State Of Rajasthan vs Dhool Singh on 18 December, 2003

Equivalent citations: AIR 2004 SUPREME COURT 1264, 2004 AIR SCW 24, 2004 (2) SRJ 193, (2004) 15 ALLINDCAS 257 (SC), 2004 (15) ALLINDCAS 257, (2004) 1 RAJ LW 70, 2004 (1) LRI 692, 2004 (1) SLT 246, 2004 (12) SCC 546, 2004 (1) UJ (SC) 670, 2003 (10) SCALE 842, 2004 UJ(SC) 1 670, (2004) 2 ALLCRILR 319, (2004) 1 CURCRIR 89, (2004) SC CR R 837, (2003) 10 SCALE 842, (2004) 2 RAJ CRI C 331, (2003) 8 SUPREME 850, (2004) 14 INDLD 801, (2004) 48 ALLCRIC 595, (2003) 3 CHANDCRIC 330, (2004) 1 CRIMES 165, 2004 (1) ALD(CRL) 351

Bench: N.Santosh Hegde, B.P.Singh

CASE NO.:
Appeal (crl.) 299 of 1997

PETITIONER:
State of Rajasthan

RESPONDENT:
Dhool Singh

DATE OF JUDGMENT: 18/12/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T SANTOSH HEGDE,J.

On 15.7.1989 Magan PW-1 lodged a complaint with Police Station Pahada alleging that on the previous day at about 9 p.m. the respondent herein Dhool Singh had caused serious injuries with a sharp-edged weapon to Amar Singh son of Shankar Singh in a field known as Pahada which incident according to the complaint was noticed by Ramesh PW-4. The attack in question was alleged to be due to the dispute between the respondent herein and deceased Amar Singh as to the right of the deceased to graze his cattle on the land belonging to the respondent. It is based on the said complaint that after investigation the Police of Pahada Police Station filed a chargesheet against the respondent herein for offences punishable under section 302 IPC as also under sections 4 and 25 of the Arms Act. Learned Sessions Judge-II, Udaipur, in Sessions Case No.58 of 1989 after trial found the respondent herein guilty of the offences charged against him and sentenced him to undergo life imprisonment and a fine of Rs.200 for an offence under section 302 IPC, in default to undergo simple imprisonment for a period of 15 days. He also found the respondent guilty of offence punishable under section 4 read with 25 of the Arms Act and awarded punishment of 6 months'

simple imprisonment with a fine of Rs.200 in default to undergo simple imprisonment for 15 days. Being aggrieved by the said judgment and conviction by the trial court the respondent herein preferred an appeal before the High Court of Judicature at Rajasthan at Jodhpur. In the said appeal the High Court accepting the prosecution case as to the incident in question and the role of the respondent herein in causing death of the deceased came to the conclusion that the offence alleged against the respondent would not fall under section 302 IPC but would come under section 304 Part II IPC, hence modified the conviction to the one under section 304 Part II IPC and held that the sentence already undergone would be sufficient. In regard to the offence under section 4 read with section 25 of the Indian Arms Act, it agreed with the findings of the trial court and modified the said sentence also to the period already undergone but directed the respondent to pay a fine of Rs.500 in default to undergo one month imprisonment. It is against the said judgment of the High Court modifying the conviction and sentence, the State of Rajasthan is in appeal before us.

This appeal came up for final hearing on 13.11.2003 when we found that the respondent was not represented by any counsel, therefore, we thought it necessary to appoint an amicus curiae to assist the Court in this appeal, hence we requested Mr. N.C. Kochar, learned senior counsel to act as an amicus curiae which he readily accepted.

In view of the fact that the finding of both the courts below as regards the incident in question leading to the death of Amar Singh has become final, there being no challenge to the same from the respondent, the only question that arises for our consideration is whether the High Court was justified in coming to the conclusion that on facts of this case the prosecution has failed to establish the case against the respondent that it falls under section 300 IPC requiring a punishment provided for in section 302 IPC or the act of the respondent is such that it would attract only a punishment provided under section 304 Part II IPC as held by the High Court. As stated above it is the finding of two courts below that due to the injury caused by the respondent to the deceased with a sword measuring about 3 ft. in length the deceased suffered an injury on his neck which injury was described by PW-10 the doctor who conducted the post mortem as follows :

> "Incised wound 9.0 cm x 3.0 cm x 2.5 cm on transversally placed on left side of neck Thyroid Cartilage is cut. Transversally on left side sternoclinoid muscle External Jugalar Vein Internal Jugalar Vein and common carotid Artery cut completely.
>
> Margin of wound is clear cut deep staining Gaping and swelling of surrounding tissue. Wound is Ante Mortem in nature."

