

Mohd.Mahfooz Alam Vs. State

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Court : Delhi

Decided On : Feb-17-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

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

Appeal No. : CRL.A.NO.60/1999

Appellant : Mohd.Mahfooz Alam

Respondent : State

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr.Bhupesh Narula, Adv.

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?

1. Vide impugned judgment and order dated 26.10.98, the appellant Mohd.Mahfooz Alam has been convicted for an offence punishable under section 302 IPC. Vide order on sentence dated 26.10.98, he has been sentenced to undergo imprisonment for life and to pay a fine in sum of `5000/-; in default to undergo RI for six months.

2. Conceding that in view of the testimony of Mohd.Zakir PW-4; the testimony of Mohd.Saeed PW-10, the 2 witnesses to the incident and the testimony of Wahiduddin PW-3 and Zia-Ul-Haque PW-11 who reached on hearing the noise upstairs and apprehended the appellant at the spot, it stands established that the appellant inflicted 2 stab injuries on the chest cavity of the deceased Shamim Ahmed, counsel urges that the attendant circumstances wherefrom appellant's intention or knowledge could be gathered makes liable the appellant to be convicted for the offence of culpable homicide not amounting to murder and not the offence of murder. Counsel would concede that evidence certainly establishes the commission of an offence punishable under Section 304 Part I IPC.

3. To be fair to the learned counsel for the appellant we must record that learned counsel attempted to bring home the point that in view of the discrepancies in the testimony of two stated eye-witnesses and the other two witnesses who reached at the place of the crime virtually contemporaneous with the crime being committed a contra view could be taken, but on going through the testimony of the witnesses conceded that the discrepancies are normal aberrations in the testimony of witnesses who deposed to facts seen by them after a few years.

4. It may be noted that the date of the incident is 5.12.1993 and the 4 aforementioned prosecution witnesses deposed in the year 1997 and 1998 and thus there was a gap of over 4 years since they saw the crime and gave testimonial narration thereof.

5. In the decision reported as AIR 2006 SC 3010 Pulicherla Nagaraju @ Nagaraja Reddy v. State of A.P., with reference to a single knife blow traversing 12 cm deep resulting in death of the victim, with reference to the case law on how to gather the intention of the assailant, the Supreme Court observed:

"The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in caused injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident

occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

6. Noting the aforesaid enunciation of law, in the latest judgment reported as 2011 (1) SCALE 57 Mangesh v. State of Maharashtra, where the deceased had an affair with the sister of the accused which was frowned upon by the accused and in spite of displeasure being expressed by the accused the deceased continued the clandestine affair, and on the unfortunate evening the accused saw his sister chatting with the deceased at a short distance from his house, and in anger assaulted the deceased thrice with a knife and ran away from the spot, the Supreme Court held that since the assault was not premeditated and everything happened at the spur of the moment upon the accused being overcome by emotion, (though not justified), attracted the offence punishable under Section 304 Part I IPC notwithstanding that of the 6 injuries caused, 1 on the left side of the chest was directed on a vital part of the body. It was highlighted by the Supreme Court that when a person loses his sense and becomes violent, that by itself may not be a ground to be considered against him, meaning thereby a holistic view of the matter has to be taken. The decision highlights the difference between premeditated acts and acts upon sudden loss of self-control and in the heat of the passion.

7. Since out of the two eye witnesses, learned counsel for the parties concede that Mohd.Zakir PW-4 has given a more graphic account of the incident, we note his testimony.

8. Mohd.Zakir along with the deceased Mohd.Shamim, the appellant and Mohd.Saeed PW-10 were residing as tenants on the first floor of House No.859, Gali No.30/4, Zafrabad, Delhi. Deceased Shamim had borrowed ₹1,400/- from the

appellant about 3 or 4 months prior to the date of the incident i.e. 5.12.1993, and on numerous occasions the appellant had demanded money to be returned and the deceased had avoided. The previous night at about 10:00 PM after appellant returned to the room he requested the deceased to return his money to which the deceased replied that he would do so when he would return from his village. Some altercation took place (we note that nature thereof has not been deposed to) and thereafter the accused and the deceased slept under one blanket. Mohd.Zakir and Saeed slept under the other blanket. At about 6:00 AM in the morning accused once again demanded money from the deceased and got the same answer which was given to him the previous night. All of a sudden the appellant struck two knife blows on the chest of the deceased whereupon he i.e. Mohd.Zakir and Saeed disarmed the appellant by snatching the knife from his hand and upon hearing the noise Wahiduddin and Zia-Ul-Haque came to the room. The appellant was prevented from fleeing and the deceased was removed to the hospital.

9. We note that deceased was not dead by the time he was removed to the hospital. He was given surgical intervention but could not be saved and died by around 9:00 AM.

10. Unfortunately for the deceased, one out of the two blows struck on the chest proved fatal due to the left ventricle of the heart being pierced.

11. That the appellant and the deceased were friends stands established from the testimony of PW-4. That the appellant had lent `1,400/- to the deceased shows the depth of their friendship. That the appellant was annoyed for the deceased not to be returning the loan also stands established. But the fact that in spite of the altercation the previous night, the two slept under one blanket, shows that the so-called altercation was no more than, if not a quibble at best a squabble. The deceased was wanting to go to the village and was promising to return the loan on returning from the village and the appellant was annoyed at the loan not being returned. There is no evidence that the appellant acted with any premeditation. It is apparent that the appellant wanted his money back and the loan already being 3 to 4 months old, the appellant thought that the deceased may not return from his village or may return very late. This irritated him and under the influence of an

irritated mind the appellant used a knife and caused 2 stab injuries to the deceased. Had the appellant desired to murder the deceased he had all the opportunity throughout the night and when the world was asleep he could have executed a designed plan. The appellant did not do so. This evidences the intention of the appellant to cause grievous injuries upon the deceased with an intention to over awe the deceased and unfortunately for the appellant, 1 of the 2 injuries inflicted by him upon the deceased proved fatal.

12. Guided by the two decisions of the Supreme Court it can safely be said that within the contours of granting benefit, if two views emerge, adopting the one favourable to the accused, the act of the appellant attracts the offence of culpable homicide not amounting to murder punishable under Section 304 Part I IPC for which we impose the sentence upon the appellant to under RI for 10 years.

13. The appeal stands disposed of modifying the conviction of the appellant from that of having committed an offence punishable under Section 302 IPC to having committed an offence punishable under Section 304 Part I IPC. Setting aside the sentence to undergo imprisonment for life, we impose the sentence upon the appellant to undergo RI for 10 years.

14. Copy of this judgment be sent to the Superintendent Central Jail Tihar for his record. If the appellant, with permissible remissions, has already undergone the sentence, he need not surrender. But, if there is any unexecuted part of the sentence remaining, the appellant would surrender and undergo the same.

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