

MAGAN
v.
STATE OF MADHYA PRADESH

APRIL 10, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Penal Code, 1860; Ss. 302 and 323:

Murder—Accused persons attacked deceased and another—Accused allegedly shot an arrow which pierced the chest of deceased—Deceased succumbed to injuries—Trial Court found all the accused persons guilty of committing murder of the deceased and causing voluntary hurt to his brother and sentenced them accordingly—High Court setting aside conviction against all the accused persons except appellant and another, affirmed conviction and sentence against the accused-appellant—On appeal, Held: Motive of committing the crime has categorically been disclosed not only in FIR but also in the deposition of prosecution witnesses—Presence of prosecution witnesses at the place of occurrence not doubtful—Since deposition of witnesses made after lapse of four years from the incident, some variation in their statement cannot be ruled out—A plea of right to self-defence raised for the first time and it was not specifically raised before the trial Court—No reasons/explanations furnished as to the circumstances—None of the accused persons suffered injuries so as to justify accused exercising their right to private defence—Under the circumstances, both the Courts below rightly found accused guilty of offence punishable u/s. 302 IPC—Evidence Act, 1872—Evidence of witnesses—Evidentiary value.

On the fateful day, when the deceased along with his brother PW-2 and other persons were in their respective hutments, the accused persons including appellant came there and started shouting, on hearing of which deceased, his brother and others came out of their houses. Appellant was carrying a bow and arrows and other accused persons were having stones in their hands. Accused-appellant bore a grudge against the deceased since he made a complaint against the appellant in regard to cutting of Mahua tree before the Forest Rangers. Appellant shot an arrow which pierced the left side of the chest of the deceased. PW-2 and other witnesses tried to intervene,

A whereupon other accused persons started pelting stones towards them. On receipt of injuries, the deceased tried to run away from the scene of occurrence, however, after going a few steps he fell down. He was brought to the hut and after some time he succumbed to the injuries. First Information Report was lodged by PW-2, and Police, after completing the investigation, submitted the charge-sheet. During trial, seven witnesses were examined on behalf of the prosecution. The Trial Court upon considering the materials brought on record found all the accused persons guilty of committing the offences of murder of the deceased and causing voluntary hurt to PW-2, and accordingly convicted them for committing offences punishable u/ss. 148, 302/149, 323/149 IPC and sentenced them accordingly. An appeal was preferred thereagainst by all the accused persons. The High Court opined that the appellants therein were not guilty of the offences punishable under Sections, 148, 302/149 and 323/149 I.P.C. High Court, while setting aside the conviction against all the convicts except the appellant, affirmed the conviction and sentence against the accused-appellant only. Hence the present appeal.

D Accused-appellant contended that the Trial Court and consequently the High Court failed to notice the fact that the litigations were pending between the parties and, thus, no reliance should have been placed upon the evidences of the prosecution witnesses and in particular PW-2; and that although PW-2 made a statement before the Court that two other eye-witnesses, they were not named in the First Information Report.

E Dismissing the appeal, the Court

F HELD: 1.1. The motive on the part of Appellant in committing the crime has categorically been disclosed not only in the First Information Report, but also in the deposition of the prosecution witnesses and in particular PWs-2 and 6. If the place where the occurrence took place is not in question, there cannot be any doubt whatsoever that the residents of the neighbouring huts would either see the occurrence or come out immediately thereafter. As the occurrence took place at about 6.00 p.m., presence of the prosecution witnesses cannot be doubted. It may be that a litigation in regard to theft of a buffalo was pending against PW 3, PW4 and PW-6, but that by itself cannot be a ground for false implication of the appellant. PW-2 is furthermore an injured witness

G [Para 16] [1053-G-H; 1054-A]

H 1.2. A suggestion had been given by the accused that PW-2 being armed with a bow and arrows ran after the accused-appellant to kill him, if that be

so, it was expected that the First Information Report to that effect should have been lodged. A question was asked to him as to whether he had gone to the deceased after he fell down to ask as to who had hurt him; but then he clarified that he had seen the deceased being shot with an arrow. Yet again a suggestion was put to him that the accused persons came barging in their house; if that be so, they must be held to have accepted the prosecution case in part.

