

Ali Jaan Vs State and ors.

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Court : Delhi

Decided On : Jun-02-2010

Judge : Mr. Pradeep Nanrajog ; Mr. Suresh Kait, Advs.

Appeal No. : CRL.A. 696/2010

Appellant : Ali Jaan

Respondent : State and ors.

Advocate for Def. : Ms.Richa Kapoor, Adv.

Advocate for Pet/Ap. : Mr.Tashriq Ahmad ; Mr.Alam Mizaz, Advs.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

ORDER. (Oral)

1. Ali Jaan father of Mulla Ji (the deceased) has filed the above captioned appeal and has sought delay to be condoned in filing the appeal. The delay in filing the appeal is of 58 days.

2. It is settled law that if issue arising in appeal is meritorious and needs consideration and further, if a manifest miscarriage of justice has resulted as a result of the view taken by the learned Trial Judge, the Appellate Court has to be liberal in condoning the delay in the appellant availing the appellate remedy. Thus, we are considering, on merits, the view taken by the learned Trial Judge, for if, we find that the view taken is perverse or has resulted in a manifest miscarriage of justice, we would be inclined to condone the delay in filing the appeal.

3. A two-fold grievance has been raised in the appeal filed by Ali Jaan, the unfortunate father of Mulla Ji who suffered an untimely death on 10.09.2006.

4. Two accused, Lakhan and Chander were sent for trial. Case projected was that they owed money to Mulla Ji and when Mulla Ji used foul words against them on account of the two not returning his money, the two accused protested, Mulla Ji slapped Chander. This act invited retaliation. The two accused joined in a concerted action to cause injuries with scissor to Mulla Ji and fled. Mulla Ji died as a result of the injuries. The prosecution brought into aid two eye-witnesses. Rahul Kumar PW-6 and Kavinder PW-8. The prosecution also took the help, to prove a stated dying declaration, by examining Minto PW-7.

5. Rahul Kumar PW-6 deposed :- "On 8.9.2006, I was present in the aforesaid factory premises. After finishing their job that day, the accused persons left. At about 9:00 pm, they again returned. Shakil @ Mullaji was present in the factory at that time. Mullaji demanded his money from accused Lakhan and Chander. They told that at that time there was no money with them to pay their debt to Mullaji. Mullaji and Lakhan and Chander reasoned with each other. Mullaji gave a slap to Chander. At that juncture, Chander exhorted Lakhan to caught hold of Mullaji and declared that day they will clear accounts of Mullaji. Chander lifted a scissor lying on a machine and gave a stab blow in his abdomen, thigh and other parts of the body. Thereafter, Lakhan and Chander ran away. Lakhan jump down from the roof while Chander went down stairs."

6. Kavinder PW-8 deposed:-

"On 8.9.2006, I was present in the factory. Some workers including Pintoo were on leave on the occasion of Suberaat. Myself, Rahul, Mullaji, Chander and Lakhan were present in the factory. About 5:00-6:00 pm, Chander, Lakhan and Mullaji had also left factory. They returned about 9:00 pm in the factory. All had consumed liquor. The factory was being run on the second floor. Chander, Lakhan and Mullaji came on the second floor of the factory. Mullaji demanded his money back from chander and Lakhan, who are real brothers. Rahul was also present there. Chander and Lakhan uttered that they were not having money at that time. Chander, Lakhan and Mullaji abused each other. Mullaji slapped Chander. On this, Chander exhorted Lakhan to hold Mullaji and further told that they will finished the account of Mullaji. Lakhan caught hold Mullaji by his hands. Chander picked up a scissors, lying on the machine and gave 3-4 scissors blows on the person of Mullaji. Mullaji sustained one scissors blow on his belly and other on the other side of the belly and third one on the thigh. Mullaji sat on the ground pressing his belly. Lakhan and Chander escaped from the spot."

7. Mintoo PW-7 deposed:-

"I went to arrange a vehicle and arranged a Maruti Van from Street No.9. By that time, Rahul Tomer also reached the factory. It was about 7:00 or 7:15 pm. Mullaji requested me to remove to a hospital and told that he was not in position to reach his house. Accordingly, myself and Rahul Tomer removed Mullaji to SDN Hospital. During my discourse with Mullaji, Mullaji had told me that an altercation had taken place between him and Lakhan and Chander on the matter of money and he has consumed liquor. Lakhan and Chander had stabbed him with scissor."

