

SUPREME COURT OF INDIA

Addha

Vs.

State of M.P.

CrI.A.No.532 of 200

(U. C. Banerjee and K. G. Balakrishnan JJ.)

28.09.2001

JUDGEMENT

K. G. Balakrishnan, J.:-

1. Appellant Addha, son of Rooplal, was tried by the First Additional Court of Sessions, Mandla [Madhya Pradesh], along with four others, for the offence punishable under Section 302 read with Section 149 IPC. The Sessions Court held that there was no unlawful assembly as alleged by the prosecution and the appellant was found guilty of the offence punishable under Section 302 for having caused the death of one Sher Singh. Two other accused, namely, Rooplal and Buddhulal were found guilty of the offence punishable under Section 324 IPC. The conviction and sentence of the accused were confirmed by the High Court.

2. The incident in question took place on 19-7-1986 at about 9.00 PM. PW1 Jugal Kishore, along with PW3 Mishridas, was returning from the nearby flourmill and they saw accused Buddhulal in a wordy altercation with PW4 Pancham. Jugal Kishore intervened and tried to dissuade them from quarrelling. At that time, Buddhulal's father Rooplal came there and took his son to his house. But on reaching their house, Buddhulal and Rooplal started hurling abusive words at PW1 , Jugal Kishore. On hearing this, deceased Sher Singh, PW2 Gulab and some others persons came to the place of occurrence and there ensued a quarrel. It is alleged that while Buddhulal was armed with an axe, Rooplal was armed with a Bichua and Addha was having a Lathi. It is the prosecution's case that Rooplal inflicted an injury on PW1 Jugal Kishore and Buddhulal dealt a blow on the arm of Gulab. It is also the prosecution's case that Addha dealt 2-3 blows on the head and chest of the deceased Sher Singh. Deceased Sher Singh fell on the ground. He was taken to the nearby hospital where he was declared dead.

3. On the next day by about 9.20 AM, PW1 Jugal Kishore gave the F. I. statement before the police and PW6, Sub-Inspector of Nainpur Police Station, took over the investigation. He held inquest on the body of the deceased and the dead body was then sent for post mortem examination. PW 8 conducted the post-mortem and it was revealed that 7th and 8th ribs of

left side of the chest of the deceased were fractured. PW8 deposed that the injuries on the head and the ribs were sufficient in the ordinary course of nature to cause death of the victim.

4. We heard the learned counsel on both sides. The counsel for the appellant contended that the prosecution case is not true and correct and that PW1 Jugal Kishore, deceased Sher Singh, PW2 Gulab and others came and attacked the accused. It was also contended that the accused Rooplal and others had sustained injuries in the course of the incident. It was argued that the prosecution failed to prove that appellant, Addha caused the vital injuries to the deceased Sher Singh. We find some force in the above contention.

5. According to PW1 Jugal Kishore, when he was coming along with PW3 Mishridas, he saw Buddhulal and PW4 Pancham quarrelling. He intervened in the quarrel and tried to send them away. By the time the first accused Rooplal also reached there and took Buddhulal home. PW1 also alleges that he was severely abused by the first accused Rooplal. The incident is alleged to have taken place near the house of Rooplal. Even according to the F. I. statement given by PW1 before the police, after the first incident of quarrel between Buddhulal and Pancham, PW1 Jugal Kishore and others proceeded to the house of Rooplal. When they reached the house of Rooplal, the accused persons started attacking PW1 Jugal Kishore and others. PW2 Gulab has deposed that his house is located about half a mile from the place of incident. It is certain that he along with PW1 and others must have come to the house of the accused with an intention to pick up a quarrel with them and there ensued the attack and the counter-attack and in that incident, PW1, PW2 and the deceased Sher Singh sustained injuries. It is also pertinent to note that in the F. I. statement, PW1 has not stated that the appellant caused any injuries to the deceased Sher Singh on his head. In the F.I. statement, it is only stated that appellant Addha had given a Lathi blow on the ribs of Sher Singh and as a result thereof Sher Singh sat down and later died. The other accused were also armed with Lathis. There is also evidence to the effect that there was complete darkness and it was not possible to see who had caused the injuries. PW2 admitted in his cross-examination that when he proceeded from his house to the place of incident, it was dark. PW4 also admitted in the cross-examination that there was complete darkness and he could identify only some of them.

6. In view of the failure of PW1 to mention the details of attack by the appellant as against deceased Sher Singh and in view of the fact that the entire incident happened pursuant to a quarrel between two groups of people and that the appellant had no deliberate intention to cause death of Sher Singh, we do not think that an offence under Section 302 IPC had been made out against the appellant. The incident was the result of a sudden quarrel between the two groups and in that melee the appellant must have used a Lathi which caused injury to Sher Singh which ultimately resulted in his death. In that background it is difficult to hold that the appellant committed the offence of murder. The offence would only come under Section 304 Part II of the Indian Penal Code. Therefore, we acquit the appellant of the offence under Section 302 IPC and find him guilty of offence punishable under Section 304 Part-II of IPC.

7. We are told that the appellant has been undergoing imprisonment even since the date of Sessions Court's judgment, which was pronounced on 28-9-1988. Therefore, we hold that the sentence already undergone by the appellant is sufficient to meet the ends of justice. In the circumstances of the case, appellant Addha, son of Rooplal is directed to be released forthwith, if not required in any other case. The appeal would stand allowed accordingly. Appeal allowed.