

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : July 04, 2017

+ Crl. A. No. 178/2002
TAHIR AHMED

..... Appellant

Through: Mr. M.S. Khan, Advocate

versus

STATE

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

+ Crl. A. No. 201/2002
SHABBIR AHMAD ALIAS GULUKOJ

..... Appellant

Through: Mr. M.S. Khan, Advocate

versus

STATE

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

+ Crl. A. No. 253/2002
JAGDISH

..... Appellant

Through: Mr. Mukesh Sharma, Advocate

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeals bearing Crl.A. Nos.178/2002, 201/2002 and 253/2002 have been filed by the appellants Tahir Ahmed, Shabbir Ahmad and Jagdish respectively against a judgment of conviction dated 29.01.2001 and order on sentence dated 04.03.2002, therefore, all these appeals are decided together.

2. The present appeals have been filed by the appellants being aggrieved by the judgment of conviction dated 29.01.2001 passed by the learned Additional Sessions Judge, Delhi convicting the appellants for the offence punishable under Section 341/304/34 of Indian Penal Code (hereinafter referred to as I.P.C.), and order on sentence dated 04.03.2002, whereby the appellants have been sentenced to undergo rigorous imprisonment for a period of three and half years and fine of Rs.5,000/- each for the offence under Section 304 Part II/34 of IPC and in default of payment of fine they were further sentenced to undergo rigorous imprisonment for three months. They were also sentenced to undergo simple imprisonment for a period of 15 days each for the offence under Section 341/34 of IPC.

3. Since the trial of all the applicants was commonly conducted and all the appellants have been convicted by the common impugned judgment and have been awarded sentence by the common order on sentence, therefore, with the consent of the counsel appearing on

behalf of all the appellants, arguments in all the appeals have been heard together and all the appeals are being disposed of by this common judgment.

4. The present case was registered against the appellants on the statement of complainant-Brijnish, who was brother of the deceased Rajnish. He had stated in his statement that 15-20 days prior to the date of incident, i.e., on 15.08.1998, while playing cricket near Railway line, Ashok Vihar, an altercation had taken place between him, his brother and the accused persons. On that day, at about 8 PM, when he alongwith his brother Rajnish gone to pay obeisance in a temple on the occasion of Janmashtami and reached near the temple at Shahid Sukhdev Nagar, all the accused persons/appellants met them and started abusing them and uttered that they would teach them a lesson and forcibly took his brother Rajnish towards the Railway line, where accused Tahir Ahmad caught hold of him (complainant) and Jagdish and Shabbir started giving blows with fists and legs in the abdomen of his brother-Rajnish, consequent to which, his brother fell down and become unconscious. He raised an alarm and all the accused persons fled away from the spot. His brother was taken to a private doctor by his father for treatment, but despite treatment he did not get any relief and was removed to Sunderlal Jain Hospital, from where he was referred to Hindu Rao Hospital and ultimately he expired on 17.08.1998. Investigation of the case was conducted by Sub-Inspector Randhir singh, who conducted the inquest proceedings and recorded the statements of the witnesses and sent the body for autopsy.

Appellants–Tahir Ahamad and Shabbir ahmad were arrested on 19.08.1998, however, appellant–Jagdish was arrested on 01.09.1998.

5. After completion of investigation, challan was filed before the trial court. The appellants were charged with the offence punishable under Sections 341/304/34 of IPC, to which they pleaded not guilty and claimed trial.

6. To bring home the guilt of the appellants, the prosecution examined as many as 16 witnesses. They are, Constable Surender Singh (PW-1); Shri Gian Singh (PW-2); Constable Basawan Singh (PW-3); Dr. Rajesh Bansal (PW-4); Constable Jai Prakash (PW-5); Dr. Paramjeet Singh (PW-6); Dr. C.B. Dabbas (PW-7); Constable Rakesh Chander (PW-8), Constable Lalit Kumar (PW-9), Brijnesh Pawak (PW-10), Shri Har Lal (PW-11); Constable Deep Chand (PW-12); Head Constable Umed Singh (PW-13); Constable Ravinder Kumar (PW-14); Sub-Inspector Randhir Singh (PW-15); and Head Constable Vijay Kumar (PW-16).

7. After conclusion of the prosecution evidence, entire incriminating material on record was put to the appellants, and their statements under Section 313 of Cr.P.C. were recorded, in which they denied the allegations of the prosecution and stated that they are innocent.

8. After considering the facts, evidence led on behalf of both the sides and the material on record, the learned Additional Sessions Judge held the appellants guilty for an offence punishable under

Section 341/304/34 of IPC vide judgment and sentenced the appellants vide order on sentence, as indicated above. Hence the present appeal has been preferred against the impugned judgment and order on sentence. Vide order dated 13.03.2002, of this court, the sentence of the appellants was suspended.

