

ONKAR LAL
v.
STATE OF MADHYA PRADESH
(Criminal Appeal No. 323 of 2007)

MARCH 31, 2009

[S.B. SINHA, DR. MUKUNDAKAM SHARMA AND H.L.
DATTU, JJ.]

Penal Code, 1860 – s. 302 – Murder – Prosecution – Eye-witnesses to the incident – Their names mentioned in FIR – FIR lodged within reasonable time – Recovery of weapon of offence at the instance of the accused – Conviction by courts below – On appeal, held: Prosecution case proved – Accused liable to be convicted – The witnesses were independent – The case cannot come within purview of s. 304 IPC in view of the nature of injuries caused.

Appellant-accused was prosecuted u/s. 302 IPC for having caused death of one person. Weapon of offence was seized at the instance of the accused. During trial 4 out of 7 eye-witnesses turned hostile. Trial court convicted the accused, placing reliance on eye-witnesses and other PWs. High Court confirmed the conviction.

In appeal to this court appellant-accused contended that prosecution has failed to prove its case in view of the facts that there was no motive; that two of the witnesses could not be termed as eye-witnesses and their names were also not mentioned in FIR; that there was no blood-stain on the seized weapon. Alternatively it was contended that only an offence u/s.304 (Part II) IPC was made out.

Dismissing the appeal, the Court

A **HELD: 1.1** The prosecution has failed to prove any
motive on the part of the appellant to commit the offence.
However, the prosecution case is found to have been
proved by several eye-witnesses who admittedly have no
animosity towards the appellant. Indisputably, the
B appellant was closely related to the deceased being his
uncle. They were residents of the same village. Both were
known to the villagers for a long time. It was a moonlit
night. Cards were being played which could not have
been done unless there was sufficient light. The
C deceased had suffered as many as six injuries. On being
arrested the appellant made a confession leading to
recovery of a sword. Presence of the lamp at the place
of occurrence has been disclosed by several
prosecution witnesses. Although there appears to be
some contradictions as to who had brought it or who had
D lit it, the same is not of much significance. [Paras 12, 13,
14 and 15] [200-F-H; 201-A, E, F]

1.2. The First Information Report was lodged within
a reasonable time. The very fact that the First Information
E Report was lodged almost immediately after the
occurrence had taken place by a person who had no
enmity/animosity with the appellant clearly shows that he
had not been falsely implicated. [Paras 16 and 17] [202-
B-C]

F 1.3. Having regard to the materials brought on record
by the prosecution, there is no doubt that the statements
made by the first informant (PW-4) has been corroborated
in material particulars by other witnesses. Some of the
witnesses who have been declared hostile have also
G supported the prosecution case in part. [Para 23] [203-
H; 204-A-B]

1.4. Some of the prosecution witnesses were related
to the deceased. Their presence has been established
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beyond any shadow of doubt. No suggestion had been put to any one of the said witnesses that they had any enmity against the accused. [Para 23] [204-C]

2. In a case of this nature where the appellant had come with a sword and hit the deceased more than once, leading to his death, the same, would not come within the purview of the second part of Section 304 IPC. The intention on the part of the accused to cause death or cause such injury which would likely to cause death is apparent. The deceased was hit with the sword on a vital part of the body as he was assaulted repeatedly. [Para 23] [204-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 323 of 2007.

From the Judgment & Order dated 26.10.2006 of the High Court of Madhya Pradesh at Indore in Criminal Appeal No. 12 of 2002.

Kunal Verma and Rajul Shrivastav (for S.K. Verma) for the Appellant.

R.P. Gupta, Upasana Nath, Sunny Chaudhary and Aditya Singh (for C.D. Singh) for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. This appeal by special leave has been preferred by the appellant questioning the correctness of a Judgment and Order dated 26th October, 2006 passed by a Division Bench of the High Court of Madhya Pradesh, Indore Bench, Indore in Criminal Appeal No. 12 of 2002 affirming a judgment of conviction and sentence dated 27th November, 2001 passed by the Additional Sessions Judge, Jhabua, in Sessions Trial Case No. 131 of 2001 convicting him for commission of an offence under Section 302 of the Indian Penal

A Code and sentencing him to undergo rigorous imprisonment for life as also pay fine of Rs.10,000/- and in default to undergo rigorous imprisonment for one year.

B 2. The deceased Ramchandra Patidar is related to the appellant. The deceased was playing cards on the platform of the shop belonging to Mahesh Kumar Makwana at about 9:15 p.m. on 10th March, 2001 with him and others. Electricity in the locality had gone off. A lamp was lit.

