

Yeshwant Rao

Vs

State of M.P.

Criminal Appeal No. 295 of 1992

(Kuldip Singh, Yogeshwar Dayal JJ)

04.05.1992

JUDGEMENT

YOGESHWAR DAYAL, J.

1. Special leave granted.
2. We have heard the learned counsel for the appellant as well as the learned counsel for the State.
3. The appeal itself is directed against the judgment of the learned single Judge of the High Court of Madhya Pradesh dated 19th September, 1991 whereby the High Court dismissed the appeal of the appellant and maintained conviction under S. 325, Penal Code but reduced the sentence to the sentence already undergone by him. The trial Court had convicted the appellant under S. 325, Penal Code and sentenced him to one year rigorous imprisonment.
4. The prosecution case was that on 5th April, 1985 at about 11 O'clock in the night the appellant himself went and informed Dilip Singh, the brother of the deceased Lakhan Singh, that since Lakhan Singh was abusing him he had assaulted him by spade. The accused also asked the brother Dilip Singh to go and bring his brother. Dilip Singh started to see his brother, but on the way he found Bhola Singh (P. W. 7) and Yeshwant (P. W. 9) bringing his brother from the direction of the house of the appellant. Lakhan Singh was removed to hospital. When he was being taken from one hospital to another hospital, he died. Accordingly the appellant was prosecuted under S. 302, Indian Penal Code but, as stated above convicted under S. 325, Indian Penal Code.
5. As per the medical evidence the cause of death was due to the injury of the liver. But for this injury no external injury was found nor the Doctor deposed that this could be caused by spade. The earliest defence is contained in police report filed as Annexure 'C' lodged by the appellant on 5th April, 1985 in which he says that his minor daughter Chhaya had gone to latrine on the rear side of his house where the deceased had gripped her and having heard the disturbance when the appellant went to see, the deceased Lakhan Singh, in a bid to escape dashed against the wall and fell on the stony ground and sustained injuries.
6. Later in the case the appellant also took the plea of a right of private defence.
7. The Sessions Judge took the view that the minor daughter of accused aged 15 years was a consenting party to the sexual inter-course by the deceased Lakhan Sinah when the appellant assaulted the deceased.

8. The Sessions Judge while dealing with the case had noticed Panchanama Ext. P-4 where it was stated that when the dead body of the deceased was rendered naked they found seminal emission from the penis of the deceased. The Sessions Judge believed the contents of this Panchanama and took the view that the deceased Lakhan Singh was engaged in sexual intercourse with Chhaya daughter of the appellant. The Sessions Judge also gave a finding that the incident took place at about 10 o'clock in the night. It took place on the rear side of the house of the appellant close to the latrine which was engrossed in darkness. Half an hour before the incident Chhaya who was 15 years of age had gone to the house of the deceased to call him and for the same reason the deceased might have come to the house of the appellant and with the consent of Chhaya was doing sexual intercourse with her on the rear side of the house. The Sessions Judge also found that at the same time the appellant, who according to his own version, had returned at 9.30 p.m. from Shahpur and when he went to the back side of his house then he might have seen the deceased Lakhan doing sexual intercourse with his daughter and on seeing such an act being performed, any father could easily lose control of himself and assaulted the deceased due to grave and sudden provocation.

9. It will be noticed that before the sessions judge the appellant had pleaded the right of private defence also but the Sessions Judge after noticing that the assault was an act of sudden and grave provocation did not pursue the matter further. It appears to us that it is a case where the right of private defence arises and the case is fully covered by 96,97 read with S. 100 of the Indian Penal Code. Whether it was a case of sexual intercourse with consent or without consent the fact remains that according to the case of the prosecution Chhaya was of 15 years of age and, therefore the act of Lakhan Singh, deceased, would amount to rape within the meaning of S. 375, Cl. (6) of the Indian Penal Code. The Panchanama Ext. P-4 shows that the attempt of rape or actual sexual intercourse was not fully complete and it is in that state of affairs that the appellant is alleged to have assaulted the deceased with spade on his head. As per the medical evidence the cause of death is not by spade but it was due to the rupture of the liver which could be either by fall on hard object, as the appellant stated that the deceased tried to run away but hit against the wall and fell on the ground or it could be as a result of blow given by the appellant. The fact remains that the right of private defence is extendable to the facts of the present case when the daughter of the appellant was being sexually molested. It appears that this part of the case of the appellant was not brought to the notice of the High Court. The judgment of the High Court mainly deals with the prosecution case only. The right of private defence is fully applicable to the facts of the present case. We thus find that the appellant is entitled to acquittal. We would accordingly hold the appellant not guilty of the offence under S. 325, Indian Penal Code as well. The result is that the appeal is allowed and the conviction and sentence of the appellant is set aside.

Appeal allowed.

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