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Shahadat Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-30-1999

Reported in : 2000CriLJ2809

Judge : R.R.K. Trivedi and ;M.C. Jain, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 302 and 304

Appeal No. : Cri. Appeal No. 2082 of 1980

Appellant : Shahadat

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : D.N. Wali and ;Viresh Misra, Advs.

Judgement :

M.C. Jain, J.

1. Accused-appellant Shahadat has been convicted under Section 302, I.P.C. and sentenced to life imprisonment by Sri Usha Kant Verma, the then IIIrd Additional Sessions Judge, Kanpur in S.T. No. 282 of 1979. Aggrieved, he has preferred this appeal before this Court. There was another co-accused Munna who was tried under Section 302 read with Section 34, I.P.C. but he was acquitted.

2. The case relates to the murder of one Abdul Aziz alias Palle on 15-8-1979 at about 12.30 p.m. The report was lodged the same day at 2 p.m. by Khalil. The case of the prosecution as per F.I.R. and the evidence adduced in the Court below was that on the fateful day at about 12.15 p.m., Khalil P.W. 2 was going to the house of his Khaloo Meera situate in Colenlganj, Kanpur. When he reached near the house of Ajmeri on way, he saw the accused-appellant Shahadat and his maternal uncle Salim exchanging hot words. Co-accused Munna was also present there. Khalil advised Shahadat that he should have consideration for Salim as he was older than him. Accused-appellant felt annoyed by such intervention of Khalil. He abused and pushed him by jaw fiercely. Khalil fell down and sustained injury in the back of his head. Weeping, he went to his house with Salim and narrated the incident to his own brother Abdul Aziz alias Palle deceased. Abdul Aziz, Rashid and Salim along with Khalil proceeded to confront Shahadat. They saw Shahadat and Munna conversing with each other. Deceased Abdul Aziz alias Palle demanded an explanation from Shahadat about his misbehaviour. It infuriated Shahadat and Munna who used abusing language as to how could they dare to question one of them, namely, Shahadat, Munna caught hold of the hands of Palle and Shahadat pierced his Karoli in his stomach. When Rashid and Khalil rushed to catch hold of Shahadat, he brandished his Karoli at them and both of them, namely, Shahadat and Munna fled away towards the direction of the well. On receiving the Karoli blow Palle had fallen down on the ground. He was taken to the U.H.M. Hospital by Khalil, Rashid and Salim and was examined there by Dr. D. K. Tewari at 1.20 p.m. He was declared to be dead. The investigation of the case was made as usual whereafter accused-appellant and co-accused Munna were charge-sheeted. Khalil was also examined by the same Doctor five minutes later. Leaving the dead body of Palle there, Khalil proceeded to the Police Station, Bajaria and lodged the F.I.R. Ext. Ka-2 there at 2 p.m.

3. It would be appropriate to state here that as per injury report Ext. Ka-3 of Khalil of 15-8-1979 prepared at 1.25 p.m., he had suffered traumatic swelling 4 cm x 2 cm with lacerated wound 1 cm x 5 cm x scalp deep, bleeding at the back of the head 3 cm above occipital region, one abrasion 1/4 cm x 1/4 cm on the left cheek and one linear abrasion 2 cm on the front side of the right fore arm 4 cm above wrist joint. Such injuries had been caused by hard object and were fresh at the

time of examination as per testimony of Dr. D. K. Tewari DW 3.

4. The post-mortem of the dead body of Abdul Aziz Palle was conducted by Dr. Tej Bahadur Singh PW 1 on 16-8-1979 at 2.15 p.m. The following ante-mortem injuries were found on his person:

1. Penetrating wound 3 cm x 1 cm x chest cavity deep on the left side 10 cm below and outer to the nipple; it is directed to right and lower part and inward.

2. Abrasion 7 cm x 1/2 cm on the right of the chest (12 cm from nipple part of the axilla).

3. Abrasion 2 cm x 1 cm on the front side of the right nee.

4. Abrasion 2 cm x 1 cm on the front side of the left knee.

5. The death had occurred due to shock and haemorrhage due to stab wound (ante-mortem injury No. 1).

6. The accused-appellant pleaded not guilty and his case was of false implication.

7. The prosecution examined as many as nine witnesses out of whom Khalil PW 2, Mohd. Salim PW 4 and Abdul Rashid PW 5 were the witnesses of the occurrence. Abdul Sattar PW 6 was examined in respect of assault on Khalil, which was the genesis of the whole incident. The rest of the witnesses related to medical evidence or of formal nature including that of the investigation of the case. The accused did not examine any witness in defence.

