

RAHIMBUX

v.

STATE OF M.P.

(Criminal Appeal No.861 of 2008)

MAY 12, 2008

[A.K. MATHUR AND ALTAMAS KABIR, JJ].

Penal Code, 1860 – ss. 302, 323, 304-I and 304-II – Alteration of conviction u/s. 302 to s. 304-I or s. 304-II – Tenability of – Accused chasing informant with sword and on his failure to catch him, he caused fatal injury to informant's brother who was standing there – Conviction u/ss. 302 and 323 by courts below – Held: Case for alteration of conviction from s. 302 to s. 304-I or 304-II not made out – Intention was predominantly present in the mind of accused when he chased informant to inflict serious injury to him and he satisfied his intention by inflicting murderous blow on informant's brother-innocent bystander who did not provoke the accused for murderous act – Thus, conviction u/s 302 justified.

According to the prosecution case, on the fateful day when appellant was quarrelling with his father-in-law, informant-AK intervened to save him. Thereafter, appellant inflicted injury to AK and chased him but AK ran away. Appellant went to his house and came out with a sword and chased AK to attack him. AK managed to escape but his brother was standing there. Appellant attacked him with a sword and caused him fatal injury. AK-PW-1 lodged an FIR. Investigation was carried out. Trial court convicted the appellant u/s.302, 323 IPC r/w s. 25 of the Arms Act and sentenced him accordingly. High Court upheld the conviction. Hence the present appeal.

Appellant contended that the accused did not intend to cause fatal injury to the deceased; and that it was only a single blow not intended to cause the death but intended

- A to attack the other brother who was out of reach, thus it did not fall u/s 302 but would fall u/s 304-I or s.304-II I.P.C.

Dismissing the appeal, the Court

- B HELD: 1.1 There is no two opinion that the present injury was inflicted on the deceased as supported by AK-PW-1 and the testimony of PWs. 2 and 3 and the medical evidence corroborated by recovery of sword. Therefore, so far as the voluntarily causing injury to the deceased by the accused is concerned, there is no two opinion and the same has been fully substantiated by the relevant evidence. (Para 5) [218-B-C]

- D 1.2 The intention of the accused is more than apparent that he went to his house and brought a sword and wanted to chase AK. He intended to inflict serious injury to AK but unfortunately on his failure he made the deceased a victim. Nobody, chases person with sword for any benevolent purpose. It is unfortunate instead of causing the death of AK the accused caused the death of his brother. It is nothing but change of malice from one brother to another brother. From these facts it is not a case in which the benefit of s. 304-I or s. 304-II IPC can be given to the accused. One has to see the intention and the intention of the accused in the instant case is more than apparent that he chased AK with sword and on his failure to catch hold of AK with sword, he caused the death of an innocent bystander who has not given any provocation to the accused for the murderous act. It is the intention which was predominantly present in his mind when the accused chased AK and therefore, this intention he satisfied by inflicting the murderous blow on the deceased on his vital part of body. Therefore, under these circumstances, the conviction of the appellant u/s 302 IPC is well founded and there is no ground to interfere. (Para 5) [218-E-H; 219-A-B]

- H 1.3 So far as converting the case from s. 302 I.P.C. to s. 304-I or 304-II IPC each case has its peculiar facts and

justification for converting the offence from s. 302 IPC to s. 304-I or s. 304-II IPC. Therefore, in the circumstances of the instant case, there is no merit to convert the offence u/s 302 IPC to either s. 304-I IPC. or s. 304-II IPC. (Para 6) [219-CD]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No.861 of 2008

From the final Judgment & Order dated 2.9.2005 of the High Court of Madhya Pradesh at Jabalpur in CrI. Appeal No. 49 of 2000

Rachana Joshi Issar, Rupal Bhatia and Ajay Thakur for the Appellant.

Siddartha Dave, Jemtiben AO and Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

A.K. MATHUR, J. 1. Leave granted.

2. This appeal is directed against the order dated 2.9.2005 passed by the Division Bench of the Madhya Pradesh High Court whereby the Division Bench of the High Court has affirmed the conviction of the accused-appellant under Section 302 of the Indian Penal Code and under Section 323 of the Indian Penal Code (hereinafter to be referred to as 'I.P.C') read with Section 25 of the Arms Act and sentence imprisonment for life and payment of fine of Rs.500/- in default to suffer further imprisonment for a period of two months under Section 302 of the I.P.C., and simple imprisonment for a period of three months under Section 323, I.P.C. and Section 25 of the Arms Act on each count and directed that both the sentences to run concurrently. Aggrieved against this order the present appeal was filed by the accused. Notice was given on the limited question of the offence.

3. Brief facts which are necessary for disposal of this appeal are that Aslam Khan, P.W.1 lodged a report to the effect that on 8.6.1998 at about 4.00 P.M. the appellant was quarrel-

A ling with his father-in-law. Therefore, he tried to intervene by
persuading the appellant not to beat the old person. Being an-
noyed, the appellant inflicted injury on him by piece of brick.
After receiving this injury, P.W.1 ran away from that place. There-
after, the appellant went to his house and came out with a sword
B and chased him to cut him with the sword but somehow he es-
caped and did not come within his reach. His brother, Rehman
Khan who was standing in front of the house was attacked by
the appellant with the sword which caused abdominal injury with
intestine coming out of the wound. The deceased Rehman Khan
C was immediately shifted to the Hospital along with Aslam Khan.
Dr. M.P. Garg, on examination found an incised wound in the
abdominal region of Rehman Khan and the doctor immediately
shifted him to the operation theatre for treatment by surgical
specialist. Aslam Khan was also treated for his injuries sus-
tained by the brick. Subsequently, Rehman Khan succumbed
D to his injuries. A panchnama was made and the dead body was
sent for post-mortem. It was found that the deceased had in-
cised wound 1 ½" X ¾" X cavity deep on abdominal region near
umbilical cord. Subsequently, during the investigation the sword
in which the deceased was attacked was recovered. After
E completion of the investigation, challan was filed against the
accused. Learned Sessions Judge after conclusion of the trial
convicted the accused-appellant under Section 302, I.P.C.,
Section 323, I.P.C. and Section 25 of the Arms Act and sen-
tenced him as aforesaid. Thereafter, an appeal was preferred
F before the High Court. The Division Bench of the High Court
affirmed the conviction of the accused- appellant. Hence, the
present appeal. The limited question to be examined is with
regard to the nature of offence.

