

(2009) 02 DEL CK 0120
In the Delhi High Court
Case No : Criminal Appeal 212 of 2007

Gurmukh Singh

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2009) 02 DEL CK 0120

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

Bench : Division Bench

Advocate : Rakhi Dubey, for the Appellant; Pawan Sharma, for the Respondent

Judgement

Pradeep Nandrajog, J.—A short issue arises for consideration.

2. Whether on the evidence on record, the conviction of the appellant has to be sustained for the offence punishable u/s 302 IPC or whether the offence made out is punishable u/s 304 IPC. Further if the conviction has to be for the offence punishable u/s 304 IPC, whether part I or part II thereof is attracted.

3. The eye witnesses to the incident are PW-2 and PW-4.

4. Briefly noted case of the prosecution is that the deceased Jaspal Singh had a doubt whether sum of Rs. 1,800/- which was collected by him as a taxi fare was removed by a person called Bobby who used to reside near a public toilet at Hanuman mandir, Baba Kharag Singh Marg.

5. It was New Year's Eve: 31.12.2003. At around 10:30/11 PM accompanied by his friend Inder Mohan PW-4 the deceased reached Connaught Place. The place was crowded as people were swarming all over celebrating New Year's Eve. Jaspal Singh handed over his taxi to Inder Mohan requesting him to park the same at a suitable parking place and reached the toilet and enquired from a lady about Bobby. The appellant came near the toilet and joined the talks.

6. What happened thereafter may be noted in the language of Inder Mohan

PW-4, who deposed as under:

Jaspal was inquiring from them about a person namely Bobby. While these talks were going on, a Sardar came out from a nearby bathroom and joined the talks. Jaspal Singh also inquired from that sardar who came out from the bathroom about Bobby. That Sardar told that some articles of Bobby were lying in the bathroom but he was not able to tell about the time of visit of Bobby. As soon as Jaspal Singh told about his money a heated argument took place between Jaspal Singh and that Sardar. Thereafter that Sardar took out a knife like object and gave a blow of the same towards the heart side portion on the chest of Jaspal Singh. Accused present in the Court today is the same Sardar who gave knife blow to Jaspal Singh in my presence (witness points out towards accused Gurmukh Singh).

7. Information of the deceased being stabbed was conveyed to the police and entered in the daily diary vide DD No. 41A. SI Rakesh PW-22 accompanied by Const. Virender PW- 11 went to the spot and therefrom to R.M.L. Hospital where the injured Jaspal was found admitted. His statement Ex.PW-22/B was recorded by SI Rakesh; endorsement Ex.PW-22/C was made thereon and forwarded for registration of a FIR. At PS Connaught Place HC Sukhbir Singh PW-6 registered the FIR Ex.PW-6/A.

8. Jaspal Singh the deceased had a single stab wound having an entry on the left side of the abdomen placed 14 cms below the left nipple and 11 cms from the midline.

9. The wound was opined to be not dangerous to life. The wound was sutured and Jaspal was discharged from the hospital. Unfortunately the doctor had mis-read the injury and probably discharged Jaspal a little prematurely, evidenced by the fact that Jaspal Singh had to be re-admitted in the hospital due to continued abdominal pain. He died on 4.1.2004 at 6:05 AM.

10. The body was sent for post-mortem. Dr. Amit Kochhar PW-8, conducted the post-mortem on 4.1.2004 and noted a stab wound 5 cm deep in the abdominal cavity. Internal examination reveals that the stab wound had pierced the spleen which had a tear of the size 1 cm x 0.2 cm. He penned the report Ex.PW-8/A.

11. Learned Trial Judge has believed the testimony of Inder Mohan PW-4 and has returned a finding that the same evidences that the appellant caused the fatal stab wound resulting in the death of Jaspal Singh. The learned Trial Judge has accordingly opined that the offence squarely fell within the purview of Section 300 IPC.

