

Sanjay Vs. State

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Court : Delhi

Decided On : Sep-25-2004

Reported in : 2004CriLJ4761; 114(2004)DLT132; 2005(79)DRJ488

Judge : R.S. Sodhi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304(II), 323, 427 and 452; ;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360; Probation of Offenders
Act

Appeal No. : Crl. Appeal Nos. 419, 434, 435 and 463 of 1999

Appellant : Sanjay

Respondent : State

Advocate for Def. : Baldev Malik, Adv.

Advocate for Pet/Ap. : P.R. Thakur and; Vinay Thakur, Advs

Judgement :

R.S. Sodhi, J.

1. Since all the above appeals arise out of a common judgment, this order shall dispose of all the above-mentioned appeals.

2. Nobody appears for the appellant-Virender Singh. I appoint Mr. P.R. Thakur, Advocate, who is present in Court, as amicus Curiae for Virender Singh to assist me in this case.

3. These appeals are directed against the judgment dated 10th August, 1999 of the Additional Sessions Judge in Sessions Case No. 159/1998, whereby the learned Judge had held the appellants guilty under Sections 304(11)/34, IPC as also under Sections 452/427/323/34, IPC and vide separate order dated 16th August, 1999, sentenced them under Sections 304(11)/34 to Undergo RI for five years with a fine of Rs. 3,000/- each and in default of payment of fine to undergo SI for three months. They were further sentenced under Sections 323/34, IPC to RI for one year and fine of Rs. 1,000/- each and in default of payment of fine, to undergo SI for one month. All the convicts were further sentenced under Sections 427/34, IPC to undergo RI for one year and fine of Rs. 1,000/- each and in default of payment of fine to undergo SI for one month. They were also sentenced under Sections 452/34, IPC to undergone RI for three years and a fine of Rs. 1,000/- each and in default of payment of fine to undergo SI for one month. All the sentences were directed to run concurrently.

4. The brief facts of this case, as has been noted by the Additional Sessions Judge, are as under:

'The facts of the prosecution case, as made out from the police report sent under Section 173, Cr.P.C. are that on 16.11.1987 on receipt of D.D. No. 10-A, ASI Raj Singh along with Constable Subhash Chand, Constable Rajinder Prasad and Constable Udai Singh reached at the spot i.e. shop No. M-15, Palika Bhawan, where no eye-witness met him. Injured has already been removed to the hospital. Constable Rajinder Singh and Constable Udai Singh were left at the spot and ASI Raj Singh along with Constable Subhash Chand reached Safdarjung Hospital, where no injured person was found admitted in the hospital. Then ASI Raj Singh along with Constable Subhash Chand came back at the spot and from there, they all went to the police station. In the police station, Urminder Singh Sethi and his brother Surinder Singh Sethi along with his three servants namely Shiv Charan, Sanwal Mal and Sunil met them. Urminder Singh had received injuries and he

requested them to remove him to the hospital as his condition was not good. He along with injured, his brother and three servants and above-named constables reached at Safdarjung Hospital, where Doctor declared Urminder Singh Sethi 'brought dead'. ASI Raj Singh recorded the statement of Surinder Sethi to the effect that he runs a shop of ready-made garments at shop No. M-15 Palika Bhawan along with his brother Urminder Singh. On 16.11.1987, he along with his brother Urminder Sethi and three servants namely Shiv Charan, Sanwal Mal and Sunil was present at his shop. At about 8.45 p.m. they were about to close the shop, in the meantime Deepak Chopra, owner of shop No. M-33, Palika Bhawan along with his servants Sanjay, and friend Raj Pal came there. Deepak Chopra threatened his brother Urminder Singh that he would not leave him alive today as he was instigating his servants against him. Sanjay caught hold of Urminder Singh and Raj Pal and Deepak started giving fist and kick blows to Urminder Singh. Virender Singh gave hockey blows to Urminder Singh. When Shiv Charan intervened, he also received hockey blows on his left hand. He snatched the hockey from the hand of Virender Singh. Virender Singh pushed him, as a result, he fell down. Then Virender Singh started giving fist and kick blows to his brother Urminder Singh. Sanwal Mal, Sunil, Shiv Charan and some public persons tried to intervene and in the process, Sanwal Mal also received injuries. All the four accused persons also caused damage to the shop. Then, all of them fled away from there. Deepak Chopra and his companions gave beatings to him and his brother Urminder Singh, who died because of the beatings given by Deepak Chopra, Sanjay, Virender Singh and Raj Pal. On this statement a case was registered and the investigation was conducted by ASI Raj Singh, who during investigation, prepared the site plan, got the spot photographed, recorded the statement of the witnesses and got conducted the post mortem on the dead body of Urminder Singh. On 17.11.1987, he arrested the accused persons and recovered the hockey, which was used in the commission of the offence, on the pointing out of accused Virender, collected the MLC, sent the exhibits to CFSL and after completion of investigation, filed the challan in the Court of concerned Metropolitan Magistrate, who committed this case to the Court of Sessions, being exclusively triable by it as such.'

