

Mohd. Akhtar Vs. the State

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Court : Delhi

Decided On : Apr-03-2014

Judge : V. K. Jain

Appellant : Mohd. Akhtar

Respondent : The State

Advocate for Def. : Mr. Feroz Khan Ghazi

Advocate for Pet/Ap. : Ms. Inderjeet Sandhu

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

03. 04.2014 + CRL. A.197 of 2010 MOHD. AKHTAR Through: Appellant Ms. Inderjeet Sandhu, Adv. versus THE STATE Through: Respondent Mr. Feroz Khan Ghazi, APP. CORAM: HON'BLE MR. JUSTICE V.K. JAIN JUDGEMENT V.K. JAIN, J.

(Oral) On 20.8.1996, on receipt of copy of DD No.30, ASI Balwan Singh of Police Station Ambedkar Nagar reached Chandrawal Road, A-2 Block, Allah Hoo Ka Dhaba, Madangir, New Delhi where he came to know that the injured had been taken to AIIMS by PCR van. The police officer then reached AIIMS where the injured Aas Mohammad, son of Rashid Mohammad was found admitted in injured condition. He being fit for statement, his statement was recorded by the police

officer. The complainant told him that at about 9:15 p.m. that day he along with his friend Bhura had come to meet some persons known to Bhura. When he and Bhura were taking food in a hotel at Chandrawal Road, A-Block, a boy came there, started taking meals and abusing him. When he and Bhura asked him not to abuse, the boy whose name later came to be known as Mohammad Akhtar brought a friend with him and both of them gave beating to him as well as Bhura. The friend of Mohammad Akhtar caught his hands whereas Akhtar gave a blow on his head with an iron palta, which is used for cooking meat as a result of which he became unconscious. When he gained consciousness after some time he was brought to AIIMS by a PCR van. An FIR under Section 308/34 of IPC was registered on the aforesaid statement of the complainant. After completion of investigation two (2) persons namely Mohd. Akhtar and Mohd. Sattar were chargesheeted. Mohd. Sattar died during the pendency of trial whereas Mohd. Akhtar was charged under Section 308/34 of IPC. He having pleaded not guilty to the charge five (5) witnesses were examined by the prosecution. One (1) witness was examined in defence.

2. The complainant Aas Mohammad came in the witness box as PW3 and stated that he had gone to Madangir to meet someone known to Bhura and after meeting him both of them were taking meal in a nearby hotel at about 9-9:15 p.m. The accused, who was also taking food in the said hotel, suddenly started abusing both of them. When Bhura asked him not to abuse, the accused picked up a palta, which is used to prepare and stir vegetables, and hit the same on his head. At that time he was held by another person from legs, head and hands. After Akhtar had given second blow on his head, he lost his consciousness.

3. PW2 Dr. Sandeep Bhorawal proved the MLCs Ex.PW2/B and the casualty card Ex.PW2/A, which are in the hands of one Dr. Reddy. He also proved the MLC of the accused Ex.PW2/C.

4. In his statement under Section 313 of Cr.P.C., the appellant admitted that he was present in the hotel on 20.8.1996. He, however, denied having picked up a palta and having hit the complainant on his head. He also stated that it was the complainant who, being intoxicated had caused injury to him. DW1 Mohd. Salim

stated that on 20.8.1996, he was taking dinner in a hotel at A-2 Block, Madangir. He stated that the accused and two (2) other persons were also taking dinner there. According to him a scuffle took place between the accused and those two (2) persons on account of their looking at each other. He further stated that one of the boys who was having a palta tried to hit the accused but ended up hitting the other person taking dinner with him.

5. Vide impugned judgement dated 29.1.2010, the appellant was convicted under Section 308/34 of IPC and vide impugned Order on Sentence dated 30.1.2010, he was sentenced to undergo RI for three (3) years. Being aggrieved from his conviction and the sentence awarded to him, the appellant is before this Court by way of present appeal.

