



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Appeal No.541/1991

1. Panna Lal Son of Shri Madho Dass
2. Ram Swaroop, S/o Shri Mohan Lal
3. Lekh Raj, S/o Shri Prabhu Lal
4. Bhairu Lal, S/o Shri Hazari Lal Gujar,
All resident of Deoli, District Bundi (Rajasthan)

----Appellants

Versus

The State of Rajasthan.

----Respondent

For Appellant(s) : Mr. Anoop Pareek
Mr. Pranav Pareek
Mr. Mahendra Singh
For Respondent(s) : Mr. Vivek Sharma

JUSTICE ANOOP KUMAR DHAND

Judgment

Reserved on 04.09.2024

Pronounced on 19.09.2024

Reportable

By the Court:-

1. This appeal under Section 374 Cr.P.C., at the instance of the accused-appellants (hereinafter referred to as "the appellants") is directed against the impugned judgment dated 07.12.1991 passed by the Additional District and Sessions Judge, Bundi in Sessions Case No.1/1991 by which the appellants have been convicted under Section 304 Part-II IPC and sentenced to undergo seven years rigorous imprisonment with a fine of Rs.1000/- each and in



case any default occurs, then to further undergo six months additional rigorous imprisonment.

2. The factual matrix of the case is that PW-1 Radhey Shyam registered an FIR No.129/1990 (Exhibit P-1) at Police Station Kapren, District Bundi on 23.09.1990 around 11.30 PM, alleging therein that cattle of the appellants; Pannal Lal, Ram Swaroop, Lekh Raj and Bhairu Lal caused damage to his crops. When he went to his field, all the four appellants were grazing their cattle in his field and when he forbade them from grazing their cattle, they responded that their *lathis* are thirsty for his blood and thereafter, a quarrel took place between Radhey Shyam and the appellants. It was also alleged in the FIR that in the evening when it was dark, while he was going to his village alongwith his uncle-Goverdhan, all the four accused suddenly appeared from the field armed with *gandassi*, *lathis* and sticks in their hands. He could not identify them properly because of darkness. Then immediately, after seeing PW-1 and his uncle Goverdhan, all the four appellants assaulted them and also started beating his uncle, due to which he flew away from the site to save his own life, but in the meantime, the appellants kept beating his uncle and then they ran away. The villagers assembled on the site and brought his uncle in a bullock cart in unconscious state. His uncle sustained injuries on several parts of his body including his head, etc. Upon this report, the said FIR was registered with Police Station Kapren District Bundi for the offences under Section 307/34 IPC. During the course of investigation, the injured Goverdhan expired on 23.09.1990, hence Section 302 IPC was added. After investigation, police submitted charge-sheet against all the four



appellants for the offences punishable under Section 302 IPC read with Section 34 IPC before the Court of Magistrate, who committed the matter to the Court of Sessions and, thereafter, the case was transferred to the Court of Additional Sessions Judge, Bundi, wherein charges were framed against the appellants for the offences punishable under Section 302 IPC read with Section 34 IPC.

3. All the four appellants denied the charges and claimed trial. During the course of trial, the prosecution examined as many as 15 witnesses in support of its case and exhibited 22 documents. Thereafter, explanation of the appellants was recorded under Section 313 Cr.P.C., wherein they denied their participation in the incident and submitted that they have been falsely implicated on account of enmity. It was also submitted that Radhey Shyam caused the incident with them. In defence, statement of DW-1 Prabhu Lal was recorded by the appellants but no document was exhibited in their defence. After hearing the arguments of learned counsel for the appellants as well as Public Prosecutor, the Ld. Trial Judge, vide impugned judgment dated 07.12.1991, acquitted them of the charge under Section 302 IPC but the appellants were held guilty for the offences punishable under Section 304 Part-II read with Section 34 IPC.

4. Aggrieved by the aforesaid judgment, the appellants have approached this Court by way of filing of this appeal.

5. Learned counsel for the appellants submitted that in the FIR, no specific overt act was assigned to the appellants and only common-general-omnibus allegations were levelled against the appellants by the sole eye witness PW-1-Radhey Shyam. Learned



