

Vijay Alias Talwar Vs. State

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Court : Allahabad

Decided On : Sep-30-2010

Judge : Imtiyaz Murtaza, J.

Appeal No. : JAIL APPEAL No. - 5138 of 2005

Appellant : Vijay Alias Talwar

Respondent : State

Advocate for Pet/Ap. : A.G.A. Adv

Judgement :

1. This jail appeal has been filed against the judgment and order dated 30.4.2004 whereby the appellant has been convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life and fine of Rs.10,000/- and in default of payment of fine further imprisonment for six months.

2. Briefly stated according to the prosecution case on 14.12.1999 informant's brother Hulasi had gone to answer the call of nature outside village and on account of enmity Vijay son of Ramdhani in order to kill his brother assaulted him by sword. His brother Hulasi son of Mathose sustained grievous injuries and his condition was serious. On raising alarm by Hulasi Jagdish Prachat Rai, Udhal reached there to rescue him and accused person leaving his brother ran away. On account of previous enmity his brother was assaulted by Vijay. While going away he also abused him and threatened to kill. Jagdish and Udhal and other family

members carried injured to the police station and lodged the report. Hulasi was medically examined on 14.12.1999 at 1.50 P.M.

3. The injured subsequently on 24.12.1999 succumbed to his injuries and in the opinion of Doctor cause of death was due to Cardiac failure as a result of multiple injuries and its complication.

4. The F.I.R. was registered on 14.12.1999 at 10.15 A.M. under Sections 326,504,506 and 307 I.P.C.. The investigation was commenced by S.I. Girish Kumar Verma. He prepared the site plan and recorded the statement of the witnesses. After the medical examination Investigating Officer added Section 325 I.P.C. also. Thereafter, S.I. Subhash Singh Gaur started the investigation and after the death of Hulasi case was converted under Section 302 I.P.C. After concluding the investigation he submitted charge-sheet under Sections 302,307,326,325,504 and 506 I.P.C.. Case was committed to the court of sessions and charge under Section 302 I.P.C. was framed.

5. The appellant claimed trial. The prosecution in order to prove its case examined informant Devideen as P.W.1, P.W.2 Jagdish Singh, P.W.3 Subhash Singh Gaur (second I.O.), P.W.4 Dr. Ashok Kumar Paliwal examined injuries, P.W.5 Dr.Surendra Singh Chauhan conducted post mortem examination, P.W.6 S.I.Girish Kumar Verma (first Investigating Officer). The case of the defence was of denial and appellant did not examine any witness in his defence but under Section 313 Cr.P.C. he stated that he is innocent and has been falsely implicated in this case. It is further submitted that son of Hulasi abducted his wife and child and thereafter committed murder of his child and he had lodged the report against him, therefore, he has been falsely prosecuted on account of enmity.

6. In order to appreciate the submissions of the counsel for the appellant we have to examine evidence on record carefully.

7. P.W.1 Devideen deposed that occurrence took place on 14.12.1999 at 8.30 A.M. when Hulasi had gone to answer natural call outside the village. Vijay was inimical with him and in order to kill him caused injuries by Dhariya (sword) and seriously injured him. Hearing the alarm raised by Hulasi Jagdish reached at the

place of occurrence and intervened and accused person ran away from the spot. He also stated that wife of accused has been taken away by Ram Naresh, son of his brother and on that account he was inimical. Injured Hulasi was brought to the police station with the assistance of villagers. Report was scribed by Indresh Singh. He proved the F.I.R. as Ex.Ka-4. He brought his brother in injured conditions at the police station and admitted in District Hospital, Etawah where his brother was medically examined. Thereafter, condition of his brother deteriorated and he was referred to Gwalior Hospital where after some time he succumbed to his injuries, on 24.12.1999.

8. P.W.2 Jagdish is also an eye witness of the occurrence. He deposed that on the date of occurrence at about 8.30 A.M. Hulasi had gone to answer call of the nature in the field of Indra Pal. He was also sitting at a distance of 20-25 steps. Thereafter, he was returning. At that time he heard shrieks of Hulasi and he and Udal reached at the place of occurrence and challenged the accused, who after causing injuries to Hulasi ran away towards northern side. While running away, he extended threats. He further deposed that prior to the occurrence wife of accused Kiran was enticed away by the son of Hulasi and he had solemnized court marriage in Bhind. On account of this enmity accused had caused injuries to Hulasi. Subsequently, on account of these injuries Hulasi died in Gwalior Hospital.

9. P.W.3 S.I. Subhash Singh Gaur deposed that he had investigated the case and proved site plan Ex.Ka-3, which was prepared by earlier I.O. G.K. Verma. He also proved charge-sheet and chik F.I.R. Ex. Ka-4 and Ex. Ka.5. He also proved G. D. Entry no.12, which is Ex.Ka7, the inquest report and letter of Madhya Pradesh Police Department, which is Ex.10 and Ex.11.

10. P.W.4 Dr .Ashok Kumar Paliwal had examined Hulasi and he noted following injures-:

1.An incised wound 7cm x 1.5 cm. X bone deep over left side of skull 6 cm. Above left ear advised X-ray.

2.An incised wound 5 cm. X 2.5 cm x bone deep over back of left elbow advised X-ray.

3.An incised wound 3 x 5 cm. X muscle deep over left forearm 2.5 cm below injury no.2.

4.An incised wound 5 cm x 3cm x bone deep over left forearm. 3 cm below injury no.3 advised X-ray.

5.An incised wound 3 cm x 5 cm bone deep in a semi circular tashion over medial side of left forearm 6 cm below injury no.4 advised X-ray.

