicial Magistrate First Class, Bagli, who committed the case to the Court of Sessions Dewas and ultimately it was transferred to IV Additional Sessions Judge, Dewas.

5. The accused abjured their guilt. They took a plea that they are innocent and have falsely been implicated in the matter. In defense, Bhagwan Singh (D.W.1) was examined. The trial Court after considering the evidence adduced by the prosecution, convicted the appellants and sentenced them as mentioned hereinabove.

6. We have heard the learned counsel for the parties and perused the record.

7. First of all it is to be considered as to whether the death of the deceased was homicidal in nature or not? In this connection, evidence provided by Dr. Manisha Mishra (P.W. 6) is important, who conducted the postmortem of the dead body of the deceased Rhumal and she found the following injuries on his body :-

(i) 8 to 10 contusions of 10" x 2" size cut on left upper back covering almost whole of the back.

(ii) 10 to 12 contusions of 10" x 2" incise wound, covering almost whole of the back and lateral side of thigh.

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On internal examination of the dead body, she found that middle lobe of the lungs had a big rupture and there were air bubbles in it. Left lateral side of the heart had two big holes of 2" x 1" size rupture.

8. From the postmortem of deceased, It is apparent that such injuries cannot be caused by the deceased himself nor they could be sustained by him in any accident and, in these circumstances, there is no reason to discard the evidence given by Dr. Manisha Mishra, and therefore, it is properly observed by the trial Court that the death of the deceased Rhumal was homicidal in nature and caused by hard and blunt object.

9. In the present case, eye witness Babulal (P.W.7) was examined. According to him, 6-7 months ago, at around 5.30 p.m., when he was at his house situated at Chainsingpura, village Paras, at that time, the accused persons were beating Rhumal by Teakwook sticks, they dragged him in front of his house when he said them that you take him from here then they threatened him that they would deal with you as well, then he came to the village and informed the incident to Champalal Prajapat, Naharsingh and Nahar singh who were sitting in the grocery shop . Thereafter they came with him and took injured Rhumal on a bullock-cart to the house of Sikdar.

10. Champalal (P.W.1), Govind (P.W.5) and Naharsingh (P.W.8) deposed that 6-7 months ago, at round 5-6 p.m.,when they were standing at the shop of Mukesh, at the same time, Babu came there and informed that Onkar, Kalu and Laxman were beating Rhumal in front of his house situated in his field, then they rushed to the spot where Rhumal was lying on the ground. On asking, he told that Onkar caught hold of him,then Kalu and Laxman inflicted injuries to him by

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sticks. After that, they took him to the house of Sikdar, where after drinking water he succumbed.

11. Sikdar (P.W.2) and Jamsingh (P.W.3) also supported the statements of the above witnesses. Champalal (P.W.1) deposed that he informed the incident to the police and lodged the *dehati nalishi* (Ex.P/1).

12. From the statement of Champalal (P.W.1), Sikdar (P.W.2), Jamsingh (P.W.3), Govind (P.W.5) and Naharsingh (P.W. 8), it is evident that they were not present at the time of the incident; therefore, they have not seen the accused persons to cause any injury to the deceased. They reached the place of occurrence after hearing about the incident from Babulal. However, they claimed that the deceased told them that the accused persons had beaten him, due to which he received injuries.

13. Babulal (P.W.7) is the sole eye-witness of the incident and he narrated the incident in his examination-in-Chief that as to how the incident has happened. Various suggestions were given to this witness, but there are no contradictions in material particulars in the statement of the witness. Nothing has come on his cross-examination to controvert his testimony. Therefore, his unchallenged testimony cannot be disbelieved, which appears to be truthful.

14. The First Information Report (Ex.P/16) is promptly lodged by Champalal (P.W.1), in which, he narrated the entire incident, which also finds placed in the examination-in-chief of the eye-witness Babulal (P.W.8) and corroborated by the statement of Dr. Manisha Mishra (P.W.6) and autopsy report (Ex.P/11). Therefore, this Court has no hesitation to

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hold that the statements of the prosecution witnesses established beyond reasonable doubt that the applicants caused injuries to the deceased.

15. Now advertig to the question that what were the surrounding circumstances leading to the infliction of nature of injuries. In this context, in the statement of Champalal (P.W.1), Sikdar (P.W.2), Jamsingh (P.W.3), Govind (P.W.5) and Naharsingh (P.W. 8) there is a specific mention of incident, which had taken place between Onkar and Madiya Bhilala at village Kadudiya, in which the deceased intervened and asked Onkar that why he is beating Madiya on the festival of *Makarsankranti*, which led the appellants to be retaliated by inflicting the injuries to the deceased after ten days of the aforesaid incident. This discussion is relevant to ascertain that the conduct of the appellants are liable to be punished under Section 302 or 304 (Part-I) or Section 304 (Part-II) of the IPC.

