
(2009) 04 DEL CK 0217
In the Delhi High Court
Case No : Criminal Appeal No. 482 of 2008

Anil Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 24, 8
Penal Code, 1860 (IPC) — Section 299, 300, 302, 304

Citation : (2010) CriLJ 1806

Hon'ble Judges : Pradeep Nandrajog, J; Aruna Suresh, J

Bench : Division Bench

Advocate : Anu Narula, for the Appellant; Pawan Sharma, for the Respondent

Judgement

Pradeep Nandrajog, J.—As per the case of the prosecution, two boys of Sarvodaya Bal Vidyalaya, Madipur, Delhi; namely Anil (accused) and Ujala (deceased), students in the afternoon shift of the school, had a fight during the recess hours at around 4:15 PM - 4:30 PM on 27.5.2005. Having a verbal duel, both reached House No. 446 Pocket-3 Paschim Puri New Delhi situated a little away from the school. A carpenter was working in front of the aforesaid house. All of a sudden, Anil picked up a "rapi" (chisel) and caused multiple stab injuries on Ujala and fled, but was chased by some students of the school. Since the students were shouting "pakdo-pakdo"; Ranjan PW-3 and Rajesh PW-4 who were also students of the same school got attracted by the noise and saw the accused running while being chased by other students. They joined the chase and succeeded in apprehending Anil, who was dutifully produced before the Vice Principal of the school, before whom, Anil made a confession that he had inflicted the injuries on the deceased.

2. The police was informed of the incident at 4:10 PM, which information was noted at the police station vide DD No. 32 Ex.PW-19/A by HC Sudesh PW-19. A copy of the DD entry was handed over to Inspector Jarnail Singh PW-21, who

reached the spot accompanied by Const. Rajesh PW-17. Since a PCR Van had arrived at the spot and had removed the injured to Maharaja Agrasen Hospital, Inspector Jarnail Singh went to the hospital and collected the MLC Ex.PW-16/A of Ujala, which recorded that the injured was brought dead to the hospital. Inspector Jarnail Singh drew out a tehrir by making an endorsement Ex.PW-21/A on the aforesaid DD No. 32 and handed it over to Const. Rajesh PW-17 for an FIR to be registered.

3. After the registration of the FIR, the investigation of the case was handed over to Inspector Lakhinder Singh PW-18, who directly reached the hospital from the police station, where he was handed over a pullanda containing the clothes of the deceased along with one black purse containing Rs 10/- and one I-card of the deceased which he seized vide seizure memo Ex.PW-17/A. The body was sent to Sanjay Gandhi Memorial Hospital Mangolpuri for post-mortem.

4. Thereafter, Inspector Lakhinder Singh PW-18 reached the place of the incident in front of House No. 446 Pocket-3, Paschim Puri and prepared a rough site plan Ex.PW- 18/B. He summoned the crime team to the place of incident and HC Ram Niwas PW-10, of the crime team, took the photographs Ex.PW-10/1 to Ex.PW-10/10 of the place of incident.

5. Inspector Lakhinder Singh learnt that the accused had been taken to Sarvodaya Bal Vidyalaya, Madipur. He went to the school and found the accused sitting in front of the principal's office wearing blood stained shoes. The accused was arrested. The pair of shoes Ex.P1 were seized vide seizure memo Ex.PW-5/C. He interrogated the accused and recorded his disclosure statement Ex.PW-18/D as per which, inter alia, the accused informed that he can lead the police to the place where he had thrown the rapi. Thereafter the accused led Inspector Lakhinder Singh to House No. 447 Pocket-3, Paschim Puri and pointed out the place where he threw the rapi Ex.P-2 which was recovered from the said spot and seized vide seizure memo Ex.PW-18/F. A sketch Ex.PW-18/E of the rapi was prepared by Inspector Lakhinder Singh.

6. The statements of Ranjan PW-3 and Rajesh PW-4 as also of Yuvraj Lal PW-5, the Vice Principal of the school were recorded u/s 161 Cr.P.C. Vijay Pal Singh PW-1, the carpenter whose rapi was used as the weapon also made a statement u/s 161 Cr.P.C. As per the statements of PW-3, PW-4 and PW-5, the appellant was the assailant of the deceased. As per the statement of the Vice Principal of the school, the appellant had made an extra-judicial confession to him.

