

(2014) 08 DEL CK 0328

In the Delhi High Court

Case No : Criminal Appeal Nos. 79 and 315 of 2012 and 772 of 2014

Abdul Wasim

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (2014) 4 JCC 2472

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Jatin Rajput, Avinder Singh, Inderjeet Sidhu and Priyanka Jaiswal, Advocate for the Appellant; Varun Goswami, APP and Insp. Ashok Kumar, P.S. I.P. Estate, Advocate for the Respondent

Judgement

Pradeep Nandrajog, J.

Crl.M.A. No. 10032/2014 in Crl. A. No. 772/2014

Delay of 1025 days in filing Crl.A. No. 772/2014 is condoned for the reason appellant thereof has been convicted for an offence punishable under Section 302/ 34 IPC and has been sentenced to undergo imprisonment for life.

Crl. M.B. No. 1077/2014 in Crl.A. No. 315/2012, Crl. M.B. No. 9945/2014 in Crl.A. No. 772/2014

Since learned counsel for the parties in all the three appeals and learned counsel for the State say that the appeals may be heard today itself, which we do, the two applications which seek suspension of sentence pending final hearing of the two appeals are dismissed.

Crl.A. Nos. 79/2012, 315/2012 & 772/2014

1. Abdul Wasim appellant in Crl.A. No. 79/2012 has been produced in Court today by the Superintendent Central Jail Tihar pursuant to the production warrants issued in terms of the order dated August 19, 2014. His presence was

required in Court because counsel engaged by him was not appearing on the dates fixed. On August 19, 2014, applications seeking suspension of sentence filed by co-convicts in CrI.A. No. 315/2012 and CrI.A. No. 772/2014 were listed and after hearing learned counsel for the two appellants on said date we had thought it proper to dispose of the appeals themselves, but were handicapped on account of counsel for Abdul Wasim not appearing. Since counsel for Abdul Wasim appears today, and along with co-counsel in the other two connected appeals has argued on behalf of Abdul Wasim, we proceed to judgment.

2. The success or failure would depend, as learned counsel for the appellants and the State concede, on an appreciation of the testimony of Nadeem PW-1 and Mohd. Salim PW-2, the two stated eye witnesses to the incident in which deceased Mohd. Wasim, son of Mohd. Salim and brother of Nadeem died.

3. The site plan to scale Ex.PW-19/A would guide us that Mohd. Wasim was stabbed at the crossing of Mata Sunderi Road and Meer Dard Road.

4. DD 27, Ex.PW-12/A would evidence that information pertaining to the crime was conveyed by the police control room to PS IP Estate at 5:05 in the evening of September 22, 2009 when an unknown caller rang up the number 100 to inform of a person being stabbed on the crossing of Mata Sunderi Road and Meer Dard Road.

5. Testimony of ASI Yashpal Singh PW-12 tells us that he was entrusted with a copy of DD No. 27 at 5:10 in the evening and accompanied by HC Naresh PW-11 he reached the crossing only to learn that the injured had been taken to Lok Nayak Jai Prakash Hospital. The testimony of Insp.Naresh Khanka PW-20 tells us that he was patrolling in the area when through wireless he received a message in the evening of September 22, 2009 that a person was lying unconscious at Meer Dard Road crossing and he too reached the place where he met ASI Yashpal Singh and HC Naresh. The testimony of ASI Yashpal Singh, HC Naresh and Insp.Naresh Khanka tell us that leaving behind HC Naresh at the spot, ASI Yashpal Singh and Insp.Naresh Khanka proceeded to Lok Nayak Jai Prakash Hospital where they learnt that a boy named Wasim was admitted in the casualty at 5:12 PM as recorded in the MLC Ex.PW-5/A of Wasim by Dr. Hitkishore and after primary medicine was referred to the emergency surgery department of the hospital. Mohd. Nadeem son of Mohd. Salim, as noted in the MLC was the person who had brought Wasim to the casualty. They learnt that Wasim had died by the time he was brought in the emergency surgery wing of the hospital. The testimony of ASI Yashpal and Insp.Naresh Khanka further tells us that Nadeem's statement Ex.PW-1/A was recorded by Insp.Naresh Khanka. He made the endorsement Ex.PW-20/A beneath the statement and dispatched the same from the hospital at 7:00 PM for FIR Ex.PW-16/B to be registered for an offence punishable under Section 302/ 34 IPC.

