

(2005) 08 DEL CK 0044
In the Delhi High Court
Case No : Criminal A.No. 401 of 2001

Subhash Kumar

APPELLANT

Vs

The State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Penal Code, 1860 (IPC) — Section 300, 302, 304, 304(1)

Citation : (2006) 1 ALT(Cri) 19 : (2005) CriLJ 4399 : (2005) 123 DLT 487 :
(2005) 84 DRJ 84 : (2005) 4 RCR(Criminal) 974

Hon'ble Judges : Manmohan Sarin, J; Manju Goel, J

Bench : Division Bench

Advocate : Pramod K. Dubey, amicus Curiae and Rajan Bali, for the Appellant;
Ravinder Chadha, APP and Jagdish Prasad, for the Respondent

Judgement

Manmohan Sarin, J.—Appellant-Subhash Kumar by this appeal assails his conviction vide judgment dated 14th October, 2000 u/s 304(1) IPC and u/s 27 of the Arms Act. The learned Sessions Judge vide order dated 16th October, 2000, sentenced the appellant to undergo life imprisonment and fine of Rs.1000/- in default, RI for three months. Appellant was also sentenced to RI for six months u/s 27 of the Arms Act, with both the sentences to run concurrently.

2. The prosecution case, in brief, is that deceased Antony Joseph, was a tenant in a room situated at first floor of house no.122, Village Karkardooma. Appellant-Subhash Kumar was his neighbour residing on the first floor of house no.56. On 16th September, 1998, both of them started quarreling and hurling abuses at each other. After verbal exchange from their respective balconies, quarrel was taken to the street. It is alleged that deceased-Anthony Joseph gave a fist blow on the nose of appellant and blood started oozing. Appellant who was holding a button actuated knife plunged it in the chest of deceased-Anthony Joseph and took to his heels and rushed to his room. The deceased had fallen down on the street. He was taken to SDN Hospital by the neighbours, where he was declared

dead. Appellant was arrested. Based on his disclosure statement, appellant led the police party to his room and got recovered the knife from behind a picture of Lord Shiva.

3. The appellant denied committing the offence in his statement u/s 313 Cr.P.C. He stated that he was returning to his room after taking meals from a Dhaba and son of the landlord had pointed out towards him, following which he was arrested. No evidence in defense was led. Prosecution examined 27 witnesses. There were three eye witnesses Smt., Sudha, PW 1, her husband Shashi V.V., PW 6 and Kishori Lal, PW-2, landlord of the appellant. PW-3, one of the neighbours Sewa Ram deposed that he had heard that appellant-Subhash Kumar after stabbing Antony Joseph had gone to his room where the landlord followed and locked him . Appellant-Subhash Kumar was later on handed over to the police.

4. Mr. Pramod Kumar Dubey, learned amicus Curiae sought to point out that there were several contradictions in the testimony of eye witnesses. Kishore Lal- PW 2 and Shashi V.V-PW 6 had stated that while the quarrel was going on, appellant Subhash had gone to his room leaving deceased- Antony Joseph standing on the street and came out from his room and then plunged the knife in the chest of Antony Joseph. PW-1 Smt. Sudha did not depose that appellant had gone to his room. While Sudha-PW-1 and Shashi V.V PW-6 had both stated that deceased has given blow on the nose of the appellant but this fact was not stated by PW-2 Kishore Lal. It is noticed that the learned Addl. Sessions Judge in his well reasoned judgment, dealt with the so called contradictions and other inconsistencies pointed out with regard to place of occurrence etc. He has rightly held that such contradictions and inconsistencies were natural and happen after lapse of time. Further that such contradictions were not material. These were likely to happen when different persons are asked to describe the same incident after passage of more than a year. The crux of the matter is that all eye witnesses were categorical on the appellant having stabbed the deceased.

5. After some arguments, learned amicus Curiae submitted that, in any case, the court ought to modify the order of sentence from that of life imprisonment to the term already undergone in view of extenuating circumstances.

6. Having examined the record and the depositions and heard the learned amicus Curiae, we find that there is no ground to interfere with the conviction of the appellant. The learned Addl. Sessions Judge has rightly held this to be as case falling u/s 304(1) IPC, considering the force used and nature of injury i.e. stabbing in the chest. We, accordingly, uphold the conviction of the appellant.

7. Coming now to the question of sentence, it may be noted that in the instance case, initially charge sheet was filed u/s 302 IPC. However, charges were framed u/s 304 IPC read with section 27 of the Arms Act. Conviction of the appellant was held to be u/s 304(1) IPC and sentence of life imprisonment was accordingly imposed. We find that the instant case falls within ambit of Exception 4 u/s 300 IPC which provides that culpable homicide is not "murder" if it is committed

without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, would fall u/s 304 IPC.

8. Learned amices Curiae submits that appellant was a young man of about 22-23 years when the offence was committed. Appellant has already undergone over 6-7 years of incarceration and has not been able to avail the benefit of bail/suspension of sentence due to his penury and inability to furnish a surety. Appellant has clean antecedents and has not reported to have been involved in any other criminal activity or offence. There was no motive for committing the offence. Offence was committed in the heat of moment following the quarrel. The deceased had given a blow to the appellant, leaving him bleeding, which further aggravated the quarrel.

The learned Addl. Sessions Judge, considering the use of the button actuated knife with which injury was inflicted, held it to be case u/s 304(1) IPC and sentenced the appellant to life imprisonment. The learned Addl. Sessions Judge while on the aspect of sentence, refers to the conduct of the appellant going to his room after the incident, as being indicative of the intention to wipe off the deceased. We are unable to agree to this aspect and inference, as drawn. We further notice that the mitigating circumstances, as noticed by us in paragraph 8 above, do not appear to have been taken into consideration, while determining the quantum of sentence. We are of the view that in the facts of the present case and circumstances, as noticed, the sentence of life imprisonment, in view of the mitigating circumstances, deserves to be modified to a period of 10 years with remission, as admissible under rules and benefit of set off of the period undergone in custody during trial u/s 428 Cr.P.C. Ordered accordingly.

Appeal stands partly allowed in above terms.