12. We may note that the weapon of offence is a kirpan and the one which was seized pursuant to the disclosure statement of the appellant was opined by the doctor concerned to be the possible weapon of offence.

13. Learned Counsel for the appellant has urged that believing the testimony of PW-4 at its face value, it is apparent that the appellant had no enmity or a cause

to inflict the injury on Jaspal Singh. That Jaspal Singh went to the place to meet Bobby. That Bobby appears to be residing at a place nearby where appellant was residing and that in respect of the charge made by Jaspal Singh against Bobby of misappropriating his money, some altercation ensued between the appellant and the deceased and during heated arguments, the appellant inflicted a single stab blow.

14. Learned Counsel urges that Exception 4 to Section 300 is clearly attracted inasmuch as the act was committed without pre-meditation and in a sudden fight in the heat of passion upon a sudden quarrel and that the appellant has not acted in a cruel or an unusual manner.

15. A perusal of the testimony of PW-4, as noted hereinabove, shows that when the deceased Jaspal Singh was enquiring about Bobby and was in a dialogue with a lady and another person (it happens to be Ashok Kumar Banerjee PW-2), the appellant came out from a nearby bathroom and joined the talks. The deceased enquired from the appellant about Bobby. The appellant told the deceased that some articles of Bobby were lying in a bathroom but he was not able to tell about the time of the visit of Bobby. All of a sudden heated arguments ensued.

16. It is relevant to note that PW-4 has not disclosed as to what were the words exchanged between the appellant and the deceased. He has simply stated that there were some heated arguments and that thereafter the appellant took out a knife like object and inflicted a blow on the person of Jaspal Singh.

17. Obviously, some words must have been used by the deceased which provoked the appellant.

18. What is important to be noted is that the appellant did not attack the deceased at the first instance. He had a dialogue with the deceased pertaining to the whereabouts of Bobby. The dialogue flared into a heated argument resulting in the offending act being committed.

19. A kirpan is a religious object kept by those who profess the Sikh religion. It is a revered object. What we mean to convey is that, though capable of causing an injury, a kirpan is not treated as a weapon of offence in India. Thus, it cannot be said that the appellant was armed with a deadly weapon as conventionally understood.

20. Unfortunately, the learned Trial Judge has not considered whether Exception 4 to Section 300 was attracted in the facts and circumstances of the instant case. The learned Trial Judge has not microscopically examined the legal impact of the deposition of Inder Mohan PW-4.

21. It is clearly a case of culpable homicide not amounting to murder.

22. Pertaining to whether part I or part II of Section 304 is attracted, suffice would it be to state that where the act done is with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily

injury as is likely to cause death, part II of Section 304 IPC is attracted.

23. The distinction between part I and part II of IPC is the degree of knowledge which can be attributed to the offender by the wanton act of the offender.

24. While attributing knowledge, which vital part of the body is the target becomes important and needs to be considered while deciding whether Part I or Part II of Section 304 is attracted.

25. The injury on the deceased is a 5 cm deep cut directed towards the lower left side of the abdomen. But for the spleen being cut, the deceased would have survived.

26. Indeed, the doctor concerned was convinced that the injury is not fatal to life evidenced by the fact that after suturing the wound Jaspal Singh was discharged from the hospital. Unfortunately for him, the internal injury was not detected by the doctor. Internal bleeding continued resulting in his death.

27. This gives us a clue to the knowledge which could be attributed to the assailant.

28. We are of the opinion that the offence committed by the appellant is that of culpable homicide not amounting to murder and punishable u/s 304 Part II IPC.

29. The appeal is partially allowed. Impugned judgment dated 1.2.2007 is set aside. Conviction of the appellant u/s 302 IPC is set aside. The appellant is convicted for the offence of culpable homicide not amounting to murder punishable u/s 304 Part II IPC. The appellant is sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 1,000; in default to undergo simple imprisonment for one month.

30. Copy of this order be transmitted to the Superintendent Central Jail Tihar for necessary action.