

Raj Kumar @ Raju Vs. the State

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Court : Delhi

Decided On : Nov-12-2009

Reported in : 166(2010)DLT107

Judge : Sanjay Kishan Kaul and; Ajit Bharihoke, JJ.

Acts : Indian Penal Code (IPC) - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 53/1996

Appellant : Raj Kumar @ Raju

Respondent : The State

Advocate for Def. : Pawan Sharma, APP

Advocate for Pet/Ap. : Nilofar Qureshi, Adv

Judgement :

Sanjay Kishan Kaul, J.

1. The appellant is aggrieved by the impugned judgment dated 3.02.1996 convicting the appellant under Section 302 of the IPC for murder of one Kirpal (deceased) and the order of even date sentencing him to life imprisonment and a fine of Rs. 2000/-, in case of default of payment of fine, to further undergo simple imprisonment for a period of four months.

2. The case of the prosecution as established by the testimony of the eye witness Satish Kumar (PW3) is that the said PW3 and the deceased went to the shop of kerosene dealer along with the PW2 Chander Pal, where one Nandu and Balli met them. After purchasing the oil, there was some altercation between Balli and the deceased, which resulted in the deceased slapping the Balli. On this occurrence, Nandu, (who is brother of the appellant) reprimanded the deceased, but the deceased told him to bring whoever he wanted in support of himself. Balli went away and brought the appellant along with him who enquired from the deceased as to why he had slapped Balli. The deceased responded by stating that he would do what he liked and challenged the appellant to fight at the lake side. Thereafter, the two parties went to the lake side where there was exchange of hot words between the appellant and the deceased, and the deceased also slapped Nandu, the brother of the appellant. On his brother being slapped, the appellant took out kirpan and stabbed deceased in his abdomen twice. The said PW3 rushed forward to save the deceased and claimed that the appellant also tried to stab him, but he hit with belt and the appellant ran away.

3. The deceased was rushed to a general hospital Shahdara, from where he was referred to JPN Hospital. The statement of PW3 was recorded by the Police on his return to his home. On the basis of said statement Ex.PW3/A, FIR was registered. The deceased succumbed to his injuries the same night. The appellant made disclosure statement (Ex.PW3/G) pursuant to which the weapon of offence Ex.P-3 was recovered. We may notice that as per the testimony of PW3, the deceased was in a fit medical condition to speak and his statement was recorded by the Police, but the Investigating Officer, SI Hoshiyar Singh (PW15) of the case does not support this version.

4. The appellant is present in Court. Though prosecution has failed to prove the post mortem report by producing the Doctor concerned, learned Counsel for the appellant, on instructions, submits that the appellant accepts his participation in the incident and the infliction of the wound on the person of the deceased. He, however, submitted that there was no intention to kill. As per the story of the prosecution, the incident arose on account of sudden fight in which the appellant was provoked on account of the deceased slapping the brother of the appellant. It

is thus pleaded that the present case is not fit for conviction under Section 302 of the IPC, but under Section 304 of the IPC, the Exception 4 to Section 300 of the IPC applying to the facts of this case.

5. Learned APP, however, supports the impugned judgment and submits that since the injuries were inflicted in the area of abdomen by the appellant on the deceased, the conviction under Section 302 of the IPC is liable to sustained.

6. We find merit in the plea of learned Counsel for the appellant that the incident is one where the background was the altercation between Balli and the deceased. The appellant questioned the deceased as to why he had slapped Balli, whereafter the deceased exhorted the appellant to bring whoever he wants and settle the score near the lake. The parties went near the lake, where also verbal altercation took place. The deceased slapped Nandu, brother of the appellant, which provoked the appellant to take out the knife and inflict injury on the deceased. These facts show that there was no premeditation to murder the deceased, but in the sudden fight and heat of passion upon the sudden quarrel, on account of the brother of the appellant being slapped by the deceased, the injuries were inflicted by the appellant on the deceased. The incident occurred suddenly and the appellant did not take any undue advantage or act in any cruel manner and thus the case is one of culpable homicide not amounting to murder in view of the Fourth Exception to Section 300 of the IPC, which reads as under:

300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Exception 4-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

7. We may note that the prosecution has proved the post mortem report Ex.PW16/A by examining the record clerk from the hospital. The prosecution has

failed to prove the post mortem report by the Doctor concerned. In absence of his testimony, it is difficult to conclude that the intention of causing such bodily injuries were likely to cause his death. However, the fact remains that the deceased did die because of the injuries. There being no evidence of any motive on the part of the appellant to kill the deceased, in our considered view, in view of the circumstances discussed above, the case falls within the Fourth Exception to Section 300 Part I IPC.

8. We, thus modify the conviction of the appellant to one under Section 304 Part I of the IPC and given the facts of the case, sentence the appellant to 8 years RI while sustaining the fine. The nominal roll shows that the incarceration period of the appellant taking into consideration the remission would be more than 8 years and thus he has already undergone the sentence. The appellant present in Court undertakes to deposit a fine of Rs. 2000/- within 15 days from today with the Trial Court.

9. The appeal is allowed to the aforesaid extent.