

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. APPEAL 232/2009

% Judgment decided on: 31st January, 2011

SANJAY APPELLANT

Through: Mr. A. J. Bhambhani & Ms.
Lakshita Seth, Advs.

Versus

THE STATE RESPONDENT

Through: Mr. Arvind Gupta, APP

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | Yes |

A.K. PATHAK, J. (Oral)

1. Appellant has been convicted under Sections 325/304-II IPC by the Trial Court; sentenced to undergo rigorous imprisonment for six years with fine of ₹10,000/- and in default of payment of fine to undergo rigorous imprisonment for three months under Section 304-II IPC; sentenced to rigorous imprisonment for three years with fine of ₹5,000/- and in default of payment of fine to undergo rigorous imprisonment for two months under Section 325 IPC. Both the sentences have been directed to run concurrently.

2. It is this judgment which is under challenge in this Appeal.

3. Factual matrix as unfolded is that Shri. Pal Krishan (PW1) was the owner of two buses bearing registration Nos. DL1P-A-5062 and DL1P-A-5663. Appellant was driver of bus No. DL1P-A-5663, while Naveen (PW2), brother of deceased Praveen, was working as a driver on bus bearing registration No. DL1P-A-5062. Deceased was working as conductor on bus bearing registration No. DL1P-A-5663 of which appellant was driver. Both these buses used to be parked in the night at Jheel Chowk. On 24th August, 2006, buses were parked at Jheel Chowk. After taking meals, appellant, deceased and Naveen were resting on the roof of the bus. At about 1:30 AM, a quarrel broke out between the appellant and deceased over the settlement of account. Appellant commanded that money be paid to him immediately. When deceased told appellant that he will pay money later, appellant pushed him from the roof of the bus. Deceased fell down on the ground, sustained fatal injuries on his head and back to which he succumbed at the spot itself. When Naveen (PW2) asked the appellant as to why he had pushed his brother, appellant pushed him also from the roof of bus. PW2 fell down on the ground and sustained grievous injuries.

4. Charge under Section 302 IPC was framed against the appellant on 2nd December, 2006 for causing death of Praveen. Charge under Section 325 IPC was also framed

against him same day for causing grievous injuries on the person of Naveen Kumar. Appellant pleaded not guilty to the charges framed against him and claimed trial.

5. After the prosecution closed its evidence, statement under Section 313 Cr.P.C. of the appellant was recorded wherein entire incriminating material, which had come on record, was put to him. Case of appellant is that of simple denial. He claimed that he had been falsely implicated. He did not lead any evidence in his defense.

6. PW2 Naveen Kumar is the injured. He had also witnessed the appellant pushing the deceased from the bus. PW2 has fully supported the prosecution story. His testimony has been found trustworthy and reliable by the Trial Court to conclude that it is the appellant, who had pushed the deceased from the roof of the bus resulting head injuries to him, as a consequence whereof he died at the spot itself; further appellant had caused grievous injuries on the person of PW2 Naveen by pushing him from the roof of the bus. Keeping in mind the fact that appellant, deceased and the injured were friends, had taken liquor and meals together, quarrel broke out between the appellant and deceased all of a sudden, Trial Court was of the view that intention on the part of the appellant to cause culpable homicide of the deceased cannot be inferred. However, it was held that knowledge on the part of the appellant that by his act of pushing the deceased from the roof of the bus was

likely to result in his death cannot be ruled out. Throwing a person from the roof of a bus was a dangerous act and cannot be termed as accidental. Appellant had pushed the deceased in order to teach him a lesson since he had failed to handover the money on that day itself. This aspect was further strengthened from the fact that when PW2 Naveen Kumar confronted the appellant as to why he had thrown his brother (deceased) from the roof of the bus, appellant pushed him down also. The repetition of this act ruled out the possibility of appellant accidentally pushing the deceased from the roof of the bus. Trial Court concluded that since there was no intention or mens rea brought out from the evidence led on record, no case was made out under Section 302 IPC as also 304-I IPC. Thus, appellant was convicted under Section 304-II IPC for causing death of deceased Praveen. He was also convicted under Section 325 IPC for causing grievous injuries on the person of Naveen by pushing him from the roof of the bus.

7. I have carefully perused the statement of PW2 and find that he has fully corroborated the prosecution story. He has categorically deposed that after the buses were parked at Jheel Chowk, he along with appellant and deceased had taken meals. Thereafter they were resting on the roof of the bus. A quarrel took place between the appellant and deceased on the point of payment of money. Deceased told the appellant that he would pay him later on. However,

appellant was adamant that money should be paid to him immediately and when deceased expressed his inability to do so, appellant pushed him from the roof of the bus. Deceased fell down on the ground and sustained head injuries to which he succumbed at the spot itself. When he asked appellant as to why he had pushed his brother down, appellant pushed him also. He fell down on the ground and sustained grievous injuries. His this version has remained unshattered in his cross-examination. No material discrepancy could be pointed out by the learned counsel for the appellant in his testimony during the course of arguments. The version given by PW2, while in witness box, is in conformity with his statement contained in the FIR. In my view, Trial Court has been right in accepting his testimony to conclude that it is the appellant who had pushed the deceased from the roof of the bus resulting in his death, after a quarrel broke out between them over the payment of money; when PW2 confronted him as to why he had pushed his brother, appellant pushed him also from the roof of the bus resulting grievous injuries to him.

