A

JAGDISH

v.

STATE OF RAJASTHAN

February 28, 1979

B [S. MURTAZA FAZAL ALI AND O. CHINNAPPA REDDY, JJ.]

Penal Code—Sec. 302—*Mutual assault—Injuries on the body of deceased very severe—Injuries on the person of accused superficial—Conditions requisite to prove mutual assault—What are.*

C The appellant and four other accused who were charged with an offence under s. 302 IPC were acquitted of the charge but the appellant alone was convicted and sentenced under s. 304 read with s. 34 IPC. Rejecting the view of the trial court that since some of the accused had injuries on their bodies it was a case of mutual assault and that there was no intention to cause murder, the High Court convicted the appellant under s. 302 IPC and sentenced him to life imprisonment.

D

Dismissing the appeal,

HELD : The High Court was right in pointing out that the findings of the Sessions Judge were not based on a proper appreciation of evidence. The injuries on the persons of the accused were extremely superficial and could be easily explained. The accused had not established that the injuries on their bodies were E sustained in the course of altercation which resulted in the death of the deceased, so as to lay the burden on the prosecution to explain the presence of the injuries. Before this obligation is placed on the prosecution two conditions must be satisfied viz., (i) that the injuries on the person of the accused were very serious and severe and not superficial and (ii) that the injuries had been caused at the time of the occurrence in question. [429 A-H]

F

In the present case neither condition is satisfied. The injuries were extremely superficial and there was nothing to show that they were caused during altercation which resulted in the death of the deceasd. [430 A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 150 G of 1972.

(From the Judgment and Order dated 3-3-1972 of the Rajasthan High Court in D. B. Criminal Appeal No. 354/69 and S. B. Criminal Appeal No. 121/69).

L. N. Gupta, (A.C.) for the Appellant.

H *Sobhagmal Jain* for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J.—In this appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction), Act, the appellant was convicted along with other accused by the Sessions Judge under s. 304 Pt. 1 read with s. 34 of the I.P.C. and sentenced to five years R.I. The State filed an appeal to the High Court against the acquittal of the appellant under s. 302 I.P.C. and other accused. The High Court while allowing the appeal of other accused also allowed the appeal of the State against the appellant Jagdish and set aside his acquittal under s. 302 I.P.C. and convicted him under s. 302 I.P.C. and sentenced him to life imprisonment. We have gone through the judgment of the High Court which has given cogent reasons for holding that the Trial Court Judge was absolutely wrong in acquitting the appellant of the charge under s. 302 I.P.C. The injuries found on the deceased were very severe which resulted in fracture of the scalp on the left perietal bone and also a fracture of the temporal bone. These were the two injuries which according to the prosecution were the cause of the death of the deceased Jairam. The Sessions Judge was of the opinion that as some of the accused persons had also injuries it was a case of mutual assault and therefore, there was no intention to cause murder. The High Court has rightly pointed out that the findings of the Sessions Judge are not based on a proper appreciation of the evidence. It is true that the accused had some injuries on their persons. The injuries on their persons were extremely superficial and could be easily explained. As regards Nanda, it is true that he had five injuries out of which two are contused wounds. It was the evidence of D.W. 1 that he examined the injuries on 25-6-67 i.e. two to four days after the occurence. It has not been proved that all the injuries sustained by him were sustained in the course of altercation which resulted in the death of the deceased, so as to lay the burden on the prosecution to explain the presence of these injuries. Even the contusions are not of serious nature. It is true that where serious injuries are found on the person of the accused, as a principle of appreciation of evidence, it becomes obligatory on the prosecution to explain the injuries, so as to satisfy the Court as to the circumstances under which the occurrence originated. But before this obligation is placed on the prosecution, two conditions must be satisfied ;

1. that the injuries on the person of the accused must be very serious and severe and not superficial;

2. that it must be shown that these injuries must have been caused at the time of the occurrence in question.

A In the instant case, none of these conditions are satisfied. The injuries are extremely superficial and there is nothing to show that they were caused during the altercation which resulted in the death of the deceased. Having regard, therefore, to the circumstances of the case, we find ourselves in complete agreement with the view taken by the High Court in convicting the appellant under s. 302 I.P.C. We find B no force in this appeal. It is dismissed.

N. K. A. *Appeal dismissed.*