

Subhash Gupta Vs. State

Subhash Gupta Vs. State

SooperKanoon Citation : sooperkanoon.com/1171238

Court : Delhi

Decided On : Sep-29-2014

Judge : Pradeep Nandrajog

Appellant : Subhash Gupta

Respondent : State

Judgement :

\$~9 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: September 29, 2014 + CRL.A. 679/2012 SUBHASH GUPTA Represented by: Appellant Mr.Pramod Kumar Dubey, Advocate with Mr.Pulkit Misra, Ms.Namita Wali, Advocates versus STATE Represented by: Respondent Mr.Varun Goswami, APP for the State CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.(Oral) Crl.M.B.No.10652/2014 1. Learned counsel for the appellant states that the limited point which he needs to address is whether the act of the appellant constitutes the offence punishable under Section 302 IPC or 304 Part I IPC. Counsel states that everything turns on the testimony of the mother of the appellant, who is also the mother of the deceased Smt.Ram Dulari PW-1. Counsel states that if appeal itself could be heard today he does not press Crl.M.B.10652/2014 whereunder the appellant seeks bail pending final hearing of the appeal.

2. We have accordingly decided to hear arguments in the appeal today itself.

3. Crl.M.B.No.10652/2015 is dismissed. Crl.Appeal No.679/2012 1. The unfortunate day was July 15, 2008. It was past mid-night. At 1:07 in the dead of the night information was received at P.S.Shahdara and noted in DD No.2A, Ex.PW-12/A by SI Sumer Singh PW-12, the duty officer at the Police Station, that near Sai Baba Mandir, Kabool Nagar, Shahdara, a quarrel was taking place.

2. The PCR van stationed near where Ram Dulari PW-1, her deceased son Rajinder and the elder son - Subhash resided, reached the spot and removed Rajinder to Guru Teg Bahadur Hospital where he was declared brought dead as recorded in the MLC Ex.PW-6/A by Dr.Anshul.

3. The duty officer at the hospital conveyed said information to PS Shahdara where it was recorded in DD No.3A, Ex.PW-12/B by SI Sumer Singh.

4. ASI Lala Ram PW-13 was entrusted with the investigation and accompanied by HC Ombir Singh he reached house No.1/6060 Kabool Nagar, near Sai Baba Temple and met Ram Dulari PW-1 who told him that her son had been removed to GTB Hospital. Insp.K.K.Upadhyaya PW-15, the Addl.SHO of the area also reached the spot on learning about the incident. Crime team was summoned. Ram Dularis statement Ex.PW-1/A was recorded from the spot and the FIR Ex.PW-12/C for the offence of murder was registered.

5. Ram Dulari has been examined as PW-1. As per her statement Ex.PW-1/A she has deposed in Court that deceased Rajinder was her younger son and accused Subhash was her elder son. Whereas deceased was hardworking and through his earnings the day to day expenses of the house were met, the appellant was lazy, quarrelsome and an alcoholic. On the day of incident i.e. July 15, 2008, the appellant returned to take dinner at 10.30 P.M. when her younger son requested him to improve himself and earn something so that family expenses can be met, appellant abused and left and returned after two hours at past 12.00 mid-night. Appellant went to the room where Rajinder was sleeping on the first floor to take a bedding and abused Rajinder. She heard a noise. As she came to the staircase she saw the appellant with a brick in one hand and a stick in the other. He was raining blows on her younger son who was bleeding from the head and mouth. She raised an alarm. One Ashok and one Sohan Lal came. Appellant ran away.

Her son was removed to GTB Hospital where he died.

6. Sohan Lal has appeared as PW-2 who corroborated PW-1 in all material respect but turned hostile when it came to naming the appellant. Ashok Kumar PW-4 has fully corroborated PW-1 in that has deposed that when he heard a noise of quarrel from the house of PW-1 he reached there and saw appellant running away from the house. Ram Dulari was screaming saying that appellant had injured her younger son Rajinder.

7. There is sufficient evidence to establish that the appellant had attacked his younger brother and the injuries inflicted by the appellant were the cause of Rajinders death.

8. The post mortem report Ex.PW-8/A of Rajinder which was authored by Dr.Sumit Tellewar records the undernoted 16 injuries:

(1) Reddish graze abrasion measuring 1 cm x 1 cm present on the lateral malleolus of right leg.

(2) Reddish graze abrasion 2 cm x 2 cm present on left posterior aspect of arm 7 cm below above elbow joint.

(3) Reddish graze abrasion 1 cm x 1.2 cm present over the left posterior forearm 2.5 cm below elbow joint.

(4) Reddish raze abrasion with reddish contusion measuring 4 cm x 3 cm present on the right shoulder joint.

(5) Lacerated wound 7 cm x 0.5 cm x bone deep present on the right posterior parietal scalp, 1 cm away from midline and 8 cm above right ear, 8 cm above occipital protuberance.

(6) Reddish graze abrasion measuring 11 cm x 6 cm present on the whole left face extending onto right cheek area.

(7) Reddish abrasion 2.8 cm x 2 cm present on the bridge of the nose with underneath fracture of nasal bone.

(8) Lacerated wound measuring 7 cm x 3 cm x 0.5 cm present along right ramus of mandible and right chin area.

(9) Reddish abrasion and contusion measuring 3.5 cm x 1.8 cm present on the left side of forehead, 1.6 cm from midline and 0.5 cm. Above medial end of left eyebrow.

(10) Lacerated wound with abraded border 1.7 cm x 0.5 cm x 0.2 cm present on the left side of face, 1 cm below mid of left eye and 3.5 cm from midline.

(11) Lacerated wound with abraded border 2 cm x 0.4 cm x 0.2 cm present on left side of face 5.8 cm in front of left ear tragus and 8 cm from midline.

(12) Lacerated wound with abraded border 2.3 cm x 0.5 cm x 0.2 cm present over the lateral angle of left eyebrow.

(13) Reddish abrasion contusion 3.8 cm x 2.2. present on the left temple area with underneath depressed fracture of left temporal bone.

(14) Reddish contusion 2.5 cm x 1 cm present on the right side of neck, oblique 1.5 cm from midline and 5.5 cm above medial end of right clavicle.

(15) Reddish contusion measuring 3.4 cm x 2.6 cm present on the left side of neck, 8 cm from midline and .6 cm above mid of left clavicle.

(16) Reddish contusion 4.5 cm x 1 present on the anterior aspect of left arm, 5 cm above elbow joint.

9. Internal examination of the dead body evinces extravasation of the blood vessels, a depressed fracture in left temporal bone, linear fracture in left frontal and right temporo-parietal bones. There was subdural haemorrhage in right parietal area. Sub arachnoid haemorrhage was present. There were contusions in left basi frontal and left temporal lobes. There was laceration in left temporal parietal areas.

10. Cause of death was obviously the severe brain injuries. It was opined that injuries No.5, 9, 12 and 13 were possible from a wooden stick and injuries No.5

and 12 were also possible with a broken brick.

11. The injuries evince defence and fall injuries besides injuries caused on the skull using a hard object such as a brick and a stick.

12. So ferocious was the assault that knowledge has to be attributed to the assailant that as a result of the injuries caused death would ensue.

13. If nothing else Section 300 fourthly is attracted. The appellant has to be attributed knowledge that his acts were so imminently dangerous that in all probability they would cause death.

14. The appeal is dismissed.

15. Copy of this order be sent to the Superintendent, Central Jail Tihar for his record and thereafter to be supplied to the appellant. (PRADEEP NANDRAJOG)
JUDGE (MUKTA GUPTA) JUDGE SEPTEMBER29 2014 skb

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