8. As per postmortem report Ex. PA2, following injuries were sustained by the deceased:

“external injuries:-Laceration-avulsion
8 cm x 5 cm over right fronto parieto
temporal region. Grazed abrasion 3 x 2
cm over lateral aspect of left knee.
Internal examination:-Head- sub scalp
bruising Bi-parietal & both temporal &
part of right frontal regions fracture

reparation medical part of right coronal suture, left coronal suture and fissure, fracture left temporal and part of left parietal bone. Meninges infort SAH both parietal and left temporal lobes blood and clots also present over bone of skull middle cranial fossa.”

Doctor has opined that cause of death was on account of cranio cerebral injuries as a result of blunt force impact, which was possible due to falling from height. Possibility of knock down from the roof of the bus, as alleged, cannot be ruled out. Cranio cerebral injury was sufficient to cause death in ordinary course of nature. Medical evidence, thus, corroborates the testimony of PW2 Naveen that deceased, on account of having been pushed from the roof of the bus by the appellant, fell down on the ground and sustained injuries on his head which ultimately caused his death.

9. MLC Ex. PA1 of Naveen shows that he had sustained interior compressed fracture of L-2 vertebra. Doctor has opined the injuries of PW2 as grievous. From the evidence adduced on record, it has been proved that by his acts appellant had caused grievous injuries on the person of PW2 Naveen.

10. Learned counsel for the appellant has vehemently contended that from the MLCs of injured and appellant it is clear that they had consumed liquor. PW2 has nowhere stated that there was previous enmity between him, deceased and the appellant. Appellant, deceased and the injured were resting on the roof of the bus after taking meals. They were

under the influence of liquor. Appellant had pushed the deceased after a verbal quarrel took place between them. In these facts, at best, the act of appellant in pushing the deceased and injured from the roof of the bus can be termed as his rash and negligent act. It was not expected by the appellant to have realized or comprehended that a person can die due to falling from the roof of the bus which may be about 15 feet high. In nutshell, his contention is that appellant cannot be held guilty of committing the offence punishable under Section 304-II IPC as there was no knowledge on his part that by his act he would have caused death of deceased. According to the learned counsel only ingredients of Section 304-A are attracted in this case.

11. I do not find the above contention of learned counsel much convincing. The act of the appellant, by no stretch of imagination, can be termed as rash and negligent act on his part. A quarrel had taken place between the deceased and appellant on the question of payment of some money. Appellant commanded the deceased to pay money then and there and when this was not complied, he pushed the deceased from the roof of the bus. When PW2 Naveen asked him as to why he had pushed his brother down, then appellant pushed him also. His this act clearly shows that it was not a mere rash and negligent act on his part, even though he may not be having any intention to cause death of the deceased and grievous injuries to the injured. Repetition

of similar act in succession negates the arguments of his counsel that pushing of deceased from the bus was nothing but his rash and negligent act.

12. In **Shankar Narayan Bhadolkar vs. State of Maharashtra, (2005) 9 Supreme Court Cases 71**, it has been held as under:

“18. Coming to the plea of the applicability of Section 304-A, it is to be noted that the said provision relates to death caused by negligence. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision relates to offences outside the range of Sections 299 and 300 IPC. It applies only to such acts which are rash and negligent and are directly the cause of death of another person. Rashness and negligence are essential elements under Section 304A IPC. It carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder in Section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person’s death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A IPC has to make room for the graver and more serious charge of culpable homicide.

19. In order to be encompassed by the protection under Section 304-A there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section 304-A has no application. The accused-appellant not only picked up the gun, unlocked it for use but also put the cartridges and fired from very close range, aiming at a very vital part of the body.”

(emphasis supplied)

13. Similar view has been expressed in **Girish Singh vs. State of Uttaranchal , (2008) 15 Supreme Court Cases 330**. In the said case accused and deceased were going on a

hill road, an altercation took place between them on hill road, accused suddenly pushed deceased from the road as a result of which deceased fell down from the hill and sustained injuries to which he later on succumbed in the hospital. In the above facts, Supreme Court has held that the offence punishable under Section 304-II IPC was disclosed and the ingredients of offence punishable under Section 304-A were not attracted.

14. In this case, knowledge on the part of appellant that his act of throwing the deceased from the roof of the bus may result in his death can safely be inferred. A normal prudent person cannot feign ignorance of the fact that in case a person is pushed down from the height of about 12 feet it can result in head injury leading to death of such a person. Section 304-II of the Code envisages that whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. Thus, in my view, Trial Court was right in convicting the appellant under Section 304-II for causing death of Parveen.

15. In view of the above discussion, I do not find any illegality or perversity in the impugned judgment of conviction. Accordingly, conviction of the appellant under

Section 304-II IPC is upheld. Learned counsel for the appellant has next contended that appellant is aged about 30 years; he is not involved in any other case; he is not a previous convict; he has two minor children aged about 2½ years and 4 years respectively; old aged ailing parents of the appellant are also wholly dependent upon him. Thus, it is prayed that sentence of the appellant be reduced to the period already undergone by him, which is by now approximately 4 years. Keeping in mind the totality of the circumstances, sentence of the appellant is reduced to 4½ years from 6 years. Sentence of fine is maintained as it is.

16. Appeal is disposed of in the above terms.

A.K. PATHAK, J.

JANUARY 31, 2011

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