

SUPREME COURT OF INDIA

Keshavlal

Vs.

State of M.P.

Crl.A.No.204 of 2000

(R. P. Sethi and K. G. Balakrishnan JJ.)

04.03.2002

JUDGEMENT

R.P.Sethi, J.:-

1. Holding that the judgment of acquittal passed by the Trial Court on the basis of the findings given being totally erroneous and as a result of misreading the evidence, the High Court, vide the judgment impugned in this appeal, set aside the same and convicted the appellant for the commission of offence punishable under Section 302, IPC. Consequently, the appellant was sentenced to undergo life imprisonment and to pay a fine of Rs. 1000/-. In default of payment of fine he has been directed to undergo further rigorous imprisonment for one year. The High Court found that there was no ground to disbelieve the testimony of five eye-witnesses and to ignore a number of independent circumstances which connected the accused with the commission of the crime.

2. Appearing for the appellant, Shri Y. P. Singh, learned Counsel (Amicus Curaie) submitted that as the view taken by the trial Court, while acquitting the accused, was a probable view, the High Court should not have interfered with by convicting and sentencing the appellant. It is contended that there being various omissions, improvements and contradictions in the statement of the eye-witnesses, no reliance should have been placed on their depositions. As the weapon of offence is stated to have not been sent for the examination of finger-print expert, it is argued that the accused could not be connected with the commission of the crime. It is further submitted that failure to produce the report of Serologist showed that the prosecution was withholding the same obviously perhaps it was not in its favour. Regarding the injury inflicted on the person of the deceased it is submitted that as the location of the injury, as described by the witnesses, is not the one found in the post-mortem report, it should be presumed that the eye-witnesses did not see the occurrence.

3. To appreciate the submissions of the learned Counsel appearing for the appellant, it is necessary to note down the prosecution version of the occurrence. Deceased Kamlabai, a young woman of 21 years of age was living with the appellant as his mistress after her marital relations had been strained with her husband. On 30th June, 1985 at about 7 a.m., the

appellant is stated to have come at the house of the parents of the deceased. Kamlabai was combing her hair in a room where the accused also entered. He had some altercation with Kamlabai whereafter he picked up a knife and stabbed her with the result she sustained a deep wound of cutting the vital inner parts of her body. When Sunderlal (PW3) tried to apprehend the accused, he was thrown on the ground and attempted to be given a knife blow in his neck. The witnesses who came on spot intervened and saved Sunderlal. The appellant fled away from the scene of occurrence. Jamnabai (PW2), mother of the deceased lodged the FIR whereafter the accused also reached the police station along with weapon of offence and was arrested there. To prove its case, the prosecution mainly relied upon the testimony of Meenabai (PW1), sister of the deceased, Jamnabai (PW2), the mother of the deceased, Sunderlal (PW3), father of the deceased, Kamleshwar (PW4), brother of the deceased, and Mayabai (PW5), step-mother of the deceased.

4. After going through the judgment of the trial Court we find that the High Court was justified in setting aside the same because the judgment of acquittal is based upon surmises, conjectures and assumed contradictions. The High Court rightly found that in fact there was no contradiction in the depositions of the eye-witnesses and omissions or improvements noticed by the trial Court did not amount to contradictions for the purposes of discarding the testimony of otherwise trustworthy natural witnesses. The trial Court totally ignored the testimony of the eye-witnesses while holding that they had not seen the injury because, according to the FIR, the injury allegedly had been inflicted on the nose of the deceased. All the witnesses had deposed in the Court that the injury was caused on the body of the deceased from behind near the right shoulder and the force with which it was caused resulted in the cutting of the vital inner parts of her body. Non-examination of the finger-print expert has not, in any way, affected the case of the prosecution because it has come on record that before the seizure of the weapon of offence many persons had handled it. Though the report of the Serologist is not available on the record, yet the report of the Chemical Analyser clearly and unequivocally shows that the clothes of the appellant and the weapon of offence were stained with human blood. Non-ascertainability of the blood group cannot be made a basis to discard the evidence of the witnesses who otherwise inspire the confidence of the Court and are believed. No fault can be found with the judgment of the High Court by which the findings of the acquittal recorded by the trial Court were set aside.

5. In the facts and circumstances of the case we find that a usual brawl between the persons living as husband and wife resulted in the death of the deceased. There is nothing on record to show that the accused had pre-planned the execution of the offence. It is admitted even by the prosecution witnesses that the appellant had come unarmed at the residence of the parents of the deceased and after altercation he picked up a kitchen knife from that house by which he inflicted one injury on the person of the deceased. It appears that the appellant committed the offence without pre-meditation in a sudden fight, in the heat of passion upon a sudden quarrel which was not provoked by him. It has also come on record that the appellant was not taking any undue advantage during the occurrence. The offence cannot be said to have been committed in a cruel or unusual manner. The appellant-accused was, therefore, entitled to the benefit of Exception 4 of Section 300 of the Indian Penal Code. The High Court, in its judgment, did not consider this aspect of the matter and despite finding that the occurrence

had taken place without pre-meditation and in the heat of passion opted not to advert to any of the exceptions to Section 300, IPC. The High Court only dealt with clauses 2, 3 and 4 of Section 300 to hold that the appellant was guilty of murder without noticing that culpable homicide would be murder only if the action of the accused does not fall within the ambit of any of the exceptions attached to the section. Even though the appellant was found to be guilty of culpable homicide, yet because he was entitled to the benefit of Exception 4, the crime committed by him would be culpable homicide not amounting to murder, which is punishable under Section 304, IPC and not Section 302, IPC. The judgment of the High Court is, therefore, required to be modified to that extent.

6. Under the circumstances, the appeal is partly allowed by upholding the order of the High Court insofar as it has set aside the order of acquittal passed in favour of the appellant but the impugned judgment is modified to the extent that instead of Section 302, IPC, the appellant is convicted for the commission of offence under Section 304 (Part I). Upon his conviction for the aforesaid offence, the appellant is sentenced to undergo imprisonment for 10 years and to pay a fine of Rs. 1,000/-. In default of payment of fine, he shall undergo a further rigorous imprisonment of one year.
Appeal partly allowed.