

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 13.05.2013
Judgment pronounced on: 08.07.2013

CRIMINAL APPEAL No.62/2009

LAXMI NARAYAN

..... Appellant

Through: Mr. K.S.Sharma, Advocate.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. Laxmi Narayan has preferred this appeal against his conviction by impugned judgment dated 15.12.2008 under Section 304 Part II of the Indian Penal Code, 1860 (IPC) for causing the death of Upender Chaudhary. By the order of sentence dated 16.12.2008, the appellant has been sentenced to rigorous imprisonment for a period of 4 years and a fine of Rs.5,000/- to be paid to the family of Upender Chaudhary. In case of default for payment of fine of Rs.5,000/-, the appellant is to undergo rigorous imprisonment for a period of six months.

2. The incident which gave rise to the prosecution occurred on 12.07.2004 at noon time when the appellant Laxmi Narayan was coming on his motor cycle and was behind the TSR of the deceased Upender Chaudhary, who was a TSR driver. Sukhdev was also seated in the said TSR. The appellant honked to Upender Chaudhary to give side but since there was no space between the vehicles, he did not give side. Both the vehicles then stopped and an altercation ensued between the deceased Upender Chaudhary and the appellant. In the course of this struggle the appellant gave fist and slap blows on the stomach of the deceased Upender Chaudhary, who succumbed to his injuries and died on the same day.

3. Sukhdev, an eye witness to the incident was examined as PW-1 and has deposed that on the date of incident he was on his way home and on reaching near ganda nala he sat in the TSR that belonged to the deceased. He knew the deceased from before as the deceased used to come to his workshop to get his TSR repaired. He identified the appellant in court and stated that the appellant was behind them on a motorcycle and was honking to get side. The deceased however, could not give side as there wasn't any space. The appellant then stopped his motorcycle in front of the TSR which made the deceased also stop his TSR. The appellant then dragged the

deceased from the TSR and started beating him. The appellant had given slaps and fist blows on the stomach of the deceased after which he became unconscious. He states that when he came out of the TSR the deceased had fallen to the ground. He has stated that he then took the deceased to Modi Hospital along with the appellant in the TSR. The appellant had given his motorcycle to his friend.

4. On being cross examined he has stated that the appellant had given slaps only and not fist blows. There was an exchange of abusive language between the appellant and the deceased. He was also confronted with his statement recorded as Ex PW-1/A wherein the fact regarding dragging of the deceased from the TSR was not recorded. He has denied a specific suggestion that the deceased was aggressive and has admitted that the deceased did not receive any visible external injuries.

5. Dr. Sanjeev Lalwani has conducted post mortem on the body of the deceased on 13.07.2004 and was examined as PW-8. He states that the body of the deceased was brought with the history of falling unconscious after involvement in a quarrel. He was declared brought dead at 12:30 p.m.

6. On examination, rigor mortis was present all over the body and post mortem staining was seen on back and dependent parts except pressure areas. The eyes were closed and mouth was partially open. There were no signs of decomposition and there was no external visible injury. He has deposed that the cause of death was subarachnoid hemorrhage which could be due to natural cause. On being cross examined he has clarified that subarachnoid hemorrhage as mentioned in the post mortem report is due to rupture of blood vessels in the brain which could occur in case of excitement or emotion. He admitted that this type of hemorrhage could have occurred due to anger, aggressiveness and hyper tension. He however, added that death could not have been caused due to a slap blow and that in general he has never seen a case of death following a single slap without any external injury.

7. Ravinder, was working in the same shop as the appellant as an electrician and had accompanied the appellant along with PW-1 and the deceased to the hospital. He was examined as PW-8 and has deposed that on the date of the incident at about 11:30 a.m the appellant had come to the shop in a TSR with one more person who was a mechanic. The driver of the TSR was unconscious and was held by the appellant. The appellant told him

that he had a quarrel with the driver of the TSR who was consequently injured and had to be taken to the hospital. The appellant requested PW-8 to accompany them as he was not aware of the hospital. They took the deceased to Sagar Nursing Home. However, the doctor was not present so they took the deceased to another nursing home called Gaba Nursing Home. This Nursing Home refused to treat the deceased and finally the deceased was taken to Modi Hospital. In his cross examination, PW-8 has deposed that he was in the TSR for about half an hour. The deceased, who was injured at the time, was not able to speak but was murmuring. He also said that the deceased's body was hot when he touched him.