6. The impugned order has been assailed by the learned counsel for the appellant on the following grounds: i. No offence under Section 308 of IPC is made out in the facts & circumstances of the case and at best only an offence under Section 323 of IPC is made out. ii. Neither true genesis of the incident has been disclosed by the complainant nor has the prosecution explained the injuries sustained by the appellant.

7. A perusal of the MLC of the appellant Ex.PW2/C would show that when he was examined in the hospital he alleged to have been beaten and some bruises were found on his upper lip. I am in agreement with the learned counsel for the appellant that the complainant did not disclose full facts in the court since he did not tell the court as to what precisely had happened before the appellant allegedly abused him and then caused injuries to him. The appellant and the complainant were totally strangers to each other. There could have been no reason for the appellant to all of a sudden start abusing the complainant and follow it up by causing injuries to him using a palta meant for stirring vegetables/meat, for the purpose. The plea taken by the appellant is that the complainant was under the influence of liquor and it was he who had started quarrel. According to DW1, the complainant and the appellant were staring at each other and that had resulted in the aforesaid incident. Be that as it may, it can hardly be disputed that in the normal course of human conduct, the appellant had no reason, while taking his

own food to all of a sudden start abusing the complainant.

8. Since the appellant also had some injury, though it was only a minor injury, it can hardly be disputed that a quarrel had actually taken place between the complainant and the appellant in which the injuries were sustained by both of them though the injuries sustained by the appellant were quite minor whereas the complainant sustained one injury on his parietal region and the other on his chin. Though the appellant is alleged to have used a palta meant for stirring vegetables/meat for causing injuries to the complainant, the said palta was not seized by the IO though this is not the case of the prosecution that the appellant had taken the palta with him while fleeing from the spot. Obviously the palta must be owned by the hotel in which the complainant and the appellant were taking food at the time the aforesaid incident happened. Hence, the employees of the hotel would not have allowed him to take the palta belonging to them. There is no explanation from the Investigating Officer for not seizing the palta which the appellant allegedly used for causing injuries to the complainant. Another important aspect is that no attempt was made to examine the owner or any employee of the hotel to verify the statement of the complainant and again there is no explanation as to why neither the owner nor any employee of the hotel was examined. As rightly pointed out by the learned counsel for the appellant even Bhura, the companion of the complainant, was not examined. In these circumstances, the version given by the complainant becomes somewhat suspect.

9. It appears to me that a quarrel had actually taken place between the appellant and the complainant possibly on account of either of them feeling that the other one was staring at him and confronting him accordingly. Though the complainant did sustain injuries, in the facts & circumstances of the case, the Court cannot be sure as to whether a palta was actually used by the appellant for causing injuries to him or not. In any case, it cannot be known, what was the size and shape of the said palta. In these circumstances, it would be difficult to say that the appellant had caused injuries to the complainant with such intention and knowledge that under such circumstances that if he by that act had caused death he would be guilty of culpable homicide not amounting to murder. The charge under Section 308 of IPC, therefore, cannot be sustained. The appellant, however, is liable to be

convicted under Section 323 of IPC for causing simple injuries to the complainant Aas Mohammad. He is convicted accordingly.

10. In the facts & circumstances of the case, the appellant is granted benefit of probation and is released on his furnishing a bond of peace and good conduct in the sum of Rs.10,000/- with one surety of the like amount for a period of one (1) year. During the period of bond, the appellant shall maintain peace and good conduct and refrain from committing any crime. The appellant is also directed to pay compensation of Rs.15,000/- to the injured Shri Aas Mohammad. The bond of peace and good conduct as well as a pay order of Rs.15,000/- in the name of the complainant Aas Mohammad shall be submitted by the appellant before the trial court within three (3) weeks from today. In the event of failure to deposit the pay order of Rs.15,000/- in the name of the complainant and/or furnishing the bond of peace and good conduct in terms of this order the appellant shall undergo RI for one (1) year. The appeal stands disposed of accordingly. APRIL03 2014 bmesh V.K. JAIN, J.

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