

Jagpati

Vs

State of M. P.

Ram Krishna

Vs

State of M. P.

Criminal Appeal Nos. 795 of 1980 and 49 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

11.02.1992

ORDER

1. Delay condoned. These two appeals arise out of the judgment of the Madhya Pradesh High Court. The appellants in both these appeals were convicted by the Sessions Court under Section 302 IPC read with Section 34 IPC and their appeals were dismissed by the High Court. The prosecution case is as follows. Both the accused are brothers and are labourers. The deceased lived in the neighbourhood. PW 1 is his widow, PW 3 is his daughter and PW 17 is his son. On September 29, 1977 at about 6-7 p.m. a quarrel took place between the son of PW 1 and the deceased and the sons of appellant Jagpati over drawing water. Some people present there intervened and thereafter the appellant, Jagpati and his brother, Ram Krishna, the other appellant came back armed with balli, a ringed stick and danda, an ordinary stick and it is alleged that they assaulted the deceased, Balkrishna. He received two injuries on the head and some bruises on the other parts of the body. PW 1, wife, lodged a report at Chashai Outpost. The case was registered under Section 307 IPC. The injured was taken to the hospital. He died on the next day. An inquest was held and the dead body was sent for post-mortem. Dr. Mishra, PW 16 conducted the post-mortem. The accused were arrested and after completion of the investigation a challan was filed. The prosecution examined PWs 1, 2, 3, 9 and 17 as eyewitnesses. Out of them PWs 2 and 9, the independent witnesses, turned hostile. The remaining three witnesses, namely, wife, daughter and son of the deceased deposed that there was a quarrel in the evening between the appellant Jagpati and the deceased and some people present there intervened. Thereafter, Jagpati went back and returned along with his brother armed with balli and danda, respectively. Thereafter, they dealt the blows on the head. The main submission before the courts below was that the remaining witnesses are all interested and their evidence could not be relied upon. The same submission is put forward before us also. We have gone through the record and we see no reason to disbelieve the evidence of PWs 1, 3, and 17.

2. Before the courts below it was also submitted that even if the prosecution case is to be accepted, even then an offence under Section 302 IPC read with Section 34 IPC is not made out. Coming to the nature of the offence, we find it difficult to hold that an offence under Section 302 IPC read with Section 34 is made out. There was no previous enmity. There was a scuffle and a sudden quarrel that preceded the occurrence. No doubt the witnesses say that 15-20 minutes later the accused Jagpati accompanied by his brother, Ram Krishna came to the scene of occurrence. It can be seen

that because of the trivial incident the subsequent occurrence appears to have taken place.

3. Now coming to the occurrence as such, the two weapons are blunt weapons - one is a ringed stick and the other is an ordinary stick. The first doctor, PW 5 who examined the deceased found an open injury 3 inches skin deep in the centre of the head and another swelling of the 3 inches width on the forehead. The other injuries are all bruises on the chest and the arm. It is the injury on the head that resulted in the fracture of the skull causing the death. No doubt the doctor had stated that the injury was sufficient in the ordinary course of nature to cause death. He opined that the external injuries No. 2 and 3 could have resulted in the fracture. One is attributed to Jagpati and another is attributed to Ram Krishna. From the facts stated above it is clear that Ram Krishna had absolutely no immediate motive and even the appellant, Jagpati also because of the trivial quarrel that took place went and beat the deceased. under these circumstances, we find it difficult to hold that these two accused intended to cause that particular injury which was sufficient in the ordinary course of nature to cause death. It can be seen that each one of the accused is attributed one blow and the injury that is said to have been caused by Ram Krishna is only a swelling. The other fact is that the deceased died on the next day.

4. In a case of this nature no doubt clause thirdly can be attracted in a technical manner, but what the courts have to see is whether there was an intention to cause that particular injury which was sufficient in the ordinary course of nature to cause death. The courts have to take into consideration the nature of the injuries caused and the attendant circumstances.

5. Having given our earnest consideration, we think that it is not a case where Section 302 IPC is attracted. However, in causing those two injuries, one swelling and one skin-deep injury the accused must be attributed the knowledge that they were likely to cause death. In such an event, the offence committed by them would be one punishable under Section 304 Part II with Section 34 IPC.

6. Accordingly, we set aside the convictions and the sentence of Jagpati (appellant in CrI.A. No. 795 of 1980) and of Ram Krishna (appellant in CrI.A. No. 49 of 1981) under Section 302 read with Section 34 IPC and the sentence of imprisonment for life. Instead we convict them under Section 304, Part II, IPC read with Section 34 IPC and sentence each of them to undergo seven years' rigorous imprisonment.

7. The appeals are partly allowed.

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