7. The post-mortem of the deceased was conducted on 28.7.2005 by Dr. Samir Pandit PW-11 at Sanjay Gandhi Memorial Hospital. The post-mortem report Ex.PW-11/A records the following injuries on the person of the deceased:

1. Incised cut mark left side of the upper chest and interiorly 4cm below clavicle and 5cm medial to anterior axillary fold, transversely placed 2.3cm X 5mm subcutaneous tissues deep.

2. Incised cut mark left side of chest vertically placed 6cm from mid line and 4 cm below and medial left nipple, 2.3cm X 0.9 cm size with both angles sharp is cavity deep.
3. Incised cut mark left iliac fosse of abdomen 9cm from midline and 1cm above anterior, superior iliac spine obliquely placed 2.5cm X 1.5cm size cavity deep with intestinal loops prolapsed out and sharp angles.
4. Incised cut mark right side of back of chest 9.5cm from mid line obliquely placed over lower angle of scapula 2.3cm X 0.9cm size is bone deep with sharp angles.
5. Incised cut mark right side of lumbar spine 6cm from mid line obliquely placed 1.8cm X 0.5cm is muscle deep.
6. Incised cut mark right side back of trunk over iliac crest 10cm from mid line, 2.3cm X 6mm skin deep with be welling of lower edge.
7. Incised cut mark left side of sacral region transversely placed 2cm from mid line, 2.5cm X 1cm going into lumbo sacral joints space.
8. Incised cut mark left buttock in upper medial quadrant 6cm below injury No. 7, 2.3 X 0.9cm size muscle deep. Chest: on exposing injury No. 2 there is cut on the 6th rib costochondral junction further going into chest cavity which contains about 2 ltrs. of liquid and clotted blood, further passing through pericardium to right side of heart over right ventricular wall and passing into the cavity of right ventricle.
8. The cause of death was recorded to be hemorrhagic shock as a result of injury to heart. Injury No. 2 and 3 along with their underlying injuries were stated to be sufficient to cause the death in the ordinary course of nature individually as well as collectively. After the post mortem, the blood sample of the deceased taken on a piece of gauze was handed over to Inspector Jarnail Singh.
9. The clothes of the deceased, the shoes of the accused and the rapi were sent to FSL Rohini through Const. Rajesh PW-19. As per the FSL report Ex.PX-1 human blood was detected on the shoes Ex.P-1 of the accused as well as on the weapon of offence Rapi Ex.P-2 but the blood group thereon could not be detected.
10. A charge sheet was filed against the accused for having murdered Ujala.
11. At the trial, Vijay Pal Sharma PW-1, deposed that on the date of incident i.e 27.5.2005 he was working as a carpenter in House No. 446, Pocket-3, Paschim Puri. At about 4:15 PM while he was busy with his work, two boys who were quarreling came there. Several school children were also present. One out of the two boys who were quarreling, lifted his tool and attacked the other boy with it. However, he could not identify who that boy was.
12. In his cross-examination, he stated that the accused was apprehended by the police the next day when he also got the weapon of offence recovered.

13. Rajan PW-3, deposed that he knew the accused as well as the deceased, since they were students of his school. On 27.7.2005 when he and Rajesh were taking lunch in a shop outside the school, the accused came running and the students had raised an alarm "pakdo pakdo". He and Rajesh apprehended the accused and handed him over to the principal. Relevant would it be to note that on being declared hostile and cross examined by the learned APP, PW-3 denied having told the police what was recorded at point A to A, point B to B, point C to C and point D to D in the statement Ex.PW- 3/A i.e. the statement recorded by the police u/s 161 Cr.P.C. It be noted that in said statements, it finds mention that PW-3 had seen the accused assault the deceased.

14. On being cross examined by the counsel for the accused, PW-3 denied that he and Rajesh did not apprehend the accused. He also denied the suggestion that the accused was not handed over to the principal of the school.