8. We have heard Sri D. N. Wali, learned counsel for the appellant and the learned A.G.A. from the side of State in opposition of the appeal.

9. The first argument of the learned counsel for the appellant is that Khalil PW 2, Mohd. Salim PW 4 and Abdul PW 6 were declared hostile by prosecution and remaining eye-witnesses Abdul Rashid PW 5 was a partisan witness and conviction could not be based on his testimony which had not been corroborated by independent sources and was also not in conformity with the medical evidence as contained in the postmortem report of the deceased. No doubt, Abdul Rashid

PW 5 is an interested witness being the brother of the deceased, but it could be no ground to discard his testimony and to throw it over board. True it is that Khalil PW 2, Mohd. Salim PW 4 and Abdul Sattar PW 6 were declared hostile and did not support the prosecution case in every minute detail, but it is apparent from careful scrutiny of their testimony that for some reason or the other, they became luke-warm and attempted to help the accused-appellant. It is found that Khalil PW 2 corroborated the entire prosecution story except the prosecution case that co-accused Munna had caught hold of hands of Palle before he was stabbed by Shahadat. However, in his cross-examination at the instance of accused-appellant Shahadat, he stated that he could not see whether Shahadat had inflicted the knife injury on Palle or it was Munna who had done so. However, truth fell down from his lips in his cross-examination by the State Counsel that Munna was 2 or 3 steps behind Shahadat when Shahadat stabbed Palle. So, as per his testimony also, it was Shahadat who had stabbed Palle. There is a reason as to why-Mohd. Salim PW 4 crossed Over to the side of accused-appellant. He admitted in his cross-examination by the prosecution that he is the son of uncle of the accused-appellant Shahadat. Any way, even ignoring the testimony of Mohd. Salim PW 4, it is clear from the evidence of Khalil PW 2 also that it was Shahadat who has stabbed Palle at the relevant time. He has made obvious attempt to help the accused-appellant. In any case, his evidence also proves the presence of accused-appellant Shahadat at the fateful time when Palle was stabbed. Therefore, it cannot be said that there is no corroboration of the testimony of Abdul Rashid PW 5 in any respect.

10. So far as Abdul Sattar PW 6 is concerned, he is a witness of the earlier incident of Shahadat having pushed Khalil by jaw as a result of which Khalil fell down and started bleeding. It was also stated by him that Shahadat went with a knife towards the side where Khalil used to live. He pleaded ignorance about what happened thereafter. Thus, the evidence is there in the statement of Abdul Sattar PW 6 regarding earlier incident of Khalil having been pushed and injured by Shahadat. It was the starting point of the whole trouble, because it was thereafter that Abdul Aziz alias Palle. Rashid and Salim along with Khalil had proceeded to confront Shahadat as per the prosecution case. It was when Abdul Aziz alias Palle remonstrated to Shahadat about his having injured Khalil that Shahadat stabbed

him with the use of abusive language. Despite the fact that Khalil PW 2,. Mohd. Salim PW 4 and Abdul Sattar PW 6 were declared hostile and cross-examined by the prosecution, when the statement of Abdul Rashid PW 5 is examined in the light of revelations coming out from the testimony of Khalil PW 2 and Abdul Sattar PW 6 it admits of no doubt at all that it was the accused-appellant Shahadat who had stabbed Abdul Aziz alias Palle. There was immediate background also for this incident that the accused-appellant had pushed Khalil a little before who had fallen down and sustained injury. The cause for that incident was that Khalil had intervened in the altercation between the accused-appellant Shahadat and Salim and had counselled Shahadat to have consideration for his elder Salim. The name of Abdul Rashid PW 5 finds place in the F.I.R. also as an eye-witness. He was present at the spot when Shahadat accused-appellant had stabbed Abdul Aziz alias Palle. He has categorically so stated and his testimony could not be displaced despite searching cross-examination from the side of accused-appellant. Though he is related to the deceased, but his presence at the spot is beyond doubt. His evidence that he saw the accused-appellant stabbing Abdul Aziz alias Palle is in consistence with the surrounding circumstances and has the ring of truth. On consideration, we are inclined to believe the testimony of Abdul Rashid PW 5 that he had seen the accused-appellant Shahadat stabbing Abdul Aziz alias Palle. The learned Court below has rightly placed reliance on his testimony in this behalf.

