

THE STATE OF RAJASTHAN

A

v.

KANHAIYA LAL

(Criminal Appeal No. 645 of 2019)

APRIL 10, 2019

B

[L. NAGESWARA RAO AND M. R. SHAH, JJ.]

Penal Code, 1860: ss. 302 and 304 Part I – Murder – Victim attacked by accused on his head by an axe, succumbed to his injuries – Conviction and sentence of the accused for the offence punishable u/s. 302 by the trial court, however, altered by the High Court to s. 304 Part I on the ground that the victim died of a single injury caused on his head by the accused by an axe; that there was no repeated injury; and that the victim and the accused had an altercation and there was no intention for the accused – Interference with – Held: Reasoning given by the High Court while converting the conviction from s. 302 to s. 304 Part I, manifestly perverse and totally contrary to the evidence on record – Doctor who conducted post mortem stated that the said head injury was sufficient to cause death in the ordinary course of nature – Single blow on the vital part of the body like head and that too by deadly weapon-axe and used with force proved to be fatal, and was sufficient to hold that it was a case of murder u/s. 300 – Merely because the altercation might have taken place much earlier and not immediately prior to and/or at the time of commission of the offence, it cannot be inferred that there was no intention on the part of the accused to cause death of the deceased – Thus, the High Court committed erred in altering the conviction from s. 302 to s. 304 Part I – Judgment of the High Court set aside and that of the trial court restored.

C

D

E

F

G

Allowing the appeal, the Court

HELD: 1.1 The main reason given by the High Court while converting the conviction from Section 302 of the IPC to Section 304 Part I of the IPC is that it was a case of a single blow, the deceased had died because of single injury caused on his head by the accused by an axe. The said can hardly be a ground to convert the conviction from Section 302 IPC to Section 304 Part I IPC.

H

- A Applying the law laid down by this Court in the said decisions to the facts of the case on hand and the reasoning given by the High Court while converting the conviction from section 302 to Section 304 Part I, the reasons stated in the impugned Judgment and Order, the judgment of the High Court is manifestly perverse and is totally contrary to the evidence on record. As per PW15, a fracture of 4 cm length was found in the parietal and occipital. He also stated that the said head injury was sufficient to cause death in the ordinary course of nature. Thus, the accused used a deadly weapon-axe on the vital part of the body-head, which proved to be fatal. [Para 6.2, 7] [575-E; 576-G-H; 577-B-C]
- B
- C *Arun Raj v. Union of India (2010) 6 SCC 457 : [2010] 7 SCR 1; Ashokkumar Magabhai Vankar v. State of Gujarat (2011) 10 SCC 604 ; State of Rajasthan v. Leela Ram alias Leela Dhar 2019 (1) SCALE 544 – relied on.*
- D *Vijay Ramkrishan Gaikwad v. State of Maharashtra (2012) 11 SCC 592 – referred to.*
 - 1.2 Another reason given by the High Court is that there was no repeated injury, can hardly be a ground to convert the conviction from section 302 to section 304 Part I IPC. A single blow on the vital part of the body like head and that too by deadly weapon-axe and used with force which proved to be fatal, was sufficient to hold that it was a case of murder within the definition of Section 300 IPC. [Para 8][577-C-D]
- E
- F 1.3 Another reason given by the High Court is that in the morning on the day of the incident, there was an altercation between the accused and the deceased and so it can be said that in the circumstances of the case there was no intention to cause death on the part of the accused but the fact by which the death was caused appears to hold down that the intention of causing such bodily injury as was likely to cause death. The said is contrary to the evidence on record. It is not a case on behalf of the accused that there was an altercation between the accused and the deceased at the time of commission of the offence. The altercation, if any, had taken place, in the morning and much earlier than the time of incident. Merely because the altercation might have taken place much earlier and not immediately prior to and/or at the
- G
- H

time of commission of the offence, it cannot be inferred that there was no intention on the part of the accused to cause death of the deceased. Thus, the judgment of the High Court is manifestly perverse and is totally contrary to the evidence on record. The High Court committed a grave error in altering the conviction from Section 302 IPC to Section 304 Part I IPC and therefore the interference of this Court is warranted to obviate a complete failure of interest of justice. The impugned judgment of the High Court is set aside and that of the trial court convicting the accused under Section 302 IPC is restored. [Para 8.1, 9][577-E-H; 578-A-C]

