

(2014) 11 DEL CK 0222

In the Delhi High Court

Case No : Criminal Appeal Nos. 307 and 739/2014

Anil

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 304II

Citation : (2014) 11 DEL CK 0222

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

Bench : Division Bench

Advocate : Mukesh Birla, Advocate for the Appellant; Aashaa Tiwari, APP and Ram Singh, Insp, Advocate for the Respondent

Judgement

Pradeep Nandrajog, J.—Involvement of the local police leading to the registration of the FIR Ex.PW-2/A commenced when DD 31A was recorded at PS Neb Sarai at 12:55 in the middle of the night on November 16, 2009 that at Jhuggi No. D-144, J.J.Camp a fight was taking place.

2. Being handed over a copy of the DD entry, HC Umesh PW-5, accompanied by Ct.Akhilesh (not examined) left the police station and when he reached the spot he found that the jhuggi No. D-143 (not 144) was locked. He was told by people in the neighbourhood that there was a person inside. He informed Insp.Ram Singh PW-11 who reached the spot (D-143) and broke the lock and found inside dead body of a male whose name was disclosed as Vinod by the inhabitants of the slum cluster who had gathered at the spot. He summoned the crime team which took photographs of the scene of the crime. Seizing a mobile phone Ex.P-4 and a charger Ex.P-5 from inside the room, Insp.Ram Singh seized a small wooden plank Ex.P-1, the lock Ex.P-2 and wrote the endorsement Ex.PW-11/D beneath a copy of DD No. 31A. The body was seized and sent for post-mortem before the tehrir was dispatched. The tehrir was dispatched, as written thereon by Insp.Ram Singh, at 1:50 PM i.e. just in the early hours of the afternoon on

November 16, 2009. The FIR was registered at 2:35 noon and entry made to said effect in the daily diary register vide DD No. 8A.

3. From the facts noted above it is apparent that information of the crime was received at the police station 55 minutes past midnight, when the day of November 16, 2009 had commenced. The police remained at the place of the crime till 1 hour and 50 minutes past noon of the same day. Assuming that Insp.Ram Singh reached the jhuggi somewhere around 2:00 in the middle of the night, he remained at the site for about 12 hours, and it assumes importance that during his stay for 12 hours at the spot nobody volunteered any information to him and this explains the writing on Ex.PW- 11/A that no clue was available with him as to who was or were the suspects.

4. The dead body was seized and sent for post-mortem to the mortuary of AIIMS where Dr.Manish Goyal conducted the post-mortem and authored the report Ex.PW-10/A, proved at the trial by Dr.T.Millo, PW-10 who claimed to have worked with Dr.Manish Goyal and familiar with his handwriting and signatures. The post-mortem report notes the following 13 ante-mortem injuries on the body of Vinod:-

- "1. Contused abrasion of size cm x 1.5 cm over forehead in the right side.
2. Contused abrasion of size 3 cm x 1.5 cm over malar prominence of right cheek.
3. Laceration of size 4 x 1 cm skin deep over right eye blow.
4. Linear abrasion of size 2 x .2 cm over left lower chest.
5. Multiple contused abrasions in an area of size 7.5 cm x 5 cm over left upper back.
6. Patterned contused abrasion of size 10.5 cm x 2 cm (rail road pattern) present over right back.
7. Multiple contusion of various sizes present all over the back and on dissection there are diffused and extensive haemotoma seen.
8. Multiple contusion of various sizes present over back of left arm, left forearm and dorsum of left hand and on dissection there are diffused and extensive haemotoma seen.
9. Multiple contusion of various sizes present over back of right arm and forearm and on dissection there are defused and extensive haemotoma seen.
10. Contused abrasion of size 6 cm x 4.5 cm over outer aspect of left upper thigh.
11. Contused abrasion of size 6 cm x 4.5 cm over left buttock.
12. Contused abrasion of size 1.5 x 5 cm over front of middle one third of left leg.
13. Contusion of size 8.5 cm x 5.5. cm over outer aspect of left thigh and on dissection there are diffuse and extensive haemotoma seen."

5. Two days thereafter, Rakesh PW-1 and Prem Prabha PW-3 came forward, claiming to be eye witnesses. Rakesh is the nephew of the deceased named Vinod. He is the son of Vinod's younger brother. Prem Prabha is the sister-in-law of Vinod the deceased. The two lived in the same slum cluster in Jhuggi No. D-144, in fact the jhuggi adjoining the jhuggi where Vinod's dead body was found. They informed that a day prior, when Vinod's body was seized, a quarrel had taken place between Ashok and Vinod concerning the mobile phone Ex.P-4 which belonged to Ashok who refused to return the phone. Ashok left and returned with Sonu, Anil, Rajesh and one "R", a juvenile, all of whom were drunk, and all gave a beating to Vinod using wooden sticks. They dragged Vinod down the street and kept on beating him. They poured cold water on him. A neighbour Naresh (not examined) intervened and offered Rs. 5,000/- to Vinod in lieu of the mobile phone but Vinod demanded Rs. 10,000/-. After beating Ashok for a long time they put him inside the jhuggi and after bolting the door of the jhuggi left but before that put a lock on the jhuggi. The two claimed that they did not volunteer the information in time because not only the four accused but even one Shyam, the elder brother of one Ravi had threatened them with dire consequences if they disclosed the true facts to the police.

6. The usual recoveries, in this case a plastic pipe Ex.P-6 are claimed by the prosecution to have been recovered pursuant to the disclosure statements made by the accused.

7. "R" being a juvenile did not face trial before the Court of Sessions. Ashok, Rajesh, Anil and Sonu were sent for trial, charged with the offence of murdering the deceased Vinod.

