

Kamal Singh

Vs

State of M.P.

Criminal Appeal No. 200 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

04.09.1992

ORDER

1. The sole appellant is convicted under Section 304, Part I, I.P.C. and sentenced to six years rigorous imprisonment. He along with four others were tried for offences punishable under Sections 302 and 302 read with Section 34, I.P.C. and 324 read with Section 34, I.P.C. The trial Court convicted Kamal Singh, A-5 under S. 302, I.P.C. and sentenced him to undergo imprisonment for life. The others were convicted under Section 324 read with Section 34, I.P.C. and sentenced to two years rigorous imprisonment. On appeal the High Court acquitted all accused but altered the conviction of Kamal Singh, A-5 to one punishable under Section 304, Part I, I.P.C. and sentenced him to undergo six years rigorous imprisonment. A-5 is the appellant before us pursuant to the special leave granted by this Court.

2. The prosecution case is as follows:

The appellant and two other accused were real brothers and they were related to the other accused. D.W. 1 is the wife of Brijlal and sister of P.W. 3 and P.W. 4 is their brother. Kumani Kanti Jat, P.W. 1 was the cousin sister of P.W.4 and P.Ws. 2 and 4 were also related to them. Deceased Marathilal was the brother-in-law P.W. 4 and one of his sisters was married to him. The accused and the prosecution witnesses were residing in Kanjar Mohalla at Jabalpur. There was an incident prior to the date of the present incident and there were quarrels. On 14-4-78 at about 9 p.m. the accused came to house of Jamna Prasad to take away D.W. 1. She was not willing to go and a quarrel instituted and it is alleged that when the deceased reached outside the house, he was surrounded by the accused. He was caught hold of and in the meantime, Kamal Singh, A-5 stabbed him with a knife in his abdomen. Thereafter all the accused fled away. The deceased was rushed to the Police Station. A report was given and he was sent to the Hospital thereafter for treatment. Dr. Dubedkar, P.W. 6 found an incised wound on the stomach. The same doctor found some injuries on Brijlal. The appellant was also examined by him and he found a stab wound 3 cm x 2 cm x 5 cm over the left buttock and he was admitted in the Hospital. The deceased, however, succumbed to his injuries on the next day. The post-mortem was conducted by P.W. 15 and he opined that injuries found on the deceased were homicidal in nature and sufficient to cause death in the ordinary course of nature. The prosecution relied mainly on the evidence of P.Ws. 1,2,4 and 5. The accused, however, denied the offence. The appellant, however, pleaded that the deceased caught hold of his neck

and one Ratan armed with a knife stabbed him on the buttock and the appellant snatched that knife and stabbed the deceased in exercise of his right of self-defence. The plea of self-defence was rejected by both the Courts below. The High Court, however, held that it was a sudden attack during the quarrel and the accused did not take undue advantage and in that view of the matter gave the benefit of Exception IV and convicted him under Section 304, Part I, I.P.C. as stated above.

3. In this appeal the learned counsel for the appellant submits that this is a clear case where the plea of self-defence ought to have been accepted particularly when A-5 had also received serious injuries on his buttock and he had a right of inflicting injury on the deceased. The doctor's evidence does not show that there is any mark of violence on the neck of the appellant. In any event the deceased was not armed and even if the plea of the appellant is to be accepted he was clearly exceeded the right of self-defence and would also be punishable under Section 304, Part I, I.P.C. In any event no interference is called for so far as his conviction is concerned. Now coming to the sentence we find from the facts and the circumstances that it was a sudden quarrel and it took place because the girl was being taken away to her in law's house. Further there is only one injury on the deceased. Taking these circumstances into consideration while confirming the conviction under Section 304, Part I, I.P.C. we reduce the sentence to 4 years rigorous imprisonment.

4. No orders are necessary on the application for intervention.

5. The appeal is disposed of accordingly. Appeal dismissed.

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