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Court : Delhi

Decided On : Dec-13-1985

Reported in : 1986CriLJ1655; 1986(1)Crimes528; 1986(10)DRJ241

Judge : Malik Sharief Ud Din and; R.N. Aggarwal, JJ.

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

Appeal No. : Criminal Appeal No. 89 of 1984

Appellant : Bhavi Ram

Respondent : The State

Advocate for Pet/Ap. : Mr. S. K. Aggarwal

Judgement :

Sharief-Ud-Din, J.

1. This appeal has been preferred against the judgment of Mr. S. M. Aggarwal, Additional Sessions Judge, dt. 14th March 1984 convicting the appellant of the offence under S. 302 of the Penal Code and sentencing him to undergo rigorous imprisonment for life and to the payment of a sum of Rs. 500/- as fine. In default of payment of fine the appellant was sentenced to undergo further rigorous imprisonment for one year.

2. The facts are few and they are as follows. Complainant in the case is one Kharak Bahadur, resident of Nepal, who on the date of the incident which is, 4th January 1982 was working in Delhi and was residing at E-C, Railway Quarters, Patel Nagar, where Man Singh had come to see him and his nephews Bomb (illegible) Bahadur and Dil Bahadur who were staying with him. The prosecution case is that they left for Kirti Nagar to see one Nar Bahadur working at 9/56 (illegible) Woollen Mills, Kirti Nagar Industrial Area. It is said that when they reached near the Jhuggies (illegible) Crepes Floor Mill, they noticed the appellant Bhavi Ram together with his accomplice Bal Bahadur Rana, a proclaimed offender now and with whom we are not concerned, standing near the Jhuggis. On seeing Kharak Bahadur Bhavi Ram is stated to have called him whereupon he and Dil Bahadur deceased came near him. PWs. Man Singh, and Bomb Bahadur remained at a distance. Bhavi Ram is stated to have protested to Kharak Bahadur for having abducted his wife about six months earlier and he expressed a grievance that Kharak Bahadur was persisting in paying visits to his place. Kharak Bahadur thereupon tried to put him off by saying that his wife had voluntarily joined him and that he had sent her back after a couple of days. It is at this stage that the proclaimed offender Bal Bahadur Rana is stated to have caught hold of Kharak Bahadur by his neck and when the deceased Dil Bahadur rushed forward to rescue Kharak Bahadur, the appellant Bhavi Ram is stated to have proclaimed that they would deal with the deceased Dil Bahadur first. Immediately, thereafter he is stated to have dealt two or three blows on the head of Dil Bahadur with a small lathi which he was holding in his right hand. Meanwhile, Bal Bahadur, the proclaimed offender, is said to have left Kharak Bahadur and caught hold of the deceased Dil Bahadur deceased, however, on receiving the fatal blow bled profusely from his head and fell on the ground. He is said to have died on the spot. In the meanwhile, Man Singh was sent to inform the police and the appellant together with his accomplice were overpowered by Bomb Bahadur and Kharak Bahadur. At the instance of Man Singh a D.D. report No. 78-B (Ex. P.W. 7/A) which was recorded on a telephonic message given by Man Singh at 7.30 p.m. on 4th January, 1982 came to be recorded at police station Moti Nagar. This was handed over to Sub-Inspector Dalip Singh who came on the spot, took possession of the accused as well as the weapon of the offence. He also took into possession

some blood, blood soaked earth and control earth and secured and sealed all these exhibits properly. He also conducted the inquest of the deceased at the spot and referred the dead body of the deceased Dil Bahadur to the mortuary of the police hospital where it was received along with the papers at 4.30 a.m. on the night intervening 4th/5th January 1982.

3. The post-mortem was conducted by Dr. Bharat Singh who noticed two injuries on the person of the deceased which he opined to be ante-mortem. He further opined that injury No. 1 was sufficient to cause death in the ordinary course of nature, and death was due to coma resulting from head injuries. He was further of the opinion that the lathi seized could cause the injuries noticed on the person of the deceased. We may notice the two injuries sustained by the deceased which are as follows :-

(1) One lacerated wound on the right front of parietal area, placed anterio posteriorly. Size of the wound was 1' x 1/2' x Scalp deep. Margins of the wound were irregular and swollen wound was covered by clotted blood. Right side of skull was also covered by clotted blood surrounding the injury.

