

Supreme Court of India

Mst. Madani vs State Of Rajasthan on 23 April, 1993

Equivalent citations: AIR 1994 SC 1713, 1994 CriLJ 1978

Bench: S Pandian, N Venkatachala

JUDGMENT

1. The appellant who is a widowed sister of Sohanlal and Vishwapal who were the co-accused before the trial Court took her trial along with her brothers under Section 302 read with Section 34, I.P.C. and also under Section 324, I.P.C. on the allegations that on 6-6-80 at about 5.00 p.m. they all caused the death of the deceased Murlidhar and also caused injury to another by name Ram eshwar. It is stated in the evidence that Sohanlal was armed with a lathi and the appellant was armed with gandasi (FO). The occurrence was due to a dispute over the enjoyment of a piece of land. There were 8 injuries on the deceased of which injuries Nos. 2,3,4 and 5 are said to have been caused by gandasi and all of these injuries are attributed to the present appellant. In respect of this incident the first information report was lodged at 6.00 a.m. on 7-6-1980. The police registered a case on the first information report Ex. P 1, inspected the scene of occurrence, recorded the statements of the witnesses and filed the charge-sheet against the appellant and two of her brothers.

2. P.W. 17, Medical Officer conducted the post-mortem over the dead body of the deceased and opined that injuries Nos. 5, 7, 8 were sufficient to cause death in the ordinary course of nature. Be it noted that injury No. 7 was an irregular contusion, injury No. 8 was a contusion on the back of left side of the chest of the deceased. These two injuries, namely, injuries Nos. 7 and 8 are attributed to Sohanlal. To substantiate the charges the prosecution examined P.Ws. 10, 18, 19 and 20 as eye witnesses. All the accused denied the offence when questioned under Section 313, Cr.P.C. The trial Court acquitted Vishwapal and convicted the appellant and her brother Sohanlal under Section 302 read with Section 34, I.P.C. and sentenced both of them to undergo imprisonment for life and also convicted the appellant under Sections 324 and 33 read with 34, I.P.C. and sentenced to undergo imprisonment for a period of one year and also to pay a fine of Rs. 50 and four months rigorous imprisonment and for 4 months rigorous imprisonment respectively. Sohanlal was also convicted under Section 324 read with Section 34, I.P.C. and sentenced to undergo rigorous imprisonment for one year and further convicted under Section 323 and sentenced to suffer rigorous imprisonment for a period of four months with a direction that all sentences to run concurrently.

3. Hence on being aggrieved by the judgment of the Trial Court the appellant and Sohanlal preferred an appeal before the High Court. The High Court for the reasons assigned in its judgment altered the conviction of the appellant into one under Section 302, I.P.C. (simpliciter) and affirmed the sentence of life imprisonment and in addition that it has also confirmed the conviction Under Section 324 and the sentence of imprisonment for one year but the High Court set aside the conviction of the appellant under Section 323 read with Section 34, I.P.C. and the sentence of imprisonment imposed therefor.

4. Coming to the case of Sohanlal the High Court set aside the conviction under Section 302 read with Section 34 and instead convicted Sohanlal under Section 325, I.P.C. and sentenced him to undergo rigorous imprisonment for three years. However, it has confirmed the conviction under

Section 323 and the sentence of four months rigorous imprisonment while setting aside the conviction under Section 324 read with Section 34, I.P.C. Sohanlal has not preferred any appeal. Therefore, we are not concerned with his conviction. Only the appellant has preferred this appeal, canvassing the correctness of the judgment.

5. We have heard the learned Counsel for the State as well as for the appellant in detail and perused the documents. The facts and circumstances of the case show that it was the deceased who came to the field where the appellants/ accused were carrying on their agricultural operation and tried to demarcate the boundary line and caused provocation. On such grave and sudden provocation caused by prosecution party, the appellant attacked the deceased. Further the evidence also disclosed that the appellant on being suddenly and gravely provoked by the deceased was deprived of her self-control. It was only under such circumstances the appellant who was armed with a gandasi, which is said to be an ordinary weapon used for cultivation purposes, attacked the deceased. It is very unfortunate that the injury, namely, injury No. 5 had caused fracture on the skull. The injuries Nos. 7 and 8 which are attributed to Sohanlal along with injury No. 5 had caused the death of the deceased. As we have already pointed out, the High Court found Sohanlal who is found to have caused the two fatal injuries, guilty only under Section 325, I.P.C.

6. Having regard to the totality of the evidence and the circumstances appearing in this case, we are of the view that the present appellant would be guilty of offence punishable only under Section 304, Part I, I.P.C. not under Section 302, I.P.C. Hence, we set aside the conviction recorded under Section 302 and the sentence of imprisonment of life. Instead we convict her Under Section 304, Part I, I.P.C. and sentence her to rigorous imprisonment of 8 years. The conviction recorded Under Section 324 and the sentence of rigorous imprisonment for one year are retained and directed to run concurrently with the sentence of 8 years imposed under Section 304, Part I, I.P.C. It is stated that she has already served 8 years of imprisonment. It is for the authorities concerned to calculate the period of sentence which she has already served and act accordingly. The appeal is dismissed subject to the alteration of the conviction and sentence as indicated above.