The cause of death according to this witness was "cut on the neck and the excess bleeding and the heart failure." The trial court on this aspect of the case came to the conclusion that the prosecution has proved that the respondent herein knowing well the consequences of his act, committed the offence of killing Amar Singh, while doing so, came to the following conclusion :

> "Thus, by perusing the above analysis, it is proved that the prosecution has proved the issue Point No.2 wherein the accused Dhool Singh well knowing has committed the offence of killing Amar Singh. The accused had attacked on the neck of the

> deceased. He knew very well that neck is very tender place and has applied the sharp weapon for such offence. Therefore, it has to be agreed that well knowing with an open mind that if he attacks the deceased with the motive of killing, he should commit it by attacking the deceased with a sword for killing him. Therefore, the prosecution has been successful in proving the Issue point No.2."

On the above basis it found the respondent guilty of an offence punishable under section 302 and consequently awarded the lesser of the two sentences provided under the said section by imposing life imprisonment.

The High Court per contra came tot he conclusion that the act of the respondent causing injury to the deceased which led to his death would not be one punishable under section 302 IPC but would be one falling under section 304 Part II IPC hence modified the sentence as stated above. While coming to this conclusion the High Court held that the fact that the accused inflicted only one injury, suggests that his intention was not to cause death but it was merely to cause an injury with a sharp-edged weapon. It accepted the argument addressed on behalf of the respondent that Exception I to section 300 would not apply to the facts of the case because the respondent did not act with an intention of causing death. For this purpose it relied on the fact that the respondent had inflicted only one blow on the deceased. It also came to the conclusion that the respondent could not even have the intention to cause such bodily injury which he knew to be likely to cause the death of the deceased. This finding of the High Court was purportedly based on the statement of the doctor who according to the High Court had not stated that the injury actually found on the neck of the deceased was sufficient in the ordinary course of nature to cause death. The High Court proceeded to come to the conclusion that in the absence of medical evidence to the above effect it would be unsafe to hold that the injury actually found on the neck of the deceased was sufficient in the ordinary course of nature to cause death, hence it modified the conviction from section 302 to 304 Part II, IPC.

Having heard learned counsel for the parties and examined the records of the appeal we are unable to agree with the finding of the High Court both in law and on facts. The observations of the High Court that the doctor in this case has not spoken about the fact that the injury caused by the respondent would in the ordinary course be sufficient to cause death, is contrary to the actual evidence of PW-10 the doctor which part of the evidence of the doctor we have extracted hereinbelow :

> "In my opinion, the cause of the death was due to the incised wound cut on the neck and the excess bleeding and the heart failure."

From the above, it is clear that the opinion of the doctor as to the cause of death was the incised cut wound on the neck which led to the excess bleeding and heart failure. This evidence has been improperly construed by the High Court as there being no opinion of the doctor in regard to the cause of death, therefore, as stated above, this finding of the High Court is contrary to the medical evidence.

In regard to the finding of the High Court that the prosecution has not even established that the respondent herein had acted with an intention of causing death of the deceased we must note that the same is based on the fact that the respondent had dealt a single blow which according to the High Court took the act of the respondent totally outside the scope of Exception I to section 300 IPC. Here again we cannot agree with the finding of the High Court. The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft. in length on a vital part of body namely the neck. This act of the respondent though solitary in number had severed sternoclinoid muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edged weapon would cause death. Such an injury in our opinion not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing the death of the victim. The reasoning of the High Court as to the intention and knowledge of the respondent in attacking and causing death of the victim, therefore, is wholly erroneous and cannot be sustained.

Mr. Kochar, learned senior counsel as an amicus curiae however, supported the judgment of the High Court by contending that the prosecution has failed to establish the fact that the respondent has caused this injury with a sword measuring 3 ft. as stated above. He pointed out that though a sword was said to have been recovered from the respondent the same was not produced in the court nor was it established that it contained blood stains nor has any witness identified the said weapon. In such a situation, therefore, we cannot rely upon the fact that the respondent has used a dangerous weapon. We are unable to accept this argument of the learned counsel for the purpose of deciding whether the injury in question was caused by a sword measuring 3 ft. as alleged by the prosecution or by some other weapon. The doctor who was examined to prove the injuries on the deceased has stated that the injury in question was an incised cut wound causing extensive damage to various blood vessels in the neck, leading to excess bleeding. In our opinion, such an injury cannot but be caused by a sharp edged weapon; be it a sword as alleged by the prosecution or some other sharp-edged weapon. Assuming that the prosecution has not established that this injury was caused by a particular sword as alleged by it, it is clear that this injury has been caused by a sharp-edged cutting weapon; be it a sword or otherwise. The fact that the respondent has caused this injury is accepted by both the courts below which finding is not under challenge before us therefore it goes without saying that the respondent has caused this injury with a sharp-edged weapon hence the factum of not proving that those injuries were caused by a particular sword measuring 3 ft. would not in any manner prevent us from coming to the conclusion that the injuries were caused by the respondent with such a weapon which causes incised cut injuries, therefore, the argument of learned counsel that non-production of the weapon would not establish an offence under section 302, cannot be accepted. Learned counsel then pleaded that according to the evidence of the doctor the cause of death was not only due to the injury inflicted by the deceased but was the cumulative effect of bleeding and heart failure, therefore, it is not possible to come to the conclusion that a