A

B

C

D

E

F

G

H

<u>Case Law Reference</u>		
(2012) 11 SCC 592	referred to	Para 4.4
(2011) 10 SCC 604	relied on	Para 7
[2010] 7 SCR 1	relied on	Para 7
2019 (1) SCALE 544	relied on	Para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 645 of 2019

From the Judgment and Order dated 23.05.2014 of the High Court of Judicature for Rajasthan, at Jodhpur in D.B. Criminal Appeal No. 303 of 2009.

Ms. Jyoti Sharma, Ms. Prachi Agarwal, Jayant Bhatia and Ms. Ruchi Kohli, Advs. for the Appellant.

Rishabh Sancheti, Ms. Padma Priya, Anchit Bhandari and K. Paari Vendhan, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Leave granted.

2. This appeal arises from the Judgement and Order of a Division Bench of the High Court of Judicature for Rajasthan dated 23.05.2014 passed in Criminal Appeal No.303 of 2009. The High Court, while allowing the appeal filed by the respondent, convicted him under Section 304 Part I of the Indian Penal Code, instead of Section 302 of the IPC. The High Court sentenced the respondent

- A to undergo 8 years RI and to pay a fine of Rs.1000/- and in default of payment of fine, to suffer one month simple imprisonment. The State preferred this appeal against the said decision.

3. A First Information Report was lodged by one Dalip Kumar at Police Station Nimbaheda being FIR No.32/2008. It was alleged that on 26.01.2008, when PW-5 – Ms. Kailashi was returning from the farm, in her presence, Kanhaiya Lal attacked Raju (deceased) on his head by an axe. As per PW-5, Raju fell down and, on her cries, other persons reached the spot. The accused ran away. That Raju succumbed to the injuries. After concluding the investigation, the Investigating Officer filed the charge-sheet against the accused for the offence punishable under Section 302 of the IPC. That the accused pleaded not guilty and therefore he came to be tried by the learned Sessions Court for the offence punishable under Section 302 of the IPC. That the prosecution examined as many as 17 witnesses including PW1 Dr. K. Asif, who issued the Injury Report (Exhibit P1); PW5 Ms. Kailashi; PW15 Dr. Anees Ahmed, who performed the Post-Mortem Report of the deceased. Through the witnesses who were examined, the prosecution brought on record the documentary evidence including the Injury Report (Exhibit P1) as well as the Post-Mortem Report. That thereafter, the statement of accused under Section 313 of the CrPC was recorded, in which accused stated that he has been falsely implicated. No evidence/witness was produced by the accused in defence. That thereafter, on appreciation of evidence, the learned Sessions Court held the accused guilty for the offence punishable under Section 302 of the IPC and sentenced him to undergo life imprisonment with fine of Rs.1000/- and in default to pay the fine, to undergo further one month SI.
- 3.1 Feeling aggrieved and dissatisfied with the Judgment and Order of conviction and sentence passed by the learned Sessions Court, the respondent-original accused preferred Appeal before the High Court being Criminal Appeal No.303 of 2009. By the impugned Judgment and Order, the High Court has partly allowed the appeal preferred by the accused and has convicted the accused under Section 304 Part I of the IPC instead of Section 302 of the IPC. Hence, the present appeal by the State against the H

impugned Judgment and Order passed by the High Court, converting the conviction of the accused to Section 304 Part I of the IPC in place of conviction under Section 302 of the IPC.

4. Learned counsel appearing on behalf of the appellant- the State of Rajasthan has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in altering the conviction of the accused from Section 302 of the IPC to Section 304 Part I of the IPC.

