Mahesh vs State Of Madhya Pradesh on 28 August, 1996

Equivalent citations: JT 1996 (7), 644 1996 SCALE (6)315, AIR 1996 SUPREME COURT 3513, 1996 (10) SCC 668, 1996 AIR SCW 3617, 1996 CRILR(SC&MP) 593, (1996) 3 CRIMES 258, 1997 SCC(CRI) 181, 1996 CRIAPPR(SC) 307, (1996) 39 DRJ 557, (1996) 64 DLT 455, (1996) 7 JT 644 (SC), 1996 CRILR(SC MAH GUJ) 593, (1996) 3 ALLCRILR 209, (1996) 2 CRICJ 347, (1996) 3 CHANDCRIC 204, (1997) 2 EASTCRIC 428, (1997) SC CR R 152

Author: K.T Thomas

Bench: K.T Thomas

PETITIONER:
MAHESH

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 28/08/1996

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
THOMAS K.T. (J)

CITATION:
JT 1996 (7) 644 1996 SCALE (6)315

ACT:

HEADNOTE:

JUDGMENT:

THE 28TH DAY OF AUGUST, 1996 Present:

Hon'ble Dr. Justice A.S.Anand Hon'ble Mr.Justice K.T.Thomas H.L.Agrawal, Sr.Adv. and Ashok Kumar Gupta, Adv. with him for the appellant U.N.Bachawat, Sr.Adv.,

Prashant Kumar and Uma Nath Singh, Advs. with him for the Respondents O R D E R The following Order of the Court was delivered:

Mahesh V. State of Madhya Pradesh O R D E R The appellants was tried for an offence under Section 302 IPC for the murder of Krishna Kumar on 24.7.1983.

According to the prosecution case, the deceased along with PW-2 Purshottam and PW-6 Badda, were working as agricultural labourers on the field of Purshottam Sharma, PW-1. On 24.7.1983 at about 1.00 p.m. while the deceased and other labourers were ploughing the field belonging to PW-1, the appellant came there for grazing his cattle. As the cattle entered the field of Purshottam Sharma, PW-1, where the crop of Soyabean was standing, the deceased and PW-2 told him to take his cattle away and not let his cattle damage the crop. The appellant, however, did not pay any heed to their request and insisted that he would graze the cattle in that field only. An altercation ensued between the deceased and the accused. Thereafter, the appellant dealt a pharsa blow on the head of Krishna Kumar. On receipt of the blow, Krishna Kumar fell down on the ground and died instantaneously. PW-2 and PW-6 rushed to inform Shri Sharma, PW-1, who arrived at the spot. The First Information Report was lodged by PW-1 Purshottam Sharma at police station Narsinghpur at about 3.00 p.m. on the same day. The Investigating Officer, Shri Prakash Chand Sonkar, PW-9, after registration of the FIR, came to the place of occurrence and after preparing the inquest report, sent the dead body of Krishna Kumar for post mortem examination to the District Hospital, Narsinghpur, where the autopsy was performed by Dr. M.R. Khan, PW-10. The Doctor found an incised wound on the right parietal region with fracture of the same and damage to the brain. In the opinion of the Doctor, the death of Krishna Kumar was caused as a result of that injury and the injury was found to be sufficient in the ordinary course of nature to cause death. The appellant was arrested on 26.7.1983 and while in custody, he made a disclosure statement under Section 27 of the Evidence Act, leading to the recovery of a pharsa from the roof of the upper story of his house. The pharsa was found to be blood stained and according to the chemical examiner and the serologist, the blood found thereon was of human origin. The appellant was sent up for trial. After recording the evidence on behalf of the prosecution and examining the appellant under Section 313 Cr.P.C., the trial court vide judgment dated 3.8.1984 came to the conclusion that the evidence given by PW-2 Purshottam Mehra and PW-6 Badda, the two eye-witnesses of the occurrence, was cogent, trustworthy and reliable. The trial court also found that the medical evidence provided by Dr. Khan, PW-10 lent corroboration to their occular testimony. The trial court on appreciation of the evidence found that the appellant had caused the injury with the pharsa on the head of the deceased when he prevented the appellant from grazing his cattle in the field of Purshottam, PW-1. The trial court, however, after rejecting the plea of self defence found that the case of the appellant was covered by Exception-4 to Section 300 IPC and after giving reasons in support of that conclusion, held the appellant guilty of an offence under Section 304 (Part- I) IPC and acquitted him of the offence under Section 302 IPC. The appellant was sentenced to two years RI and to pay a fine of Rs.500/- and in default of payment of fine, to undergo further RI for four months for the offence under Section 304(Part-I) IPC. The State preferred an appeal against the acquittal of the appellant for the offence under Section 302 IPC. The High Court vide judgment dated 7.9.1992 found that the offence committed by the appellant was punishable under Section 302 IPC and that the recording of his conviction for an offence under Section 304 (Part-I) IPC, was wrong and not justified. Consequently,

the State appeal was allowed and the appellant was convicted for an offence under Section 302 IPC and sentenced to undergo imprisonment for life. On special leave being granted, the appellant is before us.

We have heard learned counsel for the parties and perused the record.

In our opinion the appreciation of evidence by the trial court as well as the High Court, is sound, correct and proper. The evidence given by PW-2 and PW-6 regarding the occurrence and the manner of assault is cogent, consistent and has impressed us as trustworthy. Their evidence has remained unshaken in the cross-examination and nothing has been pointed out which may in any manner discredit their testimony. The evidence of these eye-witnesses coupled with the recovery of pharsa and the medical evidence given by Dr. Khan, PW-10, un-mistakably connects the appellant with the connects the appellant with the crime, i.e., the assault on the deceased which resulted in his death. The question, however remains about the nature of the offence.

From a perusal of the evidence, we find that when the appellant arrived along with the cattle at the field there was no premeditation for the assault. At the spot, there was an altercation between the parties and in the sudden fight, after the deceased objected to the grazing of the cattle, when possibly hot words or even abuses were exchanged between the parties, the appellant gave a single blow with the pharsa on the head of the deceased. The statement of the appellant and the suggestions given on his behalf to the prosecution witnesses that there was an attempt to assault the deceased with a Parena, which was with the deceased, does not appear to be improbable. Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heals. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW-2 or PW-6 who were also present along with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW-1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception-4 to Section 300 IPC is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304(Part-I) IPC. The trial court, under the circumstances, was justified in convicting him for the said offence and the High Court, in our opinion, fell in error in interfering with it and that too without dispelling any of the reasons given by the trial court. The judgment of the High Court convicting the appellant for an offence under Section 302 IPC cannot be sustained and we accordingly set it aside and instead convict the appellant for the offence under Section 304 (Part-I) IPC.

We, however, find that the sentence of two years RI, and fine of Rs.500/- for the offence under Section 304(Part- I) IPC, as recorded by the trial court, was grossly inadequate and un-reasonable. Considering the facts and circumstances of the case, in our opinion proper sentence in the case would be for the appellant to suffer RI for a period of six years, besides payment of Rs.1,000/- as fine for the offence under Section 304(Part-I) IPC. In default of payment of fine, the appellant shall further undergo RI for four months.

The appeal, therefore, succeeds to the extent indicated above and is disposed of.