

Sanjay Kumar Vs. State

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Court : Delhi

Decided On : Sep-17-2014

Judge : Pradeep Nandrajog

Appellant : Sanjay Kumar

Respondent : State

Judgement :

\$~15 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: September 17, 2014 + CRL.A. 1533/2013 SANJAY KUMAR Represented by: Appellant Mr.K.Singhal, Advocate with Mr.Siddharth Mittal, Advocate versus STATE Represented by: Respondent Mr.Lovkesh Sawhney, APP for the State CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Sanjay has been convicted for having murdered Dhananjay and Akshay vide judgment dated August 29, 2013 and as per order dated September 03, 2013 has been sentenced to undergo imprisonment for life and pay fine in sum of `1 lakh, upon realization to be paid to the family of the deceased as compensation.

2. The conviction has been sustained on the testimony of Rishi PW-4.

3. The PCR log Ex.PW-2/A would evidence that at 20:20:19 hours on October 24, 2009, Rishi PW-4 had informed of acid burn being caused at factory No.H-71, Bawana Industrial Area. The said PCR log would further evidence that a Police

Control Room van nearby had reached the place of the incident and removed Dhananjay and Akshay to the hospital, information whereof was conveyed over the wireless at 20:35:05 hours to the Police Control Room. This establishes Rishi's presence at the time of the incident at the spot.

4. Rishi PW-4 has stated that he as well as Akshay and Dhananjay were employed at factory No.71, DSIDC, Bawana, the owner whereof was Rajinder Kumar. Plastic molding work was undertaken at their factory. Sanjay was employed at the adjoining factory : H-72, DSIDC, Bawana. On the day of chhatt puja in the year 2009 everybody was making merry. Liquor had been arranged for. consumed alcohol. He, Sanjay, Akshay and Dhananjay Akshay and Sanjay were joking but suddenly they started abusing each other. Sanjay caught Akshay by the collar. Lakhender and Rajiv came and intervened. Dhananjay separated Akshay, and Rajiv and Lakhender separated Sanjay. Sanjay threatened Akshay that he would not spare him. He rushed inside his factory and brought out a jug full of acid and threw it on Dhananjay and Akshay. The two rushed towards the water tank in the factory. They took off their clothes and jumped in the water. He informed the Police Control Room, a PCR van came and took Dhananjay and Akshay to the hospital where they died.

5. From Rishi's testimony it is apparent that there was no premeditation. In a drunken state, while joking, something transpired between Akshay and Sanjay which led the two to become physical with each other. Dhananjay, who was Akshay's brother, intervened instinctively. The three were separated by Rishi, Lakhender and Rajiv.

6. Question which arises is : Whether Rishi has correctly and truthfully stated that after they were separated, Sanjay rushed inside factory No.H-72 and came out with a jug full of acid.

7. As noted above, Rishi has said that after acid was thrown on Akshay and Dhananjay by Sanjay, the two jumped inside a water tank in the factory.

8. Now, concededly the water tank is in factory No.H-72, DSIDC, Bawana and not H-71, DSIDC, Bawana, for the reason at factory No.H-71, DSIDC plastic molding

work used to be done. As deposed to by Dalip Kumar PW-12, owner of the factory where Sanjay used to work, being at H72, DSIDC, Bawana, work of drawing of wires was being done which required nitric acid to be used. Three water tanks were constructed in said factory.

9. As per Rishi the drinking and merry making was at factory No.H-71, DSIDC, Bawana.

10. The place where acid has been thrown on Akshay and Dhananjay is concededly the gate of factory No.72, DSIDC, Bawana.

11. This probalizes, certainly does not rule out, Akshay and Dhananjay chasing Sanjay after Rajiv, Lakhender and Rishi intervened to separate Akshay and Sanjay. This does not rule out Sanjay seeing the can of nitric acid inside the factory and to save himself, picking up a jug lying nearby; taking out acid from the can and throwing the same on Akshay and Dhananjay. What we need to bring out is that Rishis version that after the three were separated, Sanjay went inside the factory and came out with acid in a jug and threw the same on Akshay and Dhananjay is most probably an exaggeration.

12. The reason for said exaggeration appears to be Sanjays rudimentary knowledge that something done in the heat of passion reduces the gravity of the wrong but if there is a lapse of time between passion and the act, reason to interpose, the wrong is of a higher degree.

13. The scene of the crime being the gate of factory No.H-72, the two injured with nitric acid jumping into a water tank in factory No.H-72, makes it far more likely that the two injured had chased Sanjay as a sudden quarrel ensued between Sanjay and Akshay when Sanjay, Akshay, Rishi and Dhananjay were making merry on Chhat Puja day and were consuming alcohol. On being separated, Sanjay ran inside the factory where he was working and was also residing. Akashay and Dhananjay chased him. When the heat of the moment was on, Sanjay picked up a jug, and from a can nearby, filled nitric acid in the jug and splashed the same on Akshay and Dhananjay. It is most unfortunate that the two died due to acid burns. The photographs of the dead body of the two would show

that acid was splashed at them and not poured over them; their forehead and head is not damaged. Acid burns are on the face, below the nose and on the chest.

14. The offence committed by Sanjay is therefore culpable homicide not amounting to murder punishable under Section 304 Part II IPC. We convert his conviction from the offence punishable under Section 302 IPC to the offence committed under Section 304 Part II IPC.

15. Since two deaths have resulted we sentence Sanjay to undergo imprisonment for eight years. Needless to state Sanjay shall be given the benefit of Section 428 Cr.P.C.

16. Two copies of this decision be sent to the Superintendent Central Jail Tihar, one to be supplied to Sanjay and the other for the Jail record.

17. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
JUDGE SEPTEMBER17 2014/skb

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