

ADDHA
v.
STATE OF MADHYA PRADESH

SEPTEMBER 28, 2001

[UMESH C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

Penal Code 1860 : Sections 302 and 304 Part II.

Murder—Sudden quarrel between two groups of peoples—Accused gave lathi blows to deceased—Trial court convicted accused under S.302—High Court affirmed conviction and sentence—Correctness of—Held, accused had no deliberate intention to cause the death of deceased—Hence, offence under S.302 not made out—Conviction altered to one under S.304 Part-II.

The appellant-accused was convicted by the trial Court under Section 302 of the Penal Code, 1860. The conviction and sentence were confirmed by the High Court. Hence this appeal.

According to the prosecution the deceased and some others came to a place near the house of the accused and there ensued a quarrel. It is the further case of the prosecution that the accused gave 2-3 blows on the head of the deceased with a lathi. The deceased fell on the ground and later died in the hospital.

Allowing the appeal, the Court

HELD : 1. In view of the failure of PW-1 to mention the details of attack by the appellant as against the deceased and in view of the fact that the entire incident happened pursuant to a quarrel between two groups of people and that the appellant had no deliberate intention to cause death of the deceased, an offence under Section 302 of the Penal Code, 1860 had not been made out against the appellant. The incident was the result of a sudden quarrel between two groups and in that melee the appellant must have used a lathi, which caused injury to the deceased, which ultimately resulted in his death. In that background it is difficult to hold that the appellant committed the offence of murder. The offence would only come under Section 304 Part II of the Penal Code, 1860. [406-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 532

A of 2000.

From the Judgment and Order dated 28.1.99 of the Madhya Pradesh High Court in Crl. A. No. 473 of 1989.

Y.P. Singh, C.Siddharta and Mukesh Kumar Sharma for the Appellant.

B

Alok Bachaval, Ms. Vibha Makhija Datta, Ms. Bhart Tyagi for Uma Nath Singh for the Respondent.

The Judgment of the Court was delivered by

C

K.G. BALAKRISHNAN, J. Appellant Addha, son of Rooplal, was tried by the First Additional Court of Sessions, Mandla [Madhya Pradesh], along with four others, for the offence punishable under Section 302 read with Section 149 IPC. The Sessions Court held that there was no unlawful assembly as alleged by the prosecution and the appellant was found guilty of the offence punishable under Section 302 for having caused the death of one Sher Singh. Two other accused, namely, Rooplal and Buddhulal were found guilty of the offence punishable under Section 324 IPC. The conviction and sentence of the accused were confirmed by the High Court.

D

E

The incident in question took place on 19.7.1986 at about 9.00 PM. PW-1 Jugal Kishore, along with PW-3 Mishridas, was returning from the nearby flourmill and they saw accused Buddhulal in a wordy altercation with PW-4, Pancham. Jugal Kishore intervened and tried to dissuade them from quarreling. At that time, Buddhulal's father Rooplal came there and took his son to his house. But on reaching their house, Buddhulal and Rooplal started hurling abusive words at PW-1, Jugal Kishore. On hearing this, deceased Sher Singh, PW-2 Gulab and some others persons came to the place of occurrence and there ensued a quarrel. It is alleged that while Buddhulal was armed with an axe, Rooplal was armed with a Bichua and Addha was having a Lathi. It is the prosecution's case that Rooplal inflicted an injury on PW-1 Jugal Kishore and Buddhulal dealt a blow on the arm of Gulab. It is also the prosecution's case that Addha dealt 2-3 blows on the head and chest of the deceased Sher Singh. Deceased Sher Singh fell on the ground. He was taken to the nearby hospital where he was declared dead.

F

G

H

On the next day by about 9.20 AM, PW-1 Jugal Kishore gave the F.I. statement before the police and PW-6, Sub-Inspector of Nainpur Police Station, took over the investigation. He held inquest on the body of the deceased and

the dead body was then sent for post mortem examination. PW-8 conducted the post-mortem and it was revealed that 7th and 8th ribs of left side of the chest of the deceased were fractured. PW-8 deposed that the injuries on the head and the ribs were sufficient in the ordinary course of nature to cause death of the victim.

We heard the learned counsel on both sides. The counsel for the appellant contended that the prosecution case is not true and correct and that PW-1 Jugal Kishore, deceased Sher Singh, PW-2 Gulab and others came and attacked the accused. It was also contended that the accused Rooplal and others had sustained injuries in the course of the incident. It was argued that the prosecution failed to prove that appellant Addha caused the vital injuries to the deceased Sher Singh. We find some force in the above contention.

According to PW-1 Jugal Kishore, when he was coming along with PW-3 Mishridas, he saw Buddhulal and PW-4 Pancham quarrelling. He intervened in the quarrel and tried to send them away. By the time the first accused Rooplal also reached there and took Buddhulal home. PW-1 also alleges that he was severely abused by the first accused Rooplal. The incident is alleged to have taken place near the house of Rooplal. Even according to the F.I. statement given by PW-1 before the police, after the first incident of quarrel between Buddhulal and Pancham, PW-1 Jugal Kishore and others proceeded to the house of Rooplal. When they reached the house of Rooplal, the accused persons started attacking PW-1 Jugal Kishore and others. PW-2 Gulab has deposed that his house is located about half a mile from the place of incident. It is certain that he along with PW-1 and others must have come to the house of the accused with an intention to pick up a quarrel with them and there ensued the attack and the counter-attack and in that incident, PW-1, PW-2 and the deceased Sher Singh sustained injuries. It is also pertinent to note that in the F.I. statement, PW-1 has not stated that the appellant caused any injuries to the deceased Sher Singh on his head. In the F.I. statement, it is only stated that appellant Addha had given a Lathi blow on the ribs of Sher Singh and as a result thereof Sher Singh sat down and later died. The other accused were also armed with Lathis. There is also evidence to the effect that there was complete darkness and it was not possible to see who had caused the injuries. PW-2 admitted in his cross-examination that when he proceeded from his house to the place of incident, it was dark. PW-4 also admitted in the cross-examination that there was complete darkness and he could identify only some of them.

- A In view of the failure of PW-1 to mention the details of attack by the appellant as against deceased Sher Singh and in view of the fact that the entire incident happened pursuant to a quarrel between two groups of people and that the appellant had no deliberate intention to cause death of Sher Singh, we do not think that an offence under Section 302 IPC had been made out against the appellant. The incident was the result of a sudden quarrel between the two groups and in that melee the appellant must have used a Lathi which caused injury to Sher Singh which ultimately resulted in his death. In that background it is difficult to hold that the appellant committed the offence of murder. The offence would only come under Section 304 Part II of the Indian Penal Code. Therefore, we acquit the appellant of the offence under Section 302 IPC and find him guilty of offence punishable under Section 304 Part-II of IPC.
- B
- C

- We are told that the appellant has been undergoing imprisonment ever since the date of Sessions Court's judgment, which was pronounced on 28.9.1988. Therefore, we hold that the sentence already undergone by the appellant is sufficient to meet the ends of justice. In the circumstances of the case, appellant Addha, son of Rooplal is directed to be released forthwith, if not required in any other case. The appeal would stand allowed accordingly.
- D

V.S.S.

Appeal allowed.