

Jai Bhagwan Vs. State

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Court : Delhi

Decided On : Sep-17-2014

Judge : Pradeep Nandrajog

Appellant : Jai Bhagwan

Respondent : State

Judgement :

\$~15 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: September 17, 2014 + CRL.A. 650/2000 JAI BHAGWAN Represented by: Appellant Ms.Inderjeet Sidhu, Advocate versus STATE Represented by: Respondent Mr.Lovkesh Sawhney, APP CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Having perused the evidence as also the impugned decision dated July 10, 2000 convicting appellant for the offence of having murdered Ajay, it is apparent that the learned Trial Judge has not kept in mind the post-mortem report Ex.PW-7/A of deceased Ajay authored by Dr.B.P.S.Karv PW-7.

2. This has vitiated the conclusion.

3. Post-mortem report Ex.PW-7/A would evidence that Dr.B.P.S.Karv detected bleeding from the nose and mouth of Ajay. He saw a brownish abrasion on the right temple 4 cm x 2 cm with clotted blood present. He saw multiple abrasions on

both knees, left wrist, left shoulder. They were reddish brown in colour. Clotted blood was present. Internal injuries were a defused subdural hematoma on the skull in the frontal and parietal region. There was a fracture of base of the skull starting from occipital region up to foramen magnum.

4. The cause of death was haemorrhagic shock due to brain injury.

5. The injuries on the body of deceased Ajay do not rule out he being hit from the back by a vehicle, and as he tumbled he fell on the road. This explains multiple abrasions on both knees, left wrist and left shoulder. This explains the fracture of base of the skull starting from the occipital region going up to foramen magnum. This explains the defused subdural hematoma in the frontal and parietal region.

6. The eye witnesses, whose testimony has been gullibly believed by the learned Trial Judge are Rajesh PW-1, Rajesh PW-6 and Praveen PW-9. All of them speak in harmony and briefly noted all deposed that they along with Ajay had hired Gypsy No.DL4 2130 owned by Ranbir Singh (PW-2) to come from Jind to attend a marriage in Rohini. The accused Jai Bhagwan was the taxi driver. They reached the venue of the marriage at Tri Nagar. The gypsy was parked outside and they went inside the hall where the marriage had to be solemnized. Their luggage was in the gypsy. When they came back Praveen PW-9 checked the suit case and found a trouser and a pullover missing. They enquired from the accused as to how the theft took place. The accused replied that some drivers sat in the gypsy and consumed eatables. He denied any knowledge of the pullover and the trouser. They told the accused that they would not like to return in his gypsy. Accused demanded entire fare. They refused to pay the entire fare. There was an altercation regarding settling the account. All four picked up their belongings from the gypsy and started searching for a taxi. Accused followed them. They met a police patrol. The police heard their version. With the intervention of the police the account was settled. As they were proceeding towards Pitampura on foot the accused came from behind and struck Ajay with the side of the gypsy. Ajay fell down. The accused turned the gypsy back and ran over Ajay.

7. Now, this obviously has not happened.

8. If the gypsy had run over Ajay when he fell down on the road the injuries would have been crush injuries. None of the kind are to be present.

9. The witnesses have exaggerated.

10. What has apparently happened is this.

11. Angered by not receiving full fare to return to Jind, when the accused saw Ajay, Rajesh, Rajesh and Praveen walking on the road, to give them a scare, he whizzed past the four. There was an error of judgment. His thought that he would whiz past them by a whisker proved to be fatal. The gypsy hit Ajay, but not with full impact. Had the gypsy hit Ajay with a full impact, fracture of the femur bone or pelvic bone would have resulted. The fall impact on the road would have resulted in teeth being broken, may be a fracture of the nasal bone or the cheek bone. None of this kind has happened.

12. The post-mortem report would show that the force impact, as something hit Ajay at the back, was not very severe. It was mild. As Ajay lunged forward and fell it appears that the skull hit the pavement.

13. Thus, appellants conviction for the offence of having murdered Ajay is wrong.

14. The next question which arises is : Whether the act by the appellant constitutes the offence punishable under Section 304 Part II IPC or 304A IPC.

15. Learned counsel for the appellant would submit that the offence is of causing Ajays death by a rash and negligent act.

16. Learned counsel for the State submits that appellants act would amount to culpable homicide not amounting to murder punishable under Section 304 Part II IPC.

17. Now, if appellant, with the intention to scare the life out of Ajay, Rajesh, Rajesh and Praveen decided to whiz past the four at a whiskers distance, knowledge has to be attributed to him that the wanton act of his was dangerous enough and was likely to cause the death if during the act the vehicle hit Ajay.

18. We thus hold that the appellant is guilty of Ajays homicidal death which does not amount to murder.

19. We dispose of the appeal convicting appellant for the offence punishable under Section 304 Part II IPC concerning Ajays death and for which we sentence him to undergo imprisonment for the period already undergone; and we note that when appellant was admitted to bail by this Court on January 14, 2003 he had undergone a sentence of nearly 6 years and 5 months. He had earned a remission of around four months.

20. The bail bond and surety bond furnished by the appellant are thus discharged.

21. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
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