6.An incised wound 10 cm. X 8 cm x bone deep '?' shaped over medial side of left hand extending upto forearm at 4 cm below injury no.5 advised X-ray.

7.An incised wound 11 cm. X 3.5 cm x deep upto the muscle of opposite side over back of right forearm with cut fracture of both bone forearm 5 cm above right wrist Advised X-ray.

11. In his opinion only injury no.7 was grievous in nature. Injury no.3 was simple in nature and for remaining injuries he deposed that all the injuries were caused by sharp edged weapon.

12. P.W.5 Surendra Singh conducted the post mortem examination on the deadbody of Hulasi. He proved post mortem examination report, Ex.Ka-9.

13. P.W.6 S.I. Girish Kumar Verma is the Investigating Officer. He proved the recovery memo and blood stained earth, which is Ex.Ka-6.

14. The Sessions judge relying on the prosecution case convicted the appellant as above. Hence this appeal.

15. We have heard Sri Rahul Mishra, advocate, learned amicus curiae for the appellant and Sri Arunendra Singh, learned A.G.A. for the State.

16. The counsel for the appellant submitted that on account of previous enmity he has been falsely implicated in this case. The testimonies of the witnesses are not reliable and independent witnesses present at the time of occurrence have not been examined and lastly submitted that the Sessions Judge has wrongly convicted the appellant under Section 302 I.P.C.

17. The time and place of occurrence is not challenged. The testimony of P.W.1 and P.W.2 proves that occurrence took place at 8.30 a.m. when deceased had gone to return the call of nature. The investigating officer collected blood from the place of occurrence and prepared recovery memo Ex.Ka6. The deceased was medically examined in injured condition by Dr Ashok Kumar Paliwal P.W.4 on 14.12.99 at 1.50 p.m. and in his opinion injuries could be caused at 8.30 a.m. we are of the opinion that prosecution has proved time and place of the occurrence beyond reasonable doubt.

18. As regard motive of the crime P.W.1 Devideen deposed that accused wife and child was enticed away by the son of the deceased and on that count appellant was inimical with the deceased. Similar is the deposition of P.W.2 Jagdish Singh P.W.2.regarding motive of the crime. The appellant in his statement has stated that he had falsely been implicated in the crime because son of the deceased had enticed away his wife and son and also committed the murder of his son. it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. It is a case of direct evidence and motive part does not play any important part.

19. Now the Sessions Judge has accepted the testimony of P.W.2 Jagdish Singh and held that the appellant had caused injuries to the deceased which resulted in his death. The counsel for the appellant has challenged the findings of the trial court and submitted that the Sessions judge has wrongly placed reliance upon the testimony of P.W.2 Jagdish who is a friend and supporter of P.W.1 Devideen. It is further argued that other independent witness Udal has not been examined by the prosecution.

20. We have considered the submission of the counsel for the appellant and also perused the testimony of the O.W.2 Jagdish.He has described the occurrence in a very truthful manner. He has been mentioned as a witness in the first information report and the investigating officer had recorded his statement on the date of occurrence. He had been extensively cross examined by the defence counsel but nothing could be elicited to discredit his testimony.

21. The submission of the non examination of other witness namely Udai is concerned, mere failure to examine him will not result in outright rejection of the prosecution case if the P.W.2 Jagdish examined by the prosecution is found to be truthful and reliable. Moreover, we cannot ignore the reality that many eye witnesses shy away from giving evidence for obvious reasons.

22. In the case of Appabhai v. State of Gujarat reported in 1988 (supp.) SCC 241 the Apex Court has observed as under:

"Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. The court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror-stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner."

23. We are of the view that the Sessions Judge has rightly relied upon the testimony of P.W.2 Jagdish who is a reliable witness and his testimony inspires full confidence and also corroborated by the medical evidence. The allegation against the appellant that he had assaulted the deceased with sword and medical

evidence shows that deceased sustained incised injuries which could be caused by sword.

24. Lastly, the counsel for the appellant submitted that on the basis of the evidence on the record no offence under section 302 I.P.C. is made out because looking to the injuries of the deceased it can not be said that the appellant intended to cause his death. In order to appreciate the submission of the counsel for the appellant we have to examine the injuries sustained by the defence. The deceased was medically examined by Dr. A.K. Paliwal P.W.4 in injured condition on 14.12.99. In the medical examination he noted only seven injuries and out of these seven injuries only one injury was found on skull and remaining injuries were on hands. In other words only one injury was on vital part of the body and remaining injuries were on non vital part of the body. The deceased also did not succumb to his injuries immediately and he died after about ten days. Dr. Surendra Singh Jadaun P.W.5 conducted post mortem examination on 24.12.99. and in his opinion cause of death was as a result of multiple injuries and its complications. A perusal of the testimony of P.W.5 Dr. Surendra Singh shows that the prosecution did not question him specifically as to whether all or any of the injuries found on the deceased was sufficient to cause death in the ordinary course of nature. We are of the opinion that the act of the appellant would be culpable homicide, not amounting to murder and punishable under section 304 Part 1 I.P.C. and the sentence of ten years would meet the ends of justice.

25. For the reasons stated above, the appeal is partly allowed. Conviction of the appellant under Section 302 I.P.C. is altered under Section 304 part 1 I.P.C. and he is sentenced for ten years' imprisonment.

26. The appellant is languishing in jail. He shall be kept there to serve out the sentence awarded.

27. Office is directed to communicate this order to the concerned Magistrate for compliance.