G 4. Learned counsel for the appellant strenuously urged
before us that there is only one injury caused to the deceased.
Therefore, it does not fall under Section 302, I.P.C. but at best it
would fall under Section 304-I or Section 304-II of the I.P.C. as
the accused did not inflict any second injury and secondly, the
accused did not intend to cause any injury to the deceased so
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as to cause his death. The accused in fact wanted to attack A
Aslam Khan but since Aslam Khan was out of reach, therefore,
he inflicted the injury to his brother, Rehman Khan who was
standing there. The accused- appellant did not intend to cause
death to the deceased and as such the case does not fall within
the parameters of Section 302, I.P.C. and at best it can be under B
Section 304-II, I.P.C. In support of this contention, learned
counsel cited the following decisions of this Court.

- i) (1981) 4 SCC 245
Kulwant Rai v. State of Punjab. C
- ii) (1981) 4 SCC 489
Randhir Singh alias Dhire v. State of Punjab.
- iii) (1983) 2 SCC 342
Jagtar Singh v. State of Punjab D
- iv) (1981) 3 S.C.R 658
Gokul Parashram Patil v. State of Maharashtra
- v) 2004 (2) SCALE 217 E
Chowa Mandal & Anr. V. State of Bihar (Now
Jharkhand)
- vi) (2004) 12 SCC 250
Ramu v. State of U.P. F
- vii) 1995 Supp.(3) SCC 472
Balbir Singh v. State of Punjab.
- viii) [1958]S.C.R. 1495 G
Virsa Singh v. The State of Punjab.

Learned counsel for the appellant has tried to seek sup-
port on the aforesaid decisions to show that in fact the accused
in the present case did not intend to cause fatal injury to the H

A deceased and it was only a single blow not intended to cause the death but intended to attack the other brother, Aslam Khan who was out of reach. As against this, learned counsel for the State supported the judgment of the High Court.

B 5. We have bestowed our best of consideration to the facts of the present case. There is no two opinion that the present injury was inflicted on the deceased as supported by P.W.I and the testimony of P.Ws.2 & 3 and the medical evidence corroborated by recovery of sword. Therefore, so far as the voluntarily causing injury to the deceased by the accused is concerned, C there is no two opinion and the same has been fully substantiated by the relevant evidence. In fact, the only question is whether offence under Section 302, I.P.C. is made out of Section 304-I, or 304-II I.P.C. is made out. It is a fact that the accused was chasing Aslam Khan and when he was out of his reach, the accused D went to his house and brought out a sword to attack Aslam Khan but somehow, Aslam Khan managed to escape from the spot. But unfortunately, his brother- the deceased was standing in front of his house and the accused on his failure to cause the serious harm to Aslam Khan gave the murderous blow to the E deceased which ultimately became fatal. So far as the intention of the accused is concerned, it is more than apparent that he went to his house and brought a sword and wanted to chase Aslam Khan. Therefore, the intention of the accused is apparent, he intended to inflict serious injury to Aslam Khan but unfortunately on his failure he made the deceased a victim. There- F fore, from this his intention is apparent. Nobody, chases person with sword for any benevolent purpose. It is unfortunate, instead of causing the death of Aslam Khan the accused caused the death of his brother. It is nothing but change of malice from one brother to another brother. From these facts we are of opinion G that it is not a case in which the benefit of Section 304-I, I.P.C. or Section 304-II, I.P.C. can be given to the accused. One has to see the intention and the intention of the accused in the present case is more than apparent that he chased Aslam Khan with sword and on his failure to catch hold of Aslam Khan with sword H

he caused the death of an innocent bystander who has not given any provocation to the accused for the murderous act. It is the intention which was predominantly present in his mind when the accused chased Aslam Khan and therefore, this intention he satisfied by inflicting the murderous blow on the deceased on his vital part of body. Therefore, under these circumstances, we are of opinion that the conviction of the appellant under Section 302, I.P.C. is well founded and there is no ground to interfere in this appeal.

6. Learned counsel for the appellant has invited our attention to the various decisions which have been cited above. Each case depends on its facts and therefore, the decisions cited above will not render any assistance to learned counsel for the appellant. So far as converting the case from Section 302, I.P.C. to Section 304-I or 304-II, I.P.C. is concerned, each case has its peculiar facts and justification for converting the offence from Section 302, I.P.C. to Section 304-I or Section 304-II, I.P.C. However, so far as the present case is concerned, we are satisfied that the intention of the accused is more than apparent when he chased Aslam Khan after taking out a sword from his house and since he could not succeed to cause injury on Aslam Khan he diverted his malice on his brother an innocent person who was present & gave no cause to this accused. Therefore, under these circumstances, we do not find any merit to convert the offence under Section 302, I.P.C. to either Section 304-I, I.P.C. or Section 304-II, I.P.C. Consequently, there is no merit in the present appeal and the same is dismissed.

N.J.

Appeal dismissed.