
(2009) 07 DEL CK 0070
In the Delhi High Court
Case No : Criminal Appeal No.775 of 2005

Vicky	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 300, 302, 304

Citation : (2009) 7 ILR Delhi 287

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

Bench : Division Bench

Advocate : Charu Verma, /DHCLSC in Criminal A. No.775/2005 and Pradeep Chaudhary, in CrI .A. No. 401-402/200, for the Appellant; Richa Kapoor, APP., for the Respondent

Judgement

Pradeep Nandrajog, J.—Vide impugned judgment and order dated 22.07.2005, appellant Vicky has been convicted for an offence punishable u/s 302 IPC and co-accused Kale @ Suraj and Sumit have been convicted for the offence punishable u/s 302 IPC read with Section 109 IPC. For record, it may be noted that pertaining to the fourth accused namely Rajiv, he being a minor, matter was referred for trial to the Juvenile Justice Board.

2. The case of the prosecution can be traced to the First Information Report which was lodged on the basis of the statement Ex.PW-6/A recorded by the Investigating Officer and as made to him by Mohd.Tahir PW-6. The said statement was recorded soon after the incident which took place on 25.5.2003 at around 6.30 PM. The statement Ex.PW-6/A was dispatched for registration of the FIR as recorded in the endorsement beneath the statement; endorsement being Ex.PW-14/A, at 9.15 PM on 25.05.2003, the date when Mohd. Qasim was stabbed.

3. In the statement Ex.PW-6/A, PW-6 stated that the deceased was his brother and both of them were residing in Jhuggi No. C- 57/402, Shahid Basti. That around 6.30 PM when the two brothers were outside their jhuggi, they heard

sounds of a quarrel and both proceeded to the place from where the sound was emanating and on reaching the place found 4-5 boys. One out of said boys queried from his brother as to whether he was the Dada of the area and whether he had come to the place on summons to rescue and that one boy named Kale caught hold of his brother and Vicky stabbed him. All the boys ran away and he took his brother to Lady Harding Hospital.

4. The statement aforementioned was recorded by SI Abhimanyu PW- 14, who was deputed to the place of the incident after DD No. 18-A, Ex.PW1/A, was recorded at the police station when information was received about Mohd.Qasim being admitted at Lady Harding Hospital in an injured condition by Mohd. Tahir PW-6.

5. The presence of PW-6 with his brother is not seriously in doubt, inter-alia, for the reason, the MLC of the injured Qasim i.e. Ex.PW-10/A, proved by Dr. Reena Chauhan PW-10, names PW-6 as the relative of Qasim who had brought Qasim to the hospital. The time of admission of the patient is recorded as 7.10 PM.

6. Since injured Mohd.Qasim could not be revived at the hospital and continued to remain unconscious till he died, the version of Qasim never saw the light of the day.

7. The body of Qasim was seized by the Investigation Officer and sent to the mortuary of Aruna Asaf Ali hospital, where Dr. Ashok Jaiswal PW-11, conducted the post-mortem on 27.5.2003 and noted only a single stab injury inflicted on the person of the deceased, being as under:

Vertically placed incised stab wound on right side abdomen placed 3 cm above umbilicus at 11.00 O'clock position just right of midline of size 3.5 cm X 1.5-1.8 cm. X ? margins everted with lower angle acutely cut with omentum was seen coming through the wound whose margins were blood stained.

8. The sole injury which was opined to be the cause of death had resulted in a haemorrhagic shock. It was further opined that the said injury was sufficient to cause death in ordinary course of nature.

9. As per the prosecution, apart from PW-6, two other persons had witnessed the incident, being Azam Sheikh PW-7 and Shahzad PW-9.

10. Needless to state, the case of prosecution was hinged upon the testimonies of PW-6, PW-7 and PW-9.

11. PW-6 Mohd.Tahir deposed that he and his deceased brother Qasim were present in their jhuggi at around 6.30 PM on 25.5.2003. They heard a noise from the washing line side. As they heard cries of Bachao-Bachao., he and Mohd.Qasim rushed towards the washing line with Qasim being ahead of him. He saw 4-5 boys standing there. They asked Qasim as to whether he was a group leader and had come there to rescue the boy. That Kale, Sumit, Rajeev and Vicky were present. That Rajeev caught his brother and Vicky stabbed him in the abdomen. All of them ran away.

12. After deposing facts pertaining to the arrest of the accused and the disclosure statement made by them, PW-6 proceeded to narrate a slightly different version of what he saw, by stating that Sumit and Kale caught his brother and Rajeev and Vicky gave a knife blow.

13. Azam Sheikh PW-7 deposed that he was in his jhuggi and heard cries of Bachao-Bachao.. He went towards the place from where the cries were coming and saw PW-6 and his brother Mohd.Qasim reach the place. 6-7 persons were present, out of whom, 2 or 3 were armed with knife. The said 6-7 persons ran away after inflicting knife blows on Qasim.