9. Learned counsel for the appellant–Tahir Ahmed contended that the appellant had neither caught hold of Rajnish nor caused any injury to him. In this regard attention of this court was drawn to the deposition of PW-10 Brajnish who admitted in his cross-examination that the appellant had neither caught hold of the deceased nor caused any injury to the deceased. It is further urged that at the most the appellant can be convicted for the offence under Section 323 of IPC and the period of sentence already undergone by him would meet the ends of justice. It is further urged on behalf of the appellant that there was no pre-meditation or pre-planning for causing death of Rajnish. Even the appellant had no knowledge that the fist and kick blows given by the other accused were of such nature to cause the death of Rajnish, therefore the petitioner cannot be liable to be convicted for the offence under Section 304/34 of IPC. It is further argued that PW-13 Head constable Umed Singh admitted before the court that he finished recording the statement of Brajnish on 16.08.1998 at about 8.15 PM whereas the complainant had not alleged any quarrel having taken place 15 days before the incident. It is only after recording of the supplementary statement the motive for the alleged incident on 15.08.1998 has been introduced.

10. While arguing the appeal of appellants–Shabbir Ahmed and Jagdish, learned counsel for the appellants contended that there is no independent witness at all to corroborate the prosecution story. It is further argued that conviction on the basis of testimony of Brijnesh Pawak (real brother of the deceased) and Har Lal (father of the deceased) cannot be relied as they are highly interested witnesses being in close relation with the deceased. More so their testimonies suffer from discrepancies and inconsistencies and contradictions. It is further argued that there was neither any intention to cause death or to cause any such bodily injury which likely to cause death and nor there was any knowledge that it may likely to cause death, therefore, the appellants cannot be convicted for the offence under Section 304 of IPC. It is further contended that from the deposition of PW-10 Brijesh, it is clear that it was sudden quarrel and no weapon of offence at all was used by any of the accused persons, therefore, it should be inferred that there was no intention or knowledge on the part of the appellants to cause death of the deceased. It is further urged that the deceased remained conscious after alleged occurrence on 15.08.1998 at 8 PM as he walked down to his residence from the place of occurrence and died on 17.08.1998 at 5.40 PM i.e. after 46 hours. While referring to the post mortem report it is contended that the deceased had an enlarged spleen and PW-7 Dr. Dabbas has admitted that if the person with enlarged spleen falls on hard substance it may cause death. It is further urged that it is the admitted case of the prosecution that the appellants have not used any weapon of offence and only fists and kick blows were inflicted and as such injuries were

never intended to cause death and the accused persons had no knowledge that such injuries may cause death of the deceased.

11. Witness Brijnesh Pawak (PW10) is the most important witness of the prosecution being the eye witness of the incident. In his testimony, he had deposed that about 15-20 days before, when they first played cricket in Ashok Vihar side in a park along railway lines, among Jagdish, Sabbir and Tahir and his brother a mild dispute ensued. On 15.08.1998 at about 8 p.m., PW10 and his brother Rajnesh were going to see Janamastmi festival from their house in Ashok Vihar via railway line. When they went to Sukhdev Vihar to offer their prayer in a small temple, they met Jagdish, his friend Tahir and Sabbir near temple. On seeing them, accused persons started abusing his brother and him and said they became "badmash". Thereafter, all the three accused persons forcibly caught the complainant and his brother and took them to railway track. While going there, accused Tahir caught hold the complainant. Accused Jagdish and Sabbir attacked with fists and legs in the abdomen of his brother. Consequently, his brother fell down and became unconscious. On this, PW10 raised alarm and then the accused persons ran away. PW10 brought his parents. They met the brother of PW10 who was falling and standing whom they got medicines but no relief was felt by him. In the morning, Rajnesh was taken to Sunder Lal Jain Hospital from where he was referred to Hindu Rao Hospital. PW10 identified all the accused persons/appellants in the Court. He

further deposed that his statement Ex.PW10/A was recorded by the police.

12. During cross-examination on behalf of the appellants, PW10 had deposed that after leaving his brother on the place of occurrence, he went to inform his parents. They met him on the way. After the arrival of his father on the spot, they had taken his brother to a nearby doctor. On the next date i.e. 16.08.1998, they took the deceased to Sunder Lal Jain Hospital. Though the witness was cross-examined at length, but the defence had failed to put any dent to his testimony.

13. PW11 Har Lal is the father of the deceased and complainant (PW10). PW11 had deposed that on 15.08.1998, his sons Brajnish and Rajnish left their house at about 07.30 p.m. to see the Janamastmi celebrations. At about 8 p.m., he was informed by a person coming from the side of Ashok Vihar that a quarrel was going on with his sons near railway line. On receipt of said information, PW11 along with his wife started running for that place and on the way, his younger son Brajnish met them. Brajnish told him that Tahir had caught hold of him; accused Jagdish and Sabir had caught hold of elder brother Rajnish and that they were beating him with kicks and fist blows. When they reached at some distance, he saw his son Rajnish coming falling. His wife handled his son Rajnish whereas he saw all the three accused persons standing by the side of park. When PW11 questioned the accused persons, they said that they had spared them but would not leave him thereafter. He identified all the three accused persons in the Court.