8. Discussing the testimony of the witnesses, the leaned Trial Judge has taken a view that Rahul Kumar has no where deposed that when Chander exhorted Lakhan to catch hold of Mulla Ji and declared that they would clear the account of Mulla Ji, Lakhan caught hold of Mulla Ji. No doubt PW-8 has stated that on Chander's exhortation Lakhan caught hold of Mulla Ji, but in view of the conflicting testimony view taken is that Lakhan has to be acquitted.

9. The learned Trial Judge has also referred to statement made first at point of time to the Investigating Officer by Rahul Kumar being Ex.Pw-6/A in which Rahul

Kumar has not stated that when Chander gave the exhortation, Lakhan caught hold of Mulla Ji.

10. It is urged by learned counsel for the appellant that in view of the testimony of PW-8 as also the testimony of PW- 7, it is but apparent that even Lakhan participated by catching hold of Mulla Ji.

11. It is settled law that where a view taken by learned Trial Judge is a reasonable and a possible view, the Appellate Court would not interfere merely upon the premise that another view is equally plausible or may be a little better.

12. From the testimony of PW-6 and PW-8 it is to be noted that on 08.09.2006 Mulla Ji demanded money from Lakhan and Chander. They replied that they had no money. Mulla Ji started reasoning with Lakhan and Chander and the verbal altercation resulted in Mulla Ji giving a slap to Chander who thereupon retaliated.

13. It is thus apparent that every-thing happened all of a sudden. It was at the juncture when Mulla Ji gave a slap to Chander that Chander exhorted. But it may happen that before the person who receives exhortation reacts to the exhortation, he who gives the exhortation has already completed what he had desired to do. In the instant case it is possible that before Lakhan could react to the exhortation by Chander, Chander picked up the scissor lying on a machine and stabbed Mulla Ji. In fact, if we read the testimony of PW-6, this appears to what had happened.

14. It is thus not possible for us to conclude that given the evidence before it, the view taken by the learned Trial Judge is wrong or has resulted in miscarriage of justice.

15. As regards the stated dying declaration deposed to by PW-7, suffice would it be to state that he has deposed that Mulla Ji told him that Lakhan and Chander had stabbed him with scissors. It be noted that witness has not stated that deceased told him that Lakhan caught hold of the deceased when Chander stabbed him.

16. Given the back drop of what happened, in layman's words, anyone would say that Lakhan and Chander have stabbed the deceased, but in a Court of law, as a

matter of fact only Chander would be the one who had stabbed the deceased. As against Lakhan, his act has to be the one in respect whereof deposition is given as to what Lakhan did. Thereafter, with the aid of Section 34 it would be the duty of Court to draw the requisite inferences required by law.

17. We do not find any error committed by the learned Trial Judge while acquitting Lakhan.

18. The second issue raised in the appeal is that having inflicted as many as four incised wounds on the person of Mulla Ji, Chander cannot escape liability of being convicted for the offence of murder.

19. The submission ignores Exception 4 to Section 300 IPC. As per 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 when the offender having taken no undue advantage nor acted in a cruel or unusual manner.

20. With reference to the testimony of Rahul Kumar it is apparent that the accused did not visit the factory with any premeditated intention. Their presence in the factory became an opportunity for Mulla Ji to demand his money from them and when they responded that they had no money to repay the debt, Mulla Ji lost his cool. A verbal altercation ensued with Mulla Ji as party No.1 and Lakhan and Chander as party No.2. During the verbal altercation, Mulla Ji gave a slap to Chander who instantly picked up a scissor lying on a machine, meaning thereby he never came armed. Exception 4 to Section 300 IPC is clearly attracted. It cannot be said that Chander has acted with cruelty or has taken undue advantage.

21. Holding that the offence committed by Chander is that of culpable homicide not amounting to murder, we find that the sentence imposed upon Chander is to undergo RI for a period of 10 years and pay fine in sum of Rs.5,000/-.

22. The sentence imposed is adequate; in any case cannot be labeled as shockingly disproportionality low.

23. No case is made out to interfere with the view taken by the learned Trial Judge.

24. Before concluding we may note that learned counsel for the appellant has very ably rendered assistance and along with the appeal has placed before us, for our perusal and consideration, the testimonies of all the eye-witnesses.

25. We place on record our appreciation for the diligent manner in which the young counsel has presented the appeal before us.

26. Having concluding the discussion on merits, on the issue of limitation, since the case sought to be projected in the appeal is not a worthy case, we are not inclined to condone the delay in filing the appeal.

27. The appeal, as well as the application seeking delay to be condoned is accordingly dismissed.

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