14. Shahzad PW-9 deposed likewise, that cries of Bachao-Bachao. attracted him towards the place from where the sound was coming, being near the washing line. Sumit, Vicky, Kale @ Suraj and Rajeev were present. Vicky asked Qasim whether he was a leader. Few boys caught hold of Qasim and that Vicky gave a stab blow to Qasim and all of them ran away.

15. With reference to the testimony of the three eye witnesses, the learned Trial Judge has returned a finding that their testimonies establish that appellants Kale @ Suraj and Sumit caught hold of Qasim and appellant Vicky stabbed him.

16. Vis--vis Rajeev, being juvenile as on the date of offence, the matter was referred to the Juvenile Justice Board. Thus, the impugned decision has dealt with the fate of Vicky, Kale @ Suraj and Sumit. All three have been convicted for the offence as noted hereinabove.

17. From a perusal of the testimony of all the three eye witnesses, it is apparent that the accused persons had not come with any pre- conceived intention or with a pre-meditated mind to cause any injury to Qasim. As per the three eye witnesses, a quarrel was going on near a washing line involving a boy and the appellants. The cries of Bachao-Bachao. by the said boy attracted the three witnesses and the deceased to the washing line and when the deceased reached the washing line, something happened which led the appellants to question the deceased as to whether he was a leader in the area.

18. What happened thereafter is blurred. Whereas in the first instance, PW-6 talks of juvenile co-accused Rajeev catching hold of his brother and Vicky stabbing him, at a later point of his testimony, he speaks of Sumit and Kale catching hold of his brother and Rajeev and Vicky giving him knife blows.

19. Obviously, both Rajeev and Vicky could not have inflicted knife blows, for the reason, the MLC as well as the post-mortem report of the deceased shows a single stab wound being inflicted. It is obvious that only a single blow was inflicted on the person of the deceased.

20. The testimony of PW-7 only proves the fact that the cries of distress attracted the deceased, his brother PW-6 as well as PW-9 to the place where the deceased was stabbed. The manner of stabbing is at variance with the testimony of PW-6, for the reason without naming as to who was the person who struck the

knife blow and without naming anybody else as playing any role PW-7 states that the deceased was accosted by 6-7 persons, out of whom, 2-3 were armed and that all 6-7 ran away after giving knife blows to Qasim.

21. Now, neither 2 or 3, much less 6 or 7 persons have stabbed Qasim, for the reason, Qasim has suffered only one knife blow.

22. A reference to the testimony of PW-9 shows his corroborative statements as to what led the deceased to the place where he was fatally stabbed; namely, the cries of distress by somebody being assaulted. Qua the manner in which the deceased was injured, PW-9 states that a few people who were at the spot caught hold of Qasim and appellant Vicky gave a stab blow. Relevant would it be to note that PW-9 does not assign any specific role of catching hold to either Kale or to Sumit or to even Rajeev.

23. Testimony of all the three witnesses shows that the situation was fairly chaotic, and thus each witness has deposed as aforementioned.

24. The consequence thereof is that it is difficult to return a categorical finding that indeed there was any specific intention of Vicky to do a particular offence other than to swing the knife which emerges as a crystallized intention wherefrom further conclusion of guilt can be drawn against Vicky.

25. The boy who was being assaulted by the appellants and whose cries attracted the deceased and the other witnesses to the spot has not been examined by the prosecution. His testimony could have thrown considerable light as to what happened.

26. But, one fact is important. Obviously, the said boy was neither badly beaten, much less injured with a knife, for the reason had it been so, even said boy would have received medical treatment. It shows that the said boy was being, if at all, simply beaten by the accused persons. Obviously, the accused persons were intending to simply beat that boy and cause him no further harm.

27. It is, thus, not a case of transferred malice as conventionally understood. It is not a case where a blow directed against a particular victim chances to strike the person who is actually the recipient of the blow. Under the circumstances, it becomes imperative to be considered whether the act of the accused attracts the ingredients of Section 300 IPC or falls short thereof; namely, whether it is a case of simple homicide or it is a case of homicide amounting to murder. It has further to be considered whether Part I of Section 304 IPC is attracted or Part II thereof.

28. Without being verbose, we seek guidance from the decision of Supreme Court reported as 1984 SCC 164 Tholan v. State of Tamil Nadu. The incident which was a subject matter of consideration by the Supreme Court in the aforementioned decision is narrated in para 3 of the decision, which reads as under:

3. Few facts relevant for the disposal of this appeal are that one K.G. Rajan was running a chit with the help of PW 4 Chinnu. The profit derived by this venture

