

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

% Date of decision: 11.12.2009

+ CRL. A. No.731 of 2009

AJAY KUMAR ...APPELLANT

Through: Mr.H.M. Singh,
Advocate

Versus

STATE ...RESPONDENT

Through: Mr. Sunil Sharma,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

SANJAY KISHAN KAUL, J.(ORAL)

1. This appeal is directed against the impugned judgment dated 31.8.2009 convicting the appellant under Section 302 IPC and the consequent order of sentence dated 4.9.2009.

2. Briefly stated, the case of the prosecution is that the appellant as well as the deceased were residing as tenants on the

first floor of the same house. In the morning of 20.10.2008, a quarrel is stated to have taken place between the deceased on the one hand and appellant and his uncle Kale on the other hand. Brother of the deceased Manish @ Monu PW-2 was informed about the said quarrel by his mother. He came and intervened to pacify both the parties and thereafter he left for his duty and promised to come again in the evening and get the matter resolved amicably. The deceased thereafter is stated to have left his house after taking some money from his mother and he reached at the liquor vend at Mansarovar Park, G.T.Road where PW-4 Sarvan Sharma was already present. It is further the case of prosecution that the appellant also reached there at about 11.30 a.m. on a motorcycle and he started grappling with the deceased. In the process he gave few fist blows to the deceased and the deceased fell down. Thereafter the appellant fled away from the spot on his motorcycle.

3. When the deceased did not return back, his mother lodged a report at Police Station Shahdara and on the basis of her report, a formal FIR was registered under Section 365 IPC. On 21.10.2008 at around 9.45 a.m. dead body of the deceased Sanjay was found on the pavement under Shahdara flyover and this information was conveyed to the police station vide DD No.12-A. The police, thereafter, reached at the spot. The investigating officer contacted the mother of the deceased and informed her about the recovery of a dead body. PW-2 Manish went to the mortuary of GTB Hospital and identified the dead

body of Sanjay. Statements of witnesses were recorded and after completion of formalities a charge-sheet under Section 302/201 IPC was submitted in the Court against the appellant.

4. The appellant on being charged for offences under Section 302 IPC and 201 IPC pleaded innocence and claimed trial.

5. In all 15 witnesses were examined during trial. The defence of the appellant in his statement under Section 313 Cr.P.C. was of complete denial and he claimed to have been falsely implicated in this case.

6. On completion of trial learned trial court relied upon the eye-witness account given by PW-4 Sarvan Sharma and the medical evidence i.e. postmortem report Ex.PW 9/A and found the appellant guilty of murder of Sanjay and convicted him under Section 302 IPC. So far as charged under Section 201 IPC is concerned, the appellant stood acquitted.

7. Learned counsel for the appellant has submitted that PW-9 Dr.Meghali on conducting post mortem examination of the dead body found following external and internal injuries on the body of the deceased Sanjay:-

“External antemortem injuries.

1. Linear reddish abrasion obliquely placed 1.5 x .2 cm over right antero lateral aspect of right arm 4 cm above elbow joint.
2. Reddish grazed abrasion 1 cm x 1 cm present on right scapular area 10 cm from midline and 14 cm below shoulder top.
3. Reddish grazed abrasion 1.5 cm x 1 cm present on right lower back 8 cm from midline and 10 cm above inferior gluteal fold.
4. Reddish contusion measuring 2.5 cm x 1.5 cm present on lateral epicondyle of left humerus.

On internal examination, I found

Scalp Extravassation of blood seen on the right occipital region measuring 8 cm x 7 cm.

Skull Linear fissured fracture of right posterial fossa as shown in in PM report.

Brain Weighs 1400 grams. Diffused subdural haemorrhage present over both right and left cerebral hemispheres more on the left side. Haemorrhage seen in brain stem. Contusion seen on the base of left front left ventricular bleed seen. Intracerebral haemorrhage seen in left frontal lobe. Epidural haemorrhage measuring 3 x 4 cm seen in posterial cranial fossa at the fracture site described above. "

8. Dr.Meghali opined that the cause of death was shock as a result of ante mortem head injury produced by the blood force impact and the internal head injury suffered by the deceased was sufficient to cause death in ordinary course of nature. In the cross examination, she stated that external injuries No.1 to 3 were not possible by fist blows and volunteered that injury No.4 was possible by a fist blow. She clarified that blunt force impact could be caused by a blunt and hard weapon like stick, iron rod etc. According to her, time since death were 2 ½ days.

