

R.P. TYAGI

v.

STATE (GOVT. OF NCT OF DELHI)
(Criminal Appeal Nos. 1440-1441 of 2008)

NOVEMBER 12, 2009

[HARJIT SINGH BEDI AND J.M. PANCHAL, JJ.]

Penal Code, 1860:

s. 304 (part II) – Conviction under for custodial death – A person accused of stabbing a police constable, beaten in police custody resulting in his death – Erring police officer convicted u/s 302 and sentenced to death – High Court modifying the conviction to s.304 (part-II) with sentence of 8 years RI and fine of Rs. 2 lacs – HELD: This case exemplifies the repeated observations that delay in the disposal of a criminal case leads to the destruction of the prosecution case – The incident happened in the year 1987, and the evidence was recorded in the year 2004 – Little wonder, therefore, that almost all the prosecution witnesses including the relatives of deceased declared hostile as they had not supported the prosecution – It is in this background that both the courts below had to stretch the evidence slightly in order to arrive to a conclusion of guilt against the appellant – However, the reasons recorded by trial court and High Court are germane and there is no reason to interfere with finding of the fact recorded by courts below – As regards quantum of sentence, it has been pointed out that the matter was of the year 1987 – The appellant is presently in jail and has undergone about 3 years of sentence and has paid the fine of Rs. 2 lacs – He has also been denied his retrial benefits on account of his conviction and is 67 years of age, and is in extremely indigent circumstances – Conviction as recorded by High Court confirmed, but sentence reduced from 8 years to 5 years, and fine increased from Rs.2 lacs to 5 lacs – Delay in trial – Effect on evidence.

A *Virsa Singh vs. State of Punjab* 1958 SCR 1495;
Harjinder Singh vs. Delhi Administration AIR 1968 SC 867;
and *Laxman Kalu Nikalje vs. The State of Maharashtra* AIR
1968 SC 1390, cited.

B **Case Law Reference :**

1958 SCR 1495 cited Para 7

AIR 1968 SC 867 cited Para 9

AIR 1968 SC 1390 cited Para 9

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1440-1441 of 2008.

D From the Judgment & Order dated 05.03.2008 of the High
Court of Delhi at New Delhi in Criminal Appeal No. 38 of 2007
and Death Reference No.1 of 2007.

Ranjit Kumar, Anil K. Chopra, for the Appellants.

E P.P. Malhotra, ASG, Anil Katiyar, Swa Qadri, P.K. Dey,
R. Bastian, S. Bakshi, for the Respondent.

The following Order of the Court was delivered

O R D E R

F 1. This appeal by way of special leave has been filed
impugning the judgment of the Delhi High Court dated 5th
March, 2008, whereby the death reference with respect to the
appellant's case has been declined and his appeal has been
allowed to the extent that the conviction under Section 302 of
G the IPC recorded by the Additional Sessions Judge has been
modified to a conviction under Sec.304 Part II of the IPC and
a sentence of 8 years R.I. along with a fine of Rs.2,00,000/-.

H 2. As per the facts of the case the incident happened on
16th August, 1987, (on the day of the Janmashtami festival)
when Constable Rishipal (DW.1) who was posted in police

station Vivek Vihar, where the appellant was the SHO was stabbed by the deceased Mahender and his accomplice Ram Kumar. Information about the stabbing incident was received in the police station and a case under Sec.307 etc. was registered against the two. The police thereafter launched a manhunt to trace the culprits but were unable to do so and enraged by the turn of events the police officers allegedly picked up the family members and neighbours of Mahender and Ram Kumar and confined them in the police station Vivek Vihar where they were beaten and humiliated and were told that until and unless the absconding duo surrender they would not be released. It is the case of the prosecution that two persons were produced in the police station on 24th August, 1987 at 7.45 a.m. and were administered a very severe beating by the appellant and by some of the others present at his instance. On account of the severe beating, Ram Kumar and Mahender sustained serious injuries and were taken to the Swami Dayanand Hospital, Shahdara and examined by Dr. A.K.Verma, (DW-11) but as Mahender was in critical condition he was referred to the Lok Nayak Jai Prakash Hospital where he died the next day.

3. Inquest proceedings were thereafter conducted by the SDM S.S. Rathore, (PW.1) who indicted the police officers. A second inquest proceeding was also held by Parimal Rai (DW.7) who, however, gave a contrary finding in that Ram Kumar and Mahender had been beaten by enraged members of the public, after they had caused injuries to Rishpal (DW) and it was on account of these injuries that Mahender had died. It appears that due to public pressure, however, a case under Sec.304/34 of the IPC was registered against several persons including the appellant herein, on 11th February, 1988, and after investigation an 'untraced' report was filed in the Court of the Metropolitan Magistrate, Karkardooma, who accepted the same. Tika Ram, Mahender's father, thereupon filed a criminal complaint in the Magistrate's Court which ultimately led to a trial, conviction and sentence of death for the appellant by the

A Court of Sessions and a modification in the conviction and sentence by the High Court, which proceedings are now impugned before us. The High Court has, in the course of very lengthy judgment, examined the evidence threadbare and noted that almost all the prosecution witnesses including the mother, the brothers and other close relatives of the deceased, who had all been picked up by the police as hostages to secure the arrest of Mohinder and Ram Kumar had not supported the prosecution and had been declared hostile and as Ram Kumar and Tika Ram the complainant had also died before the trial concluded, there was little evidence in favour of the prosecution except the formal evidence of PW.1. S.S.Rathore, the SDM and the evidence of PW.8, 17 and 38 who too were not eye witnesses to the incident and whose evidence was purely circumstantial in nature. The Court thereupon looked for corroboration to the evidence of some of the police witnesses who had supported the prosecution and also fell back on the statements of some of the defence witnesses, and re-appraised the evidence to come to its conclusions.

