

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Judgment: 19th August, 2009.

+ **CRL.A.82/2007**

MOHAN SINGH ...Appellant
Through: Ms. Purnima Sethi, Adv.

Versus

STATE ...Respondent
Through: Mr. Pawan Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (ORAL)

1. The appellant has been convicted for the offence of murder. The impugned judgment is dated 12.12.2005.
2. Before we note the facts of the case, we wish to pen down a prelude, for the reason we are noting an unfortunate trend of convicting each and every accused, whose act has resulted in the death of a person.

3. In a case of homicide, the distinction between homicide simplicitor and a homicide amounting to murder is well re-cognised by law and has to be kept in view while evaluating evidence. Further, the distinction between Part I and Part II of Section 304 IPC has also to be kept in view. That apart, there may be cases where the intention of the accused may be to cause an injury simplicitor but death may result. In such cases, it has to be considered whether the act constitutes an offence punishable under Section 322, 323, 325 or 326 IPC.

4. The reason is obvious. Unlike in statutory offences or offences of strict liability, mens rea plays a very important role in criminal matters. An act actuated by mens rea comes within the four corners of a penal offence.

5. The appellant has been convicted on the testimony of Const. Shiv Kumar PW-1 who claimed to be an eye-witness.

6. Shiv Kumar deposed that he was posted as a Constable in police station Kalyanpuri and at 9.45 PM on 22.9.2003 was proceeding towards Khichripur. He reached near a wine shop and saw people running here and there. He entered the market place and saw the accused hitting a boy with a broken bottle. On seeing him, the accused fled with the

broken bottle. He chased the accused and apprehended him. He brought him back to the spot and met HC Jaiveer. The SHO arrived soon. His statement Ex.PW-1/A was recorded by the SHO. He handed over the accused whom he had apprehended i.e. the appellant to the SHO.

7. We may note that the apprehension of the appellant and the recovery of a broken glass bottle from him stands recorded in the rukka prepared at the site and dispatched from the spot in the midnight at 00.15 hours. The same is evidenced from the endorsement Ex.PW-2/A on the statement Ex.PW-1/A i.e. the rukka.

8. Another fact of importance qua the involvement of the appellant may be noted. The shirt and the pant which he was wearing when he was apprehended and were seized immediately after his apprehension have been detected with the presence of human blood of group A i.e. the blood group of the deceased as per the report Ex.PW-19/L of the serologist.

9. The post-mortem report of the deceased Ex.PW-15/A notes only two injuries on the person of the deceased being:

- “(i) Incised injury 1.5cm x .5cm x 1cm deep just below left eye semicircular. Margins (illegible);
- (ii) Abrasion 2x.5 cm just below injury above.”

10. Opinion regarding cause of death was kept pending till chemical analysis report of the viscera was made available.

11. It is apparent that the doctor who conducted the post mortem report could not give a definite opinion as to what caused the death. We may note that as per the post-mortem report, one liter blood was detected in the abdomen due to heamorrhage.

12. For record we may note that there is no evidence of the deceased being poisoned to death.

13. The doctor who conducted the post-mortem, namely, Dr.V.K.Singh deposed that as per the post-mortem report the cause of death of the deceased was heamorrhagic shock consequent upon blunt force impact on the abdomen.

14. The learned Trial Judge has, without analyzing the post-mortem report or the testimony of the doctor who conducted the post-mortem, simply on the basis of the fact that the deceased died, held that it is a case of murder.

15. We totally disagree.

16. The post-mortem report of the deceased shows that due to a blow given on the stomach of the deceased a resultant injury inside the stomach of blood vessels being ruptured resulted. Due to blood loss the deceased suffered a heamorrhagic shock. No external injury on the stomach could be detected. Not even a contusion injury. It is apparent that the blow on the stomach was sans a material object. In all probability the blow on the stomach was a fist blow. The two incised injuries near the eye are superficial. In any case, the doctor has not opined the same to be dangerous.

17. Dead bodies speak for themselves. The dead body of the deceased speaks and tells us that an unfortunate fist blow on the stomach of the deceased resulted in internal arteries getting ruptured and blood loss being the result thereof. The end was heamorrhagic shock.

18. We need not discuss the theory of culpable homicide amounting to murder and culpable homicide not amounting to murder for the reason the theory is well-known.

19. The act of the appellant does not evidence any intention to cause death of the deceased. It even does not evidence an intention to cause an injury which the appellant

knew likely to cause the death of the deceased. There is no intention to cause the injury which has resulted from the act i.e. the rupturing of the internal arteries, which has resulted in the death. Even knowledge contemplated by the third limb of Section 299 IPC i.e. that the act of the appellant is likely to cause death of the deceased is ruled out.

20. It is obvious that the appellant simply intended to cause an injury on the person of the deceased by giving him a fist blow on the stomach. At best, the offence committed by the appellant is of voluntarily causing grievous hurt punishable under Section 325 IPC with imprisonment for a term which may extend up to seven years.

21. The appellant, as per his nominal role, has already undergone an actual sentence of five years, ten months and nineteen days. He has earned remissions which would entitle him to immediate release even if we sentence him to undergo imprisonment for seven years.

22. We dispose of appeal setting aside the impugned judgment and order dated 12.12.2005. We acquit the appellant from the charge of having murdered the deceased. We convict the appellant for the offence punishable under

Section 325 IPC and sentence him to undergo imprisonment for the period already undergone.

23. Copy of this judgment be sent to the Superintendent, Central Jail, Tihar for immediate compliance since the appellant has to be set free pursuant to our decision, save and accept, his being in custody in some other case.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

August 19, 2009
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