Harish Kumar

Vs

State (Delhi Administration)

Criminal Appeal No. 640 of 1980

(K. Ramaswamy, S. Mohan JJ)

29.01.1992

JUDGMENT

1. The appellant was charged for the offence of murder of Sudhir on March 19, 1973 at 2 noon. The Trial Court acquitted him of the charge, but on appeal the High Court reversed the acquittal and convicted him under Section 302, I.P.C. and sentenced him to imprisonment for life. Thus this appeal under Section 2 of the Supreme Court Enlargement of Criminal Jurisdiction Act, 1972.

2. The facts in brief are that on March 19, 1973 being the Holiday, the appellant and one Rajan Mani went to the shop of the deceased bearing No. 1259/A/B situated at Balbir Nagar, Shahdara, New Delhi and requested him to close the tea shop which he was vending and asked him to take part in playing Holi. Thereon the deceased refused to accede to their request. Thereafter, in a huff the appellant and Rajan Mani went away with a dire threat to the deceased and his father, Ved Prakash, P.W. 1, who remonstrated against the threat. One hour thereafter the appellant came holding a Gupti (sharp edged weapon) in his right hand to the shop by which time the deceased was closing the shop. Rajan Mani took the deceased in his arms and held him back. The appellant inflicted a fatal blow near the neck and also gave other minor injuries. P.W. 1 and P.W. 3 have seen the occurrence. The deceased was made to walk for a distance of 25-30 feet and thereafter he fell down at the house of P.W. 4. Then he was taken to the hospital. The deceased died two days thereafter, namely, on March 21, 1973. P.W. 12, the doctor, conducted the autopsy and found that there were as many as nine injuries and Injury No. 2 was found to be fatal which in the opinion of the doctor was sufficient to cause death in the ordinary course of nature. P.W. 1 is the father of the deceased. P.W. 3 is another independent witness, who happened to come over to the area to his sister's house to play Holi.

3. The trial Court disbelieved the evidence of P.W. 3 on the ground that P.W. 1 did not disclose the name of the P.W. 3 either in his initial statement under Section 161 or in his supplementary statement. The name of P.W. 3 was also not disclosed in the FIR. The statement under Section 164 of Cr.P.C. was got recorded. As a result, his evidence was suspect. The evidence of P.W. 1 was also disbelieved. The High Court considered the evidence afresh and found that P.W. 3 is an independent witness. P.W. 1 being the father of the deceased is not interested to exclude the real offender and implicate an innocent person as the assailant of his son and that, therefore, their evidence was found acceptable. The High Cort accordingly convicted the appellant and confirmed the acquittal of the co-accused, Rajan Mani.

4. Shri Das Bahl, learned counsel for the appellant has reiterated the contentions which were found acceptable to the trial Court, but on consideration of the evidence we find no justifiable reason to differ from the High Court. It is seen that in cross-examination of P.W. 3 he has graphically explained the attack mounted by the appellant on the deceased, but for the fact that he was an eye

witness, it would be difficult to give such a graphic description of the happening of the occurrence. Absolutely P.W. 3 has no axe to grind against the appellant. No material contradictions have been brought out to doubt his veracity except stating that he was speaking falsely. P.W. 3 being an independent witness, his evidence cannot become suspect merely because the statement under Section 164, Cr.P.C. was not recorded by the police. Perhaps with a view to see that he cannot be gained over, the police in its usual precaution has got the statement of P.W. 3 recorded under Section 164, Cr.P.C, It might be that there is an attempt to pressurise P.W. 3 by getting the statement under Section 164 and the prosecution attempted to pin him down to the statement given to them. But that ground should be taken as a caution to scrutinise the evidence of P.W. 3 and subject it to critical examination. We have carefully scanned his evidence keeping these factors in view and we find that absolutely there are no compelling reasons to differ from the assessment of the evidence by the High Court to disbelieve his evidence. That apart, we have the evidence of P.W. 1, Ved Prakash, father of the deceased, which is sufficient to hold that the appellant alone has inflicted the injuries which resulted in the death of Sudhir. It is not disputed that P.W. 1 was present at the time when the shop was being closed. Even at the first instance also, the father was present when the threat was administered by the appellant to the father himself, when he remonstrated against the obstruction to his son continuing the tea business in his shop. P.W. 1 being the father is interested to bring to book the real culprit and he does not exclude the real culprit and inculpate an innocent person. Considered from this perspective, we find that the evidence of P.W. 1 also is natural. It is consistent though there are some discrepancies in his evidence vis-a-vis the statements under Section 161 which are not on material particulars of the prosecution case.

5. On a totality of the facts and the circumstances, we are satisfied that the evidence of P.W. 1 and P. W. 3 inspires confidence to be acceptable. Accordingly, we accepted their evidence. From their evidence, it is clear that the prosecution has established that the appellant alone has inflicted the injury No. 2 which resulted in the death of Sudhir.

6. The next question is what is the offence the appellant had committed. We have seen the. evidence. Mr. V. C. Mahajan, learned counsel for the State contended that the appellant came one hour after the initial exchange of words; he came with sharp edged weapon and without any provocation he inflicted the injury on the deceased when he was held back by the acquitted co-accused that would show that there is an intention to kill him, and as per the doctor the injury was sufficient in the ordinary course of nature to cause the death coming within clause thirdly of Section 300, IPC. It is no doubt true, as rightly contended, that if read in isolation by itself the offence may be murder, but when closely scrutinised the evidence in this behalf, we find that the evidence cannot conclusively show that the offence can be brought within clause thirdly of Section 300, IPC.

7. We have seen the nature of the injuries and also the time gap between the time of infliction of the injury till the date of death which was two days after the injury was inflicted. We have no sufficient material as to the nature of the treatment given to the deceased during those two days.

8. Under these circumstances, though the injury had resulted in the death of the deceased, we cannot conclusively say that it was sufficient to cause his death. Accordingly, the offence would be one falling under Section 304, Part II of IPC. In the result, we set aside the conviction under Section 302 IPC and sentence of life imprisonment and convict the appellant under Section 304, Part II of IPC and impose a sentence of imprisonment for a period of seven years rigorous imprisonment. The appeal is accordingly allowed to the above extent and the appellant shall undergo rigorous imprisonment for a period of seven years. Order accordingly.

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