

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 1014 OF 2019
 (Arising out of SLP(CrI.) No(s).9396 of 2018)

SITA RAM

Appellant(s)

VERSUS

STATE OF NCT OF DELHI

Respondent(s)

J U D G M E N TBANUMATHI, J.:

Leave granted.

(2) This appeal arises out of judgment and order dated 15.02.2018 of the High Court of Delhi at New Delhi in Criminal Appeal No.333 of 2002 in and by which the High Court has affirmed the conviction of the appellant-Sita Ram (A-2) under Sections 302 and 323 read with 34 of the I.P.C. and the sentence of life imprisonment imposed upon him.

(3) Briefly stated the case of the prosecution is that on 2nd July, 1990 - 10:00 p.m., injured Kala Wati (PW-19), wife of deceased-Mangal Singh, was going along with her husband to her house after closing tea shop at Kardam Puri. When they reached near the shop of Girdhari Lal (A-1 since dead), they found the appellant-Sita Ram (A-2), Ram Pal (A-3) and Ram Phal (A-3) there. Deceased-Mangal Singh asked Girdhari Lal (A-1) not to tap/hook the electricity from the electric pole connecting his house. Girdhari Lal (A-1) got annoyed and objected to the questioning by deceased-Mangal Singh and all the accused alleged to have abused deceased-Mangal Singh. Ram Pal (A-3)

gave the blow on the head of deceased-Mangal Singh and Sita Ram (A-2) and Ram Phal (A-4) gave blows with Danda and hockey stick respectively on deceased-Mangal Singh. Kala Wati (PW-19), wife of deceased, who tried to intervene also sustained injury on her hand. On hearing the noise Brij Mohan (A-5) came there. When Raj Kumar (PW-9), Leela Wati (PW-4) and Jai Singh (PW-14) came to save her, other accused caused injuries Jai Singh and Raj Kumar (PW-9) and Leela Wati (PW-4). Brij Mohan (A-5), Subhash (A-9) and Rajender (A-6) are said to have attacked Raj Kumar (PW-9) who also sustained injuries. Injured were taken to the hospital. Mangal Singh succumbed to injuries. On the complaint lodged by Raj Kumar (PW-9), FIR was registered under Sections 147, 148, 307 and 323 I.P.C. which was subsequently altered to Section 302 I.P.C. Dr. M.P. Sarangi (PW-6) conducted the post-mortem on the dead body of deceased-Mangal Singh. He noticed lacerated wound at the top of head of size 3 cm x 0.5 cms; lacerated wound on right parieto temporal region of head of size 2 cm x 3 cm; lacerated wound of 1 cm x 5 cm above the upper part of right ear etc. He opined that injuries no.1 to 3 were fatal and sufficient to cause death in the ordinary course of nature. On completion of the investigation, the chargesheet was filed against A-1 to A-4 under Sections 325, 323 and 302 read with 34 I.P.C.

(4) To bring home the guilt of the accused, prosecution has examined Kala Wati (PW-19), wife of the deceased, and Raj Kumar (PW-9), son of the deceased, Leela Wati (PW-4), Jai Singh (PW-14), Vijay Kumar (PW-13) and other eye-witnesses. Upon

consideration of the oral and documentary evidence, the Trial Court convicted A-2 to A-4 under Section 302 read with 34 I.P.C. and sentenced them to undergo life imprisonment. Brij Mohan (A-5), Rajender (A-6) and Subhash (A-9) were convicted under Sections 323 read with 34 I.P.C. and were sentenced to undergo rigorous imprisonment for six months. Rajesh (A-7) and Manphool (A-8) were acquitted. Girdhari (A-1) died during trial and the charges abated against him.

(5) Being aggrieved, the accused preferred appeal before the High Court. The High Court vide impugned judgment dated 15.02.2018 dismissed the appeal preferred the appeal by Sita Ram (A-2) thereby affirming his conviction and sentence of imprisonment imposed upon him by the Trial Court. During the pendency of the appeal before the High Court, Ram Pal (A-3) and Ram Phal (A-4) also died and the charges stood abated against them. The appeal preferred by Brij Mohan (A-5), Rajender (A-6) and Subhash (A-9) were partly allowed. The High Court affirmed their conviction under Sections 323 read with 34 I.P.C. but reduced the sentence of imprisonment to the period already undergone and enhanced the fine amount to Rs.10,000/-. Being aggrieved by dismissal of his appeal, the appellant-Sita Ram (A-2) has preferred this appeal.

