

(2010) 01 DEL CK 0284
In the Delhi High Court
Case No : Criminal A. No. 687 of 2003

Vijay

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 161, 207, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2010) 01 DEL CK 0284

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Satish Tamta and Ms. Rushi Kapur, for respondent No. 2, for the appearing parties; M.P. Singh, APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Accused Narender Kumar, Nand Lal, Balraj and Vijay had been convicted under Sections 323/34 of the Indian Penal Code (IPC) by the learned Additional Sessions Judge, Delhi; and have been sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 1,000/- and in default to further undergo rigorous imprisonment for one month. Benefit of Section 428 of the Code of Criminal Procedure (Cr.P.C.) had been given to them.

2. Aggrieved by their conviction and sentence appellants have preferred above mentioned appeals and the same are being disposed of by this common judgment having arisen from the same judgment.

3. FIR No. 218/1991 was registered at Police Station Sultan Puri under Sections 302/34 IPC. After investigation accused were sent up to face trial for having committing murder of one Rajesh. However, after scrutinizing the evidence adduced by the parties, learned Additional Sessions Judge concluded that the accused were not guilty for committing the offence under Sections 302/34 IPC and acquitted them for this offence. But accused were convicted u/s 323/34 IPC for causing simple injuries on the person of deceased, by their offending acts.

4. Aggrieved by the acquittal of accused under Sections 302/34 IPC, complainant has filed a revision petition under Sections 397/401 Cr.P.C. being CrI. Revision No. 1017/2003 and same is also disposed of along with the appeals, as the same set of evidence is to be appreciated.

5. Briefly stated prosecution case, that emerges from the trial court record is that, an information was received in the Police Station Sultan Puri on 6th September, 1991 at about 6:15 pm that a quarrel was going on near Higher Secondary School, Village Pooth Kalan; this information was recorded as D.D. No. 66-B and handed over to ASI Jodha Singh for inquiry, who along with Const. Sat Narayan reached the spot and found accused Balraj, Narender Kumar and deceased Rajesh quarreling and scuffling with each other. ASI Jodha Singh arrested Narender Kumar, Balraj and Rajesh under Sections 107/151 Cr.P.C. and lodged them in the lock up of Police Station Sultan Puri after deceased Rajesh and accused Narender Kumar had been medically examined at DDU hospital.

6. In the night deceased Rajesh, while he was lodged in the lock up, complained of pain, vomited and became unconscious and was taken to DDU hospital at about 3:10 am on 7th September, 1991 from where he was referred to R.M.L. hospital. Medical treatment was provided to Rajesh but unfortunately he died at about 5:30 am on 7th September, 1991. As he died while in Police custody, inquest was conducted by the SDM, Patel Nagar, Delhi. Thereafter, medical board under the chairmanship of Dr. Bharat Singh, Medical Superintendent, Civil Hospital was constituted of which Dr. L.K. Baruah and Dr. R.K. Baruah were members. Autopsy on dead body was conducted. As per autopsy report, death was possible due to hepatic failure following viral hepatitis. It was mentioned that the injuries found on the person of deceased were simple in nature and not sufficient to cause death. Internal examination also showed that there was no intra-cranial hemorrhage and skull appeared to be normal.

7. After death of Rajesh, his mother Omwati made a statement at about 10:00 am on 7th September, 1991 before Inspector Dharampal Sharma, that about two years ago Rajesh had objected to Balraj, Narender Kumar and Vijay teasing his niece and for this reason they were nursing a grudge against him. They used to beat Rajesh off and on. In the month of July they gave beatings to Rajesh and a police complaint was made in this regard. On 6th September, 1991 at about 5:30 pm Rajesh along with his cousin Ashok had gone to ease himself in the jungle. After some time Ashok returned and informed that Narender Kumar, Balraj and Vijay were beating Rajesh on the instigation of Nand Lal and Ram Chander. On receipt of this information, she went towards the jungle along with Ashok and saw Rajbir her Jeth (husband's elder brother) bringing Rajesh with him by extending support to him. On her enquiring, Rajbir informed her that Vijay, Balraj and Narender Kumar had given beatings to Rajesh by hockey and dandas on the instigation of Nand Lal and Ram Chander, who were also carrying lathis. Rajesh also confided in her that Balraj had assaulted him with hockey, accused Narender Kumar with bullet chain and accused Vijay with lathi on the instigation of Nand

Lal and Ram Chander. She took Rajesh to Police Station in a rickshaw where Balraj and Narender Kumar were already present. She narrated the incident to Police officials present there and requested them to lodge her report but nothing was done. Instead Rajesh was taken to hospital by a Police constable on his scooter and later on at about 8:30 pm he was lodged in the Police lock up. In night when his condition deteriorated he was finally taken to DDU hospital and from there to RML hospital, where he died in the morning. In the Police Station ASI Jodha Singh tried to put pressure on her husband to settle the matter with the accused persons. On the basis of this statement of complainant, FIR No. 218/1991 under Sections 302/34 IPC was registered.