counsel submits that when the statements of the sole eye witness PW-1 Radhey Shyam were recorded, during the course of the trial he changed his version, and now he has levelled the allegation of causing head injury against the appellants-Panna Lal and Ramswaroop by hitting *gandassi* on the head of the deceased-Goverdhan. Learned counsel submits that the deceased has not sustained any injury by sharp-edged weapon on his head. The injuries sustained by the deceased-Goverdhan is lacerated wound which could be caused by a blunt weapon. Learned counsel submits that there is no recovery of *gandassi* at the instance of the accused-appellants Panna Lal and Ramswaroop. Learned counsel submits that though weapons have been recovered at the instance of all the four accused appellants but none of the weapons contained blood stains. Learned counsel submits that rest of the witnesses i.e. PW-2, Bhanwarlal s/o Jagannath, PW-3, Bhanwar Lal s/o Panna Lal, PW-4 Rewariya have not supported the prosecution version. Learned counsel submits that the Investigating Officer PW-13 Chawand Singh had admitted in his cross-examination that the informant-Radhey Shyam did not mention to him that due to darkness he could not see the faces of the accused persons. Learned counsel submits that in the site plan (Exhibit P-2), the presence of the informant is not mentioned. Learned counsel submits that the deceased has sustained as many as 12 injuries, and as per the Inquiry Report (Exhibit P-9), all the injuries sustained by him were caused by blunt weapon but injury No.12 which has been sustained by him was caused by a sharp edged weapon. Learned counsel submits that the evidence collected by the prosecution does not inspire any confidence. The



appellants have been falsely booked in this case because of an old enmity. Learned counsel submits that in view of the submissions made hereinabove, the impugned judgment passed by the Ld. Trial Court be quashed and set aside and the appellants be acquitted from all the charges.

6. In support of his contentions, he has placed reliance upon the following judgments; **Dinesh & Another Versus State of Haryana** reported in **(2002) AIR (SC) 2374**, **Datta s/o Daulatrao Mundhe & Another Versus The State of Maharashtra & Another** reported in **(2018) 0 Supreme (BOM) 828**, **Sattatiya @ Satish Rajanna Kartalla Versus State of Maharashtra** reported in **(2008) 3 SCC 210** and **Raja Naykar Versus State of Chattisgarh** reported in **(2024) 3 SCC 481**.

7. *Per contra*, learned Public Prosecutor opposed the arguments raised by learned counsel for the appellants and submitted that the prosecution has proved its case against the appellants beyond reasonable doubt. He submits that the instant case is a case of direct evidence and the eye witness PW-1 Radhey Shyam has categorically stated that all the four appellants have brutally assaulted and beaten the deceased and caused as many as 12 injuries on his person. Learned counsel submits that after considering the entire evidence available on record, the Ld. Trial Judge has rightly found the appellants guilty vide impugned judgment under Section 304 Part-II IPC, which requires no interference of this Court and hence, the appeal filed by the appellants is liable to be rejected.

8. Heard and considered the submissions made at Bar and perused the material available on record.



9. Perusal of the record and the impugned judgment indicate that the entire case is based upon sole testimony of PW-1 Radhey Shyam.

10. As per the statement of PW-1 Radhey Shyam, the appellants quarrelled with him in the morning when they left their cattle in his field for grazing and when he tried to pull the cattle out from his field, they attempted to assault him. In the evening darkness, while he was returning to home along with his uncle-Goverdhan, the appellants who were hiding nearby started following them, being afraid of the same he flew away but they assaulted his uncle Goverdhan and killed him by beating him with *gandassi*. His uncle was deaf and dumb. Initially, Panna Lal inflicted injury on his head by using *gandassi* then Ram Swaroop inflicted injury on his head by *gandassi* and later they all started beating him because of which he started crying and became unconscious. Goverdhan died due to the injury sustained by him and he was taken to his home in the Bhanwar Lal's bullock cart. Thereafter, the FIR Ex. P-1 was lodged at Police Station Kapren.

In his cross-examination, he has stated that he flew away from the place of occurrence on the way to the village, and his distance from the place of occurrence was similar to the distance between the Court room and its outside gate i.e. ran upto outside of a distance of 150 feet, from where he could see the accused-appellants beating his uncle. Although, it was darkness due to sunset but their faces could be visible. He got frightened and become unconscious. While running he did not turned back to see what was happening and later saw from where he stayed. He has further admitted that he told the police that Panna Lal and Ram



Swaroop inflicted injuries by using *gandassi* on the person of deceased, but this fact was not recorded in the FIR (Exhibit-P-1). He has admitted that the appellants were not having any enmity with his deceased uncle.

11. PW-2 Bhanwarlal s/o Jagannath, PW-3 Bhanwar Lal s/o Pannalal are not eye witnesses of the place of occurrence. PW-4 Rewariya has not supported the prosecution version, hence he has been declared as hostile. PW-5 Birdhi Lal is not the eye witness of the incident and he is a hearsay witness and he has stated that PW-3 Bhanwarlal told him that the appellants ran away after beating the deceased.