(2) Abrasion on the left zionistic area. Size 1' x 1/2', brown in colour.

This would go to show that injury No. 2 was in the nature of abrasion while it was actually injury No. 1 which was fatal.

4. The prosecution case is, in fact, based on the testimony of Kharak Bahadur (PW 10) on whose statement (Ex. PW 10/A) FIR No. 5 of 1982 police station Moti Nagar was recorded at 9 p.m. In fact, the incident has taken place at 7 p.m. and the statement of P.W. 10 Kharak Bahadur was recorded somewhere between 7 p.m. and 8.45 p.m. as it has been actually dispatched from the spot at 8.45 p.m. The formal FIR was registered at 9.00 p.m. The prosecution case is also supported by Bomb Bahadur (PW 4) and Man Singh (P.W. 12), all of them being eye-witnesses to the incident.

5. The common case of the parties is that Smt. Gian Kumari wife of the appellant Bhavi Ram had gone to stay with Kharak Bahadur (P.W. 10) for a couple of days a

few months prior to the incident. The stand of the accused, however, is that on the day of the incident Kharak Bahadur, Bomb Bahadur, Man Singh and the deceased Dil Bahadur had come towards their Jhuggis in an intoxicated state with the intention to abduct his wife. Smelling the presence of the appellant with his wife in his Jhuggi, they entered the Jhuggi of Dharam Singh and tried to molest his wife, that on an alarm being raised by her, her brother rebuked Kharak Bahadur resulting in an altercation during which Dharma Singh's wife's brother was slapped by the deceased Dil Bahadur. At this he alleges, that Dharma Singh's brother-in-law in a sudden rage hit the deceased Dil Bahadur with a danda on his head.

6. Mr. S. K. Aggarwal, learned counsel for the appellant does not want to assail the truthfulness of the testimony tendered by the eye-witnesses. He thereforee restricted his argument to the nature of the offence committed and the quantum of the sentence that the appellant deserves to be awarded. After noticing the arguments advanced in this regard, and after going through the evidence and the circumstances surrounding this case we are of the view that this is not a case where one can say that there was any premeditation to kill on the part of the appellant. In fact, the whole episode took place suddenly and on a very serious grievance which the appellant had against Kharak Bahadur, inasmuch as admittedly Kharak Bahadur had abducted his wife for sometime and had returned her after sometime. It appears from an overall view of the evidence that the appellant was under the impression that Kharak Bahadur had not given up his nefarious ideas and was out to seduce his wife. One cannot forget the manner in which the incident took place. The appellant is stated to have asked Kharak Bahadur as to why he had abducted his wife, and why he was persisting in paying visits to her again. Apparently, there was some exchange of hot words in which Kharak Bahadur was caught by the neck by the accomplice of the appellant and then Dil Bahadur came to rescue him. There was an altercation and in that altercation the appellant inflicted one fatal blow on the head of the deceased Dil Bahadur. In such a situation it is difficult to say whether the blow was aimed at Dil Bahadur and whether it was particularly aimed at head, though it did fall on his head. The medical evidence has clearly gone on records to show that the only fatal injury was injury No. 1 we may also state that the actual grievance of the appellant was against Kharak Bahadur and not against Dil Bahadur. The

appellant, thereforee, cannot be said to be possessed of a motive to murder Dil Bahadur. Under these circumstances, we are of the view that this is not a case which falls under S. 302 IPC. To our mind this is a case which squarely falls under S. 304 Part II, IPC. This will be particularly so in view of the bamboo stick that was used in inflicting the injury. It is a small stick measuring 29' x 1 1/2'.

7. In view of our observations, we set aside the conviction and sentence of the appellant under S. 302 IPC and convict him under S. 304, Part II, IPC and sentence him to five years' rigorous imprisonment.

8. Order accordingly.

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