(6) We have heard Mrs. Bharti Tyagi, learned counsel appearing for the appellant and Mr. K.M. Natraj, learned Additional Solicitor General appearing for the respondent-State, and also perused the impugned judgment and the evidence/materials on record.

(7) The evidence of the injured eye-witnesses, Kala Wati (PW-19) and Raj Kumar (PW-9), is impliedly corroborated the evidence of Leela Wati (PW-4) and Jai Singh (PW-14). Since, Kala Wati (PW-19) sustained injuries, being injured witness, the evidence of Kala Wati stands on higher footing. The evidence of all witnesses are cogent and consistent that deceased-Mangal Singh was attacked by accused no.1 to 4 with hockey stick and danda. Accused Girdhari (A-1), Ram Pal (A-3) and Ram Phal (A-4) are dead.

(8) Mrs. Bharti Tyagi, learned counsel appearing for the appellant-Sita Ram (A-2), has submitted that the occurrence was not premeditated one and that only deceased-Mangal Singh and his wife-Kala Wati (PW-19) while on the way back from tea shop to their house questioned Girdhari (A-1) as to the alleged tapping of the electricity which resulted in oral quarrel and, therefore, the entire occurrence has happened in a heat of passion and, therefore, the High Court was not right in convicting the appellant under Section 302 read with 34 I.P.C. and the act of the accused squarely falls under Exception 4 to Section 300 I.P.C.

(9) Mr. K.M. Natraj, learned Additional Solicitor General appearing for the respondent-State, has taken us through the evidence and reiterated the findings of the High Court to submit that the High Court has rightly convicted the appellant-Sita Ram (A-2) under Section 302 read with 34 I.P.C. and there is no ground warranting interference with the impugned judgment of the High Court.

(10) The only question falling for consideration is whether the conviction of the appellant under Section 302 read with 34 I.P.C. can be sustained. As pointed out by learned counsel for the appellant that there was no premeditation for the occurrence. On 2nd July, 1990 at 10:00 p.m. when deceased-Mangal Singh and his wife-Kala Wati (PW-19) were returning back to their house after closing their tea shop, on the way they questioned Girdhari (A-1) as to his alleged tapping the electricity from electric pole. This has led to oral altercation between the parties, during which the appellant-Sita Ram (A-2), Girdhari (A-1), Ram Pal (A-3) and Ram Phal (A-4) have attacked deceased-Mangal Singh with hockey stick and danda. It is to be pointed out that the accused were not armed with weapon earlier; it appears that they have picked hockey stick and danda during the course of the sudden fight.

(11) In order to attract Exception 4 to Section 300 I.P.C. the following ingredients have to be established :

(i) The crime must be committed without premeditation;

(ii) It must be committed in a sudden fight in the heat of passion upon a sudden quarrel;

(iii) The Offender should not have taken undue advantage;

(iv) The Offender should not have acted in a cruel or unusual manner;

(12) As discussed earlier the occurrence was without premeditation and sudden fight between the parties started in the heat of passion upon a sudden quarrel. The occurrence happened when deceased-Mangal Singh as his way back home

questioned Girdhari (A-1) as to his conduct of tapping electricity from the pole. The appellant-Sita Ram (A-2) was not pre-armed and other accused were also not pre-armed. Though, deceased-Mangal Singh has sustained as many as nine injuries, except injury no(s).1 to 3 which are the injuries caused on the head and all other injuries are on the hand, shoulder, arms etc.

(13) Considering the nature of the injuries sustained by deceased-Mangal Singh, it cannot be said that the appellant-Sita Ram (A-2) and other accused have taken undue advantage of deceased-Mangal Singh in attacking him. Having regard to the facts and circumstances of the case, in our view, the conviction of the appellant-Sita Ram (A-2) under Section 302 read with 34 I.P.C. deserves to be modified under Section 304 Part II I.P.C.

(14) In the result, the conviction of the appellant under Section 302 read with 34 I.P.C. is modified under Section 304 Part II I.P.C. The appellant-Sita Ram is sentenced to undergo rigorous imprisonment for a period of eight years. The appeal is partly allowed.

.....J.
(R. BANUMATHI)

.....J.
(A.S. BOPANNA)

NEW DELHI,
JULY 09, 2019.