4.1 It is vehemently submitted by the learned Counsel appearing on behalf of the appellant-State that the main reason given by the High Court while converting the conviction from Section 302 of the IPC to Section 304 Part I is that the deceased died because of a single injury caused on his head. It is submitted that however the High Court has not, at all, considered the fact that the accused gave the blow by an axe, a deadly weapon and that too on the vital part of the body, i.e. head. It is submitted that as per the medical evidence, the head injury was sufficient to cause death in ordinary course of nature. It is submitted that, therefore, the High Court is not justified in converting the conviction from Section 302 of the IPC to Section 304 Part I of the IPC.

4.2 It is further submitted by learned Counsel appearing on behalf of the appellant-State that another reason given by the High Court is that there was an altercation between the accused and the deceased and so it can be said that in the circumstances of the case there was no intention to cause death on the part of the accused-appellant. It is submitted that however the High Court has failed to consider and appreciate/reappreciate the fact that at the time when the incident had taken place, there was no altercation at all and the altercation was before few hours and not at the time when the incident had taken place.

4.3 Learned Counsel appearing on behalf of the appellant-State has submitted that in the facts and circumstances of the case and the injuries sustained by the deceased, it was a clear case of murder within the definition of Section 300 of the IPC and as such the learned Sessions Court rightly convicted the accused for the offence under Section 302 of the IPC. It is submitted by the learned

A

B

C

D

E

F

G

H

- A Counsel appearing on behalf of the appellant-State that the Judgment of the High Court is manifestly perverse and is totally contrary to the evidence on record and therefore the interference of this Court is warranted.
- 4.4 Making the above submissions and relying upon the decisions of this Court in the case of *Arun Raj v. Union of India* (2010) 6 SCC 457; *Ashokkumar Magabhai Vankar v. State of Gujarat* (2011) 10 SCC 604; *Vijay Ramkrishan Gaikwad v. State of Maharashtra* (2012) 11 SCC 592, and a recent decision of this Court in the case of *State of Rajasthan v. Leela Ram alias Leela Dhar* dated 13.12.2018 in Criminal Appeal No.1441 of 2013, it is prayed to allow the present appeal and set aside the impugned Judgment and Order passed by the High Court and to restore the Judgment and Order of conviction and sentence passed by the learned Sessions Court.
- D Learned Counsel appearing on behalf of the respondent-original accused, while opposing the present appeal, has vehemently submitted that while converting the conviction of the accused from Section 302 of the IPC to Section 304 Part I of the IPC, the High Court has given cogent reasons and has considered the relevant circumstances and thereafter has come to the conclusion that the intention of the accused cannot be said to be to cause death of the deceased. It is submitted that the High Court has considered the relevant circumstances and thereafter has converted the conviction from Section 302 of the IPC to Section 304 Part I of the IPC and therefore the same is not required to be interfered with by this Court.
- F Heard the learned Advocates appearing for the respective parties at length.
- G 6.1 We have considered in detail the Judgment and Order passed by learned Sessions Court as well as the impugned Judgment and Order passed by the High Court. The learned Sessions Court convicted the accused for the offence under Section 302 of the IPC. However, in an appeal preferred by the accused, the High Court has converted the conviction from Section 302 of the IPC to Section 304 Part I of the IPC. While
- H

doing so, the High Court has assigned the following reasons in A paragraph 15:

“15. In the circumstances of the case, it is proved beyond doubt that Rajmal had died because of single injury caused on his head by accused-appellant Kanhaiya Lal by an axe. It is also an admitted fact that there was no repeated injury and further more, it is also on record that in the morning of the day of the incident, there was analtercation between the accused and the deceased and so it can be said that in the circumstances of the case, that there was no intention to cause death on the part of the accused-appellant but the act by which the death was caused appears to have done with the intention of causing such bodily injury as was likely to cause death and so his conviction deserves to be altered from Section 302 of Indian Penal Code to Section 304 Part I of Indian Penal Code.”

6.2 Now so far as the main reason given by the High Court while converting the conviction from Section 302 of the IPC to Section 304 Part I of the IPC i.e. it was a case of a single blow is concerned, it is required to be noted that the deceased had died because of single injury caused on his head by the accused by an axe. The aforesaid can hardly be a ground to convert the conviction from Section 302 of the IPC to Section 304 Part I of the IPC.

