

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No.681/2008**

% Date of Order : April 16, 2009

IMRAN Appellant
Through : Mr. Rajesh Mahajan, Advocate

VERSUS

STATE Respondent
Through : Mr. Pawan Sharma, Advocate

CORAM :-
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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. Vide impugned judgment and order dated 18.7.2007, the appellant has been indicted for the offence of having murdered Kavinder.

2. Vide order of sentence dated 21.7.2007, the appellant has been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.2,000/- with a direction that in default of payment of fine, appellant would undergo RI for one year.

3. Briefly stated case of the prosecution was that the appellant as well as the deceased used to take cycle rickshaw on hire from Abdul Aziz @ Mulla Ji PW-3, and that about 4 or 5 months prior to 6.7.2004, the appellant vanished with a rickshaw taken by him on hire from Abdul Aziz and that Mulla Ji managed to track down the appellant with the help of the deceased and brought him along with the rickshaw to his garage at Gali No.15, Vijay Park, Mauz Pur, Delhi. That the appellant and the deceased slept in the garage in the intervening night of 6th and 7th July 2004 and that around 4:30 AM the appellant picked up an iron piece (being a segment of a railway track) and started assaulting the deceased whose cries attracted Halku PW-1 and Bhandari PW-2 who saw the assault being completed. Halku raised an alarm. People gathered. The appellant was apprehended at the spot and was handed over to the police. The clothes which he was wearing namely a shirt and a pant got stained with blood. They were seized and as per FSL report Ex.PW-18/D it was opined that blood of human origin of group 'O' was detected on the pant. Human blood was detected on the shirt but gave no reaction pertaining to the group thereof. It was opined that the blood group of the deceased was 'O'. The metal piece used for the assault, which was also stained with blood, was opined to be having human blood of group 'O'.

4. The dead body of the deceased which was seized from the garage where the assault took place was sent for post-mortem and as per post-mortem report Ex.PW-19/A it stands recorded that the following ante-mortem injuries were noted:-

“1. Lacerated wound 8cm x 2 cm x bone deep with contused margin present obliquely on right side forehead starting from outer angle of right eye going towards midline upto the hair line of scalp with underline depressed fracture of the skull.

2. Lacerated wound “L” shaped with contused margin. The longer limb measures 6cm x 2 cm and the shorter limb 3 cm x 2 cm present obliquely on right side of forehead starting just at the tip of bridge of nose going towards left side of forehead terminating 1.5 m below the hair line of scalp with underline depressed fracture of skull.

3. Lacerated wound 2.5 cm x 0.5 cm x bone deep present on left side of face horizontally placed 4cm away from left ala nasi 4 cm medial to tragus of left hair 1.5cm below the horizontal line from outer angel of left eye with fracture of underlying zygomatic bone.

4. Lacerated wound 2.5 cm x 0.5 cm x subcutaneous tissue deep present on left upper lip obliquely placed 1.5 cm medial to the outer angel of left side of mouth 2cm below the left nostril.

5. Superficial lacerated wound 3 cm x 0.2 cm x bone deep present on left side of face 1cm below the lower lip, 1.5 cm away from midline.

6. Lacerated wound 2 cm x 0.2 cm x subcutaneous tissue deep present on left side of face 1 cm below injury No.5.

7. Lacerated wound 8 cm x 2.5 cm x subcutaneous tissue deep present on left side of lower part of front of neck, medial end starting from midline and lateral end terminating little away from a vertical line drawn from left ear lobule with wound margins having tags of

skin and exposing the underlying blood vessels and muscles of neck.

8. Lacerated wound incised looking three in number, 2 cm, 3 cm and 7 cm long 0.1 cm broad, present on the lower part of left side of face on the mandibular margin.

9. Linear multiple abrasions brownish present on the front of neck across the midline 7cm long.

10. Abrasions 2 cm x 0.5 cm on right side of face, 1.5 cm below the outer angle of right eye. Upper frontal incisor teeth broken.

11. Abrasions 9.5 cm x 0.2 cm brownish obliquely present in the outer aspect of left upper arm, the medial end is 11 cm below the tip of left shoulder."

