

Dalbir Singh Vs. State

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Court : Delhi

Decided On : Feb-03-2012

Appellant : Dalbir Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % DATE OF DECISION : FEBRUARY 3, 2012 + CrI.A.218/99 DALBIR SINGHAppellant Through : Ms.Saahila Lamba, Amicus Curiae. versus STATERespondent Through : Mr.Harsh Prabhakar, Adv. for Mr.Pawan Sharma, Standing Counsel (Criminal).
CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRATIBHA RANI, J. (Oral).

1. The appellant Dalbir Singh has impugned the judgment dated 23.03.1999 convicting him for the offence punishable under Section 302 IPC and order on sentence dated 27.03.1999 vide which he was sentenced to undergo life imprisonment and to pay a fine of ` 2000/- and in default, to undergo simple imprisonment for one year with benefit under Section 428 Cr.P.C..

2. Briefly stated appellant Dalbir Singh alongwith his mother Sohan Devi (acquitted by learned Trial Court) was sent to face trial on the basis of complaint Ex.PW5/A lodged by Mr.Tek Chand, son of Mr.Udey Ram and brother of deceased Rajinder Singh. The contents of complaint CrI.A. No.218/1999 *Page 1 of 10* Ex.PW5/A reveal that on 22.03.1991 at about 8.15 pm, he alongwith his mother and sister-in-

law (Bhabhi) Mrs. Santosh was watching Chitrahar, his elder sister-in-law (Bhabhi) Ms.Veero (wife of the deceased) was busy in cooking. Deceased Rajinder Singh was sipping tea outside the house when the appellant Dalbir Singh abused him complaining that children of the deceased were indulging in abuses. While threatening to see Rajinder, the appellant forcibly took him to the place where buffaloes were tethered and started attacking him with a phawadi kept there for removing the cow dung. Deceased Rajinder suffered injuries on his head and other parts of the body and he alongwith his mother and Bhabhi Mrs.Veero removed him to the hospital. As the deceased was opined to be 'unfit for statement' his statement Ex.PW 5/A was recorded..

3. Initially FIR under Section 308 IPC was registered against the appellant. On 26.03.1991 Rajinder succumbed to the injuries and FIR was converted under Section 304 IPC. During investigation Mrs.Sohan Devi, mother of appellant Dalbir Singh was also found to be involved in the occurrence, she was also arrested in this case. After completion of investigation, they were sent to face trial..

4. At this stage, we would like to observe that initially not only FIR was converted under Section 304 IPC but even the chargesheet reveal that the appellant and his mother were sent to face trial for committing the offence punishable under Section 304 IPC. However, in Report under Section 173 Cr.P.C. by overwriting in Column No.7 at the top, the CrI.A. No.218/1999 *Page 2 of 10* offence mentioned as 304 IPC was changed to under Section 302/34 IPC..

5. After the committal of the case to the Sessions Court, appellant Dalbir Singh and his mother Sohan Devi (co- accused) were charged for the offence punishable under Section 302/34 IPC to which they pleaded not guilty and claimed trial..

6. Prosecution examined 13 witnesses in all to substantiate the charge and the incriminating evidence was put to the appellant Dalbir Singh and his co-accused Sohan Devi. After considering the testimony of material prosecution witnesses, while Sohan Devi was given benefit of doubt and acquitted, appellant Dalbir Singh was convicted for the offence punishable under Section 302 IPC and sentenced as stated herein above..

7. While PW-1 Ct. PAwan Kumar took the pullandas to CFSL, PW-2 HC Jagdish was working as Duty Officer on the relevant date and proved the copy of DD No.56-B as Ex.PW2/A received from Duty Constable at SDN Hospital, Shahdara regarding admission of injured Rajinder. Thereafter he also recorded the FIR Ex.PW2/C. PW-3 Lady Ct. Kanta is a witness to the arrest of co-accused Sohan Devi. PW-4 Ct. Rajinder Singh remained associated with first Investigating Officer ASI Asha Ram. While PW-5 Mr.Tek Chand, PW-6 Ms.Veero and PW-7 Mrs.Pushpa Devi are eye witnesses,Pw-8 Dr.George Paul conducted the postmortem and proved the report as Ex.PW8/A. PW-9 Dr. D.Chatterji prepared the MLC on admission of Rajinder in SDN Hospital. PW-10 Inspector R.S.Mehra took over the investigation after the death of Rajinder. He conducted inquest proceedings Crl.A. No.218/1999 *Page 3 of 10* and got the postmortem conducted. PW-11 Ct.Rajinder was posted as Duty Constable at SDN Hospital and conveyed the information vide DD No.56-B Ex.PW2/A. PW-12 Mr.Om Prakash was posted as Record Clerk at JPN Hospital and was examined to prove the 'death summary' prepared by Dr.Kshitij who had left the hospital. PW-13 is ASI Asha Ram - the first investigating officer..