C Appellant allegedly arrived at the said Village Raipuriya, Tehsil Petlavad in the District of Jhabua with a sword in his hand. He dealt blows on the deceased. Ramchandra sustained serious injuries on his face, head and other parts of the body. He fell down on the ground whereafter appellant ran away. He was later on shifted to Primary Health Center, Raipuriya and D from there to a hospital at Petlawad. He was eventually shifted and treated in Indore M.Y. Hospital where he breathed his last. The said village lies within the jurisdiction of Sanyogitaganj, Indore Police Station.

E 3. A First Information Report was lodged by Mahesh Kumar Makwana at about 10 p.m. on the same day.

4. The homicidal nature of death of Ramchandra is not in dispute.

F 5. From the statement of Dr. N.M. Unda (PW-20), it appears that the deceased suffered two contusions and two incised injuries as well as fracture of right wrist. The incised injury found on occipital region proved to be fatal.

G In the first information report a vivid description of the occurrence has been given. The names of Durgesh alias Bablu (PW-10), Babulal (PW-11), Santhosh Panwar (PW-1) and Ashok Kumar (PW-16) were mentioned who had been playing cards along with the informant and the deceased. Names of Dayaram (PW-2), Sunderlal (PW-3) and Vasudev (PW-8) also

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found place in the said report as the persons who had been watching the game. Presence of a lamp at the place of occurrence was also mentioned. It was furthermore stated that Ramchandra was taken on a handcart to a hospital at Raipuria by Amrit Lal and Shanti Lal etc. and later on taken to Petlavad hospital by a jeep.

6. The prosecution, in support of its case, examined a large number of witnesses including Durgesh alias Bablu (PW-10), Babulal (PW-11), Mahesh Kumar (PW-4), Santosh Panwar (PW-1), Vasudev (PW-8), Dayaram (PW-2) and Sunderlal (PW-3).

7. Both the courts below relied on the evidence of the eye witnesses. Dayaram (PW-2), Sundarlal (PW-3), Vasudev (PW-8) and Babulal (PW-11) were, however, declared hostile.

8. The learned Trial Judge relying on the evidence of Mahesh Kumar (PW-4), first informant, Gendalal (PW-6), Amritlal (PW-7), Durgesh (PW-10) and Ashok Kumar (PW-16) found the appellant guilty of the commission of said offence.

9. Before us, Mr. Kunal Verma, learned counsel appearing on behalf of the appellant, would contend :

(i) Amritlal (PW-7) and Gendalal (PW-6) having not been named in the First Information Report, their testimonies should not have been relied upon by the courts below.

(ii) As there was no electricity at the relevant time, it was obligatory on the part of the investigating officer to seize the lamp and the same having not been done, the Prosecution case has been rendered doubtful insofar as identification of the appellant is concerned.

(iii) Amritlal (PW-7) and Gendalal (PW-6) cannot be said to be eye-witnesses to the occurrence as they

A were standing at some distance.

(iv) Gendalal (PW-6) in his evidence having admitted that he was not near the spot, Amrit Lal with whom he was talking could not also be an eye-witness to the occurrence.

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(v) Moreover, the prosecution, having, failed to establish any motive on the part the appellant, the impugned judgment cannot be sustained.

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(vi) The weapon of offence having been seized from the house of the appellant which contained no blood stains although the same according to one of the prosecution witnesses was left by the appellant at the spot, the entire prosecution case has been rendered doubtful.

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(vii) In any event, keeping in view the peculiar facts and circumstances of this case only an offence under Section 304 Part II of the Indian Penal Code is made out and not a case under Section 302 thereof.

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11. Mr. R.P. Gupta, learned senior counsel appearing on behalf of the respondent, on the other hand, supported the impugned judgment.

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12. At the outset we must place on record that the prosecution has failed to prove any motive on the part of the appellant to commit the said offence.

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It must however be borne in mind that the prosecution case is found to have been proved by several eye-witnesses who admittedly have no animosity towards the appellant. Indisputably, the appellant was closely related to the deceased being his uncle (mausa). They were residents of the same village. Both were known to the villagers for a long time. It was

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a moonlit night. Cards were being played which could not have

been done unless there was sufficient light.

13. The deceased had suffered as many as six injuries. The learned Trial Judge in its judgment noticed:

"The abovesaid Doctor did not reveal such opinion in blind but he found the first injury a contusion abrasion on the right hand shoulder joint in the area of 3 cms x 2 cms and abrasion mark in the area of 2 cms x 1 cms and injury No. 2 towards the right eye, Injury No. 3 lacerated wound on the part of the palm where the fingers connect with the palm measuring 2.1 cms. x 0.7 cms and 1 cm x 0.5 cm, and Injury No. 4 fracture in the right ankle and fifth injury lacerated wound on occipital part and below the occipital part measuring 7 cms x 1.5 cms. On the full scale surface deep, corners of which were regular, hair of the head been cleaned. Besides the above-said injuries, other injuries had also been found during the postmortem of the dead body of the deceased Ram chandra."

