Mahesh Balmiki Alias Munna

Vs

State of M.P.

Criminal Appeal No. 859 of 1999

(K. Venkataswami, Syed Shah Mohammed Quadri JJ)

27.08.1999

JUDGMENT

SYED SHAH MOHAMMED QUADRI, J.:-

1. Leave is granted limited to the question of nature of offence.

2. The appellant along with two others was tried for committing the murder of one Satish (hereinafter referred to as "the deceased") and causing injuries with a knife to Harkishan and convicted for offences punishable under Sections 302 and 324 IPC read with Section 34 IPC. He was sentenced to life imprisonment and three years' rigorous imprisonment for the said offences by learned Sessions Judge in Sessions Case No/ 198 of 1981 on 17-7-1982. A division Bench of the High Court of Madhya Pradesh at Gwalior in Criminal Appeal No. 171 of 1982 confirmed his conviction under Sections 302 and 324 IPC and sentence for the said offences and dismissed his appeal on 30-4-1998. Against the judgment and order of the High Court, he is in appeal before this court.

3. Dr T. N. Singh, learned Senior Counsel for the appellant has urged that it is a case falling under Exception 4 to Section 300 IPC and, in any event, as the appellant has given only a single blow with a knife, he ought not to have been convicted under Section 302 IPC; his conviction could only be under Section 304 IPC.

4. Mr. Anoop Choudhary, learned Senior Counsel appearing for the State argued that none of the requirements of Exception 4 are present and the circumstances clearly suggest that the appellant had the intention to kill the deceased, therefore, he was rightly connived under Section 302 IPC.

5. Apropos the contentions, we have perused the judgments of the trial court and the High court. It appears that appears that the appellant and three others snatched the wristwatch of a boy known to the deceased and Harkishan. At the request of that boy, they asked the appellant and his associates to return the watch. The appellant told the deceased and Harkishan to come to some specified place. On reaching there, they had an exchange of hot words and then Naresh, Pappu and Laxan caught hold of the deceased and the appellant give a knife-blow on the chest of the deceased as a result of which he fell down. The appellant also inflicted injuries with the knife on Harkishan who rushed to save the deceased. While the deceased was being taken to the police station, he succumbed to the injuries. De D.S. Badkur (PW 5), who conducted post-mortem on the person of the deceased, found the following injuries:

> "Stab wound 1.5. x 0.5. cm vertical situated on interior aspect of chest on left border

> of sternum and at the setrno-costal joint of 6th and 7th rib, sternum cut and fracture in arms 9.2 area truck (sic) of the wound going through and through and sternum, pericardium (pericardium); anterior and posterior wall of right vertical (It) dome of diaphragm (diaphragm), left lobe of liver cardiac and of stomach perforated total depth of wound was 19 cm and direction of truck (sic) was going downwards posteriori and towards abdominal cavity full of blood, middle media sternum ecchy mosed (ecchymosis) around wound track,. Stomach contents coming out in peritoneum cavity."

6. PW 5 stated that the decease died due to shock and hemorrhage resulting from the said would which could have been sauced by a sharp-edged cutting weapon.

7. Now Exception 4 to Section 300 IPC is in the following terms:

> "Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.
>
> Explanation. – It is immaterial in such cases which party offers the provocation or commits the first assault."

The requirements of this exception are:

a. Without premeditation in a sudden fight;
b. in the heat of passion upon a sudden quarrel;
c. the offender has not taken undue advantage; and
d. the offender has not acted in a cruel or unusual manner.

Where these requirements are satisfied, culpable homicide would not be murder.

8. On the facts of this case, it cannot be said that the fatal injury was inflicted without premeditation. Indeed, the appellant asked the deceased to come to a particular place to receive the watch. There, three associates of the appellant caught hold of the deceased and the appellant gave the fatal blow with the knife. The stab wound was given on the Chest on the left side of the sternum between the costal joint of the 6th and 7th ribs and both the ribs have been fractured. It appears that truck of the wound had gone through the sternum, pericardium anterior and posterior after passing the ribs and thereafter entered the liver and perforated a portion of the stomach. Total depth of the wound was 19cm and the direction of truck (sic) was going downwards posteriori. The impact of the single blow with the knife has been disastrous. Therefore, it cannot be said that the appellant has not taken undue advantage or not acted in cruel or unusual manner. In our view, Exception 4 has, therefore, no application on the facts of this case.

9. Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC. The Question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required inanition of knowledge of the offender and the offence committed by him. In

the instant case, the deceased was disabled from saving himself because he was held buy the associates of the appellant who inflicted though a sight yet a fatal blow of the description noted above. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife-blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

10. Dr Singh invited our attention to the following judgements of this *Court in Tholan v. State of T.N.* [(1984) 2 SCC 133 : 1984 SCC (Cri) 164 : AIR 1984 SC759]*, Ranjitsingh Chandrasingh Atodaria v. State of Gujarat* [AIR 1994 SC 1060] and *Balbir singh v. State of Punjab* [1995 Supp(3) SCC 472 : 1995 SCC (Cri) 951] for altering the conviction from Section 302 IPC to section 304 IPC. A perusals of these judgments shows that these are instances of application of the aforementioned principles. We don't, therefore, consider it necessary to refer to them in detail.

11. For the above reasons, we are of the view that the appellant had rightly been convicted and sentenced under Sections 302 and 324 IPC by the trial court and the High Court. We find no merit in this appeal which is accordingly dismissed.