SUPREME COURT OF INDIA

Labha

Vs

State of Uttaranchal

Appeal (Crl.) 638 of 2007

(S. B. Sinha and Markandeya Katju, JJ)

27.04.2007

JUDGMENT

S. B. SINHA, J.

Leave granted.

One Umra advanced a petty sum of Rs. 5 to Multana by way of loan. On 31.10.1985 at about 9 p.m, he asked him to pay the said amount back to him. What was his response thereto is not known. Multana, however, started hurling abuses on him. Bachni, the mother of appellant came there and said "UMRA DO KAUDI KA LADKA HAI, ISKO MITTI MAIN MILA DO. MAIN ISKI EENT SE EENT BAJA DUNGI" Whereupon Multana and Ranjeet caught hold of the deceased. Appellant was carrying a big knife with him. He inflicted three blows on the deceased with the said knife. The deceased ran towards his house pressing his abdomen by his hands. He could not run for a long distance. He fell down. P.W. 1, Amar Singh, father of the deceased who had been coming back to his house along with P.W. 4, Jeet Singh from the market witnessed the entire incident. It was also witnessed by P.W. 7, Birsa Singh. The deceased was taken to the hospital immediately. He, however, was declared dead. A First Information Report was lodged in regard to the said incident by Amar Singh at 10.40 p.m. in the Dehradun Police Station.

On completion of the Investigation, all the four accused were chargesheeted. Appellant was charged for commission of "murder" of the deceased. He was convicted and sentenced to rigorous imprisonment. Other three accused, however, were acquitted by the learned Trial Judge opining that the prosecution has not been able to prove that they had a common intention to cause the said offence. An appeal preferred by the appellant against the said judgment of conviction and sentence was dismissed by the High Court by reason of the impugned judgment. Appellant is, thus, before us.

Mr. Vinay Singh, learned counsel appearing on behalf of the appellant would, in support of this appeal, submit that the prosecution case should not be accepted inasmuch as;

(I) The medical evidence is contrary to the ocular evidence, as not only no injury was found on the abdomen of the deceased, two other injuries were found on his back.

(II) According to doctor more than one weapon might have been used.

(III) P.W. 7, Birsa Singh having not been relied upon by the Trial Judge, P.W. 4, Jeet Singh having seen only Birsa Singh and nobody else, his testimony should not have been relied upon

(IV) In any event, having regard to the facts and circumstances of the case, a case of commission of offence under Section 302 of the Indian Penal Code, 1860 has not been made out but one under IInd Part of Section 304, as the offence was committed (i) without any pre-meditation, (ii) without any undue cruelty, (iii) At the spur of the moment on sudden provocation, and (iv) there was no debasement on the part of the appellant.

The deceased suffered three injuries at the hands of the appellant which are as under:-

1. Punctured wound with clean cut margins 4cm x 1 = cm x heart cavity deep, cutting the 6th rib pleura and apex of peri cardium and heart. 100 ml of blood in pericardial cavity, on the left side of front of chest 6 cm below the left nipple, 1 = cm away from nipple line.

2. Incised wound 2 = cm X 1cm X 1cm deep as the outer part of back 5 cms below the posterior axillary fold.

3. Punctured wound with clean cut margins 5cm X 2cm X 7cm deep on the back of chest directed upwards and anteriorly cutting the muscles of back, intercoastal muscles, pleura and piercing 2cm in the left upper lobe of lung in its lower part. A litre of fluid blood found in the thoracic cavity."

P.W. 2, Dr. Ajay Krishna, who had conducted the post-mortem examination, opined that the injuries Nos. 1 and 2 were sufficient in ordinary course to cause death. So far as injury No. 3 is concerned,

according to him, the same was directed from down to upward.

The doctor did not categorically state that in causing the injuries aforementioned, two different instruments have been used as according to him; "...Injuries Nos. (ii) And (iii) could be caused by the one and same instrument as also from different instruments...."

He, however, stated that the length and breadth of the injury would depend upon the force at which the weapon was used and if the blow of the instrument is light, it would not go deeper and in that case breadth shall be comparatively more.

The First Information Report was lodged almost immediately after the occurrence. P.W. 1 in his deposition supported the prosecution case in its entirety. P.W. 4 is a relative of the P.W. 1. They were coming back together from the market. Both of them saw the entire incident. Both of them stated that whereas Ranjeet and Multana caught hold the deceased, Appellant took out a knife and inflicted blows on the deceased. The accused, however, ran away when P.W. 1 started shouting.

Reliance was not placed upon the testimony of P.W. 7 by the learned Trial Judge as some statements made by him before the Court had not been made before the Investigating Officer under Section 161 of the Code of Criminal Procedure. The approach of the Court in this behalf although may not be entirely correct, but in the facts and circumstances of this case, we are of the opinion that even on the testimony of other witnesses the prosecutrix may be held to have proved its case.

The statement of P.W. 4 that he saw Birsa Singh alone must be taken into consideration with his other statements namely:

He and P.W. 1 were coming back from the market together. When he stated about the presence of Birsa Singh alone, he must have meant that the latter was the only outsider who was present at the scene of occurrence and noticed the entire incident.

Submission of the learned counsel in regard to the fact that there was only one injury in the front and two injuries on the back do not militate against the prosecution story. Suffice it to say that one injury was 5 cm below the nipple and if the same had been described as the injury in the abdomen by P.W. 1 and P.W. 4. no serious exception thereto can be taken. Neither P.W. 1 nor P.W. 4 stated that the appellant caused all the three injuries on the front portion of the person of the deceased.

What was stated was that the injuries were inflicted in quick succession (the expression used in the vernacular was "Palak Jhapakte"). It must have taken him by surprise. We, therefore do not find any reason to disagree with the findings of the courts below that the death of Umra was homicidal in nature and the same was caused by the appellant.

Coming to the submission of the learned counsel that only a case under Section 304 Part II of the

Indian Penal Code, 1860 has been made out, we see no reason to accept the same. 'Fourthly' appended to Section 300 of the Indian Penal Code, 1860 provides that the culpable homicide would not be murder if it was committed without pre-meditation in a sudden fight, in a heat of passion being sudden quarrel and the accused had not acted in a cruel and unusual manner.

The first ingredient of the said provision namely absence of pre- meditation exists in the instant case but it cannot be said that there was a sudden fight, in the sense that the deceased was armed or made any provocative statement. As the prosecution story goes, it was the mother of Multana who gave an exhortation. What was the occasion therefor, we do not know.

The learned Trial Judge was right in opining that a case of common intention has not been made out as against the other accused persons, as nobody probably in their wildest dream could have thought that a petty dispute relating to demand of Rs. 5 by Umra from the deceased, would lead to his death at the hands of the appellant. Appellant, however, was carrying a big knife. He inflicted three blows repeatedly in quick succession. He took undue advantage of his position as the deceased was being held by two other accused.

The intention to cause death and/or to cause an injury which is likely to cause death is evident from the fact that the first blow was given on a vital part of the body namely 5 cm below the nipple.

Two other blows might have landed on the side of the outer part of the back below the posterior auxiliary fold and the back of chest as the deceased on receipt of the first blow must have moved to his right being in pain.

The effect of the blows was such that he even could not go beyond a few paces.

We, therefore, are of the opinion that it cannot be said that there had been no debasement or appellant did not take undue advantage of the situation and/or there was a total absence of cruelty. We are, further, of the opinion that there being no provocation on the part of the deceased, it is not a case where only an offence under Section 304 part II of the Indian Penal Code is made out. The appeal, for the aforementioned reason is dismissed .