SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Rabibul Vs. State

Rabibul Vs. State

SooperKanoon Citation : sooperkanoon.com/1167120

Court : Delhi

Decided On : Oct-31-2014

Judge : Pradeep Nandrajog

Appellant : Rabibul

Respondent : State

Judgement :

$~3 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: October 31, 2014 + CRL. A. No.1186/2014 RABIBUL Represented by: ..... Appellant Mr. K.Singhal, Advocate. versus STATE Represented by: ..... Respondent Mr. Lovkesh Sawhney, APP Inspector Prabhu Dayal, P.S. Narela. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(ORAL) 1. Learned counsel for the appellant Sh.K.Singhal, Advocate urges that from the testimony of Rizwan PW-1, the injured eye-witness and that of Jahid PW-3, it is apparent that the appellant had also received an injury on his hand from a knife. Learned counsel submits that Rizwan has not told the complete truth. Learned counsel further submits that the Investigating Officer has withheld the medico legal report of the appellant who was taken to Satyavadi Raja Harish Chandra Hospital, Narela for medical treatment on November 17, 2010. Counsel prays that the case diary with the Investigating Officer may be perused.

2. Inspector Prabhu Dayal from P.S.Narela is present with the case diary and we find that lying therein is an OPD card of Satyavadi Raja Harish Chandra Hospital, Narela having patient name: Rabibul i.e. the appellant. It shows that on November 17, 2010 the appellant was administered an anti tetanus injection and a cut on his person was stitched. Unfortunately, the OPD card simply records ASP Stitch. Counsel urges that a careful reading of the testimony of PW-1 would evince that a verbal altercation preceded the physical fight during which appellant received an injury on his hand and the deceased received a stab injury on the lateral side of the chest below the arm pit. Counsel thus urges that the offence made out against the appellant is that of culpable homicide not amounting to murder punishable under Section 304-II IPC.

3. The post mortem report Ex.PW-11/A would show that the deceased received only one incised penetrating wound which was placed obliquely over left side chest on the lower side at anterior axillary line about 22 cm. below the left axilla piercing the left 9th inter coastal space, the weapon of offence penetrated the spleen. It is apparent that the knife was struck from the side beneath the arm pit.

4. The MLC Ex.PW-9/A of Rizwan PW-1, shows that he was examined at Maharish Balmiki Hospital at 3.30 P.M. on November 17, 2010. He was reeking with alcohol. His eyes were swollen with abrasions around the right eye and right side of neck. He was administered a voveron injection.

5. The deposition of Rizwan who appeared as PW-1 brings out that Bakar Id was celebrated on November 17, 2010. It was a holiday. After consuming beer, he along with Jahangir (deceased) and Jahid (PW-3) were proceeding towards their houses and as they crossed a masjid in JJ colony, Bawana, the appellant, who had previous enmity with Jahangir, abused Jahangir and took out a knife from his pant pocket and attacked Jahangir who tried to snatch knife from the appellant and in the process appellant received injury from the knife. But appellant managed to stab the deceased under the arm pit and he ran away. As per him, he and Jahid tried to over power the appellant, who managed to flee after inflicting fist blows on his right eye and inflicting leg blows to Jahid.

6. The testimony of Jahid PW-3 is in sync with that of Rizwan.

7. Now, if appellant was armed with a knife, handle thereof would be in the hand of appellant and if the deceased tried to snatch the knife from the hand of the appellant, the deceased would have received a cut injury on his hand and not that the appellant would receive a cut injury on his hand.

8. The greater probability appears to be that either the deceased or PW-1 or PW-3 also had a knife with them. There was a verbal altercation. Everybody was drunk. During the altercation the appellant was assaulted with a knife but he managed to defend himself using his hand and this explains the appellant being injured with a knife on his hand. The appellant managed to inflict a stab blow with a knife he was carrying on the person of the deceased.

9. That Rizwan PW-1 and Jahid PW-3 have something to hide is established by the fact that the two were not to be seen at the place of the crime soon after the incident took place, and we say so with reference to the testimony of Shaan Mohd. PW-6, who has deposed that on the day of Id, as he was passing by the Masjid he saw a crowd and found Jahangir, a friend of his, lying injured and therefore he removed Jahangir in a TCR to the hospital. It is apparent that Rizwan and Jahid were scared. They were not scared because their friend was assaulted and the assailant was armed with a knife and thus they ran away. As per their testimony, after Jahangir was stabbed, they challenged the appellant who struck fist blows on Rizwan and kicked Jahid before he ran away. The two knew that during the altercation even appellant had received an injury with a knife. Since the appellant, after inflicting injury with his knife on Jahangir had ran away with the knife common sense told them that if they told the complete truth they too would have to explain as to why one of the three was carrying a knife.

10. The two eye-witness having spoken half truth and in view of their conduct above-noted as also the fact that even appellant had received an injury which required stitches to be put, in all probability on his hand, we have to give the benefit of doubt to the appellant with respect to the offence committed.

11. It appears to be a case where due to past enmity some hot words were exchanged between the deceased and the appellant culminating in a combat of strength. Whereas appellant managed to ward off the assault by using his hand,

as a shield, and in the process receiving an injury with a knife on his hand, the deceased was not lucky. The fatal blow has been struck on the side of chest and unfortunately for the deceased the spleen got cut. The intention of the appellant obviously was to injure the deceased with a knife, for which knowledge has to be attributed to the appellant that it was possible that he is likely by such act to cause death.

12. Thus, we bring the curtains down by holding that the evidence on record brings out the fact that the deceased died due to the stab injury caused by the appellant during a sudden quarrel and the intention of the appellant was not to cause the death of the deceased but only to injure him, but since a knife was used knowledge has to be attributed to the appellant of knowing that he was likely by such act to cause death. The offence committed is thus culpable homicide not amounting to murder punishable under Section 304-II IPC.

13. We dispose of the appeal altering the conviction of the appellant from that of having committed an offence punishable under Section 302 IPC to having committed an offence punishable under Section 304-II IPC. We sentence the appellant to undergo rigorous imprisonment for five years and pay fine in sum of ` 5,000/-, in default of payment of fine to undergo simple imprisonment for two months.

14. Two copies of this decision would be sent to the Superintendent, Central Jail, Tihar for his record and to be supplied to the appellant.

15. TCR be returned. CRL.M.B. 10389/2014 Dismissed as infructuous. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE OCTOBER31 2014 srb

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com