8. Rakesh PW-1 and Prem Prabha PW-3 have fully supported the case of the prosecution and have deposed facts which we have noted in paragraph 5 above which they had disclosed to the Investigating Officer and as recorded in their statements under Section 161 Cr.P.C.

9. Believing the two and holding that the attack was murderous i.e. with the intention to kill Vinod, vide impugned judgment dated December 19, 2013 Ashok, Rajesh, Anil and Sonu have been convicted for the offence of murdering Vinod. Vide order on sentence dated January 27, 2014 the four have been sentenced to undergo imprisonment for life and pay fine in sum of Rs. 10,000/-, in default of payment of fine to undergo simple imprisonment for two months.

10. Learned counsel for the four convicted accused, three of whom : Ashok, Rajesh and Sonu have jointly filed CrI. A.No. 739/2014 and fourth named Anil has filed CrI. A.No. 307/2014 has urged two points. Firstly that there is a delay of two days in the two witnesses volunteering to a claim of being eye witnesses and there being a three days" delay from the date when the incident as per the two took place before they volunteered to tell the truth to the police. According to learned counsel the deceased was a near relation of the two and had they seen the incident as claimed by them, they would have immediately rung up the police

to at least inform that five miscreants were beating Vinod so that Vinod could be saved. Counsel urges that from the fact that the two gained by the death of Vinod could be their motive to kill Vinod and falsely implicate the appellants and the juvenile co-accused "R". The gain being the jhuggi in which Vinod lived. The second argument is that even if the testimony of the two is to be believed, it would be apparent from the post-mortem report of the deceased that he was simply beaten and thus the intention would be to teach Vinod a lesson of his life, but not kill him, for not returning the mobile phone to Ashok. Learned counsel highlights that neither in the post-mortem report Ex.PW-10/A nor in the testimony of Dr.T.Millo is there any opinion that the injuries, individually or collectively were sufficient in the ordinary course of nature to cause death.

11. It is true that neither Rakesh PW-1 nor Prem Prabha PW-3 came forward as was expected of relations to inform the police when Vinod was beaten or when the police came to the slum cluster. As per the testimony of the two, the early night of November 15, 2009 was when Vinod was beaten. The post-mortem report Ex.PW-10/A records that the post-mortem commenced at 12:45 in the noon of November 16, 2009 and was over by 2:15 PM. It records that the likely time of death of Vinod was 36 hours prior, meaning thereby that Vinod died around 10:00 PM to 12:00 PM on November 15, 2009. This time conforms to the time disclosed by the two witnesses when they saw Vinod being beaten by the accused : as per them Vinod was beaten at around 9:00 PM on November 15, 2009 and thereafter he was locked inside the jhuggi.

12. Now, from the injuries on Vinod it is apparent that he was beaten black and blue and he would have certainly screamed for his life. That nobody in the jhuggi cluster came forward to save him and in the least informed the police shows the terror which was struck in the minds of those who were around. At 9:00 PM one would expect jhuggi dwellers to be in their jhuggis and thus Rakesh and Prem Prabha would be expected to be in their jhuggi which was adjoining the jhuggi of Vinod. They are natural witnesses. Their presence is natural. We see no reason to disbelieve the two that due to fear they neither informed the police when the crime was being committed nor informed the police after the police reached the place of the crime after more than 24 hours of the crime being committed. The argument that they had a motive to falsely implicate the accused because they could be the ones who killed the deceased and thereby gained a jhuggi is worthy of no credence because of two reasons. Firstly the injuries on dead body of Vinod would evince that the assault was the handy work of more than two persons, for if a lady (Prem Prabha) and a young boy (Rakesh) were the assailants, Vinod could have easily saved himself. The injuries on Vinod have been caused by a blunt soft object, and we note that as per the prosecution a plastic pipe Ex.P-6 was used to beat him, apart from being beaten by fist and kicked.

13. That the accused came armed with a plastic pipe is a fact of relevance qua the intention. It obviously was to give a sound beating to Vinod but not to kill him.

14. Except for the argument based on the conduct of the eye witness, nothing being shown to us to discredit the two, we reject the first argument advanced that Rakesh and Prem Prabha were falsely claiming to be eye witnesses. We hold that the two are trustworthy.

15. There is merit in the second contention advanced. The use of the weapon of offence Ex.P-6 : a plastic pipe, has a story to tell of the intention of the accused. We have already written the story which the pipe tells : to give a sound thrashing to Vinod.

16. The post-mortem report shows that Vinod was beaten with the pipe all over his body and was kicked and boxed. No particular part of the body has been targeted, much less a vital part, except one blow directed towards the forehead, external manifestation whereof is injury No. 1 and the internal being a defused sub-scalp haemotoma.

17. The learned Trial Judge has overlooked said evidence and has simply gone by the fact that the deceased having died, it would be a case of murder, overlooking the fact that every homicidal death need not be murder. It may be culpable homicide not amounting to murder as well.

18. The appeal is partially allowed. The conviction of the appellants for the offence of murder is converted to one of having committed an offence of culpable homicide not amounting to murder, for the reason knowledge has to be attributed to the appellants that by their act of recklessly beating Vinod it was likely to result in his death. We convict the four appellants for the offence punishable under Section 304-II IPC. We note that the appellants are in custody since November 18, 2009. As of November 18, 2014 they would have undergone a sentence of five years. Their nominal roll shows that they have earned remission of about 50 days. We thus sentence them to undergo imprisonment for the period already undergone and pay fine in sum of Rs. 2,000/- each; in default of payment of fine to undergo simple imprisonment for one month.

19. Five copies of the decision shall be sent to the Superintendent Central Jail Tihar, one each to be supplied to the four appellants and the fifth for the jail record.

20. The appellants shall be released forthwith.

21. TCR be returned.