14. On being arrested the appellant made a confession leading to recovery of a sword. The High Court in view of the fact that no blood stain was found on the sword and in the manner in which the same was recovered did not place any reliance thereupon.

15. Presence of the lamp at the place of occurrence has been disclosed by several prosecution witnesses. Although there appears to be some contradictions as to who had brought it or who had lit it, the same, in our opinion, is not of much significance.

16. Although the police station and the Primary Health Center are situated in the same village but the fact remains that after the assault a handcart had to be arranged to take the deceased to the Primary Health Centre wherein he must have been given some first aid and thereafter upon arranging a jeep he could be sent to another hospital, there cannot be any doubt

A whatsoever that some time must have been consumed in the process.

PW-4 Mahesh Kumar lodged the First Information Report. We have noticed hereinbefore that the occurrence took place at about 9:15 p.m. and the First Information Report was lodged at about 10.00 pm, i.e., within a reasonable time.

17. The very fact that the First Information Report was lodged almost immediately after the occurrence had taken place by a person who had no enmity/animosity with the appellant clearly shows that he had not been falsely implicated.

Gendalal and Amritlal who although were standing at some distance must have seen at least a part of the occurrence. They might not have been named in the First Information Report but indisputably they were examined by the investigating officer on 11-03-2001. According to Gendalal, he was standing at a distance of 20-25 feet from the place of occurrence. He and Amritlal being the residents of same village and furthermore it being a moonlit night, there was no reason as to why they would not be able to identify the assailant.

18. With the aforementioned backdrop, we may notice the deposition of the informant. According to him when the supply of electricity failed, Mahesh Kumar brought the lamp which was lying on the table. He being the owner of the shop, his presence at the place of occurrence cannot be doubted. He evidently was one of those who had been playing cards with the deceased and others. He denied that the incident took place when the supply of electricity failed. He categorically stated that the lamp was brought and lit.

19. PW-6 is Gendalal, who in his deposition categorically stated that he had been standing at a distance of 20-25 feet from the place of occurrence. According to Amritlal, the distance between the shop of Mahesh Makwana and the place where they were standing was only 8-10 ft.; only one house being

in between. He immediately reached the place of occurrence hearing cries. Similar is the statement of Amritlal who examined himself as PW-7. According to this witness, as soon as they heard the noise, he and Gendalal ran towards the spot and found the appellant giving blows. He furthermore stated that night was a moonlit one.

20. Our attention has been drawn to the statement made by him that the lamp was lighted by Mahesh Makwana to contend that according to Mahesh Makwana it was Ramesh Chander who had brought the lamp and lit it. Ramesh Chander might have brought the lamp but the possibility of Mahesh lighting it cannot be ruled out. In any event, the said purported contradiction, in our opinion, is not a significant one.

21. We, furthermore, are of the opinion that the statement of Durgesh alias Bablu (PW-10) who was named as a witness in the First Information Report is reliable. He might not have supported the prosecution story in its entirety but we may notice that he had categorically stated that the appellant had attacked the deceased due to which he suffered injuries. He had also given the size of the lamp as also the diameter of the chimney thereof. He also made a frank statement as regards his feelings after the incident took place.

22. Ashok Kumar examined himself as PW-16.

Mr. Verma would submit that he, at the time of the incident, was said to be in the tailoring shop of his brother Mahesh Kumar Makwana, although in the First Information Report it was stated he had been playing cards. We do not find any inconsistency in the said statement. Mahesh Kumar Makwana was the owner of the shop and the cards were being played on the platform thereof. Thus, both the statements made by the said witnesses in his deposition before the Court as also in the First Information Report corroborate each other.

23. Having regard to the materials brought on record by

- A the prosecution, as noticed hereinbefore, we have no doubt in our mind that the statements made by the first informant Mahesh Kumar Makwna (PW-4) has been corroborated in material particulars by other witnesses. Some of the witnesses who have been declared hostile have also supported the prosecution
- B case in part but for our purpose it is not necessary to consider their evidences.

- C Indisputably, some of the prosecution witnesses were related to the deceased. Their presence has been established beyond any shadow of doubt. No suggestion had been put to anyone of the said witnesses that they had any enmity against the accused.

- D In a case of this nature where the appellant had come with a sword and hit the deceased more than once, leading to his death, the same, in our opinion, would not come within the purview of the second part of Section 304 of the Indian Penal Code. The intention on the part of the accused to cause death or cause such injury which would likely to cause death is apparent. The deceased was hit with the sword on a vital part
- E of the body as he was assaulted repeatedly.

24. For the reasons aforementioned, we find no merit in this appeal. Accordingly, it is dismissed.

K.K.T.

Appeal dismissed.

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