12. PW-6 Dr. Y.K. Sharma has conducted post-mortem of the deceased on 24.09.1990 and prepared the post-mortem report (hereinafter referred to as "PMR") (Exhibit P-4) and found the following injuries on the person of the deceased:-

- "(I) Lacerated wound 4x3x1/4 inch on left temporal region of his head.
- (II) Lacerated wound 1x3/4x3/4 inch below left eye.
- (III) Bruises 6x3 inch on the left shoulder region
- (IV) Bruises 4x3 on right chest
- (V) Abrasion 3x2 inch on right shoulder
- (VI) Bruises 6x3/4 inch on left shoulder
- (VII) Abrasion 3/4x1/2 inch left wrist of hand
- (VIII) Abrasion 2x3/4 inch on neck.
- (IX) Bruises 6x2 inch on the chest
- (X) Abrasion 3/4x1/4 inch on left elbow
- (XI) Abrasion 2x2 on left knee
- (XII) Incised wound 3x1/4x1/4 inch on the left leg"

As per the opinion of the Doctor (PW-6), injury no.12 was sustained by the deceased by a sharp-edged weapon and rest of the injuries sustained by him were caused by blunt object. The cause of death of the deceased was coma, due to his head injury.



In his cross-examination, he has admitted that the injury No.1 could be sustained by any person who is walking behind the Ox tied with a rope and if suddenly the OX starts running and the said person falls on hard surface.

13. PW-7-Panna Lal is the witness of site plan (Exhibit-P-2), in whose presence the site of place of occurrence was inspected by the Police and a pair of shoes, one bag, Safi(Turban) stained with blood and control soil was recovered.

In his cross-examination, he admits that the writings on the site plan (Exhibit-P-2) was not prepared by the Police in his presence. Meaning thereby, the site plan (Exhibit-P-2) was not prepared in his presence.

14. PW-8 Bholu is a recovery witness of *lathi* at the instance of the accused-Bhanwar Lal but he has denied the recovery of the *lathi* in his presence, hence, he has been declared as hostile. Similarly, PW-9 Kishan Gopal has also turned hostile and he has admitted that nothing has been recovered at the instance of accused-Bhanwar Lal, Panna Lal, Lekhraj and Ram Swaroop. He has also been declared hostile.

15. PW-10 Ram Chandra stated that he has deposited six packets of article in Forensic Science Laboratory (for short "FSL"). He has admitted that in the statement (Exhibit-D-3) neither the date 16.11.1990 is mentioned nor the details of articles are mentioned.

16. PW-11 Ram Kripal stated that he has deposited seven packets of articles in Malkhana and the said articles were sent to the FSL for analysis. He has admitted in his cross-examination that the articles marked as item Nos.1 and 6 to 11 were not



handed over to Ramesh Chand-Constable in the same condition in which he recovered those articles and this fact is not mentioned in Malkhana Register.

17. PW-12 Ram Kumar is the recovery witness of the Shirt (Exhibit-P-12) and the same was recovered from the hospital. He has admitted in his cross-examination that no one told him that who killed the deceased. Similarly, PW-13-Chawand Singh also stated that the blood stained shirt of the deceased was seized vide (Exhibit-P-12) in the hospital.

18. PW-13 Chawand Singh is the Investigating Officer who investigated the matter after the occurrence and prepared various prosecution documents and the same were marked as (Exhibit-P-1) to (Exhibit-P-19). In his cross-examination, he had admitted that the statement of the witnesses were recorded verbatim. He admits the fact that PW-1 Radhey Shyam has not told him about the place where he was standing at the time of occurrence of the incident and this fact was not mentioned in the site plan (Exhibit-P-2). He admits in his cross-examination that PW-1 Radhey Shyam did not tell him that the face was visible even in dark, on the contrary he said that there was lot of darkness.

19. PW-14 Sanwant Singh, Assistant Sub-Inspector, Police Station Kapren prepared the Panchnama (Exhibit-P-21) of the deceased in the hospital on 24.09.1990 and he admits that none of the witnesses of Panchnama told him that how the deceased sustained injuries and who caused the injuries to him.

20. After completion of trial, the statement of all the appellants were recorded under Section 313 Cr.P.C. wherein they have denied their participation in the incident and submitted that Radhey



Shyam quarrelled with them, hence due to that enmity, they have been falsely implicated in this case.

