

ITEM NO.103

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 2093 OF 2009

VIJENDER KUMAR @ VIJAY

Appellant (s)

VERSUS

STATE OF DELHI

Respondent(s)

Date: 28/04/2010

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE C.K. PRASAD

For Appellant(s)

Mr. Sanjeev Bhatnagar, Adv.
Brig. M.L. Khatter, Adv.
Ms. Kusum Chaudhary, Adv.

For Respondent(s)

Mr. Ashok Bhan, Adv.
Ms. Sadhana Sandhu, Adv.
Mrs Anil Katiyar, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the
signed order.

(KALYANI GUPTA)
SR. P.A.

(VINOD KULVI)
COURT MASTER

FILE.]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2093 OF 2009

VIJENDER KUMAR @ VIJAY

.....

APPELLANT

VERSUS

STATE OF DELHI

.....

RESPONDENT

O R D E R

1. In the light of the limited notice that had been issued by this Court with regard to the nature of the offence on 29th July, 2009, only the bare facts pertaining to the case are necessary.

2. Yogesh, the deceased was employed as a Helper in a bus owned by the appellant's father. He was suspected of misappropriating a part of the fare that was being collected by him from passengers. On the 9th of April, 2002, when the bus was parked at the Karampura bus terminal, Delhi, the appellant questioned the deceased to find out if a part of the fare had been withheld by him, but the deceased answered in the negative.

CRL.A. No. 1394 of 2003

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appellant, however, remained unconvinced. He, therefore, subjected the deceased to a personal search which resulted in the recovery of an amount of Rs.100/- from his person. The appellant got furious and started beating the deceased. The deceased protested whereupon the appellant brought a knife from the boot of his scooter parked nearby and caused one injury with the knife in the abdomen of the deceased. The bus crew and the passengers advised the appellant to remove the deceased, who was then in a critical condition, to the hospital. The appellant thereupon assisted by one, Kanhaiya took the injured on a two-wheeler to a private clinic but he was advised to take him to a hospital.

The appellant, accordingly, took the injured to the ESI Hospital and got him admitted at that place. The appellant also informed the attending doctor that he had found the injured lying unconscious on the roadside and as a good Samaritan had brought him to the hospital after having picked him from there. The Duty Constable at the ESI Hospital informed the police station regarding the admission of the injured on which Sub Inspector D.P. Kajala reached the hospital and found that the injured was unfit to make a statement. A case under Section 307 of the IPC came to be registered against unknown persons. Yogesh died later that day in CRL.A. No. 1394 of 2003

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the ESI Hospital and the case was modified to one under Section 302 of the IPC. The trial court found that all the eye witnesses had not supported the prosecution but relying on the circumstantial evidence convicted the accused for an offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life. An appeal taken to the High Court was also dismissed.

3. The present appeal by way of special leave is limited to the nature of the offence only on the understanding that as per the case of the appellant the case would fall under Exception 4 to Section 300 of the IPC.

4. Mr. Sanjiv Bhatnagar, the learned counsel for the appellant has very candidly stated that in view of the limited notice it was not open to him to argue the matter seeking the acquittal of the appellant. He has, accordingly, submitted that taking the prosecution story as it is, it was clear that the matter would fall under

Exception 4 of Section 300 of the Indian Penal Code as

an outcome of a sudden quarrel.

He has pointed out that

only one injury of small dimensions had been caused by

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the appellant to the deceased and that too in the REPORTABLE

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abdomen and as the appellant had himself taken the

deceased to the hospital, an inference could be drawn

that there was no intention to kill the deceased. This

plea has been strongly controverted by Mr. Ashok Bhan

the learned counsel for the respondent State of Delhi.

5. We have examined the arguments raised by the

learned counsel for the parties very carefully. The

sine quo non for the application of an Exception to

Section 300 always is that it is a case of murder but

the accused claims the benefit of the Exception to bring

it out of that Section and to make it a case of culpable

homicide not amounting to murder. We must, therefore,

assume that this would be a case of murder and it is for

the accused to show the applicability of the Exception.

Exception 4 reads as under

"Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."

A perusal of the provision would reveal that four

conditions must be satisfied to bring the matter within

Exception 4:

(i) it was a sudden fight;

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(ii) there was no premeditation;

(iii) the act was done in the heat of passion ;
and; that

(iv) the assailant had not taken any undue
advantage or acted in a cruel manner.

6. We are of the opinion that the facts, as have
been given by us above, do not justify the applicability
of Exception 4. Admittedly there was no pre-meditation

in the incident. The second requirement of a sudden
fight is however missing. The facts show that there was

no sudden quarrel and it was a unilateral act on the

part of the appellant as he lost his temper as

he

suspected the deceased of having misappropriated

the

fare that he had been collecting. The deceased also had

no role to play. We also see that the appellant had

taken undue advantage of his position inasmuch as that

he had run to the scooter opened the boot, taken out a

knife and caused one injury on the person of

the

deceased who was a young, unarmed boy. It w

as,

therefore, also a clear case where the appellant had

taken undue advantage of his position. It is also well

settled that the number of injuries caused in such a

case is not conclusive in determining the nature of the

offence, but what has to be primarily seen are

the

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circumstances preceding the incident and not exclusively

during the incident. We are, therefore, of the opinion

that the case of the appellant cannot fall within

Exception 4.

7. We, accordingly, dismiss the appeal.

.....J
[HARJIT SINGH BEDI]

.....J
[C.K. PRASAD]

NEW DELHI
APRIL 28, 2010.