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Date : 24/08/2025

Sachin @ Ajay Kumar Vs State

Court: Delhi High Court

Date of Decision: April 27, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 374
Penal Code, 1860 (IPC) â€" Section 304, 325

Hon'ble Judges: M.L. Mehta, J

Bench: Single Bench

Advocate: Manu Sharma, for the Appellant; Fizani Husain, APP, for the Respondent

Final Decision: Dismissed

Judgement

M.L. Mehta, J.
The present appeal has been preferred u/s 374 Cr.P.C. assailing the judgment and order of ld. Addl. Sessions Judge,

whereby the appellant was convicted u/s 304-II IPC and sentenced to undergo rigorous imprisonment for a term of 10 years. The case of the

prosecution in brief was that on 01.08.2007 at about 10.30 P.M., the appellant had assaulted one Dharamvir (herein after, ""the deceased"") with a

cycle tube, under the influence of alcohol and threw him on the road, as a result of which Dharamvir sustained injuries on his head and subsequently

passed away after being treated in RML Hospital for ten days. The incident was reported to the police by an eye witness Ravi Gupta (PW-3),

who was deployed as a security guard in the Pahar Ganj area where the appellant and the deceased used to reside and work as rickshaw pullers

and the incident took place. After registration of FIR and completion of investigation, the statements of the witnesses were recorded and site plan

was prepared. The doctor who conducted the autopsy of the deceased opined that the death occurred due to ante-mortem head injury. The

prosecution examined 22 witnesses to bring home the guilt of the appellant and he was convicted by ld. ASJ vide the impugned judgment passed

on 11.10.2010 which has been challenged by way of present appeal.

2. The main grievance of the appellant is that even if the prosecution version is to be believed then at the most the case of causing grievous hurt is

made out against him and not culpable homicide for which he is convicted as the victim passed away after receiving medical treatment for 10 days

which clearly indicates that his death was a result of medical negligence and not of injuries sustained by him in the scuffle with the appellant. It is

stated that the medical reports established that the blood had deposited in the brain of the deceased and his death was a consequence of the failure

of the doctors'' to drain it out and the appellant cannot be held guilty for the death of the deceased. It is further submitted by the counsel for the

appellant that the name of the appellant was nowhere mentioned in the D.D. entry and also the MLC which were prepared and that his name was

later on maliciously inserted to frame him and all these facts have been sidelined by the Ld. trial Court and hence the impugned judgment is liable to

be set aside on these grounds.

3. Per contra, the ld. APP for the State has submitted that the entire attack launched by the appellant had been witnessed and testified by eye

witness PW-3 and the report of the examining doctor(pw-21) has corroborated the fact that the deceased had suffered severe injuries on his head

and succumbed to the injuries after 10 days and hence the assault by the appellant was a direct cause of the death of the victim and thus there is no

reason to interfere with the judgment of the trial Court.

4. I have heard the rival submissions and perused the record.

5. As per post-mortem examination report (Ex. PW21/A), the autopsy had revealed the following external injuries:

(i) Scabbed abrasion, 2 x 1 cm over left lower leg obliquely placed, 5 cm above medial malleolus;

(ii) Scabbed abrasion, 1/2 x 1/2 cm over left thumb foot over proximal phalanx;

(iii) Scabbed abrasion 1/2 x 1/2 over left foot 3 cm behind injury No. 2;

(iv) Stitched wound 15 cm long with 14 stitches horizontally placed 2 cm above ear, 3 cm from mid line, over left parieto temporal region; (on

opening the stitches, wound was surgical incised)

6. The autopsy revealed on internal examination that:

Extravasation of blood was present in left parieto temporal region in scalp. In skull surgically separated portion of parieto temporal hone was

present with sutures, brain was oedematous, meninges stitched below bone flap. Sub arachnoid hemorrhage was present over left parieto temporal

region, left lateral ventricular bleed was present.

In the opinion of the autopsy doctor, PW-21, the death had occurred as a result of ante-mortem head injury.

7. Further the testimony of eye witness pw-3 leaves no doubt that the appellant had mercilessly beaten the deceased with the help of cycle tube

and even when the deceased had fallen on the ground unconscious, the appellant dealt him blows and kicks. There is no reason to disbelieve the

medical reports and unimpeachable testimony of the eye witness who had no reason to frame the appellant. Thus, it is amply proved that the death

of the deceased was a consequence of the assault by the appellant and his condition could not be revived by the doctors even after 10 days as the

injuries on his head were grave and deep. It would be absurd to term the death as a result of medical negligence as it was patently due to the

grievous injury inflicted by the appellant in a drunken and brazen assault on the deceased. Hence, I find no credence in the plea that the attack was

the one to be covered u/s 325 IPC and not 304-II IPC. The ld. trial Court has rightly based its findings on the basis of evidence on record and

convicted the appellant for causing culpable homicide and I find no plausible reason to upset its findings.

8. Moving on to the issue of absence of the name of the appellant in DD entry and MLC, it must be noted that the purpose of DD entry is to notify

the police of any incident that takes place and not for the purpose of disclosing the name of any accused or suspect in the case or the details of the

incident. Its sole purpose is to notify the police officials regarding any incident that requires attention and there is absolutely no provision of

mentioning name of accused persons or even the details of the incident. Similarly, the sole objective of preparing an MLC is to ascertain the nature

of injuries suffered by the victim and not to divulge the names of the accused persons. It is not an instrument for the purpose of making assumptions

regarding the person responsible for the offence, but for the purpose of ascertaining the medical status of the victim. Hence, the name of the

appellant could not possibly be present in any of the two documents and consequently, the contention of the counsel for the appellant stands

rejected. In view of the above discussion, the petition is hereby dismissed.