

Chandan vs Babu And Anr. on 21 January, 1953

Equivalent citations: AIR1953ALL497, AIR 1953 ALLAHABAD 497

JUDGMENT

Agarwala, J.

1. This is a revision application by one Chandan for enhancement of sentence of Babu who has been convicted under Section 304, Part II, I. P. C., and sentenced to the maximum sentence of ten years' R. I. which could be passed under that Part of the section. The facts briefly stated are as follows :

2. The opposite party Babu and Ram Dayal deceased lived as tenants in the same house at Deorhi Begam. On 19-7-1950 at 6-30 p. m. there was a quarrel between Smt. Harpiari, wife of the opposite party Babu, and Smt. Bhauti, wife of the deceased Ram Dayal. The opposite party Babu intervened and scolded Smt. Bhauti. Ram Dayal reprimanded the opposite party Babu and said that he should not interfere in a quarrel between ladies. On this Babu became furious and threatened to kill some one and in furtherance of his intention ran to his room, brought out a knife, rushed at Ram Dayal and inflicted several blows on him, hitting him in the back, neck, arms and chest. Ram Dayal collapsed and died at the spot because of the serious injury to the left lung and cutting of the blood vessels of the neck and the arm. The opposite party was prosecuted under Section 302, I. P. C. The Incident was amply proved by the evidence adduced by the prosecution. The learned Sessions Judge was of opinion that the case fell within Exceptions 1 and 4 of Section 300, I. P. C. He, therefore, acquitted Babu of the offence of murder under Section 302, I. P. C. and convicted him under Section 304, Part II. He expressed the opinion in the course of his judgment that Babu neither intended to kill the deceased nor intended to inflict such bodily injury as was likely to cause death.

3. The view of law taken by the learned Sessions Judge is undoubtedly incorrect. On the facts proved in the case, the offence fell under Section 302 I. P. C. and Exceptions 1 and 4 of Section 300 I. P. C. did not apply. It was established by the evidence on the record that Babu declared that he would kill some one, that he brought out a knife from his room, that he attacked the deceased with that knife causing injuries on the neck, chest and other parts of the body and that the injuries on the neck and the chest proved fatal. When a person causes injuries with a sharp-edged weapon, or a fire-arm, on vital organs of the body, the inference is irresistible that his intention was to cause death. When he causes these injuries with a lathi, the inference may still be that the accused intended to cause the death of the deceased. But sometimes in the case of few lathi blows causing the death of the deceased, that inference may not be drawn. In the present case, as the injuries were caused on vital organs of the body by a sharp-edged weapon, the inference was irresistible that the accused Intended to kill the deceased. This was reinforced by the prosecution evidence that the opposite party Babu had declared before he made the attack on the deceased that he would kill some one.

4. Exception 1 to Section 300 I. P. C., does not apply when the provocation was not so grave that it should deprive a normal man of the power of self-control. The question whether the provocation was so grave or sudden as to prevent the offence from amounting to murder is always a question of fact as laid down in the Explanation to Exception 1. No doubt, the murder in the present case was not premeditated in the sense that Babu had no intention to kill the deceased before the quarrel started. But he formed an intention to kill before he made the attack, The alleged provocation was only this that the deceased said to the opposite party Babu that he should not interfere in a quarrel between the ladies. This remark was called for by the action of Babu himself because he himself had scolded the wife of the deceased. The remark of the deceased was, therefore, fully justified and the opposite party Babu had no business to get into rage over it.

5. Exception 4 also did not apply because Babu took undue advantage of the position as the deceased was unarmed, and Babu further acted in a cruel and unusual manner when he attacked an unarmed person with a knife inflicting severe injuries on him. The Learned Sessions Judge was, therefore, wrong, in thinking that Babu's offence did not fall under Section 302, I. P. C.

6. Even if the two Exceptions applied the learned Sessions Judge should have at least convicted Babu under Part I of Section 304. Assuming for the sake of argument that there was no intention to kill the deceased, still Part I of Section 304 would apply because Babu obviously had the intention to inflict injuries on the deceased & did inflict injuries on him & the injuries inflicted were likely to cause the death of the deceased. The learned Sessions Judge in the present case, we regret to say, has disclosed an utter lack of understanding of the law on the subject.

7. The question, however, for our consideration is whether we have power to alter the conviction of Babu from Section 304 Part II to one either under Section 302, I. P. C. or under Section 304, Part I, I. P. C. That we have no power to alter a sentence of acquittal into one of conviction and at the same time enhance the sentence has been recently held by this Court in a Full Bench, vide --'Taj Khan v. State', AIR 1952 All 369(A). Therefore, we cannot convict Babu under Section 302 I. P. C. of which offence he has been acquitted, and enhance the sentence either to transportation for life or to death.

8. The question whether we can alter the conviction from Section 304 Part II to one under Section 304, Part I, depends on the answer to the further question whether Babu has been acquitted of the offence under Section 304 Part I, I. P. C. The learned Sessions Judge, in the course of his judgment, did say that Babu did neither intend to kill nor cause bodily injuries likely to cause death. There is no doubt, therefore, that he did intend to hold that Babu was not guilty under Section 304, Part I, I. P. C. This indication of the views of the learned Sessions Judge, in the course of his judgment may fairly be construed to amount to an acquittal of Babu under that Part of Section 304 I. P. C.

9. In --'Mohammad Sharif v. Rex', AIR 1950 All 380(B), an accused was charged under Section 302 I. P. C. but was acquitted of that offence and convicted under Section 304, Part II, I. P. C. It was held that the Court had no power to alter the conviction under Part II of Section 304, I P. C., to one under Part I of the same section and at the same time to enhance the sentence.

10. The other alternative open to us is to order a retrial of the case. The learned Government Advocate has opposed this course because he fears that, as more than two years have elapsed from the date of the order of the court below, some of the crucial witnesses may not be available to the prosecution. Mr. B. S. Darbari on behalf of the complainant Chandan insists that there should be a retrial. We think that, although a private complainant may be heard in support of a revision application for the enhancement of the sentence passed on an accused or for an order of retrial, the wishes of the State in a matter like this, when the offence is really against the State and not against the individual, should have greater weight. We, therefore, do not propose to adopt , the course suggested by Mr. Darbari.

11. Before we part with this case, we would like to mention that it is anomalous that the High Court should have no power to convict A person of the offence of which he ought to have been convicted by the court below in the exercise of its revisional jurisdiction and that it should be forced to order retrial and thus be a party to a waste of public time and energy. It is a matter which should be set right by the Legislature. Let a copy of this judgment be sent to the Government concerned.

12. In the result, we dismiss the revision application.