

Ashok Kumar Aggarwal Vs. State

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Court : Delhi

Decided On : Jul-14-2014

Judge : Pradeep Nandrajog

Appellant : Ashok Kumar Aggarwal

Respondent : State

Judgement :

\$~R-2&3 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: July 14, 2014 + CRL.A. 80/2014 ASHOK KUMAR AGGARWAL Appellant Represented by: Mr.Sumeet Verma, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP for State CRL.A. 81/2014 RASOOL MOHD. Represented by: Appellant Mr.Sumeet Verma, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP for State CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Vide impugned judgment dated September 06,2013 the appellants have been convicted for the offence punishable under Section 302/34 IPC for having murdered the deceased Harpal Singh. The two have been convicted for the offence punishable under Section 323/34 IPC for having caused simple hurt to Chotte, Chander Pal and Shyam.

2. Vide order on sentence dated September 13, 2013 for the offence punishable under Section 302/34 IPC, the appellants have been sentenced to undergo imprisonment for life and to pay fine in sum of `5,000/-; in default of payment of fine to further undergo simple imprisonment for three years. For the offence punishable under Section 323 IPC, the appellants have been sentenced to undergo imprisonment for one year and pay fine in sum of `1000/- and in default to undergo simple imprisonment for three months. The appellants have also been directed to pay compensation in sum of `25,000/each to the legal heirs of the deceased Harpal and `5,000/- for the injury caused to Chander Pal, Chotte and Shyam. In default of payment of compensation, the appellants have been directed to undergo simple imprisonment for six months.

3. We begin our destination by noting the injuries found on the person of deceased Harpal. The same are to be found recorded in the post mortem report Ex.PW5/A, authored by Dr. V.K. Jha, PW-5. Three external injuries have been noted as under:(1) Multiple bruises over left arm outer aspect size of 6x3 cm and 2 cm x 1cm. (2) Multiple bruises over palmer surface of both hands . (3) Three abrasions over left dorsum of the hand 4x0.5cm.

4. Internal injury noted is subscalp hematoma over occipital region with fracture of the occipital bone. Subarachnoid hemorrhage over occipital and base of the frontal lobe was also detected.

5. Cause of death was Craniocerebral damage consequent to blunt force diverted upon head which was sufficient to cause death in ordinary course of nature.

6. The head injury was opined to be possibly caused by the hockey stick Ex.P-1.

7. We have noted as aforesaid to focus our attention on whether the acts attributed to the appellants, if proved, would make out a case for sustaining conviction for the offence punishable under Section 302 IPC or would make out a case to alter conviction to the offence of culpable homicide not amounting to murder punishable under Section 304 IPC.

8. A perusal of the evidence lead before the trial court shows that there were as many as five eye witnesses to the incident who were examined. Three were the injured eye witnesses in respect of whose injuries; as noted hereinabove the appellants were tried for the offence punishable under Section 323 IPC. The other two were the wife and the daughter of the deceased.

9. Having pursued the testimony of all the eye witnesses, whose credibility has not been demolished by the learned counsel for the appellants, we note the eye witness account of PW-12 Smt. Anita, the wife of Harpal.

10. Her testimony would evidence that the appellants used to reside in the neighbourhood and had abused her daughter when they were in the company of a third co-accused named A who is a juvenile and for whom we are not concerned in the appeal. The three were under influence of alcohol and had caught the wrist of Anitas daughter. Her husband, the deceased came out and resisted. The three accused left. After one hour the three accused along with two other persons whose name Anita did not recollect returned. Rasool was armed with a hockey. Accused and A were having danda. They started beating her husband and fled. Chander Pal, Chote and Shyam came from the neighbourhood and intervened to save her husband. The accused gave beating to these three persons and fled. Her husband was taken to the Government hospital where he was declared brought dead. From the testimony of Anita, which learned counsel for the parties concede fairly brings out the fact of what happened on the unfortunate day, it is apparent that the accused resided in the neighbourhood and was having some issue with the family of the deceased evidenced by the fact that on the day of the incident, they had abused the daughter of the deceased and Anita. When challenged by the deceased, the three left but returned to seek revenge.

11. As per Anita, the three accused were armed with dandas and hockey stick. If the three had an intention which was definite to kill the deceased, the hammering on the person of the deceased with the hockey stick and dandas would have been severe. The three have opportunity to do so.

12. The post mortem report would bring out that the three launched a random assault on the deceased which the deceased successfully managed to avoid, in

that the three were unable to cause any serious injury to the deceased. The multiple abrasions on the left arm outer aspect, multiple bruises on both hands and the abrasion over a left dorsum of the hand evidences that the deceased successfully managed to block the blows directed. There being no fracture of the metacarpal bones indicates the blows directed not being very serious. The internal injury found over the occipital region and in respect of which surprisingly we find no external injury recorded shows that in all probability a blow got unintentional directed towards the occipital region causing fracture of the occipital bone. The blow with the hockey stick being the weapon of the offence, was obviously not very powerful for having so the dura mater or the pia mater would have oozed out of the skull 13. The impugned judgment passed by the learned trial court has not noted the aforesaid aspect concerning the post mortem report.

14. Highlighting that the incident took place at 11.18 P.M., it was dark, the possibility of one blow, which was not intended to be directed towards the head struck the occipital region. All other blows seem to be directed towards a non-vital part of the body which the deceased successfully blocked.

15. Having considered the circumstances, the two appeals are disposed of, setting aside the appellants conviction for the offence punishable under Section 302/34 IPC. The appellants are convicted for the offences punishable under Section 304 Part (II)/323/34 IPC and as regards the sentence we find that the appellants have already undergone sentence for more than five years, which in our opinion should be sufficient.

16. We accordingly direct that the appellants shall undergo imprisonment for the period already undergone. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE JULY14 2014 mg

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