16. Learned counsel for the appellants has submitted that the trial Court was not accurate in recording to the conviction under Section 302 of IPC, rather the conviction deserves to be converted into an offence punishable under Section 304 (Part-II) of the IPC. In this regard, he submitted that there is no previous enmity between the appellants and the deceased. The incident took place all of a sudden and without premeditation. The appellants were not equipped with any deadly weapon and they have not inflicted any injuries on the vital part of body of the deceased. Only multiple contusions were found on the back and left thigh of the deceased, which shows that the appellants had no intention to cause death. It is further submitted that there is no medical

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opinion available on record to show that the injuries found on the body of the deceased were sufficient in the ordinary course to cause death. Accordingly, learned counsel for the appellants prayed that the conviction should be modified.

17. In the case of ***Surinder Kumar v/s. Union of Territory***, reported as **(1989) 2 SCC 217**, the Apex Court on the same issue held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. The Apex Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300, Hon'ble Supreme Court observed:

"7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly....."

(Emphasis supplied)

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18. In the case of **Ghappo Yadav & Ors. vs. State of M.P.** reported as **(2003) 3 SCC 528**, the Apex Court held that in a heat of passion there must be no time for the passion to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. The following passage from the decision is apposite:

"10. The help of Exception 4 can be invoked if death is caused:

(a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in the Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

"11.....After the injuries were inflicted the injured had fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a

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helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused-appellants had come prepared and armed for attacking the deceased. This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in a cruel or unusual manner. That being so, Exception 4 to Section 300 IPC is clearly applicable.

(emphasis supplied).

19. In the case of ***Sukbhir Singh v. State of Haryana***, reported as **(2002) 3 SCC 327**, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The Apex Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the Apex Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 to Section 300, IPC. In cases where after the injured had fallen down, the appellant-accused did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. Hon'ble the Supreme Court observed:-

"19.....All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC.

After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner."

(Emphasis supplied).

20. In the case of ***Mahesh v/s. State of M.P.*** Reported as **(1996) 10 SCC 668**, where the appellant had assaulted the deceased in a sudden

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fight and after giving him one blow he had not caused any further injury to the deceased which fact situation was held by Apex Court to be sufficient to bring the case under Exception 4 to Section 300 of IPC. Apex Court held:-

"4.Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW 2 or PW 6 who were also present along with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW 1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception 4 to Section 300 IPC is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304 (Part I) IPC....."

(Emphasis supplied).

21. In the present case there is no doubt that the statement of Dr. Manisha Mishra (P.W.6) reflects only injuries on the back and left thigh of the deceased, which are non-vital parts of the body. The circumstances, which led to infliction of injuries upon the deceased clearly indicates that the appellants had no premeditation to cause death of the deceased and only due to the sudden fight that the injuries were inflicted. These circumstances are enough to convert the offence from Section 302 of the IPC to Section 304 (Part -I) of the IPC. Thus, the trial Court has committed error in recording the conviction for offence under Section 302 of the IPC, which falls under Section 304 (Part -I) of the IPC.

22. In light of the aforesaid, we allow the appeals in part, but only to the extent that instead of Section 302 of IPC, the appellants shall stand convicted for the offence of culpable homicide not amounting to murder

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punishable under Section 304 (Part-I) of IPC and accordingly, sentenced them to undergo rigorous imprisonment for a period of more than 12 years. Appellants Onkar and Laxman are in jail since 29.1.2006 and till date they have completed more than 12 years and, therefore, their conviction is maintained and their jail sentence is reduced to the period already undergone. Appellant Kalu is absconding; he shall also suffer the jail sentence for the period of 12 years. The fine imposed upon the appellants and the default sentence awarded to them shall remain intact. The appellants Onkar and Laxman are in jail and, therefore, the Registry is directed to issue super-session warrant so that they may be released without any delay. Trial court is directed to issue a non-bailable warrant against appellant Kalu so that he could be sent to the jail for suffer his remaining jail sentence.

23. A copy of this judgment be placed on the record of Criminal Appeal **No. 694/2007** for ready reference.

24. A copy of this judgment be also sent to the concerned trial Court for information and compliance.

Certified copy, as per rules.

(S. C. SHARMA)
JUDGE

(S. K. AWASTHI)
JUDGE

Moni
Raju


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