15. Rajesh PW-4, deposed that he knew the accused and the deceased, who were students of the same school. On 27.7.2005 he and Rajan were taking lunch outside the school, when he saw the accused running and being chased by students. That he and Rajan apprehended the accused and handed him over to the principal. Relevant would it be to note that even Rajesh was declared hostile and was confronted with statements recorded by the police as made by him u/s 161 Cr.P.C. to the effect that he had witnessed the accused attack the deceased, which statements were denied by Rajesh as having been made by him to the police. On being cross examined by the counsel for the accused, Rajesh denied that he and Rajan did not apprehend the accused. He denied the suggestion put to him that the accused was not handed over to the principal of the school.

16. Yuvraj Lal PW-5, the Vice-Principal of Sarvodaya Bal Vidyalaya Madipur, deposed that on 27.7.2005 when he was in the school, at around 4:00 PM, Rajan and Rajesh, students of his school, came to his office along with the accused. They told him that the accused had stabbed Ujala, a student of the school. That he asked the accused regarding the incident, and the accused confessed having stabbed Ujala. He saw blood stains on the shoes of the accused and informed the police post Madipur. After some time, the police reached and he handed over the accused to the police, who was arrested vide arrest memo Ex.PW-5/B, which was witnessed by him. The accused was interrogated by the police but he could not hear the same as he was sitting at a distance. The shoes Ex.P-1 were seized by the police in his presence vide seizure memo Ex.PW-5/C. On being cross examined, PW-5 admitted that the accused was perplexed at the time he i.e. the witness questioned the accused and that he i.e. the accused became more perplexed when he told the accused that he would hand him over to the police.

17. Inspector Lakhinder Singh PW-18, deposed facts pertaining to the police receiving information about the crime and he along with Const. Rajesh leaving for the place where the crime was committed and therefrom to Maharaja Agrasen Hospital where they collected the MLC and the clothes of the deceased. He deposed of having apprehended the accused who was in the custody of the Vice-

Principal of the school and having interrogated the accused. He deposed that the disclosure statement of the accused Ex.PW-18/D was recorded by him. He deposed that the site plan Ex.PW-18/B was drawn by him. He deposed that he lifted blood stained earth, blood sample and earth from the site and drew up the seizure memo Ex.PW-18/C. He deposed that the accused led him to the place of occurrence and pointed out the spot, behind a grill, wherefrom the rapi Ex.P-2 was recovered and seized vide seizure memo Ex.PW-18/F and that he prepared the sketch Ex.PW-18/E of the rapi.

18. Dr. Sameer Pandit PW-11, deposed that on 28.7.2005 he had conducted the autopsy of Ujala, and had noted his findings on the post-mortem report Ex.PW-11/A. On being cross examined, he stated: "only injuries No. 2, 3 and 4 could be possible by a sharp double edged weapon".

19. Vide impugned judgment and order dated 17.12.2007, the learned Trial Judge has held that the appellant was guilty of murdering the deceased. Noting that no witness of the prosecution has directly indicted the accused, learned Trial Judge has held that the testimony of PW-1 establishes that two boys had quarreled near the place PW-1 was carrying on his work as a carpenter and one out of the two had picked up his tool to attack the other. With reference to the testimony of PW-3 and PW-4, the learned Trial Judge has held that the same established that the accused was being chased by some students of the school who were yelling that the accused be apprehended and that the two apprehended the accused; meaning thereby, the factum of the accused attempting to flee from the spot and being chased by a crowd of students required an inference to be drawn qua his guilt. The fact that the shoes worn by the accused were found to be stained with blood and the report of the serologist was that the blood was of human origin and there being no explanation by the accused as to how his shoes got stained with blood, learned Trial Judge has found another link in the chain of circumstances against the accused. It has also been held that the rapi was recovered pursuant to the disclosure statement made by the accused and was recovered from a place which was pointed out by the accused. The fact that the rapi was opined to be stained with human blood has also been held to be another event linking the chain of circumstances against the accused. Lastly, the learned Trial Judge has held that the testimony of PW-5 establishes that the accused had made an extra judicial confession.