was being utilised to help needy school children by giving them free slates and such other articles of everyday use for school children. The balance available for this activity at the relevant time was Rs. 600. It appears that the appellant and his brother Raman gave a bid at the auction for a chit in the amount of Rs. 30 and were paid the chit amount. Appellant thereafter approached Raman with a request for a loan of Rs. 100 but PW 4 Chinnu informed him that it was not possible to grant loan. Some altercation took place in which the appellant is said to have used abusive language. PW 1 Subramanian and deceased Sampat are brothers. They were residing in adjacent houses in Boyar Street. On September 2, 1978 around 7 p. m. appellant came near the house of deceased Sampat complaining against the organisers of the chit. At that time he was in front of the house of one Palaniammal, who on hearing the shouts of the appellant asked him to go away. The appellant in turn abused Palaniammal. At that time deceased Sampat came out of his house and cautioned appellant not to indulge in abusive language, as the ladies were present and told him to go away. The appellant questioned the authority of the deceased to ask him to go away. Both were remonstrating with each other when appellant took out a knife from his waist and stabbed deceased Sampat on the right side of his chest and pushed the deceased to a distance of 25 feet and left him there and went away. Sampat succumbed to his injury which in course of post-mortem examination was found to be an incised gaping wound obliquely placed over the front of right side of the chest 1 cm. away from the right aternal box dox on the fourth intercostals space and 5 cm. medial to the right nipple of size 3 cm.x 1 cm. at the maximum point. Depth was not probed. The external wound was spindle shaped with clear-cut edges on both sides and sharp point on either ends with blood clots. On internal examination fracture of fifth and sixth ribs were noticed. The depth of the wound was probed up to middle lobe of the right lung and proceeding up to right atrial cavity. The cause of death was stated to be shock and haemorrhage on account of the stab injury and the corresponding internal injury to vital organs like the heart and the lung. This injury, in the opinion of the Medical Officer, was sufficient in the ordinary course of nature to cause death.

29. Notwithstanding the fact, as in the instant case, the blow was directed towards a vital part of the body; in the instant case, it is abdomen and in the case before Supreme Court it was the chest, in para 12, with reference to the act of the accused, discussing the law of culpable homicide and culpable homicide amounting to murder, it was observed as under:

12. It is equally not in dispute that appellant gave only one blow with a knife. Appellant had no quarrel or dispute with deceased Sampat. It is not shown that deceased Sampat had anything to do with the chit organised by K.G. Rajan. No malice has been alleged to have been entertained by the accused towards deceased Sampat. The incident occurred on the spur of the moment. It appears that the house of the deceased Sampat was somewhere near the house in which the organisers or at least one of them was residing. Appellant had his dispute and grievance with the organisers of the chit. It is the prosecution case that

accused abused organisers of the chit. Deceased Sampat is not shown to be the organiser of the chit. Probably when the deceased Sampat told the accused not to misbehave in the presence of ladies and not to use vulgar and filthy language, the appellant retorted by questioning the authority of Sampat to ask him to leave the place. Presence of Sampat is wholly accidental. Altercation with Sampat was on the spur of the moment, even the meeting was accidental. There arose a situation in which appellant probably misguided by his own egocentric nature objected as to why Sampat should ask him to leave the place and in this background he gave one blow with a knife which landed on the right side chest of the deceased, which has proved fatal. Could the appellant be said to have committed murder? In other words, whether Part I or Part III of Section 300, IPC would be attracted in the facts of this case. Even Mr. Rangam learned Counsel for the State of Tamil Nadu could not very seriously contend that the appellant intended to commit murder of Sampat. His submission was that at any rate appellant, when he wielded a weapon like a knife and gave a blow on the chest, a vital part of the body, must have intended to cause that particular injury and this injury is objectively found by the medical evidence to be fatal and therefore Part III of Section 300 would be attracted. On this aspect, the decisions are legion and it is not necessary to recapitulate them here merely to cover idle parade of familiar knowledge. One can profitably refer to Jagrup Singh v. State of Haryana, Randhir Singh v. State of Punjab, Kulwant Rai v. State of Punjab and Hari Ram v. State of Haryana. To this list two more cases can be added Jagtar Singh v. State of Punjab and Ram Sunder v. State of U.P. Having regard to the ratio of each of these decisions, we are satisfied that even if Exception I is not attracted the requisite intention cannot be attributed to the appellant. But in the circumstances herein discussed he wielded a weapon like a knife and therefore he can be attributed with the knowledge that he was likely to cause an injury which was likely to cause death. In such a situation, he would be guilty of committing an offence u/s 304 Part II of the Indian Penal Code. Having regard to the circumstances of the case, a sentence of 5 years would be quite adequate.

30. We hold that evidence on record does not establish the offence punishable u/s 302 IPC. The evidence on record establishes the commission of an offence of culpable homicide not amounting to murder and attracting Part II of Section 304 IPC.

31. The appeals are partially allowed. The conviction of the appellants for the offence punishable u/s 302 and Section 302 read with Section 109 IPC is modified, in that, the appellants are convicted for the offence punishable u/s 304 Part II IPC.

32. The appellant Vicky is in judicial custody. As per nominal roll, he has suffered incarceration for more than six years excluding the remissions which he has earned. The co-accused Sumit has been admitted to bail vide order dated 25.7.2007 wherein it has been recorded that he had already suffered sentence of four years. So is the position of co-accused Kale @ Suraj, who has been admitted

to bail on 19.9.2007; already having suffered a sentence of four years and three months. In this background, all the accused persons are sentenced to imprisonment already undergone by them.

33. Accused Vicky be released forthwith, if not required in any other case. The bail bonds and surety bonds furnished by Kale and Sumit are discharged.

34. Copy of this order be sent to the Superintendent, Central Jail, Tihar for necessary compliance.