[Para 17] [1054-B]

1.3. PW-3, PW-4, PW-5 and PW-6 also fully supported the prosecution case. PW-6 in his evidence might have stated that he alone went to the deceased and carried him to the hut, but the same by itself cannot be considered to nullify the effect the statements of other witnesses. The High Court has rightly commented that the depositions of the witnesses having taken place after four years from the date of incident, some variation in their statements cannot be ruled out. [Para 18] [1054-C-D]

2. A plea of right of self-defence had not been specifically raised. A faint attempt was, however, made in that behalf before the Trial Court alleging that during a function which took place at the house of one 'R', there had been a fight between the deceased and the appellant. The appellant was brought out of the house where the function was being held. But PW-6 categorically stated that there had been no such function. Right of private defence had not been raised by any other accused and, thus, in what circumstances, appellant had shot an arrow had also not been explained. If the deceased had shot an arrow at the appellant, he would have suffered injuries. None of the accused persons had suffered any injury so as to give rise to exercise of their right of private defence. The Trial Court as also the High Court considered all aspects of the matter and rightly found appellant guilty of the offence punishable under Section 302 I.P.C. [Para 19] [1054-E-G]

CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 99 of 2006.

From the Judgment and Order dated 18.01.2002 of the High Court of Madhya Pradesh, Bench at Indore in CRLA No. 1364 of 1998.

Santosh Singh for the Appellant.

Vibha Datta Makhija and Amit Mishra for the Respondent.

The Judgment of the Court was delivered by

A **S.B. SINHA, J.** 1. Appellant herein is before us questioning the correctness or otherwise of a judgment and order dated 18.01.2002 passed by a Division Bench of the Madhya Pradesh High Court, Indore Bench, Indore, in Criminal Appeal No. 1364 of 1998 whereby and whereunder he was held to be guilty of commission of an offence punishable under Section 302 of the Indian Penal Code (for short, 'I.P.C.') and sentenced to undergo imprisonment for life and a fine of Rs.500/-, in default whereof he had been directed to suffer further rigorous imprisonment for six months.

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C 2. Appellant along with four other persons, namely, Chamru. Dhansingh, Lalu and Jatnia were charged for commission of offences punishable under Sections 148, 302 read with Section 149 and Section 323 read with Section 149 I.P.C. The occurrence took place at about 6.00 p.m. on 27.11.1990 at village Theka Kund, Haveli Phalia.

D 3. Deceased Indar Singh along with his brother Hari Singh (PW-2) and other persons were in their respective hutments. The accused persons came there and started shouting, on hearing of which Hari Singh (PW-2), deceased Indar Singh and Ansingh, Chandar Singh, Sayaribai and Sakru came out of their houses. Appellant was carrying a bow and arrows and other accused persons were having stones in their hands. Appellant wanted to know from the deceased as to why a complaint had been made by him in regard to cutting of Mahua tree before the Ranger. They started abusing them. Appellant shot an arrow which pierced the left side of the chest of the deceased. PW-2 and other witnesses tried to intervene, whereupon other accused persons started pelting stones. Chamru allegedly threw a stone which hit the shoulder and right parietal region of Hari Singh (PW-2). On receipt of injuries, the deceased Indar Singh tried to run away from the scene of occurrence. He took out the arrow and threw away the same. He, however, after going a few steps fell down. He was brought to the hut and after some time he succumbed to his injuries. A First Information Report was lodged by PW-2 before the Police Station which was situated at a distance of 14 k.m. from the place of occurrence. Before the learned Trial Judge, seven witnesses were examined on behalf of the prosecution. The learned Trial Judge upon considering the materials brought on record found all the accused persons guilty of commission of murder of Indar Singh and causing voluntary hurt to PW-2, stating :