20. At the hearing of the appeal, Ms. Anu Narula learned Counsel for the appellant, urged that the extra judicial confession made by the appellant was under threat and hence was inadmissible in evidence. Counsel urged that from the testimony of PW-1 it was apparent that the appellant was apprehended the next day and the rapi was produced by him on the next day which belied the testimony of the other witnesses that the appellant was arrested on the day of the incident itself and the rapi was recovered on the same day. Counsel urged that only injuries 2, 3 and 4 were opined to be possible by a sharp double edged weapon (as per the testimony of PW-11); hence, it was urged that obviously two

weapons of offence were used, meaning thereby, there were two assailants. Lastly, counsel urged that it was not a case of murder but of culpable homicide not amounting to murder.

21. Pertaining to the extra judicial confession made by the accused to PW-5, the Vice-Principal of the school, we note that on being cross examined, PW-5 responded:

It is correct that the accused was perplexed at that time at the time I interrogated him. He was perplexed at the time I told him that I would report the matter to the police.

22. Learned Counsel for the State had urged that it is apparent that the accused was questioned by the Vice-Principal and when so questioned he made an extra judicial confession and it was only thereafter the Vice-Principal threatened to hand him over to the police. Thus, learned Counsel for the State urged that the extra judicial confession was without any threat or fear.

23. Deposition by witnesses cannot be treated as mathematical formula and broken into sub-components i.e. as in Algebra, complex equations for resolution thereof, being broken into linear equations. We agree with the submission made by the learned Counsel for the appellant that it appears that the appellant was made to confess to the crime by the Vice-Principal under threat of being handed over to the police. The words "proceeding from a person in authority" in Section 24 of the Evidence Act are broad enough to include any person having dominion over the accused. A Vice-Principal of a school would be a person in authority vis-a-vis student. We thus exclude the extra judicial confession made by the appellant. But, the deposition of the Vice-Principal of the school that when the appellant was brought before him, he was perplexed and that he became more perplexed when he told him that the police would be summoned is admissible in evidence pertaining to the conduct of the accused; admissibility being by virtue of Section 8 of the Evidence Act.

24. The plea of learned Counsel that the testimony of PW-1 establish that the appellant was apprehended the next day, requires not much consideration by us, for the reason, it is obviously a case of PW-1, a man of humble origin (a petty carpenter by profession), forgetting the dates and events. We say so for the reason, the Malkhana register, extracts whereof were proved as Ex.PW-13/A, records vide serial No. 3139, that the blood stained pair of shoes; the rapi and the clothes of the deceased as also his blood sample on a gauze were deposited in the Malkhana on 27.7.2005 i.e. on the very day when the crime took place.

25. It is thus apparent that the rapi was recovered on 27.7.2005; for the reason its entry in the malkhana register could not have been made on 27.7.2005 unless the same had been seized by the investigating officer and handed over to the duty officer in charge of the malkhana for safe custody in the malkhana. It is obvious that the memory of PW-1 has failed him.

26. The plea that since only injuries 2, 3 and 4 were opined to be the result of the use of a double edged weapon require an inference to be drawn that two weapons of offence were used and hence it was a case of two persons assaulting the deceased; appears to have been made by learned Counsel without appreciating what a rapi is and without perusing the sketch Ex.PW-18/E.

27. The rapi, a chisel, recovered in the instant case, as per Ex.PW-18/E, has a handle 11.7 cm long and a blade 8.1 cm in length. The head of the chisel is 2.4 cm broad. He who has seen a chisel, would understand that the head of a chisel is sharpened as a blade and even the edges are sharp covering a little distance of the blade i.e. the head of the blade is tempered by heating and then cooling and at each stage, grinded to sharpen the same, so that wood can be shaved. We have noted the injuries on the person of the deceased in para 7 above. Save and except injury No. 2, 3 and 4 which have penetrated deep into the body, all other injuries are either skin deep or subcutaneously deep; depth ranging from 0.5 cm to 0.9 cm. Injuries 5 to 8 are on the rear of the body, evidencing that they were inflicted when the victim was attempting to flee. Injury No. 2 and 3 are on the chest. The nature of injuries suggest that after the injured received the blows on the chest, he attempted to flee and the assailant persisted with the assault; injury No. 4 was struck on the back side of the chest followed by the other injuries; all of which are on the rear of the body. These injuries which have not penetrated much deep, can possibly be caused when the rapi was struck at an angle and only one edge cut through the skin and the muscle beneath.