14. From the testimony of complainant/eye witness PW10 Brajnish, it is clear that on the day of incident when he along with deceased was going to see the Janamashtmi celebrations, they were wrongfully confined by all the appellants. It is also evident from his testimony that appellant Tahir caught hold of him, whereas appellants Jagdish and Sabbir gave leg and fist blows on the abdomen of the deceased due to which he fell on the ground. Firstly the deceased was taken to a private doctor, then to Sunder Lal Jain Hospital and then to Hindu Rao Hospital where he succumbed to his injuries. There is nothing to disbelieve the testimony of PW10 who is a natural eye witness to the incident and had narrated the incident in a natural way.

15. PW11 Har Lal, father of the deceased has also corroborated the testimony of the complainant (PW10) to the effect that on the day of incident both the complainant as well as deceased had left their home to see the Janamashtmi celebrations and that they were wrongfully confined by the appellants and then the deceased was beaten up by the appellants with leg and fist blows. PW11 had seen the appellants near the spot of incident and he had specifically deposed that when he questioned the appellants as to why they had beaten the deceased, they told him that they had spared them on that day but would not leave him thereafter. Thus, the testimony of the PW11 is corroborative in nature which further proves the case of prosecution that the appellants had given beatings to the deceased on the day of incident which resulted into his death.

16. PW2 further corroborates the testimony of PW10 and PW11. PW2 had deposed that the deceased Rajnish was his nephew. On the day of incident i.e. 15.08.1998 in the evening when he returned home, he found Rajnish crying in pain. On his enquiry, Rajnish told him that accused Tahir, Sabbir and Jagdish beaten him.

17. The medical evidence further corroborates the case of the prosecution that the cause of death of the deceased was due to beatings given to him. PW4 Dr.Rajesh Bansal, CMO of Hindu Rao Hospital had deposed that on 16.08.1998, patient Rajnish was brought by the police in the hospital and he was examined by him. He found the injuries i.e. tenderness present all over the abdomen and lacerated wound at his left eye brow. PW7 Dr.C.B. Dabbas conducted postmortem on the dead body of deceased. He had deposed that he had found abrasion over left forehead region, on right side of nose, lower front part of right arm and at upper front part of left leg on the body of the deceased. He also found wound on the front of abdomen in mid-line with two drainage wounds on the right side of abdomen. on internal examination, he found surgical sutured wound adjunction of stomach and jejunum with duodenum missing. The adjoining walls around the suture were congested. As per his opinion, the death of the deceased was caused due to toxemia and shock consequent to duodenal perforation caused by blunt force impact of abdomen. All the injuries were opined to be ante mortem in nature. He proved his report as Ex.PW7/A.

18. From the opinion of the doctor who conducted post mortem on the dead body of the deceased, the cause of death of the deceased was the injuries caused to his abdomen and the same were caused by blung force impact. From a joint reading of the testimony of complainant (PW10) along with testimony of PW7 and his report Ex.PW7/A, the prosecution has successfully established on record that the deceased died due to giving of beatings by the appellants and the beatings given to him on his abdomen area were sufficient to cause his death.

19. Contention of the appellants that there are contradictions and discrepancies in the testimony of PW10 and PW11 and that they are interested witnesses, is without any basis for the reasons that it is not expected from two persons to depose on the same lines as stated by them before the police. Some minor contradictions and discrepancies are bound to occur due to lapse of time and the same are not material and do not go to the root of the matter to the affect the credibility of these witnesses.

20. In view of the above discussion, this Court is of the considered opinion that the prosecution has successfully established on record the guilt of the appellants that on the day of incident they firstly wrongfully confined the complainant (PW10) and deceased and then gave beatings to the deceased which resulted into his death thereby causing culpable homicide of the deceased not amounting to murder. Therefore, the conviction of the appellants under Section 341/304/34 IPC deserves to be upheld.

21. On the quantum of sentence, it is apparent from the record that the incident of the present case had taken place on 15.08.1998; charge was framed against the appellants on 03.08.1999; judgment of conviction was passed on 29.01.2001; order on sentence was passed on 04.03.2002; the sentence of the appellants was suspended in the year 2002 and we are in the year 2017. The appellants had faced the protracted trial for about 19 years. It is also apparent from the record that it was the appellants Jagdish and Shabbir who had given beatings to the deceased which resulted into his death, whereas the role of the appellant Tahir Ahmad was that he caught hold of the complainant at that time.

22. Keeping in view the above mentioned facts and circumstances, the judgment of conviction awarded to the appellants is hereby upheld. However, the sentence awarded to the appellant-Tahir Ahmad is modified to the extent of awarding him rigorous imprisonment for a period of two years for the offence punishable under Section 304/34 IPC, whereas appellants Jagdish and Shabbir are awarded rigorous imprisonment for a period of three years each under Section 304/34 IPC. Remaining sentence awarded to the appellants and the amount of fine shall remain as it is.

23. With the above modification in the order on sentence, the present appeal is disposed of. The appellants are directed to surrender before the trial court concerned within a period of 15 days to serve the remainder of sentence of imprisonment.

24. Resultantly, the appeals filed by the appellants are disposed of with aforesaid modifications.

25. A copy of this order be sent to the Trial Court for information and necessary steps.

26. With aforesaid directions, the present appeal is disposed of.

JULY 04, 2017
pkb/dd

(P.S.TEJI)
JUDGE