4. Leave was granted by this Court on 29th August, 2008 and while granting leave the following order was made:

“Leave granted.

Issue notice to the appellant as to why the conviction of the appellant shall not be recorded under Section 302 of the Indian Penal Code and sentence be enhanced. We, in exercise of jurisdiction under Article 142 of the Constitution of India further direct the Commissioner of Police of the National Capital Territory of Delhi to file an affidavit before this Court as to what action has been taken against the officer(s) concerned in the matter.

Bail application is rejected.”

5. We are told by Mr. P.P. Malhotra, the learned A.S.G. appearing for the respondent that the affidavit has indeed been

filed. Mr. Malhotra has also assisted us on the other question that has been raised by the admitting Bench. A

6. Mr. Ranjit Kumar, the learned counsel for the appellant has raised several arguments during the course of the hearing. In particular he has submitted that the appellant had been roped in under Sec.302/120-B of the IPC and as all the co-accused had been acquitted, the question of the applicability of Sec.120-B had to be ruled out. He has also submitted that there was absolutely no evidence which could involve the appellant in the matter and the courts below had been primarily influenced by the fact that the appellant was a police officer and he had apparently beaten a suspect to death while he was in police custody. He has further argued that the sentence awarded to the appellant was in any case excessive in the light of the fact that the conviction had been recorded under Sec.304 Part II of the IPC and even assuming though not conceding that the appellant was responsible in some way in the injuries that had been caused to Mahender which ultimately lead to his death, the fact that Mahendr and his accomplice Ram kumar were bad characters had been proved on record. Mr. Ranjit Kumar has also referred us to various defence documents on the file which show that several FIRs including an FIR under Sec.376 etc. of the IPC. had been registered against them. B
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7. Mr. Malhotra has, however, supported the judgment of the High Court and has further submitted that in the light of the judgment of this Court in *Virsa Singh vs. State of Punjab* (1958 SCR 1495) a case of murder had been clearly spelt out against the appellant. F

8. We have heard learned counsel for the parties at length and gone through the record very carefully. This case exemplifies the repeated observations that a delay in the disposal of a criminal case leads to the destruction of the prosecution case. The incident happened in the year 1987, and the evidence was recorded in the year 2004. Little wonder therefore, that the almost all the prosecution witnesses including G
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A the mother, brothers, uncles, etc. of Mahender and Ram Kumar
 had been declared hostile as they had not supported the
 prosecution. It is in this background that both the courts below
 had to stretch the evidence slightly in order to arrive to a
 conclusion of guilt against the appellant. We are of the opinion
 B however that the reasons recorded by the trial Court and High
 Court are germane and there is no reason to interfere with the
 finding of the fact recorded by the Courts below.

9. Mr. Malhotra's reliance on *Virsa Singh's* case is,
 however, misplaced. *Virsa Singh's* case was on its own
 C peculiar facts and its effect has in any case been whittled down
 in *Harjinder Singh vs. Delhi Administration* (AIR 1968 SC 867)
 and *Laxman Kalu Nikalje vs. The state of Maharashtra* (AIR
 1968 SC 1390). In *Laxman Kalu Nikalje vs. State of*
Maharashtra it was held:

D "Section 299 is in three part; first takes in the doing
 of an act with the intention of causing death. As it was clear
 Laxman did not intend causing death and first part of
 Sec.299 does not apply. The second part deals with the
 E intention of causing such bodily injury as is likely to cause
 death. Here again, the intention must be to cause the
 precise injury likely to cause and that also, as we have
 shown above was not the intention of accused. *The act*
which was done, was done with the knowledge the
 F *accused was likely by such act to cause death of*
deceased. The case falls within the 3rd part of
Sec.299 and will be punishable under the second part of
Sec.304."

10. The question as to the quantum of sentence has been
 G argued by Mr. Ranjit Kumar with some insistence. He has
 pointed out that the matter was of the year 1987. The appellant
 is presently in jail as per the orders of the trial court and the
 High Court and has undergone about 3 years of the sentence
 and has paid the fine of Rs.2,00,000/-. He has also been
 H denied his retiral benefits on account of his conviction in the

present matter and is now 67 years of age, and is in extremely indigent circumstances. Mr. Ranjit Kumar, accordingly, prays that there should be some reduction in the sentence. In the background of the above facts and that the conviction has been made under Sec.304 Part II of the IPC, we confirm the conviction as recorded by the High Court but reduce the sentence from 8 years to five years and increase the fine from rupees two lacs to five lacs. In default of payment of fine, the appeals will be deemed to be dismissed in toto. The fine if deposited shall be paid as compensation to Mahender's mother PW.9, Raj Kali.

R.P.

Appeals dismissed.

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