

SUPREME COURT OF INDIA

Chamru Budwa

Vs.

State of M.P.

Crl.A.No.55 of 1953

(Mehr Chand Mahajan, C.J.I., N. H. Bhagwati and T. L. Venkatarama Ayyar, JJ.)

24.05.1954

JUDGEMENT

BHAGWATI, J. :

1. In this appeal with special leave we are only concerned with the question whether the offence committed by the Appellant falls under Section 302 or Section 304 of the Indian Penal Code.

2. The Appellant along with his father Budhwa and his brother Damru was charged with having committed the murder of one Tiharu who was a cousin of Budhwa. The prosecution case was that about the time of night meal on the 26th May 1951 there was an exchange of abuse between the deceased and the three accused.

The three accused went over to the courtyard of the deceased with lathis in their hands. Damru threw a lathi towards the deceased and the deceased shouted out that he was struck and advanced a step or two towards the accused. The Appellant dealt a blow on the head of the deceased with the lathi in his hand. As a result of the blow the deceased fell down and bled from the injury on the head. After he fell down Budhwa dealt a blow to the deceased and all the three accused ran into their house.

3. The injury inflicted by the Appellant on the head of the deceased proved fatal and both the Courts below came to the conclusion that the Appellant was guilty of the offence under Section 302 of the Indian Penal Code. The opinion of the Doctor was that the injury inflicted by the Appellant on the head of the deceased was sufficient in the ordinary course of nature to cause death and that to cause such an injury a heavy blunt weapon must have been used with moderate force or a light weapon of that type must have been used with great force.

It was therefore held that the Appellant must have intended the actual consequences of the blow given by him on the head of the deceased and that fact together with the knowledge that the bones of an old man are brittle and are likely to break was sufficient to establish the offence under Section 302 of the Indian Penal Code against the Appellant.

4. It appears that the Appellant did not plead any execution mentioned in Section 300 of the Indian Penal Code. The circumstances however as found by the courts below were that there was a severe exchange of abuses between the parties preceding the incident, that during the abuse the tempo rose and both the parties came out of their respective houses in anger and that in the course of the quarrel

the Appellant dealt the fatal blow on the head of the deceased with his lathi. Even though the circumstances were such as not to bring the case within Exception 1 to Section 300 of the Indian Penal Code it appears that the crime was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the appellant's having taken undue advantage or acted in a cruel or unusual manner thus bringing the case within Exception 4 thereto with the result that the offence committed was culpable homicide not amounting to murder. The Appellant therefore could not be convicted of having committed an offence under Section 302 of the Indian Penal Code.

5. It now remains to consider whether the offence which he committed falls within the first part or the second part of Section 304 of the Indian Penal Code. When the fatal injury was inflicted by the Appellant on the head of the deceased by only one blow given in the manner alleged by the prosecution it could as well be that the act by which death was caused was not done with the intention of causing death or of causing such bodily injury as is likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death within the meaning of Part II of Section 304 of the Indian Penal Code.

6. We accordingly allow the appeal to this extent that the conviction of the Appellant under Section 302 of the Indian Penal Code and the sentence of transportation for life awarded to him will be set aside, but the Appellant will be convicted of having committed the offence under Section 304 Part II of the Indian Penal Code and will be sentenced to seven years' rigorous imprisonment.

Order accordingly.

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