6.3 In the case of *Arun Raj* (Supra) this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused tocause death of deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.

6.4 In the case of *Ashokkumar Magabhai Vankar* (Supra), the death was caused by single blow on head of the deceased with

- A a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 of Section 300 of the IPC. It is held by this Court that the injury sustained by deceased, not only exhibits intention of accused in causing death of victim, but also knowledge of accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.
- B
- C 6.5 A similar view is taken by this Court in the recent decision in the case of *Leela Ram alias Leela Dhar* (Supra) and after considering catena of decisions of this Court on the issue onhand i.e. in case of a single blow, whether a case falls under section 302 or section 304 Part I or section 304 Part II, this Court reversed the judgment of the High Court (in that case also the judgment impugned was from the Rajasthan High Court) and convicted the accused for the offence under section 302 of the IPC. In the same decision, this Court also considered Exception 4 of Section 300 of the IPC and observed in paragraph 21 as under :
- D
- E “21. Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are : (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner.”
- F
- G 7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the reasoning given by the High Court while converting the conviction from section 302 to Section 304 Part I, the reasons stated in paragraph 15 of the impugned Judgement and Order, we are firmly of the view that the judgment of the High Court is manifestly perverse and is totally contrary to the evidence onrecord. As
- H

per the deposition of PW1 Dr. K Asif, the deceased sustained A following injuries :

“1.Incised wound 7 cm x 0.5 cm skin deep and bone visible on the middle part of the head.

2. abrasion 1 cm x 0.5 cm on the middle portion of right leg.” B

As per PW15 Dr. Anees Ahmed, a fracture of 4 cm length was found in the parietal and occipital. He also stated that the said head injury was sufficient to cause death in the ordinary course of nature. Thus, the accused used a deadly weapon-axe on the vital C part of the body-head, which proved to be fatal.

8. Another reason given by the High Court is that there was no repeated injury. Aforesaid can hardly be a ground to convert the conviction from section 302 to section 304 Part I of the IPC. A single blow on the vital part of the body like head and that too by deadly weapon-axe and used with force which proved D to be fatal, was sufficient to hold that it was a case of murder within the definition of Section 300 of the IPC.

8.1 Another reason given by the High Court is that in the morning on the day of the incident, there was an altercation between the accused and the deceased and so it can be said E that in the circumstances of the case there was no intention to cause death on the part of the accused but the fact by which the death was caused appears to hold down that the intention of causing such bodily injury as was likely to cause death. The aforesaid is contrary to the evidence on record. It is required to be noted that it is not a case on behalf of the accused that there F was an altercation between the accused and the deceased at the time of commission of the offence. The altercation, if any, had taken place, in the morning and much earlier than the time of incident. Merely because the altercation might have taken place much earlier and not immediately prior to and/or at the time G of commission of the offence, it cannot be inferred that there was no intention on the part of the accused to cause death of the deceased. Therefore, on the aforesaid ground, the High Court has committed a grave error in converting/altering the conviction

H

- A from Section 302 of the IPC to Section 304 Part I of the IPC. Thus, we are of the view that the judgement of the High Court is manifestly perverse and is totally contrary to the evidence on record. The High Court has committed a grave error in altering the conviction from Section 302 of the IPC to section 304 Part I of the IPC and therefore the interference of this Court is warranted to obviate a complete failure of interest of justice.
- B 9. In view of the above and for the reasons stated above, we allow this appeal, Set aside the impugned Judgement of the High Court and restore the judgment of the Trial Court convicting the accused under Section 302 of the IPC. The respondent- accused is sentenced to suffer imprisonment for life as per the Judgement of the learned Trial Court. If the accused is already released after undergoing the sentence as per the impugned Judgment and Order passed by the High Court, the respondent- accused shall surrender forthwith to serve his sentence.
- C 10. A copy of this order shall be forwarded by the Registry to the Chief Judicial Magistrate of the area concerned to seek compliance.

Nidhi Jain

Appeal allowed.