

Om Prakash Vs. State

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Court : Delhi

Decided On : Sep-08-2011

Judge : Pradeep Nandrajog; Sunil Gaur, Jj.

Acts : Indian Penal Code (IPC) - Section 300

Appeal No. : CRL.A.190/1999

Appellant : Om Prakash

Respondent : State

Advocate for Def. : Mr.Pawan Sharma; Mr.Harsh Prabhakar, Advs.

Advocate for Pet/Ap. : Mr.K.B.Andley; Mr.M.L.Yadav; Mr.Lokesh Chandra; Mr.Mohit Mathur, Advs.

Judgement :

1. The appellant has been convicted for the offence of having murdered Hukum Singh, and a perusal of the impugned judgment dated 26.3.1999 would reveal that the learned Trial Judge has believed the eye-witness account deposed to by Prem Prakash PW-1, Nanak Chand PW-2 and Manmohan Singh PW-4.

2. The most graphic testimony is that of Prem Prakash PW-1, and since learned counsel for the appellant has not been able to show any material contradiction in the testimony of the 3 eye-witnesses, either inter-se the witnesses or the witness

contradicting himself, and thus the only worthwhile submission advanced is that the act of the appellant would constitute the offence of culpable homicide not amounting to murder, we note the testimony of Prem Prakash who by way of examination-in-chief deposed as under:-

"1. On 12.1.1991, at about 9.15 PM, I had gone to the house of my cousin Hukam Singh, 2/37, Geeta Colony. There I came to know that a scuffle had taken place between Omi and Hukam Singh. The scuffle had taken place on account of Lohri fire. When this matter was being discussed in the house, I heard some noise of abusing from outside by Om Prakash. I also over-heard the accused present in Court, saying he was going to Ghondli to procure the services of gundas. I along with Hukam Chand came out of the house. Nanak Chand and Manmohan Singh, neighbours of Hukam Chand were also there.

2. I saw the accused pouring petrol in a two wheeler scooter. Hukam Chand asked Nanak Chand and Manmohan Singh to stop the accused from going and Hukam Chand asked accused to stop. Accused present in Court is also known by the name of Omi. When he stopped the accused, both grappled each other. Accused Om Prakash took out a knife from the right dub of his pant and gave knife blows on the chest and rib of Hukam Chand and other parts of the body. After 7/8 blows were given to Hukam Chand, he fell down. I raised cry for help and accused Om Prakash ran away from the spot. The occurrence witnessed by Nanak Chand and Manmohan Singh. I with the help of Nanak Chand removed the injured Hukam Chand to JPN Hospital.

3. I met the police at the hospital and made statement to the police Ex.PW-1/A, it bears my signatures at point „A. Hukam Chand died on the night intervening 15th and 16th January 1991 at about 12.30 AM.

4. On 14.1.1991, I was present at my shop in Geeta Colony. The shop is in my house. One Mehtaji came to me that accused Om Prakash was standing near Khuraji bus stand. I also with Kishan Lal was proceeding towards PS but at the crossing of Ram Lila Ground, where ASI Roop Chand and a Head Constable met us. I told them about the occurrence and accused. We went to Shiv Puri bus stand on foot, and saw accused standing on Shivpuri bus stand. We pointed out the

accused to the IO. Accused upon seeing us, started running, but we all chased him and overpowered him. His personal search was taken vide memo Ex.PW-1/B. It was signed by me at point „A.

5. The accused was interrogated by the IO and accused told that he can get recovered the knife from the drain of Block No.5, Geeta Colony. Disclosure statement is Ex.PW-1/C, which bears my signatures, at point „A.

6. Accused took us to the drain of Block No.5 and took out a knife from the drain. Sketch of the knife Ex.PW-1/D was prepared. It bears my signatures at point „A and was sealed with the seal of SN in a pullanda and was seized vide memo Ex.PW-1/E, which is signed by me at point „A. I can identify the knife recovered in my presence.

7. At this stage, a sealed pullanda, sealed with the seal of SN is opened. I have seen knife Ex.P-1. It is the same, which was used and produced by the accused."

3. Relevant would it be to note that during cross- examination the witness admitted as under:- "2. I do not remember the number of scooter of the accused, nor I can tell the colour of scooter. Accused was wearing a pant and a shirt, but I do not remember the colour. It is correct that I was an accused in a case of murder of one Arjun, in which I was acquitted. Son of Manmohan Singh PW was also an accused in that case. Hukam Chand deceased had gave knife injury to my brother Om Prakash about 18/20 years and that case u/S 324 IPC was compromised. It is incorrect to suggest that I was not on speaking terms with Hukam Chand thereafter."

