Shital Prasad alias Baba

Vs

State of U.P.

Criminal Appeal No. 588 of 1980

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

23.09.1992

JUDGMENT

1. This is an appeal under Section 379, Cr. P.C. read with Section 2-A of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. The appellant along with three others was tried and convicted under Section 302, I.P.C. for causing the death of Khazanchi. The trial Court acquitted all the four accused. The State preferred an appeal and the High Court confirmed the acquittal of the three accused but convicted the appellant under Section 302, I.P.C. and sentenced him to undergo imprisonment for life.

2. The prosecution case is as follows:

> The deceased Khazanchi and the eyewitnesses PWs. 1, 2, 3 and 5 belonged to the village Jignauri. The accused also were related to each other. The fields of PW 1 and the accused Surendra were In the same vicinity. On 1-5-72 a little before 9.30 a.m. the field of PW 1 was being irrigated but the accused started diverting water to the field of Surendra, one of the acquitted accused. PW 1 protested but the accused persons did not pay any heed, PW 1 called the deceased who intervened. As soon as the deceased arrived there, he was surrounded by the four accused persons. At the instigation of Chhotey Lal and two others, the appellant Shitla Prasad alias Baba who was armed with a spear, gave a spear blow to the deceased in his abdomen. On hearing the quarrel PW 2 along with PW 3 and PW 5 and some other persons came there and witnessed the occurrence. The accused thereafter left the place. The injured person was taken in a rickshaw to the hospital but he died on the way. Leaving the dead body at the hospital PW 1 went to the Police Station and lodged the FIR. A case under Section 302, IPC was registered by the Sub-Inspector, PW 10 who investigated the matter. Inquest was held on the dead body and the same was sent for post-mortem. The doctor. who conducted the post-mortem, found one penetrating wound in the stomach, above the umbilicus and he also found that momentum was coming out of the wound. The other injury was only an operational which continued with the left angle of injury No. 1. On internal examination the doctor found that the peritoneum was congested and about 100 c.c.. of semi-digested food was found in his stomach. He also found a wound 2 cm x 1/2 cm. under injury No. 1 in the mesentery, cutting a branch of the mesentery artery. The doctor opined that the death of the deceased was due to shock and haemorrhage and the injury could have been caused by sharp weapon like a spear. The prosecution relied on the evidence of eye-witnesses. The accused pleaded not guilty. The trial Court came to the conclusion on the basis of the medical evidence that the occurrence must have taken place

sometime during night and not at 9.30 a.m. as stated by the eye-witnesses holding that there was a conflict between the medical evidence and the oral testimony. On that ground the trial Court rejected the entire evidence of four eye-witnesses and accordingly acquitted the four accused. The High Court after a careful examination of the doctor's evidence held that the presence of semi-digested food cannot be a ground to hold that the occurrence must have taken place sometime during night. According to the prosecution witnesses, the deceased had taken food by 7 or 7.30 a.m. The occurrence, according to the eye-witnesses, took place around 9.30 or 10 a.m. There was a gap of two hours. The defence case was that the presence of semi-digested food shows that occurrence must have taken place after 2 1/2 hours after the last meal and that would only go to show that occurrence took place during the night time, after the last meal and therefore prosecution's reliance on the fact that the deceased took food at about 7 or 7.30 a.m. is in conflict with medical evidence.

3. According to the prosecution the deceased had taken food after 6.30 or 7 a.m. and it cannot be ruled out the food have undergone the process of digestion within 2 1/2 hours, thereof the presence of semi-digested food does not in any manner conflict with the direct testimony of eye-witnesses. This is the only reason that weighed with the trial Court. The names of four eye-witnesses were mentioned in the earliest. It was categorically stated that it was the appellant who inflicted the single injury. To that extent there is absolutely no reason to doubt the prosecution case.

4. The next question is whether the offence committed by the appellant amounts to murder! The evidence of all the four eyewitnesses shows that it was a sudden affair. PW 1 objected to the accused diverting the water and when he did not pay heed PW 1 called the deceased in his presence to intervene in the quarrel that took place. It was also stated that the matter could be settled by Panchayat. As a matter of fact PW 2 in the cross-examination admitted that because of the incident of diverting water, the quarrel took place and the accused inflicted the single injury. In the circumstances It cannot be held that clause 1 of Section 300 applies. Then we have to consider whether clause 3 is directed. Having regard to the nature of the injury and to the fact that the appellant did not Inflict any more injuries it is difficult to hold that he intended to inflict that particular injury which the doctor opined to be fatal. However, the fact remains that the deceased died because of this injury. The High Court however failed to note that the prosecution has to prove that the appellant intended to cause that particular injury. In this process of enquiry the question arises whether he had intention to cause that particular injury. This ingredient is not established beyond doubt. However, it must be held that the appellant had knowledge that by inflicting such injury he would likely to cause death. In the result the conviction of appellant under S. 302, IPC and sentence of imprisonment for life are set aside. Instead he is convicted under Section 304 (Part) II, IPC. The appellant has already undergone a period of seven years. Therefore the (imprisonment) is reduced to the period already undergone.

5. The appeal is allowed to the extent indicated above. Appeal allowed.

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