9. PW-4, the sole eye witness examined in this case has stated that he saw the appellant grappling with the deceased Sanjay near the wine shop on 20th October 2008 at 11.30 am and in that quarrel the appellant gave fist blows to the deceased as a result of which he fell down on the spot and thereafter the appellant fled away. He has nowhere stated that the appellant was carrying any blunt object like *lathi* or iron rod etc. at that time. Aforesaid version of PW-4 Sarvan Sharma does not explain the internal injuries No.1 to 3 found on the person of the deceased which admittedly, as per the opinion of the doctor, were not possible by a fist blow. His testimony also does not explain the internal injury i.e. fracture found in the skull. Therefore, the episode narrated by the witness cannot be safely linked with the injuries found on the person of the deceased as detailed in the post mortem report Ex.PW-9/A. We may further note that as per the post mortem report Ex.PW-9/A, the post mortem examination of the deceased was conducted on 23.10.2008 between 12.15 pm to 3.30 pm. The time of death has been opined by the doctor as 2½ days prior to the post mortem. On mathematical calculations, as per the opinion of the doctor regarding time since death, the death of the deceased should have occurred somewhere around 12.15 am to 1.30 am on the night intervening 20th and 21st October 2008. PW-4 in his testimony has narrated about the purported incident which took place in the morning at 11.30 am which episode in view of the above referred medical evidence could not have been the reason for the death of the deceased

particularly when the appellant admittedly had not used any weapon to hit the deceased.

10. Further the case set up by the prosecution is that after receiving the fist blows, the deceased fell down at the spot of occurrence which admittedly was near the liquor vend. However, his body is stated to have been recovered from the pavement under Shahdara over bridge across the road. There is no evidence on the record to clarify as to how and when the deceased after falling down near the liquor vend reached under the Shahdara over bridge. This circumstance also casts a doubt against the prosecution story. There is one other intriguing factor. The dead body of the deceased as per the prosecution was found lying at the pavement under the flyover in the morning of 21.10.2008 at 9.45 a.m. Even if it is assumed that after the fall because of the fist blow of the appellant, the deceased got up and went across the road and there he again fell down on the pavement under the flyover, then also it is highly improbable that his body was not noticed by anyone for a period of about 22 hours despite of the fact that it was recovered at the G.T. Road which is a heavy traffic road and is used by number of motorists and pedestrians. Thus, a possibility cannot be ruled out that something had happened on the night of 21.10.2008 which resulted in the deceased having suffered the fatal injury.

11. The learned counsel for the State has submitted that PW-2 Manish @ Monu, the brother of the deceased has categorically

stated that after the fight in the morning of 20.10.08, the appellant had threatened to kill the deceased and given the proximity of time of threat and the date of death coupled with the statement of PW-4 Sarvan, there can be no doubt that it was the appellant who had caused fatal injury to the deceased. We do not find any merit in this contention though the threat given by the appellant to kill the deceased raise a suspicion that the appellant might have committed murder of the deceased, this by itself is not sufficient to hold the appellant guilty. The suspicion, howsoever great, cannot be a substitute of proof in a criminal trial. Therefore, in our considered view, the trial court has gone astray while appreciating the evidence led by the prosecution.

12. The result of our discussion is that the conviction of the appellant under Section 302 IPC cannot be sustained. We, accordingly, accept the appeal and set aside the impugned judgment and acquit the appellant giving him benefit of doubt. The appellant is in custody. He may be released, if not wanted in any other case. Appeal stands disposed of.

SANJAY KISHAN KAUL, J.

DECEMBER 11, 2009
Aj/ks

AJIT BHARIHOKE, J.