

A

JABAR SINGH

v.

STATE OF M.P.

(Criminal Appeal No. 1464 of 2003)

AUGUST 12, 2010

B

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]**

PENAL CODE, 1860:

C

s. 326 – Victim died fourteen days after sustaining gun-shot injuries – Acquittal by trial court – Conviction by High Court u/s 302 – HELD: No fault could be found with the finding of guilt against accused recorded by High Court – There is on record the eye witness account of several persons including the wife of the deceased, and the four dying declarations recorded at the instance of the deceased before several independent persons including an Executive Magistrate – Report of doctor that gun-shot injuries were not the immediate cause of death of the victim and he died due to peritonitis which could not be attributed to the gun-shot injury – However, there is the categorical medical evidence that the victim died due to lack of care by his attendants as he had not been properly treated in the hospital – In this view of the matter, a case u/s 302 cannot be spelt out – Accused convicted u/s 326 with a sentence of 5 years RI and a fine of Rs.5,000 – Dying declaration.

D

E

F

CRIMINAL APPELLATE JURISDICTION :Criminal Appeal No. 1464 of 2003.

G

From the Judgment & Order dated 01.8.2003 of the High Court of Madhya Pradesh bench at Gwalior in Criminal Appeal No. 212 of 1990.

H

Lakhan Singh Chouhan, Dr. Kailash Chand for the Appellant. A

Vibha Datta Makhija for the Respondent.

The following Order of the Court was delivered

B

ORDER

This is a statutory appeal challenging the order of the High Court whereby the appellant has been convicted and sentenced to imprisonment for life for the offence punishable under Section 302 of the IPC. C

As per the prosecution story one Badan Singh, a cousin of Sarnam Singh (deceased in the present case) had been murdered about 25 years ago whereafter Inder Singh and Ramjit Singh, sons of Badan Singh had sold their land to the deceased and had left the village. The house of Badan Singh was also being occupied by Sarnam Singh. The relatives of Badan Singh suspected that one Kedar Singh was responsible for his death. On 11th November, 1984, the dead body of Kedar Singh was seen floating in the canal and the accused in the present matter suspected that Sarnam Singh and some others connected with him were responsible for his death. On 13th November, 1984 at about 8 or 9 P.M. the accused, all armed with fire arms, entered the house of Sarnam Singh whereafter Jabar Singh, the appellant herein, fired a shot at him which hit him on the navel and exited from the right buttock. Sarnam Singh, grievously injured, managed to run away towards his fields where he fell down. The other accused remained standing on the Chabutra and continued firing at Sarnam Singh though no shot hit him. Sarnam Singh was removed on a Bullock cart to police station Mehgaon by Sultan (PW.2), Umed Singh (PW.5), Munnalal (PW.1), Shiv Narayan (PW.8) and Chhote Singh (PW.10) where Sarnam Singh himself lodged the FIR at 0.45 hours on 14th November, 1984. Dr. F.C.Bansal (PW.4) also examined Sarnam Singh and noted several injuries on his D E F G H

A person. He also arranged for the recording of his dying declaration on which Amrish Shrivastava (PW.15) an Executive Magistrate, was deputed and he recorded the dying declaration (Ex.P.12). Sarnam Singh was also referred to the Gwalior Hospital where Dr. C.S.Jaiswal (PW.16) recorded another dying declaration (Ex.P.13). Sarnam Singh succumbed to his injuries on 28th November, 1984 where after his dead body was subjected to a post-mortem by Dr. R.C. Upadhyaya (PW.14).

C The Trial Court on a perusal of the evidence as also the four dying declarations referred to above held that the accused had not been properly identified and as there appeared to be long enmity between the parties, the possibility of false implication could not be ruled out. The accused were accordingly acquitted.

D The State of Madhya Pradesh thereafter filed an appeal in the High Court. The High Court maintained the acquittal of four of the accused but reversed the judgment of the Trial Court with respect to Jabar Singh and convicted him under Section E 302 IPC and sentenced him to imprisonment for life.

This appeal has been filed by Jabar Singh impugning the judgment of the High Court.

F We have heard the learned counsel for the parties very carefully and gone through the record. We are of the opinion that no fault could be found with the conviction of the appellant. In the light of the eye witnesses' account of several persons including the wife of the deceased and the four dying declarations recorded at the instance of the deceased before G several independent persons including an Executive Magistrate, we have no hesitation in upholding the conviction of the appellant.

H Mr. Lakhan Singh Chauhan, the learned counsel for the appellant, has however argued that in the light of the medical

evidence it was apparent that a case of murder was not spelt out. He has highlighted that the incident had happened on 13th November, 1984 and the injured Sarnam Singh had died after 14 days thereafter and it was clear from the medical evidence of Dr. Bansal (PW.4) and Dr. Upadhayay (PW.14) that the gun shot injuries were not the immediate cause of his death and he had died due to peritonitis which could not be attributed to the gun shot injury as it had set in on account of improper care and handling by the attendants and the hospital staff. Dr. Bansal who examined Sarnam Singh on 14th November, 1984, specifically stated that the injury suffered by Sarnam Singh was not fatal to life. Dr. Upadhayay was equally categorical when he said that the death would ordinarily not have been caused as the deceased had died due to lack of care by the attendants of the deceased and as he had not been properly treated in the hospital. He also admitted that in the postmortem report he had nowhere observed that the gun shot injuries suffered by the deceased would have caused his death in the normal course of nature. In this view of the matter we are of the opinion that a case under Section 302 cannot be spelt out against the appellant and he would at the most be liable for conviction under Sec.326 of the IPC. We accordingly modify his conviction from Section 302 of the IPC to one under Section 326 of the IPC and impose a sentence of R.I. of five years and a fine of Rs.5,000/- and in default of payment of fine, to six months R.I.

The appeal is allowed to the above extent.

The appellant is on bail in view of the orders of this Court. His bail bonds are revoked. He shall to be taken into custody forthwith, to serve out his sentence.

R.P.

Appeal allowed.