

SUPREME COURT OF INDIA

Hari Prasad

Vs.

State of U.P.

07.08.2002

(Y Sabharwal and H Sema JJ.)

ORDER

1. The deceased has been killed as a result of single gun shot. According to the post mortem report, the ante-mortem injury which the deceased suffered was as under:

"Gun shot wound of entry area 1 3/4" x 1 1/2" x cavity deep margins inverted lacerated blackening and tattooing present front of Abd. left 3/4" at 2 o'clock to umbilicus & from left to right inward and backward."

2. The facts in brief are that the wife and son of the deceased informed him when he returned home at about 7.00/7.30 p.m., that the appellant had broken their cakes of cow dung in the afternoon between 11.00 to 1.00 p.m. The deceased went to the house of the appellant to complain about it. He was accompanied by his son Kishan Lal (PW2). There the accused abused the deceased and removed the gun that was hanging on the door of his house. Seeing this the deceased with his son left the house of the appellant. The accused went after the deceased. Again there was altercation on road. The accused was carrying the gun with him. He shot the deceased in the abdomen and ran thereafter. As a result of the gun shot injury the deceased died on the spot. The appellant was charged for the offence under Section 302 IPC. He has been convicted by the trial court. His conviction has been upheld by the High Court.

3. Mr. A.K. Chitale, learned counsel for the appellant contends that it was an altercation on account of trivial matter of breaking of the cow dung cakes by the appellant. The submission is that over a trivial incident of this type a single gun shot was fired and it is not a case of pumping of the bullets by the appellant into the body of the deceased and thus it is evident that the appellant had no intention to kill the deceased. In this view, learned counsel contends that the conviction of the appellant under Section 302 IPC is not sustainable and it deserves to be converted into one under Section 304 part II IPC.

4. In support of the contention learned counsel relies upon the decision of this Court in *Addha v. State of A.P.* .

“That is a case of single lathi blow as a result of sudden quarrel between the two groups of people. The entire incident had taken place pursuant to a quarrel between

the two groups of people and the appellant had no deliberate intention to cause the death and it was in the melee that the appellant used the lathi which caused injury to the deceased which ultimately resulted in his death and in this background the appellant was not held guilty of offence of murder. This Court held that the offence would only come under Section 304 part II IPC. The decision has no applicability to the facts of the present case.”

5. In the present case, it cannot be held on facts that it is a case of trivial dispute over breaking cow dung cakes by the appellant. That is over simplification of the facts which is not warranted by the material on record. The present is a case where the land which earlier belonged to the appellant was used by the deceased for making of cow dung cakes. After the appellant was deprived of the use of the land, it vested in the gaon sabha. The deceased was using the land for about 3/4 years for the aforesaid purpose. The use of the land by the deceased had earlier too resulted in dispute between the appellant and the deceased. It was thus a dispute over land and not a trivial dispute over breaking of cakes of cow dung. Further the deceased and his son left the house of the appellant after altercation when they found that the appellant had taken in his hands the gun. The appellant followed them on the road. Again altercation took place and at this stage the deceased was shot by the appellant.

6. Reliance has also been placed by learned counsel for the appellant on *K. Ramakrishnan Unnithan v. State of Kerala*, . In this decision too on facts it was held that the one knife blow given by the appellant to the deceased, which was though severe but was not as a result of animosity against the deceased and the appellant was involved because of altercation with PW1. Under these circum stances this Court found that the scenario in which the appellant has been stated by the eye witnesses to have given one blow to the deceased, did not show that he gave that blow with the intention of causing the murder of the deceased or he can said to have the requisite knowledge that death would otherwise be the inevitable result. Thus, it was held that the accused did not commit the offence under Section 302 IPC but under part II of Section 304 IPC.

7. It has been further contended that the friction in the present case was not of the kind which can be termed as such an animosity for which the appellant would carry in his mind the intention to kill the deceased. The facts noticed hereinbefore clearly show that the appellant was bearing the animosity on account of use of his erstwhile land by the deceased and it was not a simple case of friction on account of breaking of cow dung cakes by the appellant which belonged to the family of the deceased.

8. Reliance has also been placed on the decision in *State of U.P. v. Hari Om*, . In this case the son had killed his father. The dispute was about his father's property who was refuting the demand of the son-accused for separation and share in the property. The Court held that the case has to be viewed in the background that such claim in the property by married sons was common and normal in rural societies. This Court held that it was not an instance of animosity which could have bred the necessary criminal intent in the mind of the accused/respondent to kill his father. The Court further found that the accused had caused

one injury by giving a "Suja" blow but he did not intend to cause the injury to murder his father. Therefore this decision does not lend any support to the case of the appellant.

9. Lastly, reliance was placed on *Mavila Thamban Nambiar v. State of Kerala*, . It is a case of injury caused on the vital part of the body of the deceased with a pair of scissors. Therefore, on facts the Court held that it may be reasonable to infer that the appellant had knowledge that the injury with the said pair of scissors on the vital part of the body of the deceased would cause death, though he may not have intended to commit the murder.

10. In the present case, it is not possible to hold, on the facts noticed above that the appellant had no intention to kill the deceased. It is not possible to hold that every case of single injury would show the absence of intent to kill. It would depend on facts of each case. The type of weapon used would also be one of the important aspect to be kept in view. The submission that is generally made in such cases that it is a case of a single injury resulting in death and, therefore, the offence deserves to be converted from one under Section 302 IPC to one under Section 304 IPC cannot be accepted as a broad proposition of law. One may sever the head of the deceased by a single injury or may kill him by a single gun shot on a vital part, as in the present. It cannot be said that because of a single injury the offence under Section 304 IPC is only made out and not under Section 302 IPC.

11. For the aforesaid reasons we are unable to accept the contention urged for the appellant that the nature of offence deserves to be converted as noticed earlier.

12. There is no merit in the appeal. It is accordingly dismissed.