21. In defence, statements of DW-1 Prabhu Lal have been recorded and he has stated that the deceased was coming with Ox when the rope broke down, due to which the Ox came to the village but Goverdhan did not come with it, after that Rewariya told him that he is lying down near the Nahar. Thereafter, he alongwith Bhanwar Lal s/o Jagannath and other villagers brought the deceased and his hand was found tied with ropes. Later, they took him to the Hospital, where the Police came, after that he took the Police to the site where the body of the deceased was lying.

22. The appellants are not clear about their specific defence. In cross-examination with the witnesses, they suggested their defence that the complainant might have caused the death of deceased Goverdhan, to grab his property because he was deaf and dumb. While in defence, the witness DW-1 Prabhu Lal says that the deceased was plying an Ox with rope in his hand and the rope broke down due to which, he might have fallen on the ground and sustained injuries and resultantly died. Such contradictory defence of the appellants cannot be relied and the same has been rightly discarded by the trial court.

23. The deceased-Goverdhan has sustained 12 injuries. Out of which, 11 injuries were sustained by blunt weapon and the injury No.12 was sustained by sharp edged weapon. Now the question remains for consideration of this Court is as to who caused these injuries to the deceased and whether the witness PW-1 Radhey Shyam has seen the appellants causing these injuries to the deceased-Goverdhan and if yes, then whether the appellants can



be held guilty for culpable homicide not amounting to murder of the deceased.

24. Perusal of the allegations levelled against the appellants by the informant PW-1 Radhey Shyam in FIR (Exhibit-P-1) indicates that the appellants left their cattle in his field where crops were standing. When he objected, they threatened him by saying that their *lathis* want his blood and later on, in the evening when he was with his uncle-Goverdhan they chased him to kill him. While he was running, they caught hold with his uncle-Goverdhan and caused 12 injuries on his person.

This is not the case of prosecution that whether PW-1 Radhey Shyam was present on the place of occurrence or not when the incident occurred with the deceased. This witness was very much present on the site and in fact the appellants wanted to assault him, but he managed to flee away and they assaulted his uncle-Goverdhan. While running he saw the entire incident, wherein he gave beating to the appellants to Goverdhan and inflicted injuries on his person.

25. This Court finds no substance in the arguments of the appellants that there was darkness all around and from a distance of 150 feet, it was not possible for PW-1 Radhey Shyam to witness the incident. In fact, the appellants tried to commit an incident with him but he fled away by running and they assaulted the deceased and he died.

It is true that the appellants did not have any enmity with the deceased-Goverdhan and they had no intention to cause his death. But by inflicting 12 different injuries on various parts of his body, they had the knowledge that these injuries might cause his



death. The appellants might not have any common intention to commit the murder of the deceased but they actively participated in the assault by beating the deceased which makes them liable for the offence under Section 304 Part-II IPC.

26. The law on Section 304 Part-II IPC has been succinctly laid down by the Hon'ble Apex Court in the case of **Camilo Vaz versus State of Goa** reported in **(2000) 9 SCC 1**, wherein it was held that:-

"14. This section is in two parts. If analysed, the section provides for two kinds of punishment to two different situations: (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the "intention"; (2) if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a danda on a vital part of the body with such force that the person hit meets his death, knowledge has to be imputed to the accused...."

27. The Hon'ble Apex Court in the case of **Jagriti Devi Versus State of Himachal Pradesh** reported in **(2009) 14 SCC 771** held that Section 304 Part-II IPC comes into play when the death is caused by doing an act with the knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

28. The appellants have been found guilty of the offence of culpable homicide not amounting to murder under Section 304 Part-II IPC. Section 299 IPC defines culpable homicide and Section 304 IPC deals with punishment for culpable homicide not amounting to murder. Section 304 IPC is further divided into two



parts: Section 304 Part-I which deals with intention and 304 Part-II which deals with knowledge.

29. Now, Sections 299, 300 & 304 IPC would be relevant to quote and the same is reproduced hereasunder:-

“299. Culpable homicide - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

300. Murder – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or *Secondly* - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or *Thirdly* - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or *Fourthly* - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

30. In the case in hand, the death of Goverdhan was not intentional. The circumstances demonstrate that the appellants had no intention to cause his death but they had the knowledge





that the weapon used by them, in furtherance of common intention in order to inflict injury on the head of Goverdhan, may cause his death. They inflicted 12 injuries on vital and non-vital parts of his body and he died on the next day due to the injury suffered by him on his head. Hence, the circumstances reveal that the case falls within the purview of Section 304 Part-II IPC and the trial court has not committed any error in holding the appellants guilty under Section 304 Part-II IPC.