5. Internal examination revealed vertex fracture under injury No.1, 2 and 3. Anterior cranial fossa multiple fracture was found from orbital plate to wings of sphenoid on both sides. Odema i.e. swelling of the brain had resulted with sub-arachnoid haemorrhage.

6. Needless to state the death was shock resulting from ante-mortem injury to the brain and the skull produced by heavy blunt force impact.

7. As would have become apparent to the reader of the present order, the case was based on eye witness account as also the fact that the blood group of the deceased was 'O' and the pant of the appellant was found stained with same blood group. Pertaining to the weapon of offence, the FSL Report was relevant inasmuch as the iron piece was also found to be stained

with human blood of group 'O'.

8. At the trial Halku PW-1 deposed that he was plying the rickshaw of Mulla Ji and used to reside in the garage of Mulla Ji at Vijay Park. On 6.7.2004 appellant Imran had been brought by Mulla Ji to the garage because he had been absent for the last 3 months and had not paid the hire charges for the rickshaw belonging to Mulla Ji which he had taken on hire. He deposed that Kavinder also used to ply a rickshaw for Mulla Ji and had come to the garage of Mulla Ji at 8:00 Pm on that day. After taking meals he i.e. Halku slept. At 4:30 AM he saw appellant hitting Kavinder with iron piece used in the construction of railway line/track, which was been used in the workshop for repairing rickshaws. He deposed that the appellant inflicted injury on the forehead of Kavinder. Blood started oozing from the wound on the forehead. He raised an alarm. People gathered. Somebody informed the police. Appellant was apprehended at the spot and the iron piece Ex.P-1 recovered at the spot itself.

9. The witness was cross examined. We note that nothing has been brought out in the cross examination of the witness which discredits his testimony.

10. Bhandari PW-2 deposed that even he used to ply a rickshaw of Mulla Ji and on 6.7.2004 returned to the garage of

Mulla Ji at about 8:00 AM (It appears that the time has got incorrectly recorded; the same should be 8:00 PM). He deposed that the accused was brought to the garage by Mulla Ji and Kavinder as the accused who was plying a rickshaw of Mulla Ji had not paying the hire charges for the last 4 to 5 months and Mulla Ji demanded same from him. That in the morning at 4:30 AM he heard cries. He got up and heard some argument between the accused and Kavinder. The accused picked up a piece of iron (part of a rail) and struck a blow on the forehead of Kavinder. The accused was apprehended at the spot by public persons who had gathered. Blood was oozing from the forehead of the injured. He went to Mauzpur and called Mulla Ji to the spot. When he reached back with Mulla Ji, he found that the police had already reached. His statement Ex.PW-2/A bearing his signatures at point A was recorded.

11. The witness was cross examined. We note that nothing of substance has been brought out which discredits the witness.

12. We need not note any further evidence save and except to note that the FIR was registered pursuant to the statement Ex.PW-2/A. We further note that the incident took place at 4:30 AM. Information reached the police station when DD Entry No.26A was recorded at 5:30 AM. The endorsement on

the statement Ex.PW-2/A was made at 6:40 AM for registration of an FIR; meaning thereby, Bhandari PW-2 made the statement to the police in the shortest possible time after the incident took place and could not possibly have contrived false facts.

13. We further note that the testimony of Bhandari is in harmony with his statement Ex.PW-2/A.

14. Since eye witness account has successfully stood the test of cross examination we need not note any further.

15. We concur with the findings returned by the learned Trial Judge.

16. Before concluding we note that learned counsel for the appellant has urged that from the nature of injuries it cannot be conclusively opined that from the acts of the appellant an intention to cause the death of the deceased surfaced. Counsel urges that at best case is made out to convict the appellant for the offence punishable under Section 304 IPC.

17. We disagree. We have noted hereinabove the injuries inflicted on the person of the deceased. The assault has been directed towards the face and the skull. If not more, from the acts in question, it can be unhesitatingly concluded that the acts are so imminently dangerous that they must, in all probability, cause death or such bodily injury as is likely to cause death. Even a lay man is aware of the importance of the

brain and the skull. Every person would know that with the use of a heavy iron piece, repeated blows directed towards the skull would cause such bodily injury as would result in death as a near certainty.

18. We find no merits in the appeal.

19. The appeal is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

APRIL 16, 2009
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