

[2014] 1 S.C.R. 99

M.B. SURESH

v.

STATE OF KARNATAKA

(Criminal Appeal No. 985 of 2007)

JANUARY 06, 2014

[CHANDRAMAULI KR.PRASAD AND
JAGDISH SINGH KHEHAR, JJ.]

PENAL CODE, 1860:

ss. 299, 302 and 307 – Victim shot at from a distant range – Death of victim on the way to village – Acquittal by trial court – Conviction by High Court u/s 302 of accused who fired the shots – Held: The doctor, who conducted post-mortem examination, found no internal injuries and opined that gun was fired from a distant range — He further opined that death was caused because of shock but he has not stated that it was due to the injuries caused by appellant or that deceased profusely bled which could have caused shock — It is not shown that the injuries found on the person of the deceased were of such nature, which in the ordinary course of nature could cause shock — It, therefore, creates a doubt as to whether deceased suffered shock on account of injuries sustained by him – However, it has been proved that appellant shot at deceased with an intention to kill him or at least he had the knowledge that the act would cause death — Allegations proved constitute an offence u/s 307 — Conviction of appellant is altered from s. 302 to s. 307 and he is sentenced to rigorous imprisonment for ten years.

The appellant (in Crl. A. No. 985 of 2007) and his father (appellant in Crl. A. No. 21 of 2014) were prosecuted for commission of offences punishable u/ss 302, 114 and 427, IPC and s. 3 read with ss. 25 and 27 of the Arms Act. The prosecution case was that there was a long standing

A enmity between the family of the informant and the
accused in respect of certain land over which appellant's
father was claiming tenancy rights. On the date of
occurrence while the informant (PW-1) and others were
going to the coffee estate and their companion 'C' was
B ahead of them, the appellant fired at 'C'. After the first shot,
his father instigated him to fire again. The appellant fired
for the second time at 'C' and thereafter they left the
place. P.Ws. 1 to 3, took the victim to the village, but he
C died on the way. The trial court acquitted both the
accused of all the charges. However, the High Court,
reversed their acquittal and held the appellant guilty of
offences punishable u/ss 302 and 427, IPC and s. 27 of
the Arms Act and sentenced him to imprisonment for life
u/s 302 IPC and imprisonment for one year u/s 27 of the
D Arm Act. Both of them were also convicted and sentenced
to undergo simple imprisonment for one week for offence
u/s 427, IPC.

Disposing of the appeals, the Court

E HELD: 1.1. For holding an accused guilty of murder,
the prosecution has first to prove that it is a culpable
homicide, as defined u/s 299, IPC and an accused will
come under the mischief of this section only when the
act done by him has caused death. [para 6] [106-B-C]

F 1.2. In the instant case, the doctor, who conducted
the post-mortem examination, was categorical in his
evidence that no internal injuries were found and the gun
was fired from a distant range. As regards the cause of
death, he has opined that it was because of shock but
G he has nowhere stated that it was due to the injuries
caused by the appellant or that the deceased profusely
bled which could have caused shock. It cannot be
ignored that the case of the prosecution itself is that after
the deceased sustained injuries while he was being
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taken to the hospital for treatment, he died on the way. Any mishandling of the deceased by the person carrying him to the hospital so as to cause shock cannot be ruled out. It, therefore, creates a doubt as to whether the deceased suffered shock on account of the injuries sustained by him. It is not shown that the injuries found on the person of the deceased were of such nature, which in the ordinary course of nature could cause shock. It cannot be assumed that those injuries can cause shock in the absence of any evidence in this regard. There is no evidence to show that it was the injury inflicted by the appellant which was the cause of death. Thus, it cannot be held that it is the act of the appellant which caused the death. Therefore, conviction of the appellant u/s 302, IPC cannot be sustained. [para 6] [106-A-B, C-G]

2.1. However, it has been proved that the appellant shot at the deceased with an intention to kill him or at least he had the knowledge that the act would cause the death. Accordingly, the allegations proved constitute an offence u/s 307, IPC. Therefore, the conviction of the appellant is altered from s. 302 to s. 307, IPC and he is sentenced to rigorous imprisonment for ten years. However, his conviction under other penal provisions and the conviction of the other appellant is maintained. [para 7-8] [107-A-B; 108-C-E]

Bhupendra Singh v. State of U.P. 1991 (1) SCR 856 = (1991) 2 SCC 750 - relied on.

