

Supreme Court of India

Shri Murli Alias Denny vs State Of Rajasthan on 5 February, 1993

Equivalent citations: AIR 1994 SC 610, 1994 CriLJ 1114, 1995 Supp (1) SCC 39

Bench: K J Reddy, N Singh

JUDGMENT

1. The appellant Shri Murli alias Denny is convicted under Section 302, I.P.C. and sentenced to imprisonment for life. The prosecution case is as follows :

The appellant had a shop in the bazar. The deceased Shiv Rattan alias Tenny also belonged to the same place. The deceased was a man of violent nature and used to terrorise people by use of force and violence. He was a terror for common people and he was convicted and sentenced in connection with several cases, particularly, relating to gambling. The Police authorities initiated proceedings against him under Goondas' Act. On 10-9-85, at about 11-25 p.m., according to the prosecution case, the deceased went to the shop of the appellant and began to hurl abuses. Having got enraged the accused inflicted some stab injuries on the deceased with a knife. The accused was seen proceeding to the police station, and on the way, he met PW-2, PW-3 and PW-7 before whom he is alleged to have confessed that he has finished the deceased - an unsocial element. He then went to the residence of the Police Officer (PW-9) and on his direction, the accused thereafter proceeded to the Police Station, Meanwhile, PW-9 also reached the Police Station. Then PW-2 and PW-3 also came to the police station and in their presence the accused stated that the deceased came at his shop and abused him virulently and having been provoked suddenly, he inflicted injuries on the deceased. This information was, however, recorded by the SHO which was attested by PW-2 and PW-3, which later became the FIR in this case. The SHO thereafter proceeded to the scene of occurrence, held the inquest over the dead body and sent the same for post-mortem. The doctor (PW-4), who conducted the post-mortem, noticed some incised injuries and stab wounds, and on internal examination, he found the injuries crossed to the stomach and heart, which proved fatal. The accused was arrested and the knife was also recovered. After completion of the investigation the charge-sheet was laid.

2-3. The prosecution mainly relied on the evidence of P.Ws. 1, 2, 3 and 7 to whom the accused is alleged to have made an extra judicial confession. P.W-1 had turned hostile, P.Ws. 2, 3 and 7 merely stated that the accused in an agitated mood was seen going with blood-stained weapon. He also told them that he had finished the deceased. These witnesses did not, however, give the actual words alleged to have been stated in the confession, by the accused. The trial court, as well as the High Court, relying on the circumstantial evidence, particularly, on the conduct of the accused in going to the police station with blood-stained weapon and the other circumstances which are in the nature of 'Resgestae' and finding the dead body immediately pursuant to the information given by the accused held that the accused was guilty of the murder and accordingly convicted him. At this juncture, it is necessary to refer one of the submissions made before the courts below.

4. Learned Counsel who appeared for the appellant before the courts below contended that FIR which is in the nature of confession could not be proved against the accused as the same was hit by Section 25 of the Evidence Act. Learned Counsel, however, wanted to rely on a part of the statement in the FIR wherein the accused has stated that the deceased came near his shop and hurled the

abuses virulently and having been provoked in a sudden manner, he inflicted injuries. The courts below was not prepared to give the benefit of the exception No. 1 to Section 300, since the statement as a whole should be eschewed from the consideration.

5. Having examined the circumstances on record, we are satisfied that it was the accused who inflicted injuries on the deceased person, as a result of which he died. But the learned senior counsel, Shri Sibal submits that there are any number of circumstances indicating that the accused acted on a grave and sudden provocation and, therefore, exception No. 1 to Section 300 is attracted. We find considerable force in this submission. To start with, the prosecution evidence itself indicates that the deceased was a man of violent nature and had no regard for law and was creating terror and fear in the minds of common people. In such an aggressive mood, he must have gone to the shop of the accused. As to what exactly preceded the attack is not borne out by the evidence. However, there is a clear indication in the first statement given by the accused himself which formed the FIR in this case to the effect that the deceased in an aggressive manner went to the shop of the accused and showered virulent abuses. It may be mentioned here that we are not using the statement of the accused before the SHO for any purpose in favour of prosecution and against the accused. The only admission which we find in the statement in favour of the accused is being taken into account to examine whether the case falls under exception No. 1 to Section 300, I.P.C., particularly, in view of the fact that there is no other evidence disclosing as to how the quarrel ensued and attack took place. Having carefully considered the entire material, we are of the view that Exception No. 1 to Section 300 is attracted in this case. The Exception lays down :

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

This Exception is no doubt subject to certain limitations. In the instant case, the provocation is not sought or provoked by the accused. The medical evidence also shows that most of the injuries were found on the hips and the possibility of having received injuries by the deceased during grappling cannot be ruled out. In such cases, it cannot be said that the accused caused the injuries by way of an excuse for killing the deceased. Accordingly, we set aside the conviction of the appellant Under Section 302, Indian Penal Code and imprisonment for life awarded thereunder and, instead, we convict him under Section 304, Part I, Indian Penal Code and sentence him to undergo Rigorous Imprisonment for 10 years.

6. Subject to the modification of sentence as mentioned above, the appeal is dismissed.