8. PW-5 Mr.Tek Chand is the complainant and the material witness examined by the prosecution to prove the occurrence. He testified that on 22.03.1991 at about 8.15 pm, he alongwith his mother and sister-in-law (Bhabhi) Santosh was viewing Chitrahar on the upper floor of the house. His elder sister-in-law (Bhabhi) Veero was cooking on the ground floor and his brother Rajinder was having tea downstairs while standing the middle of the door. At that time, appellant Dalbir Singh abused his brother complaining "your children were hurling heap of abuses. Hearing noise, he also came down and saw Sohan Devi taking his brother to the room where buffaloes were tethered. He also reached there to save his brother and at that very time, appellant Dalbir Singh inflicted several blows on the head of his brother with phawadi (meant for removal of cow dung). He tried to save his brother and received injuries in the process. His Bhabhi Veero who reached there on hearing the noise, also intervened and received injuries. Appellant inflicted injuries on him and his Bhabhi Veero from the side of handle of phawadi. He reported the matter to the police and his Bhabhi Veero took the injured to the hospital in three wheeler scooter. She first came to the police station but police

asked her to take the injured to the hospital. She Crl.A. No.218/1999 *Page 4 of 10* got Rajinder admitted in SDN Hospital. ASI Asha Ram also reached (as Rajinder was declared 'unfit to make statement') and recorded his (PW5) statement Ex.PW5/A..

9. PW6 and PW7 have also deposed on identical lines and corroborated the testimony of PW5..

10. On behalf of appellant, Ms.Saahila Lamba, Advocate who was appointed as Amicus Curiae, has submitted that in the instant case, learned Trial Court erred in convicting the appellant under Section 302 IPC. Referring to the manner in which the occurrence has been detailed in complaint Ex.PW5/A made by none-else but the real brother of the deceased, it has been submitted that the incident took place on a trivial issue i.e. hurling of abuses by the children of family of the deceased. She urged that the appellant and deceased were neighbours and the quarrel started all of a sudden. There was no premeditation. The appellant was unarmed and there was no previous enmity with the deceased. It was at spur of moment that the quarrel took place and while quarreling at the place where buffaloes were kept, the phawadi used for removing cow dung was lifted and injuries were caused to the deceased without aiming any vital part as is clear from the complaint Ex.PW5/A itself, hence at the most, the offence committed by the appellant falls under Sec.304 Part II of Indian Penal Code..

11. On behalf of State, Mr. Harsh Prabhakar, Advocate submitted that though the dispute initially started on a petty issue about the abuses being given by children of the family of deceased but the subsequent conduct of the Crl.A. No.218/1999 *Page 5 of 10* appellant and the threat given by him to see the appellant, taking him to the room where buffaloes were tethered, itself suggest that he had the intention to kill the deceased Rajinder. The weapon of offence i.e. phawadi being dangerous weapon was hit several times on the head of the deceased Rajinder. This in itself is sufficient to attribute the required intention. It has been submitted that the deceased remained 'unfit for statement' till his death and the postmortem report reveals that the death was due to extensive cerebral damage front blunt force impact to head and all the injuries were ante mortem. It has been submitted

that on the basis of testimony of eye witnesses and postmortem report, learned Trial Court has rightly convicted him for committing the offence punishable under section 302 IPC and the appeal may be dismissed..

12. We have considered the rival contentions and carefully gone through the record. The appellant has not disputed the occurrence taking place in the room where buffaloes were tethered. Rather he has claimed the complainant party to be the aggressor and he being hit by them. Admission of the appellant about sustaining injuries in the occurrence not only proves his presence but also involvement..