Case Law Reference:

1991 (1) SCR 856 relied on para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 985 of 2007.

From the Judgment & Order dated 09.02.2007 of the High

A Court of Karnataka at Bangalore in Criminal Appeal No. 991 of 2000.

WITH

B Cri. A.No. 21 of 2014.

Basant R., Shekhar G. Devasa, Karthik Ashok (for Adarsh Upadhyay), Vijay Kumar for the Appellant.

Anitha Shenoy, V.N. Raghupathy for the Respondent.

C The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. Appellant, besides his father Bhadregowda, was put on trial for offence punishable under Section 302, 114 and 427 of the Indian Penal Code and Section 3 read with Section 25 and 27 of the Arms Act. Additional Sessions Judge, Hasan, vide judgment and order dated 24th of February, 2000 passed in Sessions Case No. 24 of 1992, acquitted both the accused of all the charges. Aggrieved by the same, the State of Karnataka preferred an appeal. The High Court, vide judgment and order dated 9th of February, 2007 passed in Criminal Appeal No. 991 of 2000, reversed their acquittal and held the appellant M.B. Suresh guilty of offence punishable under Section 302 and 427 of the Indian Penal Code and Section 25 and 27 of the Arms Act. However, his father Bhadregowda was found guilty of offence punishable under Section 427 of the Indian Penal Code alone. Appellant M.B. Suresh was sentenced to undergo life imprisonment for offence under Section 302 of the Indian Penal Code and fine of Rs. 5,000/-, and in default to undergo simple imprisonment for six months. He was also sentenced to undergo one year's imprisonment and fine of Rs. 2,000/- for offence under Section 27 of the Arms Act. Both of them were sentenced to undergo simple imprisonment for one week for offence under Section 427 of the Indian Penal Code and fine of Rs. 5,000/- each. Sentences were directed to run concurrently. Aggrieved by the same, M.B. Suresh has preferred

the present appeal whereas his father Bhadregowda, aggrieved by his conviction and sentence, has preferred Special Leave Petition No. 5363 of 2007.

A

2. Leave granted in Special Leave Petition (Criminal) No. 5363 of 2007.

B

3. According to the prosecution there was a long standing enmity between the family of the informant and the accused in respect of land of Survey No. 29/2 and 22 of Marur Village over which the accused Bhadregowda was claiming tenancy rights. According to the prosecution, on 19th of November, 1991 the deceased Chandrashekar, along with his elder brother Raghunath, cousin Krishnegowda, a friend Prakash and one Suresh came to the residence of Halegowda in the Village Marur in a tractor-trailer for unloading the gunny bags. After unloading the gunny bags, they sent the tractor-trailer along with the labourers to the coffee plantation of Ramegowda to pluck coffee seeds. However, the aforesaid persons stayed back at Halegowda's house to have a cup of coffee and later, at about 10.30 A.M., while they were going to coffee estate by the side of the wetland of Ramegowda, Chandrashekar was ahead of them. At that time, Chandrashekar was shot at by the appellant M.B. Suresh, who was standing near the gate made of bamboo. After the first shot, his father Bhadregowda instigated him to fire again and at that the appellant M.B. Suresh fired for the second time at the deceased and thereafter they left the place. P.Ws. 1 to 3, namely Krishnegowda, Raghunath and Prakash respectively, rushed to the place where Chandrashekar had fallen on the ground and in order to save him, they carried him to the village, but unfortunately he died because of the gun shot injury on their way to the village. On the basis of the report given by Krishnegowda (PW-1), a case was registered at the Bellur Police Station. Post-mortem on the dead body was conducted by Dr. Gunashekar V.C.(PW-10), who found nine injuries on the person of the deceased caused by the appellant.

