

1

NOT REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.186 OF 2008

RAMESH KUMAR

.... APPELLANT

VERSUS

STATE OF MADHYA PRADESH

.... RESPONDENT

W
ITH

C
RIM
INA
L

APPEAL NO.185 OF 2008

GOPAL PRASAD

.... APPELLANT

VERSUS

STATE OF MADHYA PRADESH

.... RESPONDENT

J U D G M E N T

C.K. PRASAD, J.

1. Both the appeals arise out of the common judgment dated 9th October, 2006 passed by the Division Bench of the Madhya Pradesh High Court in Criminal Appeal No.946 of 1993 and Criminal Appeal No.953 of 1993, hence, they were heard together and are being disposed of by this common Judgment.

2. Ramesh Kumar (appellant in Criminal Appeal No.186 of 2008) and Gopal Prasad (appellant in Criminal Appeal -

N
o.1
85
of

2008), besides Pradhuman Prasad and Dwarika Prasad were put on trial for commission of the offence under Section 341/34 and 302/34 of the Indian Penal Code. All of them were found guilty on both counts by judgment dated 21st September, 1993 passed by the Additional Sessions Judge, Sidhi in Sessions Trial No.17 of 1992. All of them were sentenced to undergo imprisonment for life and rigorous imprisonment for six months for the offence

3

under Sections 302/34 and 341/34 of the Indian Penal Code respectively. Ramesh Kumar as well as Dwarika Prasad, Gopal Prasad and Pradhuman aggrieved by the judgment and order of conviction and sentence preferred appeals before the High Court which were registered as Criminal Appeal No.946/1993 and Criminal Appeal No.953/1946 respectively.

3. During the pendency of the appeal Dwarika Prasad died and

his

appeal had abated.

4. The High Court by the impugned Judgment had affirmed the appellants' conviction and sentence. Conviction and sentence of Pradhuman Prasad, though has been maintained by the High Court but he has not -chosen to file any appeal before this Court, perhaps on the ground that he had already undergone the sentence awarded to him.

5. According to the prosecution, a litigation was going on between the accused Dwarika Prasad and PW.4 Chander Bhan Yadav, PW.6 Ram Sahai and other persons and on 29.11.1991 the informant Chander Bhan Yadav had gone to Civil Court, Sidhi to attend the hearing of the case along with Ramdhani (deceased) and PW.6 Ram Sahai. After attending the hearing of the case, according to the prosecution, while they were returning to their home and reached near Tola Parkhure in village Bihirya, all the four accused, which included the two appellants herein, who were hiding behind the tree came out and accused Dwarika pointed his gun on Ramdhani, whereas convict Pradhuman and appellant Ramesh assaulted him by "lathi" and "danda". Appellant Gopal Prasad then attempted to beat Ram Sahai, who along with the informant ran away from the place of occurrence.

Chander Bhan Yadav gave report to the Police and on the basis of that Crime No.411 of 1991 was registered under Section 341/307/34 of the Indian Penal Code at Police Station Kotwali, Sidhi. The injured Ramdhani died later on and consequently offence under Section 302/34 of the Indian Penal Code was also added.

6.

Police after usual investigation submitted chargesheet and ultimately the appellants were committed to Court of Sessions to face the trial. They were charged for wrongful confinement and murder of Ramdhani in furtherance of their common intention; punishable under Section 342/34 and 302/34 of the Indian Penal Code. Appellants denied to have committed any crime and claimed to be tried.

7. In order to bring home the charges, prosecution, altogether examined ten witnesses out of whom PW.4 Chander Bhan Yadav and PW.6 Ram Sahai claimed to be eye-witnesses to the occurrence. PW.7 Dr. S.P. Khare happens to be an Assistant surgeon and had conducted the postmortem examination on the dead body of the deceased Ramdhani. He had also proved the postmortem report. He had found the following external injuries

on
the

person of the deceased :

- 1
- 2 Contusion linear in shape 10X2 Cm. reddish in colour present on the rt. Infra scapular region in axillary line obliquely placed;
- 1 Contusion linear in shape 8X2 Cm. reddish blue in colour present on left infra-scapular region in axillary line obliquely placed;

- 1 Contusion linear in shape 10X2 Cm. present over upper scapular region and reddish blue in colour;
- 1 Contusion 6X2 Cm. present over left lumber region;
- 1 Contusion linear in shape 10X2 Cm. reddish blue in colour present over upper scapular region on rt. side;
- 1 Contusion over mid scapular region 6X2 Cm. on rt. Side reddish in colour; and
- 1 Contusion over left arm on lat. Aspect, just above elbow joint 4X2 Cm. overlying which lacerated wound present 2X1 Cm. clotted blood present over the wound.

8. According to the Doctor external injury Nos.1 and 2 had led to the fracture of the ribs of the deceased.

9. Relying on the evidence of PW.7 Dr. Khare and the postmortem report the trial court came to the conclusion that Ramdhani died a homicidal death. Further, relying on the evidence of the eyewitnesses PW.4 Chander Bhan Yadav and PW.6 Ram Sahai, the trial court came to the conclusion -

t
hat
the

prosecution had proved appellants' participation in the crime beyond all reasonable doubt and convicted and sentenced the appellants as above. Appellants preferred separate appeals, which have been dismissed by the impugned judgment.

10. Mr. S.K. Dubey, Senior Advocate appearing on behalf of the appellants submits that in view of the evidence on record he legitimately cannot assail the conviction of the appellants but

in his submission, even if the case of prosecution is accepted in its entirety, no offence under Section 302/34 of the Indian Penal Code is made out. He submits that the allegations proved at best make out a case under Section 326 of the Indian Penal Code.

11. Ms. Vibha Datta Makhija, learned Counsel appearing on behalf of the respondent submits that the allegations proved

clearly make out a case under Section 302/34 of the Indian Penal Code and the courts below did not err in convicting the appellants as above.

12. We have considered the rival submissions and the submissions made by Mr. Dubey commend us. We have -

10

extracted in the preceding paragraph of our judgment; injuries sustained by the deceased and from a perusal thereof it is difficult to hold that the appellants intended to cause such bodily injuries which they knew to be likely to cause the death. From that it is also not imperative that the appellants intended to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The injuries found on the

person of the deceased also do not indicate that it is so imminently dangerous that it must in all probability cause death or such bodily injury is likely to cause death. It has to be borne in mind that the intention of the accused is gathered from the nature of the weapon used, the part of the body chosen for assault and other attending circumstances. Here in the present case according to the prosecution the

weapon used for commission of the crime is "lathi" and "danda" and the part of the body chosen cannot be said to be a vital part of the body. Further the injuries are contusions. It seems that the deceased was not taken to the hospital immediately after the occurrence and he died. Perhaps, his life could have been saved had he given the medical aid immediately. In -

v
iew
of

what we have observed above the ingredients for the offence of murder is not made out. However, the appellants have caused grievous hurt by dangerous weapon in furtherance of their common intention and as such the facts proved make out the offence under Section 326/34 of the Indian Penal Code.

13. Accordingly, the conviction of the appellants under Section 302/34 is set aside and altered to Section 326/34 of

the Indian Penal Code. We are of the opinion that sentences to undergo imprisonment for a period of seven years shall meet the ends of justice and we order accordingly.

We do not find any error in their conviction and sentence under Section 342/34 of the Indian Penal Code and the same is maintained.

14. In the result, the appeals are partly allowed with the aforesaid modifications in the conviction and sentence.

.....
.....
.....
.....
J.

(Harjit Singh Bedi)

NEW DELHI,
May 7, 2010.

.....J.
(C.K. Prasad)