

Ramaotar

Vs

State of M.P.

Criminal Appeal No. 302 of 1982

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

03.11.1992

Judgement

G. N. RAY, J.:-

1. This appeal is directed against the judgment passed by the Indore Bench of the Madhya Pradesh High Court in Criminal Appeal No. 334 of 1980 arising out of the conviction and sentence passed by the learned Additional Sessions Judge Indore in Sessions Trial 34 of 1980. The appellant along with Kailash, Premchand, Mahesh and Kanhaiya were committed to trial before the learned first Addl. Sessions Judge, Indore in Sessions Trial 34 of 1980 for offence punishable under S. 148 and S. 302 read with S. 149, IPC. The appellant, Ramaotar is the father of other accused, Prem Chand, Mahesh and Kanhaiya. The accused No. 2 Kailash however was not related to Ramaotar: The prosecution case in short is that on 7th November, 1979, at about 11-30 p.m. when Kamal Singh was not in the house, the appellant had thrown stones at the house of Kamal Singh. Ashok (P.W. 1) son of Kamal Singh, came out of the house and he was followed by the other son of Kamal Singh namely Vijay (P.W. 2). They saw the accused persons standing outside their house. The accused No. 3 Prem Chand was armed with sword and other accused persons had lathis with them. The said accused persons abused Ashok and Vijay and challenged them. The accused Prem Chand assaulted Vijay by sword and the appellant Ramaotar assaulted him by lathi. Thereafter all the accused persons started assaulting Vijay and Ashok. On hearing the cries, mother of Vijay and Ashok, namely Vimlabai (deceased) came out of house. The appellant Ramaotar then assaulted Vimlabai by lathi. Vimlabai was thereafter dragged by other accused persons Kanhaiya and Mahesh to a distance of 100 feet, and she was assaulted by the said accused persons. Thereafter, the accused persons left the place: Vimlabai succumbed to the injuries caused to her. Ashok thereafter lodged the First Information Report of the said incident at the Police Station, Palasia at about 12 midnight namely within half an hour of the incident. After investigation, the accused persons were arrested and sent for trial. The accused persons denied the offences alleged to have been committed by them. The learned Additional Sessions Judge, Indore inter alia came to the finding that the injuries suffered by the deceased Vimlabai had been inflicted by the accused persons who had no right of self defence.

2. The learned Additional Sessions Judge convicted all the accused persons under S.302 read with S. 149, IPC. He also convicted the accused Prem Chand under S. 148, IPC and the other accused persons under S. 147, IPC. The learned Additional Sessions Judge ordered that all the accused persons should undergo life imprisonment under S. 302 read with S. 149, IPC and the accused Prem Chand was to undergo rigorous imprisonment of 2 years under S. 148 and the rest to undergo rigorous imprisonment of 1 and 1/2 years under S. 147, IPC and the sentences would run concurrently. Against such conviction and sentence passed by the learned Additional Sessions Judge, Indore, the accused persons preferred several appeals before Indore Bench of the Madhya

Pradesh High Court. The appeal preferred by the present appellant Ramaotar was numbered as Criminal Appeal No. 334 of 1980. The said appeal was heard along with other appeals preferred by the other accused persons namely Criminal Appeals Nos. 303 of 1980, 305 of 1980 and 335 of 1980 and all the said appeals were disposed of by common judgment passed by the Division Bench of the Madhya Pradesh High Court at Indore. The High Court convicted the appellant Ramaotar under S. 302, IPC for causing the death of Vimlabai and sentenced him to imprisonment for life. The convictions of other accused persons under S. 302/ 149, IPC were set aside by the High Court. The High Court however convicted all the accused persons excepting Ramaotar under S. 325 read with S. 149, IPC and sentenced to rigorous imprisonment for the period undergone by them. The High Court inter alia came to the finding that from the testimony of Ashok, Vijay and Ashabai it was clear that Ramaotar and other accused persons were in front of their house armed with sword and lathis. It was likely that the common object was to cause injury to any of the family members of Kamal Singh but there was no material to warrant a finding that there was any common object of the accused persons to cause the death of Vimlabai. The High Court was of the view that the appellant Ramaotar had lathi and he had assaulted Vimlabai on head and chest causing fatal injuries. The High Court was of the view that the testimony of Ashok, Vijay and Ashabai was consistent and was reliable so far as the complicity of Ramaotar in causing grievous injuries on head resulting death of Vimlabai was concerned. Considering the serious nature of the injuries on the vital parts of body of the deceased, the High Court was of the view that Ramaotar was liable to be convicted under S. 302, IPC but accordingly convicted him under the said section and sentenced him for life imprisonment.

3. The learned counsel for the appellant has strenuously contended that Ramaotar himself suffered serious injuries in the hands of sons of Kamal Singh. As a matter of fact, in the F.I.R. lodged by Ashok, it was indicated that Vijay had caused injuries on the person of Ramaotar in self defence. Vijay and others however denied such fact of causing injury to Ramaotar at the time of deposition at the trial. It appears from record that Ramaotar was examined on 8th November, 1979 and several injuries on his person were noted by the doctor. Dr. Dube who also examined Ramaotar in the hospital, noted injuries on his person. and he also noted that Ramaotar suffered a fracture.

