

Mukesh Kumar Vs. State

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Court : Delhi

Decided On : Dec-01-2014

Judge : Mukta Gupta

Appellant : Mukesh Kumar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision : December 01, 2014 + CRL.A. 1050/2010 MUKESH KUMAR Represented by: Appellant Mr.Bhupesh Narula, Adv. versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. Mukesh Kumar was charged and convicted for murder of Uday after an altercation took place between them on September 28, 2008 witnessed by Kuldeep Singh PW-1 the maker of the FIR.

2. Kuldeep Singh in his statement to the Police stated that he was running a general merchant shop at his house. At around 9.00 PM on September 28, 2008 when he was at his shop he heard noise. He went to the place at a distance of 20 steps from his shop and saw that Mukesh and Uday Singh were quarrelling. They were got separated. At around 9.45 PM while Kuldeep Singh was at his shop and

Uday Singh was sitting in front of his shop Mukesh came with a wooden danda in his hand and gave a blow on his head due to which Uday Singh fell on the road and blood started oozing out of his head. Mukesh ran away from the spot with the danda and Uday Singh was taken to the hospital by his son Nitin and two-three other boys. Uday was admitted in the hospital at 10.00 PM on September 28, 2008 when the doctor noticed head injury and referred him to RML hospital. At the RML hospital the doctor noticed laceration on the upper left side of the lower lip and upper lip and the eye-brow. The doctors made efforts for resuscitation but failed and hence Uday was declared dead on September 28, 2008 at 11.30 PM. On the basis of statement of Kuldeep Singh FIR No.317/2008 was registered under Section 302 IPC.

3. The post-mortem of Uday Singh was conducted by Dr.B.N.Mishra PW-7 who noticed the following injuries.

1. Lacerated wound sized 3 cm x 1 cm x full thickness present at left side of lower lip with irregular margins and blood clot at edges.

2. Lacerated wound sized 2 cm x 1 cm x full thickness present at left side of upper lip with ragged margins and blood clot it edges.

3. Lacerated wound sized 3 cm x 2 cm x bone deep present at eyebrow of left eye with irregular margins.

4. Periorbital haematoma present at left side of eye with dark red coloured haematoma (blood clot) revealed on Section.

5. Ill defined bruise 8 cm x 4 cm present at upper part abdominal wall with bruising of abdominal muscles.

6. Haematoma of size 10 cm x 6 cm present at left zygoma of face.

4. Dr.B.N.Mishra exhibited the post-mortem report wrongly noted as MLC vide Ex.PW-7/A and opined the cause of death to be due to head injury caused by blunt and forceful impact upon head. Vide Ex.PW-7/B he further opined that injury No.3 was sufficient to cause death of deceased Uday Singh.

5. Pursuant to the arrest of Mukesh Kumar the weapon of offence i.e. the danda was got recovered from near nala, Vaishno Mata Mandir, Sudershan Park. As per the FSL report though blood was detected, however neither it could be opined that it was of human origin nor the grouping. Further there is no opinion of the post-mortem doctor that the injury was possible by the said danda. However, Kuldeep Singh, the eye-witness identified the danda as the one from which injuries were inflicted. Thus the recovery of the weapon of offence pursuant to the disclosure of Mukesh Kumar is also connected to the offence committed.

6. Kuldeep Singh appeared in the witness box as PW-1. He deposed that at 9.00 PM on September 28, 2008 when he was present in his shop there was a Tu T u Mein Mein going on between Uday and Mukesh at a distance of 20 yards from his shop. Thereafter Mukesh left the spot uttering the words Mein Tujh ko Chodunga Nahin. At about 9.45 PM Uday was present in his shop when Mukesh Kumar came with a danda. Mukesh inflicted danda blow on the head, stomach and foot of Uday and thereafter ran away from the spot. His son Nitin and his friend took Uday to the hospital. He further stated that he had seen such an incident for the first time so he was perplexed. The witness was confronted with his earlier statement Ex.PW-1/A. It notices that Kuldeep Singh made improvements on two counts i.e. that Mukesh left the spot uttering the words Mein Tujh ko Chodunga Nahin and that injuries were inflicted on the head, stomach and foot instead of one danda blow on the head. Though the second part of the statement wherein he attributes injuries on the head, stomach and foot is a material improvement however the testimony of this witness cannot be discarded as the substratum of his version is true and the presence of this witness at the spot cannot be disbelieved because the place of incident is the residence-cum- shop of Kuldeep Singh.

7. As noted above the injury No.3 in the post-mortem report corresponds to injury No.4 which was revealed on dissection of the body. The Injury No.1, 2 & 3 showed irregular margins and all were on the left side of the face which extended from eye to the upper lip and the lower lip. The haematoma mentioned in the injury No.4 & 6 corresponds to external injuries No.1 to 3 and the ill-defined bruise 8 cm x 4 cm present at the upper part abdominal wall is attributable to fall. Thus the version of Kuldeep Singh in the rukka that one danda blow was given on the head of Uday

due to which he fell down is a right version and that number of injuries were given on the head, stomach and foot is an exaggeration. The single danda blow has caused haematoma on the left periorbital and zygoma of the face, however there is no depressed fracture or fracture of any skull bone which has been caused. Consequently, the offence committed by Mukesh Kumar would be the one punishable under Section 304 Part-II IPC. Consequently, the conviction of the appellant is altered to one under Section 304 Part-II IPC.

8. As per the nominal roll Mukesh Kumar has undergone more than 7 years in custody along with remissions. Therefore the sentence of Mukesh Kumar is altered to the period already undergone. Superintendent Tihar Jail will release Mukesh Kumar forthwith if not required in any other case.

9. Appeal is accordingly disposed of.

10. T.C.R. be returned.

11. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE DECEMBER01 2014 ga

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