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- A "1. Three circular pellet wounds present over the left part of the fore head, each measuring 0.5 cm. in diameter bony deep over an area of 4 cm. x 4 cm.
- B 2. Three circular pellet wounds present near the lateral end of the right side of the lip each measuring 0.5 cm. in diameter skin deep over an area of 2 cm. x 2 cm.
- C 3. Two pellet wounds over the left side of the front of the neck 0.5 cm. in diameter the muscle deep, there is an exit lacerated wound over the back of the left side of the neck piercing the skin 2 cm. x 2 cm., with lacerated edges.
- D 4. Three circular pellet wounds present over the anterior aspect of the right arm each 0.5 cm. in diameter muscle deep over an area of 1 ½" x 1 ½".
- E 5. Six circular pellet wounds present over the right anterior aspect of the chest each measuring 0.5 cm. in diameter over an area of 4" x 4" skin deep.
- F 6. A single circular pellet present in the anterior aspect of chest at the level of the 12th rib measuring 0.5 cm. in diameter and skin deep.
- G 7. An incised like wound 1" x ½" in the epigastrium skin deep.
8. A single circular pellet wound measuring 0.5 cm in diameter skin deep in the right iliac fassa.
- H 9. Three pellet wounds circular in shapre each measuring 0.5 cm. in diameter in the anterior aspect of the upper third of the right thigh over an area of 6" x 4" skin deep"
4. As regards the cause of death, the doctor has stated

that it was because of shock. The trial court, on appreciation of evidence, came to the conclusion that the prosecution had not been able to prove its case beyond all reasonable doubt and, accordingly, acquitted them of both the charges. However, the judgment of acquittal has been reversed by the High Court in an appeal preferred by the State.

5. We have heard Mr. Basant R., learned Senior Advocate, on behalf of the appellant whereas the respondent, State of Karnataka is represented by Ms. Anitha Shenoy. Mr. Basant submits that even if the entire case of the prosecution is accepted, the same does not constitute an offence under Section 302 of the Indian Penal Code. He submits that according to the prosecution, the deceased died of shock but there is nothing on record to show that the shock was on account of the injury inflicted by the appellant M.B. Suresh. He further submits that the prosecution has not brought any evidence to show that the deceased suffered any grievous hurt and in that view of the matter, the appellant at most can be held guilty for an offence under Section 324 of the Indian Penal Code. He points out that the appellant M.B. Suresh has already remained in jail for more than 10 years. Ms. Shenoy, however, contends that the very fact that the deceased died within a few hours of the incident, it has to be assumed that the cause of death, i.e. shock had occurred on account of the gun shot injury caused by the appellant M.B. Suresh.

6. We have bestowed our consideration to the rival submissions and we partly find substance in the submission of Mr. Basant R. Dr. Gunashekar V.C.(PW-10) had conducted the post-mortem examination on the dead body of the deceased Chandrashekar and, as stated earlier, had found nine injuries on his person out of which six were skin deep of the size of 0.5 or less than 0.5 cm., three circular wounds each measuring 0.5 cm. bone deep found over an area of 4 cm. x 4 cm. over the left side of the forehead as also a lacerated wound of the same size over the left side of the front of the neck and another