8. SI K.L.Meena was the Investigating Officer in the instant case and was examined as PW-9. He has deposed that on the date of incident on receipt of DD No.24/B Ex.PW-3/A, he along with Ct Ram Rattan PW-5 reached Guru Ravi Dass Mandir, Chirag Delhi. On enquiry he was informed that a quarrel had taken place between a motorcycle driver and a TSR driver and that the injured TSR driver has been removed to a hospital. Meanwhile, he received DD No.29B Ex.PW-9/A and went to Modi Hospital, Saket where he was informed that TSR driver Upender has been declared brought dead.PW-1, PW-4 and the appellant were present in the hospital. He

recorded the statement of PW-1 Ex.PW-1/A and seized the TSR and the motorcycle vide seizure memo Ex.PW-5/C and Ex.PW-5/D respectively. The appellant was arrested vide arrest memo Ex.PW-5/A. Rukka was sent with his endorsement and FIR was registered.

9. The appellant's version under Section 313 is that he was driving a motorcycle and honking the TSR of the deceased to give side. However, he did not give side and stopped his TSR in front of his motorcycle. The deceased got out of his TSR in a fit of rage and started abusing the appellant and subsequently fell down on his own. He has insisted that the deceased was conscious at the time when he took him to the hospital. He denied having told PW-4 about been part of any quarrel.

10. During the course of arguments learned counsel for the appellant has limited himself to the sole contention that a conjoint reading of the testimony of PW-1 that the appellant only gave slaps and not fist blows read with the testimony of PW-8 who has deposed that death could not have been caused due to a slap blow and that in general he has never seen a case of death following a single slap without any external injury, the instant case would not fall within the ambit of Section 304 Part II IPC. It was urged by the

learned counsel that the appellant had neither the intention nor the knowledge that his act would cause the death of the deceased.

11. From the evidence on the record, the picture that clearly emerges is that some unpleasant incident took place between the appellant and the deceased. Hot words were exchanged between them. The appellant even slapped the deceased a couple of times after which the deceased fell to the ground. Efforts were made to provide immediate medical attention however, the same got delayed. The deceased was thereafter, declared brought dead.

12. The punishment for culpable homicide not amounting to murder as contained in Section 304 IPC reads as under:

“Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or 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.”

13. In my judgment, the prosecution has clearly established that the appellant repeatedly slapped the deceased and subsequently, the deceased

died. The testimony of PW-1 to that effect is amply clear and I, have no reason to disbelieve the same. He is not only a natural and competent witness but also reliable and trustworthy.

14. The evidence of PW-8 is indicative of the fact that the act of the appellant could not have caused death of the deceased. The cause of death was subarachnoid hemorrhage by rupture of blood vessels in the brain which can occur due to excitement or emotion caused by anger, aggressiveness and hyper tension. Undoubtedly, the act was not done with the intention of causing death, or of causing such bodily injury as the appellant knew was likely to cause the death, nor was the bodily injury intended to be inflicted sufficient in the ordinary course of nature to cause death, nor did the appellant, when striking the deceased, know that his act was so imminently dangerous that it would in all probability cause death. The offence, therefore, of culpable homicide punishable under Section 304 Part II IPC was not committed.

15. But I think that there can be no doubt that the accused committed the offence of voluntarily causing hurt punishable under Section 323 IPC. The testimony of PW-1 proving the factum of slaps given by the appellant stands

corroborated by the evidence of PW-4 and thereby establishes the offence of voluntary causing of hurt by the appellant.

16. In a similar case reported as *The Public Prosecutor v. Nalam Suryanarayana Murthy*, 1973 CrL LJ 1238, the accused was tried for the offence of culpable homicide not amounting to murder. The medical evidence suggested that the injury caused was simple in nature and it could not be categorically stated that death of the deceased was due to shock caused by the injury. The accused was accordingly convicted under Section 323 IPC for causing simple hurt.

17. On the point of sentence, keeping in view the conduct of the appellant post offence wherein he made efforts to get medical help for the deceased and did not flee the scene of crime, ends of justice would be met if the appellant is sentenced to the period already undergone by him.

18. Accordingly, the appeal is partly allowed and the conviction recorded by the trial Judge is modified to the extent that the appellant is convicted under Section 323 IPC. Bail bonds are hereby discharged.

JULY 8, 2013

**SIDDHARTH MRIDUL
(JUDGE)**