

Dayal

Vs

State of M.P.

Criminal Appeal Nos. 184-185 of 1981

(S. R. Pandian, P.B. Sawant JJ)

24.04.1992

JUDGMENT

1. The appellant-Dayal has preferred these criminal appeals challenging the correctness of the common judgment rendered by the High Court of Madhya Pradesh, at Jabalpur in Criminal Appeal Nos. 1044/77 and 272/78 dismissing the earlier one and allowing the latter appeal; both arising out of the same incident. The facts of the case briefly stated are as follows :

The appellant, his brother Sonelal and his uncle's son, Dhooman Singh took their trial on an indictment that on 1-3-77 at 7-00 p.m. they all in furtherance of their common intentions caused the death of the deceased Bhikam by attacking him with lethal weapons by the appellant. According to the prosecution, one Bhura, and Sonelal and by kicking and fisting by Dhooman Singh the brother of the Appellant-Dayal came to the house of PW 6 in a drunken mood. PW 6 reported this matter to Emanlal, father of the accused Dhooman. Thereafter, Bhikam was brought to the house of Emanlal. Within few hours, Bhura died. PW 6 on hearing that Bhura had died came to PW 6's house. All the three accused persons inclusive of the appellant and some others who had gathered suspected that PW 6 had administered liquor to Bhura. They questioned PW 6 who replied that he and Bhura took liquor and that it was the deceased Bhikam Singh who gave money to him for purchasing the liquor. Then the appellant and others asked PW 6 to bring Bhikam. Thereupon, Bhikam was brought by PW 6 to the house of Emanlal. When Dayal questioned Bhikam why he administered liquor to Bhura, Bhikam denied and asked the appellant and others as to why they assaulted PW 6. The case of the prosecution is that the appellant stabbed the deceased Bhikam on being provoked on such challenge made by Bhikam.

2-3. The defence case is that when the appellant took strong objection to the conduct of Bhikam for supplying liquor to his brother Bhura, the deceased threw a challenge saying that the appellant could do whatever he could do which resulted in exchange of gross insult by words. It was only under such piquant and provocative situation, the appellant (who had already become imbalanced with a broken heart on seeing the dead body of his brother, Bhura who suddenly passed away due to the consumption of liquor, administered by Bhikam) on being deprived of self-control by grave and sudden provocation, took a knife which was lying nearby and stabbed Bhikam. According to the prosecution, the other two acquitted accused also attacked the deceased.

4. After completing the investigation, the Investigating Officer filed the charge-sheet against the appellant and others. The trial Court convicted the appellant alone under S.304, Part I, IPC and sentenced him to undergo ten years' rigorous imprisonment but acquitted the other two accused.

5. Feeling aggrieved by the judgment of the trial Court, the appellant preferred his Criminal Appeal No. 1044/77. The State directed Criminal Appeal No. 272/78 challenging the acquittal of the appellant and the two other accused of the offence under S. 302, IPC.

6. It is seen from the judgment of the High Court that the wife of the deceased also filed a criminal revision as against the appellant challenging his acquittal under S. 302, IPC. The High Court by a common judgment allowed the State appeal and dismissed the appeal preferred by the appellant and the criminal revision filed by the wife of the deceased. Resultantly, the conviction was altered into one under S.302, IPC and the sentence was enhanced to life imprisonment. Now the appellant has preferred this criminal appeal challenging the judgment of the High Court.

7. We have carefully gone through the impugned judgment and the connected records. We are satisfied on the perusal of the evidence that it was the appellant who caused the injuries resulting in the death of the deceased. But the question is whether the offence falls within the definition of S. 300 punishable under S. 302, IPC or any one of the exceptions to S. 300 is attracted.

8. As we have already pointed out in the preceding part of this order that the defence of the appellant is that the appellant on being gravely and suddenly provoked by the deceased attacked him with the knife which was lying nearby. In support of his defence, the appellant examined DWs 1 to 3. After carefully examining the evidence, we are left with an impression that the defence is more probable than that of the prosecution. In our opinion, the appellant had been deprived of his self-control by the grave and sudden provocation on the indifferent and impertinent reply as well as of the gross indecent words uttered by the deceased against the appellant in a piquant situation when his brother was lying dead on account of the consumption of liquor administered by the deceased. The High Court has overlooked this defence theory but proceeded only on the evidence adduced by the prosecution. The evidence of DWs 1 to 3 is completely ignored. Therefore, taking an overall survey of the evidence we feel that the appellant is entitled for exception 1 to S.300, IPC. Consequently, we set aside the conviction recorded by the High Court under S. 302 and the sentence of life imprisonment instead convict the appellant under S. 304, Part-I, IPC. Coming to the question of sentence, having regard to the fact that the offence took place about 15 years before in 1977 and the appellant has undergone the ordeal till date, we sentence him to undergo rigorous imprisonment for seven years.

9. The appeal is dismissed subject to the modification of the conviction and sentence as indicated above. Appeal dismissed.

</html