11. So far as the alleged conflict between his testimony and medical evidence is concerned, the argument of the learned counsel for the accused-appellant is that as per the post-mortem report of the deceased, three abrasions were also found on the person of the deceased, whereas, the evidence of the prosecution is that a single stab wound had been inflicted by the accused-appellant on the victim. According to him, there is no explanation f'rom the side of the prosecution as to how the deceased sustained three abrasions also besides penetrating wound. It may be pointed out in this regard that Dr. Tej Bahadur Singh PW 1 who conducted the autopsy on the dead body of the deceased stated that these abrasions (ante-mortem injury Nos. 2, 3 and 4) could be sustained by fall. Naturally, the victim would have fallen down on receiving stab wound on his chest and there is nothing unusual if he sustained three abrasions also besides penetrating wound. The

things have to be perceived in a logical way instead of taking a hyper-technical view. In the result, we reject the first argument of the learned counsel for the accused- appellant that reliance could not be placed on the testimony of Abdul Rashid PW 5 and the conviction could not be based thereupon. It goes without saying that it is the quality of evidence that matters and not the quantity. The testimony of a reliable single witness may form foundation of the conviction.

12. The second alternative argument of the learned counsel for the accused-appellant is that at the best, it is a case of culpable homicide not amounting to murder falling under the second part of Section 304, I.P.C. It has been submitted that the accused-appellant either exceeded right of private defence of his person or caused injury to the deceased resulting in his death in a sudden fight in the heat of passion, but without premeditation. On a careful consideration of the evidence on record and attending circumstances, we are of the opinion that it is culpable homicide not amounting to murder covered by the first part of Section 304, I.P.C. and not by its second part as argued by the learned counsel for the accused-appellant. We proceed to elaborate our point. Though the accused-appellant has not come up with the case of self-defence, but we are conscious of the fact that the self-defence may be inferred from the own case of the prosecution and its evidence. However, in the case at hand it is not possible to infer that the accused-appellant exceeded the right of private defence by causing stab injury to the victim even on the basis of prosecution evidence. There is nothing to indicate that the victim and his companions had any arm. There is nothing to presume that he or his companions had attacked the accused-appellant. It is a fact that the accused-appellant did not sustain any injury. Therefore, judged from all the possible angles, possibility of accused-appellant stabbing victim in exercise of private right of person is completely ruled out. But this alone does not clinch the issue. The own case of the prosecution is that earlier to the incident of stabbing. Khalil had intervened in an altercation between the accused-appellant and Salim whereby the accused-appellant had felt annoyed and had fiercely pushed Khalil who had sustained injury by falling down. Khalil had then gone to his house with Salim and had narrated the incident to his brother Palle. It was then that Palle, Rashid and Salim along with Khalil had proceeded to confront the accused-appellant Shahadat.The deceased Palle had demanded an explanation from Shahadat

about having caused injury to Khalil Such is the own case of the prosecution. When Abdul Aziz alias Palle and others had gone to the accused-appellant to confront and to demand an explanation from him, they must have been in a revengeful mood and full of anger. It is likely that grappling took place between the two sides as the accused-appellant did not like such remonstration by Palle and his companions. It has come also in the testimony of Khalil PW 2 that when his brother Palle demanded an explanation from Shahadat, he hurled abuses on him and grappling between the two took place. So what appears to be logical and natural is that there was no premeditation on the part of accused-appellant. It was a sudden fight and in the heat of passion, he stabbed the victim. But the fact is there that he stabbed him in the chest (vital part). So, the act by which the death was caused, was done him by causing such bodily injury as was likely to cause death. He shall be presumed to be aware of natural consequences of his act of stabbing the victim deep in his chest, though he did so in the heat of passion upon a sudden fight. It is a fact that single penetrating wound so caused by him on the chest of deceased proved to be fatal.

13. In view of what has been discussed above, we are of the opinion that the accused-appellant Shahadat is guilty of committing culpable homicide not amounting to murder covered by first part of Section 304, I.P.C. and he has to be convicted and sentenced accordingly, instead of for murder as has been done by the learned Additional Sessions Judge by the judgment under appeal.

14. To conclude, we partly allow the appeal and modify the conviction and sentence of the accused-appellant Shahadat as under.

15. Accused-appellant Shahadat is convicted for culpable homicide not amounting to murder punishable under first part of Section 304, I.P.C. and he is sentenced to rigorous imprisonment for ten years. The accused-appellant Shahadat is on bail. He shall surrender forthwith to serve out the sentence as modified by this Court.

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