single injury caused by the respondent could be the cause of death of the victim. We are unable to accept this argument. The cause of death as explained by the doctor is primarily due to the injury caused by the respondent. Bleeding and the consequential heart failure are the effects of such injury, therefore, they cannot be treated as different causes of death. Learned counsel then submitted that according to the doctor, if proper medical care were to be provided, the injured could have survived. This, in our opinion, is a hypothetical answer given by the doctor and is not something which is applicable to the facts of this case. Even otherwise we are not in agreement with the views expressed by the doctor that with the injury like the one suffered by the victim, in the normal course he could have survived. Section 300 does not contemplate such a situation of miraculous survival. On the contrary, it contemplates an ordinary situation and that is why the Legislature had advisedly used the words : "bodily injury as the offender knows to be likely to cause death." (emphasis supplied). Therefore, from an understanding of the legislative intent of section 300 IPC, in our opinion, a culpable homicide becomes murder if the attacker causes an injury which he knows is likely to cause death and, of course, consequent to such injury, the victim should die. In the instant case, all these ingredients have been established by the prosecution beyond all reasonable doubt. Learned counsel then relied on some judgments of this Court in Toran Singh v. State of M.P. [2002 6 SCC 494], Ramchandra Ohdar v. State of Bihar [1999 9 SCC 97] and The State of Madhya Pradesh v. Kalu Ram & Anr. [JT 2002 9 SC 416] to support his contention that the injuries caused by the respondent in this case would attract only a punishment under section 304 Part II IPC and not one imposable under Section 302. In the case of Ramchandra Ohdar (supra) this Court noticed that the medical evidence was silent about the nature of injury caused by the appellant therefore there being no material to assess the nature of injury this Court came to the conclusion that the offence in that case would fall under section 326 IPC. But that is not the fact of this case where we have come to a definite conclusion about the nature of injury. As could be seen from the record the intention and the knowledge of the respondent becomes clear which would only indicate an offence punishable under section 302 and none else therefore the above judgment in Ramchandra's case (supra) does not help the cause of the respondent. In the case of Kalu Ram (supra) this Court noticed the fact that when the deceased suddenly came to intervene and save his brother, one of the accused gave a katar blow on the stomach therefore this Court on facts of that case came to the conclusion that because of the suddenness of the events and the intervening factor of the deceased, it was difficult to come to the conclusion that the blow in question which was on the stomach cannot be treated as an act falling under section 300 and would come under the illustrations found in section 300 to take it out of the purview of section 302 IPC. We do not think the said case decided on facts also would apply to the case in hand. Of course, there is one similarity therefore even this case would not in any manner assist the respondent in supporting the judgment of the High Court. The judgment of this Court in Toran Singh's case (supra) was cited by learned counsel to point out that ordinarily this Court does not disturb or upset the concurrent findings recorded by the trial court as affirmed by the High Court entering into the domain of appreciation of evidence. But from the very judgment it is noticed that where the findings of the court or courts below are contrary to the evidence on record, it is permissible for this Court to interfere under Article 136 of the Constitution of India. In this case, it is to be noticed first of all that there is not a concurrent finding regarding the offence committed by the respondent by two courts below. The trial court rightly found the respondent guilty of an offence punishable under section 302 and the High Court on an erroneous appreciation of facts and law converted the said conviction to one under section 304 Part II IPC which, for the reasons stated

hereinabove, we have held is not justifiable, therefore, this decision also does not help the respondent. Those are the decisions rendered on the facts of those cases and would not help the respondent in supporting the judgment of the High Court on the facts of this case.

Before concluding, we must refer to a disturbing tendency noticed by us very often in some of the judgments impugned before this Court. As in this case in some appeals, we find the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. Therefore, there is a need for the courts to apply its mind while imposing sentence. In the instant case, the court while convicting the respondent for an offence punishable under Section 304 Part II of IPC which has maximum sentence upto 10 years thought it fit to impose the sentence already undergone without even applying its mind as to why it should be less than 10 years or for that matter what is the sentence already undergone. We seriously deprecate such misplaced generosity on the part of the courts while imposing sentence.

For the reasons stated above this appeal is allowed, the judgment and order of the High Court is set aside and that of the trial court restored. The respondent will undergo the remainder of the sentence imposed by the trial court.

The appeal is allowed.