4. From the testimony of Prem Prakash it is apparent that before the incident in which appellant stabbed Hukum Singh, on account of the place where „Lohri fire had to be lit, a verbal duel and a scuffle had taken place between the appellant and deceased Hukum Singh who lived in the same street. After some time the matter re-erupted and pursuant to a verbal exchange of hot words, the appellant said that he was going to Ghondli and threatened to return with gundas, and so saying, started pouring petrol in his two-wheeler; obviously to drive the same. At that point of time the deceased asked Nanak Chand PW-2 and Manmohan Singh

PW-4 to stop the appellant from going and the deceased requested the appellant to stop. Deceased physically prevented the appellant from leaving and at that point both grappled with each other. Appellant took out a knife and inflicted injuries therewith on the person of the deceased.

5. From the testimony of PW-1 it is apparent that it was a sudden quarrel, during heat whereof, the offending act was committed by the appellant and there is no pre-meditation in the commission of the crime.

6. From the admissions made by the witness during cross-examination, it appears that the street was akin to the „Wild-West, where everybody, probably for his safety, used to carry a knife in the pocket. This is evident from the admissions made by the witness that even he was an accused in the murder of one Arjun and so was the son of Manmohan

Singh PW-4 and that even the deceased had inflicted knife blows on the brother of Prem Prakash PW-1.

7. What we seek to highlight is that carrying a knife, though illegal, was a common practice of the residents of the street and thus it could not be said that the appellant was carrying the knife with an intention of using the same against the deceased and but for his acting by doing what he did, during the heat of the moment, during a sudden quarrel, the knife would have remained in his pocket.

8. The only issue which we need to discuss would be whether the appellant would be entitled to Exception-IV to Section 300 IPC, which states that culpable homicide is not murder if it is committed without pre-meditation in a sudden fight in the heat of passion and without the offender having taken undue advantage or acted in a cruel or unusual manner.

9. As per the explanation to the Exception, it is immaterial in such cases as to which party offered the provocation or committed the first assault.

10. The jurisprudence behind the philosophy of the afore-noted Exception is that where unexpected events cloud a mans sober reason and urges him to deeds which he would not otherwise do, the criminality of the act is lowered; and not that

it is to be taken that the man has committed no offence. The act would still be an offence, but of a lower degree.

11. The post-mortem report of the deceased would reveal that the knife was struck 7 times, notwithstanding the blade of knife being merely 8", the blows were not hard struck evidenced by the fact that though serious, except for two injuries no other serious injury was caused to any internal organ except the colon and unfortunately for the deceased it was septicemia which caused the death. Now, it is the 7 blows which have to be taken into account to decide whether it could be said that the appellant acted with cruelty or an unusual manner or took undue advantage. Would the appellant lose the benefit of the Exception in question?

12. Highlighting that the deceased died after 3 days of the incident and the immediate cause of death was septicemia, but noting that only 2 injuries were opined to be sufficient to cause death in the ordinary course of nature, we note the decision of the Supreme Court reported as AIR 1989 SC 1094 Surender Kumar vs. UT of Chandigarh where 3 injuries were inflicted causing death as also the decision of a Division Bench of this Court reported as 2009 (2) JCC 895 Mahender vs. State, where injuries were 8, the weapon was a brick and the fatal injuries were 5 as also the decision of another Division Bench of this Court reported as 2011 (3) JCC 1995 Jagtar Singh vs. State, where again the injuries were multiple, the conviction was sustained for the offence of culpable homicide not amounting to murder; thus we bring the curtains down by partially allowing the appeal.

13. The appellant is convicted for the offence of culpable homicide not amounting to murder and noting that when he was admitted to bail the appellant had undergone a sentence of 6 years 6 months and 16 days and had earned a remission for 10 months we sentence the appellant to undergo conviction for the period already undergone and additionally to compensate the wife of the deceased to whom `50,000/- shall be paid by the appellant. The concerned SHO of the police station would identify the wife of the deceased before the Court concerned so that she can withdraw the compensation. The appellant shall deposit the compensation with the concerned Court within 3 months from today.

14. In view of the sentence imposed the bail bond and surety bond furnished by the appellant when he was admitted to bail shall stand discharged.

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