

Jani Gulab Shaikh vs The State Of Maharashtra on 29 August, 1969

Equivalent citations: 1969(2)UJ598(SC), AIR ONLINE 1969 SC 76, 1969 UJ(SC) 598

JUDGMENT

Sikri, J.

1. The principal question which arises in this appeal by special leave is whether on the facts as found by the High Court the appellant is guilty under Section 323 or Section 325 or 304, Part II, I P.C. The learned Additional Sessions Judge convicted the appellant under Section 304(1), I P.C., and sentenced him to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 250/- in default to suffer further rigorous imprisonment for two months.

2. The High Court convicted the appellant under Section 304, Part II, I.P.C. and sentenced him to rigorous imprisonment for three years. The High Court set aside the sentence of fine.

3. The relevant facts as found by the High Court and as appearing on the record are as follows : At about 4.30 p.m. on August 11, 1965, the deceased, Shankar, was passing by, the station road accompanied by Mohanlal Gujarathi, P.W. 2. when they came near the shop of the appellant-hereinafter referred to as the accused which is at a distance of about 20 feet from the Station Road, the deceased uttered ',Kojtn Hui bonduk Kiski Aawaj Hat Aajao"' Hearing this the appellant came out of the shop and warned the deceased not to give abuses and asked him to go ahead. In spite of this the deceased seems to have continued abusing the accused, Three-witnesses were produced by the prosecution. The High Court found as follows : _____ "In spite of some minor contradictions and minor discrepancies, it is clear from the evidence, of these eye witnesses that the deceased and Mohan Gujarat were passing by the Station Road and when they came near the shop of the accused the deceased started abusing the accused. It also appears that the deceased was under the influence of liquor, it is also clear from this consistent evidence that though the deceased was asked by the accused to go ahead, the deceased still stood firm and continued abusing the accused. t is also clear that the accused then came from his shop and gave blows to the deceased and the deceased fell down with his face towards the sky and immediate result noticed by all the witnesses was that the deceased became unconscious and his mouth and ear started bleeding."

The High Court further said that it may be that some small weapon was available to the accused and he might have used it but it was a matter of speculation. The High Court, therefore, concluded that it was as a result of the act of pushing by the accused that deceased fell down and became unconscious and blood started oozing from his mouth and ears.

4. In the post-mortem the injuries on the head are described as follows :

"19. Head

(i) Injuries under the scalp, their nature

(ii) Skull vault and base describe fractures, their sites, dimensions, directions etc.

1. Fracture of occipital both in the posterior oramlal Fossa

- quadran gular - two lower angles joining foremen-

magnum the upper two ends being in tact with the remaining part of the occipital bone. So that piece is not separated or depressed.

(iii) Brain The appearance of its coverings, size, weight and general condition of the organ it-self and any abnormality found in its examination to be carefully noted (Weight M-3 gram F-275 grams). (i) Lacertion to brain underneath.

(ii)Subdural hamatoma right temporro pariatat region 4"

x 3" clot seen which is the end lying part of brain, wt. 1150 grams."

5. The surface wounds and injuries are described thus in col.

17 of the post-mortem report:

17. Surface wounds and injuries.

Their nature, position, dimensions (measured) . and directions to be accurately stated their probably age and causes to be noted. (1) Contusion 3.2./3" x 3" over the occipital region 11/2 about the hair margin (seen on removing the hands) contusion at temperoparital regin 2" x 1" on dissection blood in sub-suta-necus-tissue.

If bruises be present what is the condition of the subscutaneous issue ?

(N.B.) when injuries are numerous and cannot be mentioned within space available they should be mentioned on a separate paper which should be signed. Caused by impart with hard and blunt object, Age of injuries within 24-28 hours.

6. Doctor Jaswant Kaur, P.W. 12, stated in her evidence :

"On internal examination I found fracture of occipital bone in posterior ornial fosan-quadrangular 2 lower angles joining the fornemagnum ... I further noticed

subdural hema-toma in right temporeprietal region 4"x3" clot pressing the brain underneath. Drain was lacerated These injuries as described in column 17 could be caused by impact with hard and blunt substance.

In cross-examination she stated :

"Bleeding through mouth and nose must have been due to the fracture of the skull. These 2 injuries could not be by a single fall-because one contusion is on the occipetal region and the other is on the right tempore parietal region. Moreover each required a heavy fall."

No question was put either by the prosecution or by the defence to ascertain the nature of injury (iii), in column 19. In other words no effort was made to elicit any opinion as to whether the injury was grievous or not.

7. "Subdural Haemorrhage" is described in Modi's Medical Jurisprudence and Toxicology, 15th Edn., as follows :

"This occurs into the subdural space between the dura mater and the arachnoid as a result of rupture of the dural venous sinus, or a cortical vein if the arachnoid has been torn or laceration of the brain. It sometimes occurs without fracture of the skull from a slight blow on the head or from a fall. The haemorrhage occurs slowly and is localized in a small area, but it is usually diffused over both the cerebral hemispheres, and tends to gravitate to the base of the brain."

As we read the post-mortem report and the evidence of the Doctor she found fracture of the occipital bone but no fracture in the right tempore parietal region was not due to a fall.

8. The question that arises is whether the accused is guilty under Section 304, part II, Section 325 or Section 323, I. P. C, In our opinion the High Court erred in holding that Section 304, part II, applied, The High Court observed :

"We are of the opinion that the accused must be deemed to know that as a result of such forcible push death could have been the likely result. The accused must be deemed to know that the deceased was likely to fall on the cement concrete road and that the force which he was actually using was likely to result in fatal injuries to the deceased. Therefore, though the accused did not intend to cause the death of the deceased and did not intend to cause him injuries sufficient in the ordinary course of nature to cause his death and did not intend to cause him injuries which were likely to cause death, at any rate, he must be posted with the knowledge that death was likely to result in the circumstances in which the injuries were caused by him to the deceased."

We are unable to agree with High Court that the accused must be posted with the knowledge that death was likely to result in the circumstances the injuries were caused by him to the deceased. It is very rarely that if a man is pushed and he falls on the road the occipital bone gets fractured. Here it is perhaps due to the drunken condition of the deceased that while falling he could not avoid his skull falling on the road. At any rate, in our opinion it is difficult to impute knowledge to the accused that death was likely to result by the push he is alleged to have given.

9. If he is not guilty under Section 304, part II, he cannot be convicted under Section 325, because no grievous injury has been inflicted by the accused. There is no evidence to show that injury no. (iii) in column 19 was grievous.

10. The learned counsel for the appellant also tried to show that the accused was justified in pushing him and giving him blows. We are unable to agree with him on this matter. The accused could very well have gone away and ignored the deceased who was obviously not behaving normally.

In our view the accused is guilty under Section 323, I. P. C. In the result the appeal is partly allowed the conviction entered and sentence given by the High Court altered and the accused convicted under Section 323, I. P. C., instead of Section 304 part II. We understand that he was already undergone imprisonment for about 4 1/2 months. We do not think it is necessary that he should be sent back to jail. Accordingly we award him sentence already undergone. The bail bond executed by him shall stand cancelled.