8. Accused were arrested. Accused Nand Lal got recovered lathi from his house on 8th September, 1991 which was seized by the Police. Accused Balraj got recovered hockey from the agricultural field on the same day which was also seized. Accused Narender Kumar got recovered bullet chain of a motorcycle from agricultural field on the same day which was also seized by the Police. Weapons of offence got were recovered by the accused pursuant to their disclosure statements. Scaled site plan was prepared by SI Manohar Lal at the instance of Rajbir and Ashok. Case property was deposited in the Malkhana. Statements of these witnesses including that of eye witnesses Rajbir and Ashok were recorded. After completion of investigation charge sheet was filed in the court of learned Metropolitan Magistrate who took cognizance of the offence and after completing procedural formalities u/s 207 Cr.P.C., committed the case to the court of Sessions since the offence u/s 302 IPC is exclusively triable by the Sessions court.

9. Charges under Sections 147/148/302 read with Section 149 were framed against the accused by the learned Additional Sessions Judge on 4th February, 1998 to which they pleaded not guilty and claimed trial.

10. Prosecution examined twenty four witnesses in all. After prosecution closed evidence, statements of accused were recorded u/s 313 Cr.P.C. on 13th August, 2003 wherein entire incriminating material, which had come on record, was put to them. Accused persons denied the same being as incorrect and claimed themselves to be innocent. They stated that they had been falsely implicated in this case due to past enmity. However, no evidence in defence was led by them.

11. Learned Additional Sessions Judge found the testimony of PW2 Rajbir, PW3 Ashok and PW4 Omwati to be trustworthy and reliable and concluded that accused persons Narender Kumar, Nand Lal, Bal Raj and Vijay in furtherance of their common intention had caused simple injuries on the person of Rajesh, by blunt objects. However, in view of the medical evidence, according to which death had been caused due to hepatic failure following viral hepatitis and that the injuries on the person were not sufficient to cause death, learned Additional Sessions Judge held that the offence punishable under Sections 302/34 was not made out, therefor, acquitted the appellants of the charge of murder. But appellants were convicted under Sections 323/34 IPC for having caused simple injuries to the deceased by blunt object.

12. I have heard learned counsel for the appellant/complainant/revisionist and State and perused the trial court record carefully. What emerges from the trial court record is that initially an information was received in the Police Station regarding a quarrel near Higher Secondary School, Village Pooth Kalan which was recorded in daily diary as DD No. 66-B (Ex. PW14/A). On receipt of this information, ASI Jodha Singh reached the spot and found that accused Narender Kumar, Balraj and deceased Rajesh were scuffling and quarreling with each other. He also found injuries on the person of Rajesh and Narender Kumar. Narender Kumar and Rajesh were taken to DDU hospital for their medical examination. Thereafter, Rajesh, Narender Kumar and Balraj were lodged in the lock up at Police Station Sultan Puri after a case under Sections 107/151 Cr.PC. was registered against them. PW2 Rajbir in his cross examination, had admitted that Kalandra under Sections 107/151 Cr.P.C was prepared against deceased Rajesh, Narender Kumar and Balraj. He also admitted that the deceased as well as accused Narender and Balraj were lodged in the lock up. PW3 Ashok and PW4 Omwati also confirmed this fact in their cross examination. PW8 Jagdish Singh, father of the deceased, also stated so, in his cross-examination. PW14 Inspector Dharam Pal Sharma, who was posted as SHO, P.S. Sultan Puri on 6th September, 1991, had also categorically deposed that ASI Jodha Singh had arrested Narender Kumar, Bal Raj and deceased Rajesh under Sections 107/151 Cr.P.C. on 6th September, 1991 and lodged them in the police lock up. He further deposed that accused Narender Kumar and Bal Raj were produced before the Special Executive Magistrate on 7th September, 1991 under Sections 107/151 Cr.P.C. and later they were arrested in the present FIR. PW 21 Kishan Kumar who was posted as Special Executive Magistrate, at the relevant time has confirmed this fact. He has also deposed that deceased was in custody of Police under Sections 107/151 Cr.P.C. on 6th September, 1991 and had died on 7th September, 1991 in RML hospital. So far as ASI Jodha Singh is concerned, he died during the trial, therefore, could not be produced. However, from DD No. 66-B coupled with other material on record, including the statement of above witnesses, it is clear that the deceased along with accused Narender Kumar and Bal Raj was arrested under Sections 107/151 Cr.P.C. by ASI Jodha Singh and lodged in the police lock up. As per the Kalandra, incident of beating had taken place near Higher Secondary School, Village Pooth Kalan.