31. In view of the above and taking into consideration the evidence available on record, this Court finds no perversity in the impugned judgment passed by the trial court, holding the appellants guilty of the offence under Section 304 Part-II IPC.

32. The appellants have undergone the imprisonment from 03.10.1990 to 15.06.1991 during investigation and trial and remained in jail after conviction w.e.f. 07.12.1991 till 18.01.1992. The occurrence took place more than three and a half decade back and at the time of occurrence the age of the appellants was approximately 19-20 years. The appellants had to pass through this long ordeal for above 34 years, mentally and financially.

In the case of **Alister Anthony Pareira Versus State of Maharashtra** reported in **2012 (2) SCC 648**, the Hon'ble Apex Court has held that:-

".....There is no straight jacket formula for sentencing an accused on proof of crime. The Courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the Court must keep in mind the gravity of the crime, motive for the crime, the nature of the offence and all other attendant circumstances."



Similarly in the case of **Haripada Das Versus State of West Bengal** reported in **(1998) 9 SCC 678**, the Apex Court has held, looking to the facts, that the accused had already undergone detention for some time and the case is pending for pretty long period of time for which he had suffered both financial hardship and mental agony and looking to the fact that their sentence was suspended decades back, the ends of justice would meet, if the sentence is reduced to the period already undergone.

33. In the case of **Mohinder Jolly Versus State of Punjab** reported in **1979 (3) SCC 30**, the Hon'ble Apex Court found the accused guilty of the offence under Section 304 Part-II IPC and looking to his custody period of one year and one month, he was released on the basis of sentence already undergone by him with the following observations made in Para 12 which read as under:-

"12. Even so on the facts and in the circumstances of this case we do not feel persuaded to let off the appellant with an imposition of fine only. We, however, thought that sentence of three years' rigorous imprisonment would meet the ends of justice in this case. We were informed at the Bar and an affidavit sworn by the appellant's wife was also filed before us to the effect that the appellant was in jail for about nine months as an under trial prisoner and for about four months after conviction. Thus he has already undergone imprisonment for a period of about a year and a month. The occurrence took place more than a decade ago. The appellant had to pass this long ordeal all these years both mentally and financially. Considering, therefore, the totality of the circumstances while maintaining the imposition of fine of Rs. 10,000/- and in default two years' further imprisonment, we reduce his substantive term of imprisonment to the period already undergone and maintain the conviction of the appellant not under Part-I of Section 304 of the Penal Code but under Part-II."



34. The Division Bench of this Court in the case of **State of Rajasthan Versus Laldeen and Others** reported in **(1997) SCC ONLINE Raj 715**, after following the judgment of **Gurucharan Singh Versus State of Rajasthan & Others (1992 Cr.L.R. (Raj.) 680)** and **Rameshwar Lal Versus State of Rajasthan (1988 WLN (UC) 32)** and looking to the sentence undergone by the accused persons of ten and a half months, considered if sufficient sentence for the offence under Section 304 Part-II IPC and taking this fact into consideration that the occurrence took place 19 years back, the sentence of the accused was reduced to the period already undergone by him by imposing cost of Rs.20,000/- on each accused persons.

35. In the facts and circumstances of the case, for the occurrence which took place in the year 1990 and at that relevant time, the age of the accused-appellants was approximately 19-20 years and they were young and having no motive, or any intention to cause death of the deceased-Goverdhan. The deceased came in between and suffered injuries and died, they remained in custody during the period of investigation, trial and after conviction for a considerable period of time. Hence, maintaining their conviction, their sentence is reduced to the period of sentence already undergone by them. The amount of fine of Rs.1,000/- is enhanced to Rs.25,000/- for each of the appellants. In default of payment of enhanced fine, the defaulting appellant shall undergo rigorous imprisonment for a period of two years. They are directed to deposit the enhanced amount of fine within a period of two months before the trial court. After receiving the amount of fine, the same be paid to the legal representatives of the deceased as



compensation. If the appellants fail to deposit the enhanced amount of fine within the above stipulated time, the trial court would proceed against the appellants for sending them in custody to serve the remaining sentence of default in payment of fine amount.

36. The appeal is accordingly partly allowed to the above extent.

37. In view of the provisions of Section 483 BNSS, the accused-appellants are directed to furnish a personal bond in the sum of Rs.50,000/- with two surety bonds of Rs.25,000/- each to the satisfaction of the trial Court within a period of six weeks from today, which shall be effective for a period of six months with the stipulation that in the event of Special Leave to Appeal is submitted against this judgment or on grant of leave, the appellants on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(ANOOP KUMAR DHAND),J

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