H "Thus after the discussion of entire evidence I have come to the conclusion that the prosecution has succeeded in proving that on 27.10.90 the accused persons formed unlawful assembly for the common

object of causing murder of Indar Singh at Village Thekakund and in prosecution of the common object of that assembly, the accused persons armed with deadly weapons arrow and bow and stone, caused riots and being the member of unlawful assembly in prosecution of common object of that assembly, shot an arrow on Indar Singh with intention and knowingly caused death by committing murder of Indar Singh and being the member of that unlawful assembly in prosecution of common object of that assembly voluntarily caused hurt to Hari by pelting stones.

Consequently I find the accused persons guilty for the offences under sections 148, 302/149, 323/149 I.P.C. Judgment is adjourned for hearing on the point of sentence."

4. In regard to the quantum of punishment, it was stated as under :

"Accused persons heard on the point of sentence. It is argued on behalf of the accused persons that this is their first offence, hence they be dealt with liberally on the point of sentence. Looking to the nature of offences the accused persons are sentenced to undergo rigorous imprisonment for 2-2 years each for the offence u/s 148 IPC. For the offence u/s 302/149 I.P.C. to undergo life imprisonment each and fine of Rs.500/- (Rs. Five hundred) and in default of payment of fine, they will suffer further simple imprisonment for six months and for the offence punishable under section 323/149 of I.P.C., they are sentenced to undergo R.I. for six months. All the sentences of the accused persons to run concurrently. Detention period of the accused persons be set off from the sentence."

5. An appeal was preferred thereagainst by all the accused persons. The High Court by reason of the impugned judgment while accepting the evidence of the prosecution opined that the appellants therein were not guilty of the offences punishable under Sections, 148, 302/149 and 323/149 I.P.C. But while setting aside the conviction under the said provisions Appellant herein was found guilty of commission of the offence punishable under Section 302 I.P.C. and sentenced to undergo imprisonment for life; and accused Chamru was found guilty of commission of the offence punishable under Section 323 I.P.C. and sentenced to undergo the imprisonment for the period already undergone by him with a fine of Rs.500/-.

6. Appellant is, thus, before us.

- A 7. Mrs. Santosh Singh, the learned counsel appearing on behalf of Appellant, inter alia, would submit that the learned Trial Judge and consequently the High Court failed to notice the fact that the litigations were pending between the parties and, thus, no reliance should have been placed upon the evidences of the prosecution witnesses and in particular the PW-2.
- B 8. The learned counsel would contend that even from a perusal of the evidence of PW-2, it would appear that although he claimed himself to be an eye-witness, but curiously stated that when Indar Singh fell on the ground, he went to him and asked as who had hurt him, which was absolutely unnecessary.
- C 9. It was submitted that although PW-2 made a statement before the Court that Lakshman s/o Ram Chander and Bhupender s/o Karan Singh were eye-witnesses, they were not named in the First Information Report. Our attention has also been drawn to the evidence of Sakru (PW-6) to point out that he was also not an eye-witness as he came at a later stage.
- D 10. Ms. Vibha Datta Makhija, the learned counsel appearing on behalf of the State, however, supported the impugned judgment.
11. Homicidal nature of death of the deceased Indar Singh is not in dispute. He suffered the following ante-mortem injuries :
- E “External Injuries : One incised perforating wound present over 3rd rib cut off at costo-condrial junction
- Size 2.5 cm x 0.5 cm x 10.0 cm.
- F Bone Injury caused by hard sharp perforating object (as an arrow)”
- F 12. Hari Singh (PW-2) also suffered the following injuries :
- “I. Conturium on Right shoulder On Back size 6 cms. X 6 cms
- II. Lacerated wound present on Right frontal region Size 2.0 cms. X 1.0 cm x 0.5 cm.
- G 2. Abrasion on left leg in position laterally
- Size 2.0 cms. X 1.0 cm”
- H 13. The cause of death of Indar Singh, as disclosed in the Post Mortem Report, is as under :

"Deceased died of hemorrhage shock due to perforating wound. A
Homicidal in nature; Died within 24 hours."