28. It is true that PW-1, PW-3 and PW-4 have not supported the case of the prosecution to the full, and have denied having witnessed the appellant assaulting the deceased. But, from the testimony of PW-1 it stands established that at the time of the incident he had seen two boys fighting, one of whom picked up his rapi and assaulted the other. The testimony of PW-3 and PW-4 proves, that from the place where the crime took place, the appellant was seen running away and was being followed by a group of students of the school who were shouting that the appellant be caught and PW-3 and PW-4 joined the chase and apprehended the appellant. When they did so, the shoes of the appellant were stained with fresh blood. The testimony of PW-5 establishes that when he was brought before him and questioned, the appellant was in a perplexed state of mind. The rapi was recovered from the place which was disclosed to the police by the appellant i.e. the verandah of House No. 447, Pocket-3, Paschim Puri i.e. the house just adjoining House No. 446 where the carpenter was working and from where the rapi was picked up. Human blood was detected on the rapi and the shoes of the appellant. Said evidence forms a chain complete, wherefrom the only inference which can be drawn is that of the guilt of the appellant; ruling out his innocence.

29. There is no evidence that the appellant premeditated the attack. The testimony of PW-1 establishes that the appellant and the deceased were having a verbal quarrel as they were walking down the street and all of a sudden the

appellant picked up the rapi which belonged to PW- 1 and assaulted the deceased. The origin of the quarrel is unknown and therefore we give the benefit of doubt to the appellant and hold that the facts of the case require it to be held that the assault was the result of a sudden quarrel.

30. Learned Counsel for the appellant cited the decision reported as 2008 AIR SCW 7726 State of M.P. v. Sughar Singh and Ors. three injuries being (i) incised wound 1" x 1/2" x 1/4" on the middle of the head; (ii) incised wound 1" x 1/4" x 1" on the right leg and (iii) multiple contusions 4" x 2" and 5" x 2" were held to be attracting culpable homicide not amounting to murder and punishable u/s 304 Part II IPC.

31. The conceptual distinction between the offence of "murder" punishable u/s 302 IPC and the offence of culpable homicide not amounting to murder punishable u/s 304 Part I or Part II IPC was explained in the decision of the Supreme Court reported as State of Andhra Pradesh Vs. Rayavarapu Punnayya and Another, . The decision guides that when a Court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder" on the facts of the case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he was caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether the act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is, prima facie, found in the affirmative, the stage for considering the operation of Section 300, of Penal Code is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative, the offence would be "culpable homicide not amounting to murder" punishable under the first or the second part of Section 304, depending, respectively, on whether the second or third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the First Part of Section 304 of the Penal Code.

32. We thus hold that the offence committed by the appellant is not of murder but of culpable homicide not amounting to murder.

33. The only question which arises to be considered now is whether part-I of Section 304 IPC is attracted or part-II thereof.

34. From the injuries caused on the person of the deceased it is apparent that the first three blows were directed on the chest. The ferocity of the blows No. 2 and 3 can be gauged by the depth to which said blows have traversed the body. The fourth injury, at the back of the chest is also indicative of the ferocity of the attack. In fact, injury No. 2 had pierced through the right ventricle of the heart.

Thus, from the acts it can safely be inferred that the intention was of causing such bodily injuries as were actually caused. The doctor's opinion is clear that the injuries No. 2, 3 and 4 were fatal. Thus, the offence squarely falls under Part-I of Section 304 IPC.

35. We partly allow the appeal. The conviction of the appellant for the offence u/s 302 IPC is modified, in that, the appellant is convicted for the offence punishable u/s 304 Part-I IPC. We sentence the appellant to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 500/-; in default of payment of fine the appellant shall undergo simple imprisonment for one month.

36. Copy of this decision be sent to the Superintendent, Central Jail, Tihar for necessary action since the appellant is still in jail.