

GOPAL
v.
STATE OF MADHYA PRADESH
(Criminal Appeal No. 1710 of 2007)

MAY 19, 2011

[ASOK KUMAR GANGULY AND DEEPAK VERMA, JJ.]

Penal Code, 1860: s.304 (Part I) and s.324 – Five accused – Appellant-accused inflicted knife blow on the victim resulting in his death – Other accused persons inflicted sword blows and blow by cycle chain on the complainant party – Trial court held appellant guilty for commission of offences u/ss.148, 302, 323/149, IPC, and other accused persons u/ ss.148, 302/149, 323 – High Court found appellant guilty u/ s.304 (Part I) and sentenced him to undergo rigorous imprisonment for 10 years while other accused were found guilty only u/s.324 – Both appellant and State challenged the judgment of High Court – Held: Conviction of appellant-accused u/s.304 (Part I) upheld, however, in order to meet the ends of justice, his sentence reduced to period already undergone which was more than 6 years – Conviction of the other accused u/s.324 upheld in view of the fact that medical evidence showed that injuries sustained by the complainant party were simple in nature and, further, injuries sustained by the accused were not explained by the prosecution.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1710 of 2007.

From the Judgment & Order dated 19.10.2005 of the High
Court of Madhya Pradesh, Indore Bench, Indore in CrI. A. No.
328 of 1995

WITH

CrI. A.No. 1711 of 2007.

A S.K. Dubey, Subhash Kaushik, Malini Poduval, Praveena Gautam, C.D. Singh, Vikas Bansal, Vibha Datta Makhija, Vartika Sahay, Malini Poduval for the Appellant.

The following Order of the Court was delivered

B O R D E R

1. This order shall dispose of Criminal Appeal No.1711 of 2007 also as both the appeals arise out of the common judgment and order passed by the Division Bench of the High Court of Madhya Pradesh at Indore, in Criminal Appeal No. 328 of 1995, preferred by accused Gopal and Criminal Appeal No. 429 of 1998 preferred by accused Shankarlal, Nandlal, Dinesh and Chhote @ Chhotalal decided on 19.10.2005.

D 2. Five accused were charged and prosecuted for commission of offences punishable under Section 147, 148, 302/149, 323/149 IPC in the court of 3rd Additional Sessions Judge, Ratlam, Madhya Pradesh in Sessions Case No. 227 of 1992. The Trial Court pronounced the judgment on 31.3.1995, holding the accused Gopal guilty for commission of offences under Sections 148, 302, 323/149 IPC, accused E Shanker Lal and Nand Lal under Sections 148, 302/149, 323 IPC, accused Chhotelal and Dinesh under Sections 148/302/149, 323/149 IPC and awarded punishment together with fine as described in its judgment.

F 3. Against the said judgment and order, as mentioned hereinabove, two criminal appeals were preferred before the Division Bench of the High Court, which were disposed of by the common impugned judgment.

G 4. The High Court, in the appeal of Gopal, has found him guilty for commission of offence under Section 304 Part-I IPC and awarded rigorous imprisonment for 10 years, whereas in the other Criminal Appeal, accused Shankarlal, Nandlal and Chhotelal were found guilty for commission of offence under Section 324 IPC and awarded sentence to the period already H undergone by them with fine of Rs. 200/- each. The accused

Dinesh was not found guilty for any of the offences and was, accordingly, acquitted. A

5. State has preferred appeal only against that part of the judgment and order, whereby accused Shankarlal, Nandlal and Chhotelal have been found guilty under Section 324 IPC and accused Dinesh has been acquitted. Accused Gopal has preferred appeal on the ground that in view of the free fight between accused and the complainant party and the nature of injuries sustained by some of the accused persons, he deserves to be acquitted. B

6. It is pertinent to mention here that State has not preferred any appeal against the judgment of the High Court wherein and whereunder conviction and sentence awarded to accused Gopal under Section 302 IPC was altered to one under Section 304 Part-I IPC. In this view of the matter, the State cannot challenge that accused Gopal should have been convicted under Section 302 IPC. C

7. The prosecution story, in short, is as under:

That on 30.6.1992, a meeting of a Patidar Community was convened wherein Ramchandra was not present. On 1.7.1992, a panchayat meeting was also convened by Ramchandra wherein Shankarlal was present but, due to some reason, the meeting could not be held. Thereafter, on the same day, when Tulsiram, Ramchandra, Mitthulal and Shantilal were passing from the house of Shankarlal, accused Gopal abused them and inflicted knife blow on the chest of Mitthulal, accused Shankarlal inflicted sword blow on Ramchandra and Nandram inflicted sword blow on Kalu. Accused Chhotelal inflicted blow by cycle-chain on Tulsiram. On account of injury sustained by Mitthulal on his chest, caused by accused Gopal, with the aid of knife, he fell on the ground and died instantaneously. Accused Dinesh was pelting stones on the injured persons. D

8. A report of the incident was lodged by Tulsi Ram vide Exb P-12. Investigation commenced on the strength of the E

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A report lodged by Tulsi Ram. Police prepared spot map and arrested accused persons and at their instance, weapons of offence were recovered. Dead body of Mitthulal was sent for post-mortem examination and the injured were sent to hospital for their medical examination and treatment.

