SUPREME COURT OF INDIA

Khuman Singh

Vs.

State of Madhya Pradesh

Crl.A.No.998 of 1999

(B. P. Singh and Arun Kumar JJ.)

24.11.2004

JUDGEMENT

B. P. Singh, J.

1. There are seven appellants in this Appeal who have impugned the judgment and order of the High Court of Madhya Pradesh at Jabalpur dated 2nd September, 1998 in Criminal Appeal No. 1035 of 1989. The High Court by its impugned judgment and order dismissed the appeal preferred by them and upheld the judgment and order of the First Additional Sessions Judge, Sehore in Sessions Trial No. 74 of 1988 finding them guilty of the offence punishable under Section 302 read with Section 149, IPC and sentencing them to imprisonment for life. The appellants were also found guilty of the offences under Sections 147 and 323 read with Section 149, IPC and sentenced to undergo one year, and six months, rigorous imprisonment respectively for those offences.

2. The facts of the case are that in connection with the Flag Ceremony performed near the Hanuman Temple, the villagers had assembled from different villages. They danced the whole night in celebration. The party of the complainant was dancing to the beating of drums of one Nanla (PW5) while the appellants and others were dancing in a separate group. It appears that inadvertently the stick of Khuman Singh, Appellant No.2 hit PW5 on his face. There was protest from Nanla, and it appears that an altercation followed the protest. However, the groups dispersed thereafter. Rayla (since deceased) had intervened to pacify the parties. Thereafter the villagers took 'prasad' and started to proceed towards their respective villages. According to the prosecution, the complainant party was chased by the appellants who caught hold of Nanla (PW5). There was protest from deceased Rayla and others. It appears that appellant No.1 gave a lathi below to Bair Singh (PW1). The chase continued and ultimately in the field of Samadh Miyan, Rayla, the deceased was over-powered and was assaulted with lathi and stones. It is the case of the prosecution that some of the accused trampled on his body as a result of which he died on the spot.

3. The First Information Report was lodged by PW1 and after investigation the appellants were put on trial. There is considerable evidence on record to prove the participation of the

appellants. The evidence also establishes the genesis and manner of occurrence as stated by the prosecution.

4. Learned Counsel for the appellants submitted that even if the prosecution case is accepted to be true, the nature of injuries caused, the weapons used, the genesis of the occurrence and the trivial dispute which gave rise to the occurrence, belie the case of the prosecution that the appellants intended to cause the death of the deceased. She submits that none of the injuries caused way by itself sufficient in the ordinary course of nature to cause death, and at best death resulted on account of the unintended injury to the liver caused by fracture of a rib bone which punctured the liver. According to her, injury to the liver, which appears to be the cause of the death, was not intended by the appellants. According to her, the offence made out may be one under Section 326 or Section 324, IPC.

5. On the other hand, Counsel for the State submitted that a large number of injuries were inflicted on the deceased by the appellants. The appellants must have known that such large number of injuries caused by them result in the death of the victim in the ordinary course of nature. He, therefore, submitted that the case clearly comes under Section 302, IPC. To be more precise he submits that the case would fall under Section 300 'thirdly', IPC.

6. We have gone through the evidence on record and have noticed the features of the case. Firstly, the occurrence has its genesis in a trivial matter namely the unintended hitting of Nanla (PW5) by the stick of appellant No.2 when they were dancing at the festival. There was some protest giving rise to exchange of abuses and altercation but the matter rested there. Thereafter, the parties took 'prasad' and proceeded to their respective villages. It is thus apparent that what happened was not premeditated and the appellants had not come particularly prepared for the incident. Secondly, while returning to their respective villages the appellants caught hold of Nanla (PW5) but there was intervention by the deceased Rayla. This is what made Rayla the target of the appellants. The injuries inflicted were by lathis carried by the appellants and some of them picked up stones which they found lying nearby. Thirdly, the medical evidence discloses that the following injuries were caused:-

> “1. Swelling of the size of 3 cm. x 3 cm. on the outer margin of the eye and right side of the face.
>
> 2. Swelling of the idea of 4 cm. on the head bone of left parietal bone.
>
> 3. A spreading swelling over the left of the nostril and on the Mazalary bone of the left face.
>
> 4. Spreading swelling in the region of the left collar bone.
>
> 5. In the half upper portion of the left arm spreading swelling.
>
> 6. Contusion spread around the niple of left side of the chest.

7. Swelling in the region of the ribs Nos. 10, 11 and 12 of the back bone and right side of the back."

7. The internal examination disclosed that though there was clotting of blood under the upper skin on the left parietal bone there was no underlying fracture. The 11th and 12th ribs which had been fractured had entered the liver. The deceased had suffered several fracture of bones but none of them appear to be such as would have caused his death in the ordinary course of nature.

