
(2009) 08 DEL CK 0102
In the Delhi High Court
Case No : Criminal Appeal No. 394 of 2006

Rishi @ Babbal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

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

Citation : (2009) 08 DEL CK 0102

Hon'ble Judges : Pradeep Nandrajog, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : S.M. Chopra, for the Appellant; Pawan Sharma, Assistant Public Prosecutor, for the Respondent

Judgement

Pradeep Nandrajog, J.

CrI.M.A. No. 8697/2009

Allowed.

CrI.M.(B.) No. 880/2009

1. Learned Counsel for the appellant submits that if the appeal is heard today itself as he has a very short point to urge pertaining to the offence committed by the appellant, believing the testimony of PW-2, the application seeking suspension of sentence may be disposed of as infructuous.

2. Learned Counsel for the State submits that if the appeal is limited to consideration of testimony of PW-2, he has no objection if the appeal is heard today itself.

3. Since we are hearing the appeal for final disposal, we dismiss CrI.M.(B.) No. 880/2009 as infructuous.

CrI.APPEAL No. 394/2006

1. The testimony of PW-2 reads as under:

On the intervening night of 1/2/6/04 I was present in my STD shop Natia Wali Pyao in front of temple bearing 4/6176. At about 10 PM I heard noise of quarrel from outside and I came out. I saw that accused present in the Court giving blow of brick on the head of deceased Govind Ram, who used to live on the pavement near the temple and I know him. The deceased was lying on the ground near the pavement and accused after giving him brick blow on his head run away from the spot. The blood was oozing from the wound i.e. head injury of Govind Ram. Due to fear I closed my shop and went away to my home. On next day police called me and I gave my statement to the police. Police arrested the accused present in the Court today vide memo Ex.PW-2/A signed by me at point A, personal search memo Ex.PW-2/B. Accused pointed out the place of incident vide memo Ex.PW-2/C and his disclosure statement Ex.PW-2/D was also recorded. Accused got recovered from Tikino park Parsad Nagar on Banyan containing blood stained of half slip the same was taken into possession vide memo Ex.PW-2/E. I can identify the banyan. One sealed parcel with the seal of FSL is opened. And the banyan which has been taken out and shown to the witness. He has correctly identified the same as Ex.P- 1 is the same which was recovered by the accused. xxxxxx by Ms. Savita Kasana advocate for accused. I am running a shop of STD/PCO at 4/6176 block No. 1, Dev Nagar, Karol Bagh, Delhi. I am also selling the coupon/cash card of mobile as well as selling the new connection of mobile at my shop. Before murder of this case I used to close my shop at about 11.30 PM. The incident of this case took place in the night of 1/2/6/04 at about 10.15 or 10.30 AM. When I inside my shop then I heard a noise from outside "Mar Dunga" but I do not know who was uttering these words. Accused present in the court today is not known to me personally. When I came out from my shop the accused present in the court was giving beating to deceased. After this incident I became afraid/perplexed. The nearby shops used to close at about 8 or 8.30 PM. When I filled up the form before MTNL to get the STD connection there was a condition to open the STD shop within 24 hours and it will depend upon on my wish. On the day of incident I close my shop just after this incident at about 10.15 or 10.30 PM. I do not know at what time police came at the spot. Vol. as I was called early in the morning at 5 AM. After incident police used to visit to my shop just to provide me safety. I was called by the police on next morning in the P.S. at about 5 AM. I remained in the P.S. for about one or two hours. At that time I had not signed my documents in the P.S. I am tenth passed. In my presence some proceeding has been done by the police. The distance between the place of murder and my shop is about 12 feet. Deceased Gobind Ram was known to me earlier as he is also belonging to our caste. To hear the noise of quarrel no passers by stop there. I do not know the cause of quarrel between accused and deceased person. When I saw Gobind Ram was lying on the ground neither he tried to save himself nor gave any rebuttal blow to the accused. On the day of incident the street light was not functioning. Deceased Gobind Ram was addict of liquor and he used to remain under the influence of liquor. I did not appear as a witness in any case prior to this case. Police took me in search of accused near Rachna cinema or Rajinder Place area. I was taken only to these places by the

police. At that time SHO, ASI and some other police staff with me. Police took me there at about 11 PM. And after searching about two hours then the accused was apprehended from a patri near the Metro railway work was going on. At the time of arrest personal search of accused was conducted. And the clothes wearing of accused were also seized early in the morning at about 5/6 AM on 3/6/04. It is wrong to suggest that I am deposing at the instance of police against the accused. It is wrong to suggest that I had not seen any occurrence with my own eyes. It is wrong to suggest that once a quarrel took place between me and accused persons so due to that reason I am deposing against him in this case. Some hot exchange (Tu Tu Ma Ma) used to take place between the deceased and his associates, on consuming liquor. I do not know whether the deceased used to sleep. After arrest of the accused first took him the police to P.S. then took him to Tikna Park to collect his clothes. The date of incident is 1/6/04 at about 10.15 or 10.30 PM again said on the intervening night 1-2/6/04. It is wrong to suggest that I have stated in my statement. I have not stated to the police in my statement Ex.PW-2/DX1 the date of incident as 2/6/04 at about 10.15 or 10.30 PM.