13. Other prosecution story as emerges from the statements of PW2, PW3 and PW4, does not run hand in hand with initial story propounded by it. As per the eye-witnesses, incident had taken place in a jungle which was about 1km away from the Higher Secondary School, wherein Narender, Balraj and Vijay had thrashed deceased on the instigation of Nand Lal and Ram Chander. Deceased, in an injured condition was taken to police station by his mother PW4 Omwati. Both these theories do not run parallel to each other and creates a serious doubt about the whole incident, as narrated by the eye-witnesses.

14. In this case PW2 and PW3 are the alleged eye witnesses to the incident. So far as PW4 is concerned, admittedly, she was not even present at the spot. She

derived information regarding the incident from PW3 and had not witnessed the same. Therefore, her knowledge about the incident being only here say, would be of no consequence. At best, it could have been read only to corroborate the statements of PW2 and PW3, who had deposed that accused Narender Kumar, Bal Raj and Vijay had given beatings to deceased Rajesh on the instigation of Nand Lal and Ram Chander, in their presence in the jungle which was about 1 km. away from the Higher Secondary School as well as Village Pooth Kalan. The place of incident as narrated by these witnesses, was not near Higher Secondary School but was a deserted place in a jungle far away from the Village and Higher Secondary School. As per the site plan, incident took place in isolated vacant land and not near the school. The story propounded by these two witnesses is inconsistent with the first theory of prosecution that on receipt of information regarding quarrel near Higher Secondary School, ASI Jodha Singh reached and apprehended Rajesh, Narender Kumar and Bal Raj, booked them under Sections 107/151 Cr.P.C., and lodged them in the lock up. As per this theory, accused Nand Lal, Ram Chander and Vijay were nowhere in the picture. First theory of prosecution, regarding arrest of deceased, accused Narender Kumar and Bal Raj u/s 107/151 Cr.P.C., is duly supported by the prosecution witnesses and cannot be discarded. This creates a serious doubt on the veracity of versions of PW2, PW3 and PW4.

15. Conduct of PW3 also creates a serious doubt, his being an eye witness. In his cross examination, he had stated that after the incident he returned home and went to sleep. He did not visit Police Station almost for fifteen days. He has admitted that he did not inform the Police officials, who were present at the Tehrvi ceremony that he was one of the eye witness. As per the prosecution, statement of this witness u/s 161 Cr.P.C. was recorded on 7th September, 1991. But in his cross-examination, PW3 deposed that from the spot he came back to his house; he did not go to police station after coming to know about death of Rajesh at about 10.00 a.m. nor made any statement on that day. He went to police station for the first time after the tehrvi to tell them that he had witnessed the incident. His this conduct is quite unnatural and creates a doubt about his presence at the time of incident.

16. Conduct of PW2 is also not above board. As per him, he told PW4 Omwati to take the deceased to the police station. He was uncle of deceased, therefore, his conduct of leaving the deceased in injured condition midway was quite unnatural. That apart, he admittedly, reached the police station after sometime and remained there whole night. In spite of this, he did not inform the police officials including the SHO that he had seen the appellant causing injuries on the person of deceased. He had failed to explain as to why he did not tell any of the police officers that he was eye-witness to the incident. In the police station he came to know that deceased along with Narender and Bal Raj was arrested u/s 107/151 Cr.P.C. but even then he did not lodge any protest and intimate the concerned police officer that the appellants had given beatings to the deceased in the jungle and a case be registered against them. He gave statement implicating appellant

only after the death of Rajesh.

17. It appears that deceased, Narender and Balraj were quarrelling near the school and were arrested by ASI Jodha Singh and put in the lock up. Late in the night, condition of deceased deteriorated on account of his ailment with which he was suffering, this lead to his hospitalization where he died due to viral hepatitis. After his death, these eye-witnesses were brought in picture, for deposing against Narender and Balraj, who had quarreled with the deceased near the school, also implicating other accused persons as well as apparently there was past acrimony between the two families. But the fact remains that Narender and Balraj had indeed quarreled with the deceased wherein he suffered simple injuries.

18. In the light of above discussions, I am of the view that at best it can be said that accused Bal Raj and Narender Kumar by giving beatings to deceased had caused injuries on his person. So far as accused Nand Lal and Vijay are concerned, they are entitled to acquittal. Ram Chander died during the pendency of trial.

19. Next question, which arises for the consideration is as to whether accused Bal Raj and Narender Kumar had intentionally caused such injuries on the person of deceased Rajesh so as to commit his murder; the injuries so caused on the person of Rajesh resulted in his death.