13. It has been stated in the complaint Ex.PW5/A by the complainant PW-5 Mr.Tek Chand that the issue started over the abuses being given by the children and while complaining about that, appellant Dalbir Singh also abused his brother deceased Rajinder. It is also undisputed that when the appellant who is their immediate neighbourer living just in front of their house, came to complain to his CrI.A. No.218/1999 *Page 6 of 10* brother, he was unarmed. The weapon of offence i.e. phawadi was also not procured by him after the quarrel started but it was lying at the place of occurrence and used by the appellant to hit the deceased Rajinder Singh. The postmortem report Ex.PW8/A reveals that injury No.2 i.e. stitched scalped lacerated wound 3 cm with scab separating abrasions in 3 X 0.8 cms present obliquely vertical in the right side frontal region and injury No.3 i.e. stitched scabbed lacerated wound 1.8 cms with scabbed separating abrasions around in 1.8 X 0.8 cm present in the upper middle front of forehead just to left of mid line proved fatal and same were opined to be caused by blunt force..

14. To invoke exception IV to Section 300 of the Code, the accused has to show that "(i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner."

15. The cause of quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is also not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in

a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner..

16. In 2008 (11) SCC 695 Shaikh Azim v. State of Maharashtra, the deceased and his son were present at their house alongwith other family members. They noticed some filth thrown in the backyard of their house from the side of the house of the accused and expressed their Crl.A. No.218/1999 *Page 7 of 10* displeasure in this regard. The family members of the accused also abused them. One of the accused holding a stick, the other holding an iron rod and the third accused holding the stick, came out of their house and gave blows on the head of the deceased. When his son rushed to his rescue, the accused also gave injuries to him with iron rod and sticks. The deceased succumbed to the injuries caused to him. It was held that the appropriate conviction of the appellant/accused would be under Section 304 Part I of the IPC..

17. To bring his case under Exception IV to Section 300 of the Code, it is not necessary that the accused must produce evidence or put up his case by giving suggestions to the prosecution witnesses. An accused can always point out to the circumstances in the prosecution evidence to show that he is entitled to the benefit under exception IV to Section 300 of the Code..

18. Reverting to the facts of the present case, from the statement of the complainant PW-5 Mr.Tek Chand, PW-6 Ms.Veero and PW-7 Mrs.Pushpa, who are close family members of the deceased, it is proved that the quarrel has taken place all of a sudden without premeditation which started with some altercation on the issue of hurling abuses. It was at that moment that when the parties quarreling reached the room where buffaloes were tethered and seeing a phawadi used for removal cow dung lying, that the appellant picked up the same and hit on the head and other parts of the body of the deceased. The statement of PW-5 Mr.Tek Chand and PW-6 Ms.Veero that while attacking them, the appellant hit from the side of the Crl.A. No.218/1999 *Page 8 of 10* handle is sufficient to prove that in the heat of passion, the appellant had hit on the head of the deceased with the phawadi but when his family members came to intervene and rescue him, without taking undue advantage of being armed with phawadi, just to manage his escape

from the spot, he hit them from the side of the handle of that phawadi. The act of the appellant in hitting on the head of the deceased Rajinder Singh with a phawadi is sufficient to attribute the knowledge that by his act, he was likely to cause his death but the intention to cause death cannot be attributed in the facts and circumstances of this case. It is also important to note that the incident took place in the night at 8:15 PM and the place of the incident is where buffaloes tethered, meaning thereby, it was a dark place and thus it cannot be said with certainty that the blows were intentionally directed towards the head..

19. In view of the foregoing discussions, the appeal is partially allowed. The appellant is convicted for the offence punishable under Section 304 Part II IPC..

20. As per nominal roll of the appellant, as on 09.02.2004, he had already remained in custody for 5 years and 21 days and when appellant was admitted to bail in the month of April, 2004, it is apparent that he had undergone imprisonment for 5 years and about 3 months..

21. The incident took place on 22.03.1991 i.e. nearly 21 years ago and except for the instant incident where the appellant had a brush with criminal law, his antecedents are otherwise without blemish. Thus, we are of the opinion that the appropriate sentence to be imposed upon the appellant for the offence committed by him is to sentence him for the CrI.A. No.218/1999 *Page 9 of 10* period he has already undergone imprisonment. Ordered accordingly..

22. Since the appellant is on bail, the bail bond and surety bond furnished are discharged..

23. Copy of the order be sent to the Superintendent, Central Jail, Tihar for record.
PRATIBHA RANI J. PRADEEP NANDRAJOG J. FEBRUARY 3, 2012 st CrI.A.
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