2. Notwithstanding the limited plea urged by learned Counsel for the appellant, we have troubled learned Counsel for the parties to make us go through the testimony of PW-2, since we are dealing with a question which seriously affects the liberty of the appellant. Indeed, the only blemish which can be urged is the conduct of PW-2 of not telling the police in the night itself when he saw the crime being committed by the appellant as claimed by him. But, PW-2 has given a reason, of being scared and fearing for his life and thus informing the police what he saw, the next day morning.

3. We need not note the judicial decision to the effect that one cannot find a uniform behavioural pattern of those who witness a crime. Some retain their composure. Some lose their composure. Some run away with fear. Some get frozen due to fear etc. etc. It is possible that PW-2 who is a man of humble origin felt scared to venture out in the night and tell anything to the police. He chose to sleep in his house after closing his STD booth and next day morning informed the police of what he saw. What inspires confidence in the testimony of PW-2 is the fact that at the very first instance when his statement was recorded by the investigating officer under 161 Cr.P.C. i.e. in the early morning of 2.6.2004, he gave graphic description of the physical features of the appellant like a fair-coloured male aged 19-20 years, elongated face, medium built etc.

4. From the testimony of PW-2 it is apparent that the assault with a brick; the blow directed towards the head of the deceased, was preceded by a quarrel and the sound of the quarrel attracted the attention of PW-2 who was there inside his STD booth and upon coming out of the STD booth saw the appellant strike a blow on the head of PW-2, with a brick in the hand of PW-2.

5. Since the origin of the quarrel is unknown, giving benefit thereof to the appellant, it has to be presumed that everything happened upon a sudden

quarrel. If that be so, the finding that the act of the appellant makes out the offence as one of murder cannot be justified by any stretch of reasoning. Indeed, Exception-4 to Section 300 IPC makes the offence, which otherwise falls within Section 300 IPC, from one of murder, to one of culpable homicide not amounting to murder.

6. There is no evidence that the appellant came pre- armed with a brick. A brick is a common object found in open places and can be conveniently picked up and used by a person under heat of passion.

7. Though, PW-2 has stated facts, in our opinion using vague language, which are suggestive of only one blow being given on the head, but the MLC of the deceased shows at least three blows, directed towards the head the same is evidenced by injuries No. 1, 2 and 6. We note that there are seven injuries noted on the person of the deceased in the post- mortem report Ex.PW-8/A but the cause of death is attributable to injury No. 1 and 2. Injuries No. 3 to 5 and 7 are simple injuries on the elbow, nose, lips and chin which could possibly be the result of a scuffle.

8. The three fatal injuries show that injury No. 1 and 2, directed towards the skull have resulted in subdural haemorrhage affecting the brain. Injury No. 6, being a lacerated wound 6 cm x 2 cm x bone deep has caused multiple fractures of mandible. Though not opined to be fatal, injury No. 6 is the result of a blow with considerable force.

9. In the decision reported as Thangaiya Vs. State of Tamil Nadu, , an assault on an old man with a stick; injury being on the right parietal scalp, causing death was held to be an offence punishable u/s 304 Part-I IPC. We note that the knowledge of the accused that he was causing the injury on an old man could possibly be fatal was a factor taken into consideration by the Court. In the decision reported as Sunder Lal Vs. State of Rajasthan, , of the many injuries, the one which proved fatal being directed towards the head and the weapon of offence being a gandasi and there being no evidence of any specific intention to cause death by the accused, was held to be a case of commission of an offence punishable u/s 304 Part-I IPC. In both cases custodial sentence of 10 years was held to be justified. Similarly, in the decision reported as Thakarda Lalaji Gamaji Vs. The State of Gujarat, , an act upon a sudden quarrel of inflicting two blows on the head with a dhariya (scythe) and two blows on the arm were held attracting commission of an offence punishable u/s 304 Part-I IPC.

10. We take guidance from the afore-noted decisions and hold that the acts of the appellant make the same punishable u/s 304 Part-I IPC attracting punishment of rigorous imprisonment for 10 years.

11. We dispose of the appeal, partially allowing the same. The conviction of the appellant vide impugned judgment and order dated 12.12.2005 for the offence punishable u/s 302 IPC is modified, in that, the appellant is punished for the offence punishable u/s 304 Part-I IPC. We direct the appellant to undergo

rigorous imprisonment for a period of 10 years. The appellant shall be entitled to the benefit of the sentence undergone as an under- trial and during pendency of the appeal. Such remissions as per executive policy to which the appellant is entitled to shall be granted.

12. Copy of this judgment be sent to the Superintendent, Central Jail, Tihar for making necessary correction in the jail record qua the appellant.