B 9. PW-4 Dr. Deep Vyas conducted post-mortem on the body of the deceased. He had found stab wound measuring 2" x ½ " on the abdomen. Omentum was coming out with profuse bleeding. On internal examination, he found a wound on liver measuring 2" x 1". The diaphragm was found out. In the opinion of Dr. Deep Vyas, Mitthulal died due to syncope on account of shock and hemorrhage caused by stab injury. C Exb. P-8 is the post-mortem report.

D 10. On account of the aforesaid evidence, it could not be disputed before us that Mitthulal had met with homicidal death.

E 11. After completion of the investigation, all the accused were charge-sheeted. They pleaded not guilty to the charges and pleaded that they were falsely implicated in this case. They had taken a specific defence to the effect that Ramchandra, Tulsiram, Mitthulal, Kaluram and Shantilal had come to their house and abused them and started beating accused Shankarlal and on the intervention of accused Gopal, he too was assaulted by knife. According to them complainant party was the aggressor.

F 12. The prosecution, in order to bring home the charges levelled against the accused, examined 13 witnesses. In defence, the accused had also examined two witnesses. However, on appreciation of the evidence, available on record, Trial Court found them guilty for the offences as mentioned G hereinabove.

H 13. In appeal before the High Court, accused Gopal has been found guilty under Section 304 Part-I IPC and was sentenced to undergo rigorous imprisonment for 10 years, whereas other accused namely; Shankarlal, Nandlal and

Chhotelal have been found guilty only under Section 324 IPC and have been let off on the period already undergone which varies from 77 to 79 days with fine, and accused Dinesh has been completely acquitted of all the charges. Hence, these appeals by accused Gopal and State of Madhya Pradesh.

14. We have accordingly heard learned counsel appearing for the parties and gone through the lengthy record.

15. Mr. Subhash Kaushik, learned counsel appearing for the appellant Gopal contended that from record it proved that the complainant party was not residing in village Harthali. They along with other persons were called by one Poonamchand to attend the Panchayat of their community but on the date of incident, the Panchayat could not be convened and the complainant party, while returning back to Ratlam, attacked accused Shankarlal in front of his house causing injury to him as well as to the accused Gopal. Since, injuries were sustained by Shankarlal and Gopal. They, therefore, had acted in self defence. It was also contended by learned counsel for the accused Gopal that the prosecution has failed to explain the injuries sustained by Shankarlal and Gopal and the complainant party was aggressor.

16. On the other hand, Mr. S.K. Dubey, learned senior counsel appearing for the State has strenuously contended before us that the evidence has not been read properly inasmuch as accused Gopal deserves to be convicted under Section 302 IPC, even though he might have inflicted only single injury on the chest of Mitthulal. It was further contended that Mitthulal had died instantaneously which shows the nature and the force with which the injury was caused by accused Gopal on the chest of Mitthulal. It was further contended that other accused persons could not have been convicted only under Section 324 IPC, whereas the injuries sustained by the complainant party were serious in nature. It was also argued that the sentence of period already undergone with fine of Rs.200/- of each was too lenient and deserves to be enhanced.

A 17. As mentioned hereinabove, since there is no appeal
preferred by the State against that part of the judgment whereby
the accused Gopal has been found guilty for commission of
offence under Section 304 Part-I IPC and acquitted under
Section 302 IPC, we are afraid, there cannot be any scope for
B considering the conviction of accused Gopal from Section 304
Part-I to 302 IPC.

18. As regards other accused, the High Court has assigned
cogent and valid reasons as to why they have been found guilty
for commission of offence under Section 324 IPC. The High
C Court has also noted that the injuries sustained by the accused
persons have not been explained by the prosecution at all.
Apart from the above, from the evidence of PW-5 Dr. B.E.
Boriwal, it has also come on record that the injuries sustained
by injured persons were simple in nature. This aspect of the
D matter has been dealt with by the High Court in paras 8 & 9 of
the impugned judgment.

19. In the light of aforesaid contentions, we are of the
considered opinion that the appeal of accused Gopal can only
be allowed in part to the extent that his conviction has to be
E upheld under Section 304 Part-I IPC but sentence can be
reduced to the period already undergone by him, which is
more than six years. This, according to us, would meet the end
of justice. However, in Criminal Appeal No. 1711 of 2007, we
find absolutely no merit or substance and the same deserves
F to be dismissed.

20. In the result, Criminal Appeal No. 1710 of 2007 filed
by accused Gopal is partly allowed inasmuch as his conviction
under Section 304 Part-I IPC is upheld but sentence is reduced
G to the period already undergone by him. He be released from
the jail immediately if not required in any other case. Criminal
Appeal No. 1711 of 2007 filed by the State is hereby
dismissed.

H D.G. Appeal dismissed.