State of Haryana

Vs

Pala and Others

Criminal Appeal No. 210 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

29.01.1996

JUDGMENT

1.Leave granted.

2. We have heard the counsel on both sides. The facts are that in the evening of December 6, 1989, the deceased-Rati Ram, who was Lambardar of the village, had gone on stroll outside the village. While he was coming at about 8.30 p.m., the appellants emerged from their house and each of them having been armed with mussals, A-1 had attacked the deceased when he came in front of their house, on the head and hit him three times on different parts. When the deceased had fallen, A-2 again beaten him thrice on chest, abdomen and other parts of the body. PWs-6 and 7, the son and brother of the deceased, who were coming in search of him had witnessed the occurrence. When PW-7 raised the cry, the accused had gone in and went away. The deceased was taken to the hospital. He died five days thereafter. The doctor, PW-9, R.M. Singh, conducted autopsy. He noted seven injuries and injury Nos. 2 and 3 were head injuries. Injury No.2 was lacerated wound which was inflicted on the right mastoid region of size of 4 x 1 cm. It was irregular in shape. According to the doctor, the cause of the death was due to septicaemia resulted as a result of head-injury and was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. He had stated that "Septicaemia is the direct result of the head injury. This is not a disease. In other words, head injury is the cause of death. The injuries found on the person of the deceased could be caused by musals Ex.P-1 and P-2". In the cross-examination, he stated that "Septicaemia has no relation with bleeding. It is incorrect to suggest that injuries in this case are not sufficient to cause death in the ordinary course of nature. The Sessions Court convicted the respondents, applying clause thirdly of Section 300, I.P.C., under Section 302, I.P.C. and sentenced them to undergo imprisonment for life. On appeal, the High Court had applied Exception 4 to Section 300. I.P.C. and converted the offence of murder into culpable homicide not amounting to murder and convicted under Section 304, Part II and sentenced them to undergo imprisonment to the period already undergone and accordingly got them released. Thus this appeal by special leave.

3. It is not a case of a sudden fight upon heat of passion. The accused beat the deceased taking undue advantage. Therefore, Shri Mehta, learned senior counsel appearing for the respondents, fairly and rightly has not placed his case under Exception 4 to Section 300. On the other hand he contended that when death was due to septicaemia, it cannot be referable to the cause of the death in the ordinary course of nature due to ante mortem injuries and that, therefore, the offence of murder has not been made out. In support thereof, he sought to place reliance on Lyon's Medical

Jurisprudence for India (Tenth Edition) at page 222. It is stated therein that "Danger to life depends, primarily, on the amount of haemorrhage, on the organ wounded, and on the extent of shock; secondarily, on secondary haemorrhage, on the occurrence of septicaemia, erysipelas, tetanus, or other complications. In answering the question whether a wound is dangerous to life, the danger must be assessed on the probable primary effects of the injury. Such possibilities as the occurrence of tetanus or septicaemia, later on, are not to be taken into consideration". Though the learned counsel had not read the later part of the opinion, the medical evidence on record do clearly establish that Septicaemia is not the primary cause and the death was due to injuries caused to the deceased and they are sufficient to cause death in the ordinary course of nature. Septicaemia would, therefore, not be taken into account.

4. Clause thirdly of Section 300, I.P.C. envisages that if the act is done with intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, it would be murder coming under Section 300, I.P.C. and that, therefore, it would not be a culpable homicide under Section 299, I.P.C. When the accused emerged from their house and beat with deadly weapon on the head and other parts of the body and death occurred as a result of the injuries, it must be inferred that the attack on vital parts of the body was intended to be caused with an intention to cause death. Intention is locked up in the heart of the assailant and the inference is to be drawn from acts and attending circumstances.

5. It is then contended that the respondents had no intention to cause the death and that in support thereof he relies upon the judgment of this Court in State of A.P. v. Rayavarapu Punnayya (1976) 4 SCC 382): (AIR 1977 SC 45). The facts therein do not help the respondents. All the injuries therein though were not on vital parts, namely, legs and hands of the deceased, and death ensued due to their cumulative effect, this Court had applied clause thirdly of Section 300, I.P.C. and had reversed the contra-finding of the High Court and set aside the conviction under Section 304, Part II and convicted the accused under Section 302, read with 34, I.P.C. It is true that this Court therein in paragraph 39 had observed that no secondary factor such as gangrene, tetanus etc., supervened. In this case, the supervening event of septicaemia is not of any consequence as pointed out by the doctor as the death was only on account of head injuries and other injuries caused to the deceased. It is then contended that as there is no proof of a particular accused had caused fatal head injury, they are liable only to be convicted under Section 326, I.P.C. We find no force. The facts as narrated above would establish that both the accused shared common intention to kill the deceased and are liable to conviction under Section 302 read Section 34, I.P.C.

6. The appeal is, therefore, allowed. The judgment of the High Court is set aside and the accused stand convicted under Section 302 read with section 34, I.P.C. They are accordingly directed, as held by the trial Court, to undergo the imprisonment for life. They are directed to surrender themselves forthwith. In case they do not surrender, the Sessions Judge would forthwith issue warrant to arrest and have the warrants executed through the concerned police and report to the registry of this Court of compliance. Appeal allowed.