

HIGH COURT OF MADHYA PRADESH AT JABALPUR

DIVISION BENCH: HON'BLE SHRI JUSTICE SHANTANU KEMKAR
HON'BLE SHRI JUSTICE N.K. GUPTA

CRIMINAL APPEAL NO.849 OF 1996

APPELLANT: Mohan Lal

Vs.

RESPONDENT: State of Madhya Pradesh

PRESENT :

For Appellant : Shri P. S. Gaharwar & Shri U.S.Jaiswal, Advocates.

For respondent/State : Shri Pradeep Singh, Govt. Advocate.

Date of hearing: 8.09.2015

Date of judgment: 16.09.2015

(J U D G M E N T)

16/ 09/2015

Per: Shantanu Kemkar, J;

This is an appeal under Section 374(2) of the Code of Criminal Procedure against the judgment dated 25.4.1996 passed by the First Additional Sessions Judge, Hoshangabad in Sessions Trial No. 2/1995, whereby convicting the appellant for offences under Sections 302, 323 and 325 of the Indian Penal Code and sentencing him to imprisonment for life, rigorous imprisonment for three months and rigorous imprisonment for two years respectively.

2. Briefly stated, the prosecution story is that on 12.10.1994 at about 3 A.M., the appellant who is nephew of Ramcharan started altercation with him.

During the altercation he suddenly lifted an iron rod and dealt its blow on his head. On hearing his cry, when Narmadi Bai wife of Vishram reached there, the appellant dealt blow of the iron rod on her head. On hearing the commotion, when Vishram husband of the Narmadi Bai peeped out of the door, he was also assaulted by the appellant. Mohanlal, Vishram and Narmadi Bai went to police station and lodged First Information Report. Initially offence under Section 307 of the Indian Penal Code was registered. During the treatment, Narmadi Bai died and after her death offence under Section 302 of the Indian Penal Code has been registered against the appellant. After completion of the investigation, charges under Sections 302, 323 and 325 of the Indian Penal Code were framed.

3. Before the trial Court, the prosecution examined as many as 11 witnesses. The trial Court placing reliance on the eye witness account of Ramkishan (PW3), Prabhudayal (PW4), Ramvati Bai (PW5) and injured witness Ramcharan (PW8) convicted the appellant as aforesaid. Injured Vishram could not be examined as he died during the trial.

4. Against the aforesaid judgment of conviction in the appeal filed by the appellant, a Division Bench of this Court vide judgment dated 14.8.2006 acquitted the appellant on the ground that at the time of commission of the offence the appellant's mental condition was not sound. The Supreme Court set aside the said judgment of the Division Bench of this Court vide order dated 6.4.2015 passed in Criminal Appeal No. 1738/2009 by observing thus:-

“ We have heard learned counsel appearing for the parties at length.

It appears that the High Court has acquitted the respondent holding that there is “something wrong” with the person and on such ground released him.

We have noticed that the High Court at that point of time has not considered Chapter XXV of the Code of Criminal Procedure, 1973 and came to such a conclusion. In doing so, it also escaped from the mind of the High Court the provision with regard to Section 335 of the Code of Criminal Procedure, 1973.

Accordingly, we feel it will be proper for us to set aside the order passed by the High Court and remand the same back to the High Court with a request to deal with the matter afresh expeditiously after taking into account Chapter XXV of the Code of Criminal Procedure, 1973.

The Criminal appeal is disposed of in the above terms.”

5. In pursuance to aforesaid remand order passed by the Supreme Court, we have heard learned counsel for the parties on the merits of the appeal.

6. Chapter XXV of the Code of Criminal Procedure deals with Provisions As To Accused Persons Of Unsound Mind. It provides for procedure to be followed for inquiry and trial in case of accused being of unsound mind. Section 335 of the Code of Criminal Procedure deals with as to how a person of unsound mind if acquitted has to be detained or how his custody is to be

delivered to his relative or friend. However, in this matter we find that it was not the case of the appellant that the appellant was of unsound mind. In the circumstances when on the earlier occasion the Division Bench while assessing the evidence had made certain observations about the mental condition of the appellant and had acquitted the appellant treating him to be under the said category, the Supreme Court had to set aside the judgment and to remand the case with the aforesaid observations. However, before us counsel for both the sides had categorically stated that it was not and is not their case that the appellant was of or is of unsound mind. In this view of the matter, we are not examining the said issue. Before us the only argument advanced on behalf of the appellant is that taking into consideration the evidence on record the offence would be under Part II of Section 304 of the Indian Penal Code.

7. Having gone through the evidence led by the prosecution it is clear that the appellant firstly dealt the blow by rod on the head of Ramkishan (PW3) and thereafter when on hearing cry Narmadi Bai reached there, he caused a blow on her head which proved fatal. Dr. N. Hasan (PW11), who examined the injuries of Ramcharan (PW8) in his report Ex. P/17 stated that the injuries are grievous in nature. He also stated the injuries caused to Vishram are simple in nature. Dr. A. K. Tiwari (PW1) conducted postmortem of body of deceased Narmadi Bai. As per the postmortem report Ex. P/1, Narmadi Bai died due to an injury on her head.

8. As stated above, having regard to the evidence available on record the learned counsel for the appellant has not assailed the prosecution story which is well founded and fully proved. We accordingly, confirm the finding of the trial court that appellant alone had caused the death of Narmadi Bai and also caused grievous injury to Ramcharan and simple injury to Vishram.

9. Learned counsel for the appellant has, however, argued that even accepting the prosecution version in totality, it cannot be said that the appellant had the intention to commit murder of Narmadi Bai and as such the offence will not be under Section 302 but under Part II of section 304 of the Indian Penal Code. We find substance in his submission. After altercation with Ramkishan (PW3), he picked up an iron rod which was lying on the floor and dealt a blow on him, when Narmadi Bai reached there in a fit of anger he admittedly dealt a single blow by rod on her head. From the evidence available on record, it cannot be held that the appellant had any pre-meditation or intention to cause death of Narmadi Bai. However, it can be safely held that he had the knowledge that by causing head injury with rod to Narmadi Bai, she would die.

10. Consequently, we set aside the conviction of appellant under Section 302 and sentence of life imprisonment imposed to him thereunder and instead convict him under Section 304 Part II and also under Sections 323, 325 of the Indian Penal Code and impose a sentence of 10 years, 3 months and 2 years rigorous imprisonment respectively for each offence. The

appellant had remained in jail from 14.10.1994 to 25.8.2006, thus he had already completed the aforesaid period of jail sentence and, therefore, he be released, if is in jail and if not required in any other case.

(Shantanu Kemkar)
JUDGE

(N.K.Gupta)
JUDGE

AD/

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**Hon'ble Shri Justice Shantanu Kemkar
Judge
/09/2015**

For consideration

**Hon'ble Shri Justice N. K. Gupta
Judge
/09/2015**

POST FOR: /09/2015

**(SHANTANU KEMKAR)
JUDGE**