

Bijender Singh Vs. State

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Court : Delhi

Decided On : Mar-22-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Indian Penal Code (IPC) - Section 304

Appeal No. : Crl. Appeal No. 218/2006

Appellant : Bijender Singh

Respondent : State

Advocate for Def. : Richa Kapoor, Adv.

Advocate for Pet/Ap. : Ramesh Gupta, Sr. Adv.,; Kamal Katyan and; Kapil Dhaka,

Judgement :

Pradeep Nandrajog, J.

1. Discussing the testimony of the witnesses of the prosecution and in particular Anand Narayan Srivastava PW-7, the learned Trial Judge has concluded the impugned judgment and order dated 6th February, 2006 by recording a finding, in para 27 of the decision, as under:

27. It is argued that in the present case also the offence was committed without premeditation in a sudden fight in heat of passion and that the accused had not taken any undue advantage nor acted in any cruel or unusual manner. Rather he himself accompanied the injured to the hospital. I disagree with the submission learned Defence Counsel. The testimony of PW7 shows that due to the intervention of other trainees deceased and the accused were separated and thereafter the accused hit the deceased with the knife. In such circumstances I am of the opinion that despite the intervention of his colleagues the accused did not stop and acted in an unusual manner and attack the deceased with the knife on chest near armpit. The testimony of PW3 Dr.Alexander F.Khakha who conducted the post mortem shows that the injury caused by the knife was sufficient to cause death. Therefore I am of the opinion that offence is not covered under Section 304 IPC.

2. Anand Narayan Srivastava PW-7 has deposed as under:

I was working as an apprentice with man power development centre in the cooking course at C-10 Qutab Institutional Area. On 12/7/2003 at about 10.50 AM I along with Vijay Kumar Joshi, Fanishwar Nath, Sardar Hassan, Surender Singh Dhabhai and accused Bijender Singh was working in the training kitchen. Accused Bijender and one Surender went to take something out of the almirah of training kitchen when they had some altercation between them and they also had physical scuffle with each other. Thereafter we intervened and separated both of them. Thereafter accused Bijender gave kitchen knife blow under the left armpit of Surender. Thereafter I informed about this incident to Ms.Seema Chandra who was our training supervisor. Thereafter a call was made by Ms.Seema for ambulance and police. Accused Bijender is present in the Court today.

3. Notwithstanding the fact that Anand Narayan Srivastava fully supported the case of the prosecution when he was examined in chief on 1.4.2004 he resiled from his testimony when he was cross-examined on 25.8.2004, but placing reliance on the decision of the Supreme Court reported as *Khujji v. State of MP* : 1991 CrL. LJ 2653, finding returned by the learned Trial Judge is that the testimony of Anand Narayan Srivastava proves that the appellant and the deceased were

trainees at C-10, Qutub Institutional Area and were present at the institute at around 10:50 AM on 12.7.2003. An altercation took place between the two. The altercation resulted in a physical scuffle. Due to intervention of the colleagues in the office the two were separated but immediately thereafter appellant inflicted a blow with a knife on the chest of the deceased.

4. Learned senior Counsel for the appellant has urged only one submission, being that, there being no evidence of past enmity; there being no motive for the crime; the act of the appellant being the result of a sudden quarrel; the weapon of offence being a kitchen knife readily available at the place where the crime took place; appellant inflicting only one injury and no more; appellant not fleeing from the place of the crime and as deposed to by Anand Narayan Srivastava PW-7 the appellant having helped in taking the deceased to the hospital, at best, the offence committed by the appellant would be culpable homicide not amounting to murder.

5. We have noted hereinabove the testimony of Anand Narayan Srivastava. The same clearly brings out that the origin of the quarrel is shrouded in mystery. It brings out that something happened between the appellant and the deceased and at the spur of the moment the two became physical with each other. They were separated. But immediately thereafter the appellant gave a blow with a kitchen knife on the chest of the deceased.

6. An act upon a sudden quarrel has not to be understood in the manner it has been so understood by the learned Trial Judge. It has to be understood with reference to whether the heat of the passion had cooled or not, when the accused, with reference to something which has to be treated as an event of the past, after deliberation and thinking to take revenge, accosts the victim and does the offending act. What we intend to say is that continuity has to be viewed conceptually and not physically.

7. From the testimony of Anand Narayan Srivastava it is apparent that notwithstanding the appellant and the deceased being separated, but conceptually within the continuity of the quarrel, the appellant picked up the knife and inflicted the stab wound which unfortunately proved to be fatal.

8. We accordingly hold that the act of the appellant constitutes the offence of culpable homicide not amounting to murder.

9. As per the nominal role the appellant has suffered incarceration for a period of 5 years, 9 months and 12 days. As of 26.10.2008 he has earned a remission of 8 months and 5 days.

10. In our opinion ends of justice would be met if the appellant is sentenced to undergo imprisonment for the period already undergone.

11. Appeal stands disposed of by modifying the conviction and the sentence of the appellant as above.

12. The appellant has been produced from jail. The appellant may be taken back to Central Jail Tihar but would be set free forthwith if not required in custody in any other case.

13. Copy of the decision has been handed over to learned APP for the State under signatures of the Court Master with a direction that he may hand over the same to the Constable who has produced the appellant from Tihar Jail.