A muscle deep wound of the same size on the right arm. The doctor conducting the post-mortem examination was categorical in his evidence that no internal injuries were found and the gun was fired from a distant range. As regards the cause of death, the doctor has opined that it was because of shock but he has nowhere stated that it was due to the injuries caused by the appellant. For holding an accused guilty of murder, the prosecution has first to prove that it is a culpable homicide. Culpable homicide is defined under Section 299 of the Indian Penal Code and an accused will come under the mischief of this section only when the act done by him has caused death. True it is that the deceased died of shock but there is no evidence to show that the shock had occurred on account of the injuries caused by the appellant. We cannot ignore that the case of the prosecution itself is that after the deceased sustained injuries while he was being taken to the hospital for treatment, he died on the way. Any mishandling of the deceased by the person carrying him to the hospital so as to cause shock cannot be ruled out. The doctor had not stated that the deceased profusely bled which could have caused shock. In the absence of any such evidence, we are in doubt as to whether the deceased suffered shock on account of the injuries sustained by him. It is not shown that the injuries found on the person of the deceased were of such nature, which in the ordinary course of nature could cause shock. We cannot assume that those injuries can cause shock in the absence of any evidence in this regard. The doctor has not even remotely suggested that the shock was caused due to the injuries sustained by the deceased. In the face of what we have observed above, we are not in a position to hold that it is the act of the appellant, which caused death. Hence, we are of the opinion that the conviction of the appellant under Section 302 of the Indian Penal Code cannot be sustained.

7. Next question which falls for our consideration is as to the offence for which the appellant M B Suresh would be liable. What has been proved against this appellant is that he shot at

the deceased, but there is no evidence to show that it was the injury inflicted by the appellant which was the cause of death. However, from the facts proved, there is no doubt that he shot at the deceased with an intention to kill him or at least he had the knowledge that the act would cause the death. Accordingly, we are of the opinion that the allegations proved constitute an offence under Section 307 of the Indian Penal Code. The view which we have taken finds support from the judgment of this Court in the case of *Bhupendra Singh v. State of U.P.*, (1991) 2 SCC 750, in which it has been observed as follows:

“9.....The evidence only established that the first appellant shot at the deceased but it is not known where the bullet hit and whether that injury caused by the said bullet shot caused the death. Even in the case of shooting by a rifle unless the evidence shows the particular injury caused by the same and that injury is sufficient to cause death, the offence under Section 302 IPC could not be said to have been made out. In the circumstances, therefore, we are unable to agree with the High Court that the first appellant is guilty of offence under Section 302 IPC of causing the death of Gajendra Singh. However, we are of the view that while the first appellant shot at the deceased there could be no doubt that either he had the intention to kill him or at least he had the knowledge that the act could cause the death.

10. All the witnesses also say that the shot by A 1 brought down the deceased to the ground. There could, therefore, be no doubt that the shot had caused some hurt or injury though we could not predicate what was the nature of the injury and whether that injury could have caused the death. In the circumstances we consider that the offence would come under the second limb or second part of Section 307, IPC. Though imprisonment for life also could be awarded as sentence for such an offence on the facts and circumstances we impose a sentence of 10 years rigorous

A imprisonment. Accordingly we alter the conviction under Section 302, IPC as one under Section 307 IPC and sentence him to a term of 10 years rigorous imprisonment.”

B 8. Accordingly, we alter the conviction of the appellant M.B. Suresh from Section 302 to Section 307 of the Indian Penal Code and sentence him to undergo rigorous imprisonment for ten years.

C 9. Mr. Basant R. has not assailed the conviction of the appellant M.B. Suresh other than Section 302 of the Indian Penal Code. As regards the conviction of the other accused Bhadregowda under Section 427, it is on correct appreciation of evidence, which does not call for interference in the present appeal.

D 10. In the result, Criminal Appeal No. 985 of 2007 is partly allowed, the conviction of the appellant M.B. Suresh under Section 302 of the Indian Penal Code is set aside and is altered to Section 307 of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for ten years. However, his conviction under other penal provisions is maintained.
E Sentences awarded to him shall run concurrently. As the appellant has already remained in custody for more than 10 years, we direct that he be set at liberty forthwith unless required in any other case.

F 11. The appeal (arising out of Special Leave Petition (Criminal) No. 5363 of 2007) preferred by the appellant Bhadregowda is, however, dismissed.

R.P.

Appeals disposed of.