20. Post mortem on the dead body of Rajesh was conducted by a board of three doctors. Dr. Bharat Singh and Dr. L.K. Baruah had been examined as PW9 and PW19 respectively. Dr. R.K. Baruah had not been examined. However, post-mortem report had been duly proved by the PW9 and PW19. As per post mortem report following injuries were found on the person of deceased:-

- 1) Abrasion 0.5 cm x 0.5 cm left allae of the nose.
- 2) Bruise size 7 cm x 1.2 cm on the lateral aspect of left shoulder joint.
- 3) Bruise size 5 cm x 2 cm on the lateral aspect of left hand 2 inches below the elbow joint.
- 4) Bruise size 5 cm x 1.2 cm on the tip of the right shoulder.
- 5) Two intra cardice injection markover the left side of the chest.
- 6) One injection prick mark on the right cubital fossa.
- 7) Abrasion 2 cm x 1 cm on the posterior lateral aspect of the right elbow joint.
- 8) Bruise in an area of 10 cm x 2 cm on the right knee.
- 9) Similar bruise in an area of 7 cm x 2 cm just below the right patella.
- 10) One small abrasion 1.5 cm x.5 cm on the front of leg and
- 11) One small abrasion 1.5 cm x.5 cm on the lateral aspect of the right knee.

21. Doctors opined that all the injuries were anti-mortem; Injury no. 8 and 9 were possible by flexible blunt object and all the other injuries were possible by blunt object; Injuries were not sufficient to cause death and were simple in nature; death was possible by hepatic failure following viral hepatitis.

(emphasis supplied)

22. It is apparent that no head injury was detected on the person of deceased Rajesh. There is no mention of head injury even in the first MLC of deceased Rajesh prepared at DDU hospital. Merely because there is mention of head injury in the death summary prepared by RML hospital, would be of no consequence more so, when no such injury was found by the team of doctors, who had conducted the autopsy on the dead body, inasmuch as, no MLC of RML hospital had been placed on record.

23. It has been categorically deposed by PW9 that injuries were simple in nature and were not sufficient to cause death and death had occurred due to hepatic failure following viral hepatitis. PW19 Dr. L.K. Baruah supported PW9 Dr. Bharat Singh. In his cross examination, he categorically deposed that he did not observe any abrasion on the head. The medical evidence clearly shows that the deceased died due to hepatic failure following viral hepatitis and not because of injuries suffered by him. Nature of injuries suffered by the deceased are possible due to scuffle and supports the first theory propounded by the prosecution that ASI Jodha Singh found deceased, accused Narender and Balraj quarrelling near the school and arrested them u/s 107/151 Cr.P.C. Accordingly, I am of the view that learned Additional Sessions Judge has rightly concluded that from the evidence available on record no case of murder was made out against the accused persons.

24. Learned counsel for the complainant has vehemently contended that medical evidence cannot be preferred as against the cogent, credible and trustworthy ocular evidence. Reliance has been placed on Krishnan and Another Vs. State Rep. by Inspector of Police, . According to him, PW2 and PW3 are trustworthy witnesses and since they categorically deposed that accused Balraj, Narender Kumar and Vijay had given beatings to the deceased on the instigation of Ram Chander and Nand Lal resulting in fatal injuries to him, learned Additional Sessions Judge ought to have convicted all the appellants u/s 302/34 IPC. Medical evidence in these circumstances by itself would not be sufficient to hold that deceased did not die due to injuries caused to him but on account of hepatic failure following viral hepatitis. Deceased was not suffering from jaundice nor was being treated in any hospital prior to the incident, therefore, there was no question of his, all of a sudden collapsing due to the alleged ailment. He has further contended that deceased had vomited before falling unconscious and this happens only in case of head injury. Thus, it is contended that the appellants be convicted u/s 302/34 IPC.

25. I do not find any force in this contention of the learned counsel. For the detailed reasons already mentioned in the preceding paras, testimony of eye-

witnesses PW2, PW3 and PW4 had been discarded. Krishna's case (supra) is in different facts and is not applicable in the facts of this case, inasmuch, as it has been held therein that when ocular evidence is cogent, reliable and trustworthy, minor variance, if any, with the medical evidence is of no consequence. In this case, as per medical evidence death was not homicidal but was due to ailment with which deceased had been suffering, and merely on the basis of eye-witnesses account, which otherwise is not credible, it cannot be concluded that it was as a result of alleged beatings.

26. In the light of the above discussions, I allow Crl. Appeal No. 688/2003 and 687/2003 and acquit appellant Nand Lal and Vijay.

27. Conviction of Balraj and Narender Kumar under Sections 323/34 IPC is upheld. However, their sentence is reduced to six months from one year, keeping in view, the submission of learned counsel that at the time of occurrence they were young in age but with the passage of about twenty years their responsibility has grown. Their respective families are wholly dependent upon them. Crl. Appeal Nos. 693/2003 and 712/2003 are disposed of in the above terms.

28. Appellants Narender Kumar and Balraj be taken in custody and sent to jail to serve the remainder of their sentence.

29. Crl. Revision Petition No. 1017/2003 is dismissed.