8. The doctor who had conducted the postmortem examination was examined as PW10 but in the course of his deposition he did not state that he had found any injury which was sufficient in the ordinary course 1958 Cri LJ 818 of nature to cause death. His opinion appears to be that 'death has been caused due to the injuries caused on his person and following the damage of the liver and profuse bleeding". In the absence of any clear medical opinion we have examined the nature of injuries inflicted on the deceased as disclosed by the evidence on record. From the external and internal injuries found, we have come to the conclusion that it was the injury caused to the liver resulting in profuse bleeding which caused the death. If the liver had not been damaged, perhaps death would not have resulted. We say so because there is no clear medical opinion on this aspect. The question then is whether in this state of the evidence on record, the case is covered by Section 300. "thirdly", IPC, that is to say, whether the appellants committed the act with the intention of causing bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. In *Virsa Singh v. State of Punjab*[1] this Court considered the facts and held that the prosecution must prove the following facts before it could bring the case under Section 300, 'thirdly'.

"First, it must establish, quite objectively that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

9. In *Anda v. State of Rajasthan*[2] the same principle has been reiterated in the following words:-

"The third clause views the matter from a general stand point. It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and the causing of such injury is intended the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature. If the intended injury cannot be said to be sufficient in the ordinary course of nature to cause death, that is to say, the probability of death is not so high, the offence does not fall within murder but within culpable homicide not amounting to murder or something less."

In the same judgment this Court cautioned that no case can be an authority on facts. This is always a question of fact as to whether accused shared a particular knowledge or intent. One must look for a common intention, that is to say, some prior concert and what that common intention is. One must look for the requisite ingredient that the injuries which were intended to be caused were sufficient to cause death in the ordinary course of nature, and whether the accused possessed the knowledge that the injuries they were intending to cause were sufficient in the ordinary course of nature to cause death.

10. Keeping these principles in mind and applying them to the facts of this case we find that the occurrence took place suddenly. There was no premeditation on the part of the appellants and quarrel really arose from a trivial issue. The parties had danced all night and nothing untoward had happened except this small incident. Thereafter they proceeded towards their respective villages. It is not the case of the prosecution that the appellants were armed with deadly weapons. Some of them were carrying lathis, as are usually carried by the tribals in that part of the State, and had not made any special preparation for the assault. Some others had just picked up stones when the deceased was overpowered, and assaulted him. It is, no doubt, true that they assaulted the deceased in such a manner that the deceased suffered several fractures, but the injury which caused the death of the deceased was the one suffered by him on account of the rib bone puncturing the liver. We are convinced that this injury was not intended by the appellants, and the injury suffered by the deceased on his liver was at best accidental. We therefore, hold that Section 300 'thirdly', IPC is not attracted, and it cannot be said that the appellants intended to cause any injury to the liver which perhaps proved fatal. There is no evidence to suggest that any of the other injuries suffered by him was sufficient to cause death in ordinary course of nature.

11. The question then is under which provision of the IPC the appellants should be punished. Counsel for the State submits that even if the case does not fall under Section 300 'thirdly", IPC it would certainly fall under Section 304, Part II, IPC. Even if we say that the appellants had no intention to cause death they certainly knew that such bodily injury was likely to cause death. He, therefore, submits that even if the appellants may not be found guilty of culpable homicide amounting to murder, they are certainly guilty of culpable homicide not amounting to murder punishable under Section 304, Part II, IPC.

12. Having considered all the relevant facts we are satisfied that the appellants are guilty of the offence punishable under Section 304, Part II, IPC. We, therefore, set aside their conviction under Section 302, IPC and instead convict them under Section 304, Part II, IPC and sentence them to 5 years rigorous imprisonment. Learned Counsel for the appellant submitted that the offence will fall under Section 326, IPC and not under Section 304, Part II, IPC because the injury caused by the appellants resulted in fracture of the bones. It is true that in such border line cases it is possible to hold either way. However, in the facts and circumstances of this case the conviction should appropriately be one under Section 304, Part II, IPC. In any event, it would make no difference to the sentence, having regard to the facts of the case.

13. In the circumstances, this appeal is partly allowed and the conviction of the appellants under Section 302, IPC is set aside and they are convicted under Section 304, Part II, IPC and sentenced to five years rigorous imprisonment each. We are informed that the appellant No.1, Khuman Singh, s/o Nahar Singh, appellant No.2 Khuman Singh, S/o Bair Singh, Appellant No.4 Bhai Singh, s/o Phool Singh and Appellant No. 6 Dhanna, s/o Par Singh have remained in custody throughout and have served out about 11 years of the sentence, while the remaining appellants were granted bail by the High Court after sometime. In this appeal this Court granted bail to all the appellants. Their bail bonds are cancelled and the authorities are directed to take them into custody if they have not served out the sentence of five years awarded by this Court, to serve out the remainder of the sentence.

Appeal partly allowed.

[1]*AIR 1958 SC 465*
[2]*AIR 1966 SC 148 (151)*