5. The prosecution in order to establish its case has examined 21 witnesses. Of these, PW 1 Shiv Charan was the employee at the shop of the deceased and has deposed that on 16.11.1987 at about 8 or 8.15 p.m. he and Sanwal Mal (PW 2) were present at the counter of the shop of Urminder Singh Sethi (since deceased). Accused Sanjay, who was earlier employed with the deceased, passed in front of the shop of the deceased, when Urminder Singh (since deceased) asked him to return the advance which he had taken while in service. An altercation took place between Sanjay and Urminder Singh. Meanwhile, accused Virender Singh armed with hockey, Deepak Chopra and Raj Kumar also came there. While accused Sanjay and Urminder Singh were grappling, Virender broke the glass of the counter of the shop and gave hockey blow on the arm of this witness. Virender also gave two kick blows to PW 2. Accused Sanjay gave fist blows to Urminder Singh Sethi. He has also stated that when Sanjay was giving the blows, Urminder Singh struck against the counter and fell down inside the shop. Thereafter, Urminder Singh got up and came out of the shop. Accused persons were present outside the shop when the police reached there. PW 2, Sanwal Mal, supported the version of PW 1. PW 5, Surinder Singh, has also narrated the incident and supported the prosecution's version. PW 6, Constable Dharam Bir Singh, is a photographer. PW8, Dr. K.G. Sachdeva, has proved the MLC Ex. PW 8/A. PW 9, Dr. M.S. Sagar, has proved the post-mortem report Ex. PW 9/A of Urminder Singh Sethi. In this report he has opined that the cause of death was shock due to haemorrhage as a result of ante-mortem injury, that is, laceration of liver which was produced by blunt force, PW 13, Dr. Sushil Kumar Bhattacharya, has proved the MLC of Sawan Mal which is Ex. PW 13/B. PW 15, Dr. Rajesh Kumar Chopra has proved the OPD Card of Surinder which is Ex. PW 15/A. PW 14, SI Balbir Singh, draftsman, has proved the site plan of the spot which is Ex. PW 14/A. PW 16, ASI Tula Singh, Duty Officer, has proved DD No. 10/A which is Ex. PW 16/A as also the FIR Ex. PW16/B. PW 19, Inspector S.K. Giri, has deposed that on 17.11.1987 he reached the spot where the fight was taking place. PW 20, Gurbax Singh, SHO has deposed that he joined the investigation of this case and arrested the accused persons.

6. From the evidence of witnesses as also from the recovery and the medical evidence, it can safely be said that the prosecution has been able to prove its case

beyond the shadow of doubt.

7. On the question of sentence, it is submitted by Counsel for the appellants that the appellants are facing the ordeal of trial for over 17 years and that no weapon was used in the present case. He further submitted considering the peculiar facts and circumstances of this case, the same can be dealt with under Section 360, Cr.P.C. and the appellants can be given benefit of Probation of Offenders Act, 1958. He draws my attention to the statement of Dr. M.S. Sagar, who admitted in his cross-examination that injuries mentioned in the post-mortem are possible by falling on hard surface. He further submitted that the deceased may have ruptured his liver by a fall or by sudden contraction of abdominal muscle and that the above findings could be the cause of death as has been stated by PW 1 that Urminder Singh fell on the counter of the shop and thereby hurt himself in the stomach. Counsel for the State has submitted that in a case where originally the accused persons were challaned under Section 302, IPC for murder, surely the provisions of the Probation of Offenders Act would not be applicable.

8. Heard Counsel for the parties on the question of sentence and have also gone through the statements of witnesses. It appears to me that the fight took place on a spur of the moment and there was no intention whatsoever to cause the injury to the liver or cause such an injury as would be known to cause death. In that event of the matter, since the Court of Sessions has already held the appellants guilty under Sections 304(II)/34, IPC, the case of the appellants can be considered under Section 360, Cr.P.C. and also under Probation of Offenders Act, 1958. For this, I draw support from the judgment of the Supreme Court in *State of Karnataka v. Muddappa*, IV (1999) CCR 319 (SC)=1999 SCC 1046. In this circumstance, while maintaining the conviction of the appellants, the sentence of imprisonment and fine as awarded to them is set aside.

9. Having regard to the circumstances of the case including the nature of the offence and the character of the offenders, it is considered expedient to release them on probation of good conduct. It is, therefore, directed that the appellants be released for a period of three years on their entering into a personal bond in the sum of Rs. 10,000/- (Rupees ten thousand only) each with one surety each in the

like amount to appear and receive sentence as and when called upon during such period and, in the meantime, the appellants shall keep peace and be of good behavior. The requisite bonds to be furnished by the appellants and the surety to the satisfaction of the Trial Court. The fine, if already, paid, is directed to be treated as litigation expenses of the State.

10. With this modification, the order under challenge is upheld. The appeals stand disposed of. The bail bonds and sureties stand discharged. Fresh bonds and sureties, as directed to be furnished, shall be furnished within a period of two weeks from today, failing which the sentence awarded by the Trial Court shall come into effect. A copy of this judgment be given dusty to Counsel for the appellants.

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