6. None of the witnesses have been cross examined with respect to the time 5:05 PM noted in DD No. 27, 5:12 PM noted in the MLC and 7:00 PM on

Ex.PW-20/A. No witness has been cross examined on the claim of ASI Yashpal Singh and Insp. Naresh Khanka that Mohd. Nadeem met them at the hospital. Mohd. Nadeem's claim that he took his brother to the hospital has not been challenged.

7. Thus, there is no scope for any argument that Mohd. Nadeem was planted. From the fact that the crime was reported to the police control room at about 5:00 PM and by 5:12 PM Mohd. Nadeem had removed his brother to Lok Nayak Jai Prakash Hospital, which is hardly 2 kilometers from the place of the crime the only inference possible is that Nadeem was present at the spot where his brother suffered the injuries.

8. We look to what Nadeem said to Insp.Naresh Khanka and as recorded in his statement Ex.PW-1/A. The statement is in vernacular and loosely translated it reads:-

"I reside at C-4A/558 LNJP Colony, Ranjeet Singh Marg. I am a painter by profession. Today I accompanied my father to purchase house-hold goods and when at around 5:00-PM we reached the crossing of Mata Sunderi Road and - Meer Dard Road, from the side of Kale Khan Masjid adjoining the old grave yard, we saw my brother Mohd. Wasim running on the road chased by Bundul, Chela @ Vikrant and Majnu who were residents of the Basti Takiya Kale Khan and were known to him, because his brother had a fight with them in the past, (i) Chela @ Vikrant managed to catch my brother, (ii) He took out a knife from his pocket, (iii) He handed over the knife to Bundul and exhorted to finish off his brother, (iv) Bundul stabbed his brother, who in spite of receiving injuries continued to run, (v) Majnu kicked and gave fist blows to his brother. He and his father ran to save Mohd. Wasim who fell on the road. The three assailants ran away. His father flagged down a three wheeler scooter and both of them took the injured to the hospital."

(NB: We have put serial No. (i) to (v) and underline five sentences in the statement of Mohd. Nadeem for facility of reference and discussion hereinafter.)

9. Examined as PW-1 Nadeem, albeit with the usual change of expressions and different choice of words, which is natural when a person recapitulates an event after a few months, has deposed in sync with his narrative made soon after the incident to Insp.Naresh Khanka. His father Mohd. Salim PW-2 has also deposed in sync.

10. Learned counsel for the appellants do not dispute that the two witnesses have successfully withstood the test of cross-examination.

11. Thus, the incident seen by Nadeem and Mohd. Salim, contours whereof are in Nadeem's statement Ex.PW-1/A is established.

12. A word of explanation. Chela @ Vikrant - is Vikrant the appellant of Crl.A. No. 772/2014, Bundul referred to in Nadeem's statement Ex.PW-1/A is Nuruddin - the appellant of Crl.A. No. 315/2012, Majnu is Abdul Wasim - the appellant of

13. From the statement Ex.PW-1/A of Nadeem, which found its reflection in his and his father's, testimony in Court, the following emerges:-

(a) Deceased Mohd. Wasim was running and was being chased by Vikrant, Nuruddin and Abdul Wasim when Nadeem and his father Mohd. Salim captured the incident.

(b) During the chase neither pursuer was having a knife in his hand.

(c) Vikrant was the first one to out-pace Mohd. Wasim and caught him.

(d) Thereafter Vikrant took out a knife and gave it to Nuruddin, exhorting simultaneously that Mohd. Wasim should be finished.

(e) Handed over the knife and excited by the exhortation, Nuruddin stabbed Mohd. Wasim.