4. The learned counsel has contended that in view of such multiple injuries including fracture suffered by Ramaotar at the hands of Vijay, there was enough justification for Ramaotar in using the lathi against the sons of Kamal Singh and if in the course of encounter he had struck Vimlabai by lathi, there was no justification to convict Ramaotar under Section 303, IPC. The learned counsel has contended that it will appear from the post-mortem examination that deceased Vimlabai suffered multiple injuries caused by lathi and other weapons and because of her advanced age she had died on account of multiple injuries. In the facts and circumstances of the case, there was no justification for the High Court to come to the finding that Ramaotar had caused injuries on the vital parts of the body and injuries caused on the head and on the ribs of the deceased were attributable only to Ramaotar. The learned counsel has also contended that from the nature of the injuries suffered by the deceased it is quite apparent that the only intention of the accused persons was to assault the sons of Kamal Singh. The High Court as a matter of fact has come to the finding that so far the other accused persons are concerned, there was no intention to cause death of Vimlabai and the only object that can be inferred from the facts and circumstances of the case is to give good thrashing to the members of the family of Kamal Singh. It is only because the injury on the head and on the ribs of the deceased Vimlabai were attributed to the appellant Ramaotar and such injuries became quite fatal that the High Court convicted him under Section 302, IPC.

5. The learned counsel has contended that there was no intention of Ramaotar to kill the deceased

Vimlabai and even if it is held that the injuries were caused by Ramaotar by hitting the deceased Vimlabai on head and ribs by the lathi, it cannot be reasonably held that there was any clear intention of Ramaotar to kill Vimlabai. In the aforesaid circumstances, it will be only fair and consonant to justice that the appellant should be convicted for causing grievous injury to the said Vimlabai.

6. The learned counsel for the State however contended that the deceased Vimlabai had been mercilessly beaten by all the accused persons causing multiple injuries on her person. It has been established that Ramaotar hit her on the head which caused a serious injury on the vital parts of her body, and such injury was sufficient to cause death in the ordinary course of nature. There is positive evidence that he had also hit her on the ribs causing fracture of the ribs. It, therefore, cannot be seriously contended that Ramaotar had no intention to kill the deceased but lathi blows on vital parts of the body were dealt only to give a good thrashing. The learned counsel for the State has contended that considering the serious nature of injuries caused by Ramaotar, the High Court rightly came to the finding that Ramaotar was liable to be punished under Section 302, IPC. The High Court has taken a lenient view so far as the other accused persons were concerned and set aside their conviction under Section 302 read with Section 149, IPC. The learned counsel has therefore contended that no interference is called for in this appeal and the conviction and sentence should be upheld by this Court.

7. After giving our anxious consideration to the respective contentions of the learned counsel for the parties and considering the facts and circumstances of the case, it appears to us that Ramaotar himself sustained multiple injuries in the hands of the son of Kamal Singh namely Vijay. Although in the first information report, it was specifically mentioned by Ashok the brother of Vijay, that Vijay had caused injuries on the person of Ramaotar by way of self defence the prosecution witnesses including Vijay attempted to deny such facts of assault caused on the person of Ramaotar but multiple injuries including a fractured wound were noted by the doctors when Ramaotar was examined in the hospital. We are inclined to hold that Vijay had caused injuries on Ramaotar but simply because such injuries were caused on the persons of Ramaotar, it cannot be held that he had a right by way of self defence to cause serious injuries on the deceased Vimlabai who was unarmed and did not assault any one. It appears to us that it was not reasonably expected that the wife of Kamal Singh namely deceased Vimlabai would come out of the house at the dead of night. As a matter of fact, she did not come out of the house initially but hearing the cries of her sons she had come out. It is only unfortunate that Ramaotar after being assaulted by Vijay had struck by the lathi on the vital parts of the body of the deceased causing serious injury on the head and fracturing the ribs. It may be noted that excepting Prem Chand none of the accused persons including the appellant had any sharp cutting weapon and the appellant Ramaotar had only a lathi in his hands. We are therefore inclined to hold that the injuries caused by Ramaotar were not inflicted with the sole intention to cause death of the deceased but when the lathi blow was dealt with force on the head of the deceased, it may be contended that the accused should be aware that such injury was likely to cause death. We are, therefore, of the view that the conviction of the appellant under Section 302, IPC is not justified and such conviction and sentence imposed on the appellant by the High Court are set aside. In our view, the appellant is liable to be punished under Section 304, Part II, IPC. Accordingly, we convict the appellant under Section 304, Part II and sentence him to suffer rigorous imprisonment for a period of 8 years. The appeal is allowed to the extent above. The appellant has been enlarged on bail during the pendency of this appeal. He is directed to serve out the sentence.

Appeal allowed.

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