14. Dr. M.S. Mangloi (PW-1), who conducted the post-mortem examination on the body of the deceased, in his deposition stated :

"The post-mortem was conducted by me on the same day at 1.30 B
pm. The deceased was of normal built, eyes were closed, pupil dilated, mouth closed and face was pale. Chest and lower extremities were stained with dried blood. Rigor mortis present on both extremities. PM stains present on back. On the examination of the body, I found following injuries on the body :

One incised perforation wound present over 3rd rib C

At Costo-condrial junction Size 2.5 cm x 0.5 cm x 10.0 cm."

xxx

xxx

xxx

It appears that the said injuries were caused by a hard, sharp D
perforating object as an arrow. Injuries were Ante-mortem in nature, caused within 24 hours of my examination. The injuries are sufficient to cause death in the ordinary course of nature.

In my opinion, deceased dies due to hemorrhage shock. Death is E
homicidal in nature. The post-mortem report is Exhibit P-2, on which my signatures are from A to A."

15. The First Information Report is somewhat a detailed one. It speaks of the mode and manner in which the incident took place. Events taking place immediately after the occurrence had also been stated. Hari Singh (PW-2) in his deposition supported the prosecution case in its entirety. F

16. The motive on the part of Appellant in committing the said crime has categorically been disclosed not only in the First Information Report, but also in the deposition of the prosecution witnesses and in particular PWs-2 and 6. If the place where the occurrence took place is not in question, there cannot be any doubt whatsoever that the residents of the neighbouring huts would G
either see the occurrence or come out immediately thereafter. As the occurrence took place at about 6.00 p.m., presence of the prosecution witnesses cannot be doubted. It may be that a litigation in regard to theft of a buffalo was pending against Sakru, Chander Singh and Magan (PW-4), but that by itself cannot be a ground for false implication of the appellant. PW-2 is furthermore H

A an injured witness.

17. A suggestion had been given by the accused that PW-2 being armed with a bow and arrows ran after the accused Magan to kill him, if that be so, it was expected that the First Information Report to that effect should have been lodged. A question was asked to him as to whether he had gone to Indar Singh after he fell down to ask as to who had hurt him; but then he clarified that he had seen Indar Singh being shot with an arrow. Yet again a suggestion was put to him that the accused persons came barging in their house; if that be so, they must be held to have accepted the prosecution case in part.

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18. Chander Singh (PW-3), Magan (PW-4), An Singh (PW-5) and Sakru (PW-6) also fully supported the prosecution case. PW-6 in his evidence might have stated that he alone went to Indar Singh and carried him to the hut, but the same by itself cannot be considered, in our opinion, to nullify the effect of statements of other witnesses. The High Court, in our opinion, has rightly commented that the depositions of the witnesses having taken place after four years from the date of incident, some variation in their statements cannot be ruled out.

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19. Participation of Appellant and that of Chamru, therefore, cannot be doubted. A plea of right of self-defence had not been specifically raised. A faint attempt was, however, made in that behalf before the learned Trial Judge alleging that during a function which took place at one Ram Singh's house, there had been a fight between Hari Singh, Indar Singh and Magan. Magan was brought out of the house where the function was being held by Hari Singh and Indar Singh. But Sakru (PW-6) categorically stated that there had been no such function. Right of private defence had not been raised by any other accused and, thus, in what circumstances, Appellant had shot an arrow had also not been explained. If the deceased had shot an arrow at the appellant, he would have suffered injuries. None of the accused persons had suffered any injury so as to give rise to exercise of their right of private defence. The learned Trial Judge as also the High Court, in our opinion, considered all aspects of the matter and rightly found Appellant guilty of the offence punishable under Section 302 I.P.C.

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20. For the reasons aforementioned, we do not find any merit in this appeal, which is dismissed accordingly.

H S.K.S.

Appeal dismissed.