(f) In spite of being stabbed Mohd. Wasim managed to break free but could hardly run a yard or two before Abdul Wasim could catch up to him and inflict fist blows and kicked him.

14. Now, what triggered the chase is not known. It could be a verbal altercation. It could be that Vikrant, Nuruddin and Abdul Wasim saw Mohd. Wasim and because of past animosity with him; decided on the spur of the moment to teach him a lesson. Mohd. Wasim ran for his life. Vikrant, Nuruddin and Abdul Wasim in hot pursuit.

15. But, from the fact that when the chase was on, neither accused had a knife in his hand and that when Vikrant managed to catch hold of Mohd. Wasim he took out the knife from his pant pocket, we get a clue : it cannot be said that while chasing the deceased the three accused had any definite intention to cause injuries with a knife to the deceased, much less to kill him. In the absence of any other evidence, from the mere fact that the three accused chased the deceased and during the chase neither accused had a knife in the hand, no common intention can be attributed to either accused to cause injury to the deceased with a knife or to kill him.

16. It is true that a common intention can spring at the spur of the moment, but for which percipient facts must be seen by the Courts, to infer one.

17. The events after Vikrant managed to catch Mohd. Wasim are, he taking out a knife and handing over the same to Nuruddin exhorting that Mohd. Wasim should be finished off. Nuruddin to whom the knife was handed over by Vikrant inflicted the stab wounds. As the injured Mohd. Wasim made a last attempt to run free, Abdul Wasim kicked him and inflicted fist blows.

18. The common intention which has surfaced is only that of Nuruddin and Vikrant. The offending act constituting the crime of homicide was committed by the joint venture of Nuruddin and Vikrant in which Mohd. Wasim had no role. It is

only thereafter his intervention commenced when he kicked and inflicted fist blows on the deceased.

19. From the evidence on record it would be difficult to infer any common intention attributable to Abdul Wasim. As regards Nuruddin and Vikrant, from their acts and words spoken, a common intention springing at the spur of the moment can be inferred. The common intention being to inflict injuries on the deceased with the knife handed over by Vikrant to Nuruddin.

20. The post mortem report Ex.PW-7/A of Mohd. Wasim shows that he had one incised wound on the right side of the neck and three stab wounds, two on the right side of the chest and one in the abdomen. The two stab wounds on the chest traversed the thoracic cavity and the third stab wound traversed the peritoneal cavity, perforating the mesenteric border of jejunum and root of mesentery. The intestines came protruding out. It was the third stab injury which proved fatal due to hemorrhagic shock consequent to excessive sudden loss of blood. It was opined as being sufficient in the ordinary course to cause death.

21. Nuruddin and Vikrant have to be held liable for their acts. Stabbing a person twice in the chest and once in the stomach with a knife having blade length 10.5 cm and a handle of 13.5 cm (which is as per sketch of the knife Ex.PW-10/E got recovered by Nuruddin and was opined to be capable of inflicting the injuries on the person of the deceased) requires intention to be imputed to those who caused the injury to inflict such injuries as they knew would result in the death of the injured. Their acts constitute the offence of murder.

22. As regards Abdul Wasim he cannot be fastened with liability under Section 34 IPC for the acts of Nuruddin and Vikrant. He having inflicted fist blows and kicks on the deceased after the deceased was stabbed would render him liable to be convicted for the offence punishable under Section 323 IPC.

23. We dismiss CrI.A. No. 315/2012 filed by Nuruddin and CrI.A. No. 772/2014 filed by Vikrant.

24. We dispose of CrI.A. No. 79/2012 filed by Abdul Wasim setting aside his conviction for the offence of murdering Mohd. Wasim. We set aside the sentence imposed upon him to undergo imprisonment for life. We hold him guilty of causing simple injuries to Mohd. Wasim, an offence punishable under Section 323 IPC for which the maximum sentence can be imprisonment for one year. We note that Abdul Wasim is in custody for more than three years and thus we direct that unless wanted in any other case he should be set free forthwith. TCR be returned.