



2024 INSC 305

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 871/2022

YOGESH @ SONU THARU

APPELLANT(s)

VERSUS

THE STATE

RESPONDENT(s)

WITH

CRIMINAL APPEAL NO. 872/2022

WRIT PETITION (CrL.) No. 321/2022

J U D G M E N T

Criminal Appeal No. 872/2022 is filed by accused No.1 Pradeep Dabas while Criminal Appeal No.871/2022 has been filed by accused No.2 Yogesh @ Sonu Tharu. In both these appeals, the appellants have challenged the judgment of the High Court in confirming the conviction and sentence imposed against them for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code (for short "IPC") along with Sections 25 and 27 of the Arms Act, 1959.

The case of the prosecution in a nutshell is that both the appellants and the deceased were called for a party hosted in celebration of the birthday of PW-24. There was an altercation between A2 and the deceased, pursuant to which A1 took the gun and fired at the deceased. The shot aimed at the deceased was missed. PW-19 who is the relative of deceased was also present at the place of occurrence. He went to the kitchen to bring the match box for the purpose of lighting the cigarette. At that point of time, as

witnessed by him, A1 after handing over the gun to A2 while asking him to shoot the deceased, took it back and shot the deceased. It was a single shot which resulted in the homicidal death of the deceased.

The PW-31 informed PW-20 over phone, who, in turn, informed the police. PW-6 who is the constable along with PW-32 went to the scene of the occurrence, secured the body and sent it to the hospital and thereafter took it for postmortem. A statement was recorded from PW-19 which formed the basis of the First Information Report. The postmortem report indicates that the deceased was intoxicated. The aforesaid report is also in tune with the statement of PW-19 who deposed that he along with the deceased and the accused took liquor at the place of occurrence.

Before the Trial Court, almost all the eye witnesses turned hostile except PW-19. The Trial Court accepted the evidence of PW-19 along with that of PW-20 despite he not being eye witness and coupled with recovery made, rendered the conviction. The High Court, in turn, confirmed the conviction and sentence rendered by the Trial Court.

Learned Senior Counsel appearing for appellant No.1 and learned senior counsel appearing for appellant No.2 submitted that the presence of PW-19 is highly doubtful. The conduct of PW-19 was unnatural. PW-19 did not make an attempt to interfere with the fight and his conduct in leaving to the kitchen after the first shot was fired cannot be accepted. PW-19 also did not inform PW-20 nor any complaint has been made to the police immediately. In any case, this is a case which comes under Section 304 Part I IPC as

admittedly even as per the case of the prosecution, all of them were called to the party and were under the influence of alcohol. There is no premeditation involved as the occurrence has happened at the spur of the moment. Insofar as A2 is concerned, there is absolutely no material to implicate him under Section 34 of the IPC as he did not shoot the deceased nor he prompted A1 to do so. Merely because he was present, the offence alleged cannot be attributed against him.

Learned senior counsel appearing for the respondent-State submitted that the CDR record was rightly taken into consideration by both the Courts to probablise the presence of PW-19. The presence of PW-19 is also substantiated by the evidence of PW-32 and PW-33 as the evidence of PW-19 being the sole witness was taken into consideration and appreciated by both the Courts and in the absence of any perversity there is no need to interfere with the judgment rendered by the High Court. Incidentally, it is submitted that considering the fact that gun was used and the accused ran away from the place of occurrence, the conviction was rightly rendered under Section 302 IPC by treating it as murder.

We shall first deal with the case of A2. Insofar as he is concerned, if we take the case of prosecution as such, there cannot be any punishment that can be imposed for murdering the deceased. What happened was a fight between A2 and the deceased. That does not mean that A2 played a role in instigating A1 to commit the offence. Even as per the evidence of PW-19, it was A1 who handed over the gun to A2 asking him to have a better aim and shoot the deceased which he did not do. Thereafter A1 took the gun back and

shot the deceased. In such view of the matter, we are not inclined to apply the principle of vicarious liability by bringing in the rigour of Section 34 as against A2. We find that both the Courts have committed an error in not taking into consideration the proper application of Section 34 of the IPC.

As discussed above, the evidence available would show that there was only a quarrel. All the parties assembled at the place of occurrence for the purpose of celebrating the birthday of PW-24. This fact is not in dispute. It is only while consuming liquor, a quarrel happened suddenly between the deceased and A2. The reason for A1 to shoot the deceased was the said quarrel. Though it is stated that A1 had made an attempt to shoot the deceased. The very said fact alone cannot be a ground to bring it under the rigour of Section 300 IPC. The weapon was not brought for the purpose of committing an offence. A1 was carrying the weapon without any intention or objective to commit an offence. To put it differently, but for the quarrel between A2 and the deceased the occurrence would not have happened.

Thus considering the above, we have no hesitation in holding that it is a case which would come under Section 299 of IPC and therefore, A1 has committed an offence of culpable homicide not amounting to murder. We have been informed that A1 has been married and having a sixteen years old daughter and his father is bedridden. A1 has already undergone a period of eight years and ten months of actual incarceration, with remission he has undergone about ten years and two months.

Considering the facts of the case, particularly, the fact that

A1 was a young man and the occurrence was not a premeditated one, we are inclined to modify the sentence to the one undergone already.

The conviction rendered by both the Courts for the offences punishable under Section 302 IPC stands modified to Section 304 Part 1 IPC and the sentence stands modified to the one already undergone. The conviction and sentence passed under Section 27 of the Arms Act is upheld. Both the sentences being concurrent, A1 shall be released.

The appeal filed by A1 i.e. CrI. A. No.872/2022 is allowed in part. The appeal filed by A2 i.e. CrI. No.871/2022 is allowed, setting aside the conviction and sentence rendered by the High Court and the Trial Court.

The appellants are directed to be released forthwith, if not involved in any other case and are not required in any other case.

Writ Petition (CrI.) No.321/2022 stands closed, leaving the question of law open.

Pending application(s), if any, shall stand disposed of.

.....,J
[M.M. SUNDRESH]

.....,J
[S.V.N. BHATTI]

NEW DELHI;
APRIL 4, 2024