A VIJENDER KUMAR @ VIJAY

v.

STATE OF DELHI

(Criminal Appeal No. 2093 of 2009)

APRIL 28, 2010

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[HARJIT SINGH BEDI AND C.K. PRASAD, JJ.]

Penal Code, 1860:

C *ss. 302 and s.300, Exception 4 – Son of a bus operator, suspecting that the helper, a young boy, misappropriated a part of the bus fare, taking out a knife from his scooter and stabbing the boy on the abdomen – Victim died in hospital the same day – Conviction by trial court u/s 302 – Affirmed* D *by High Court – HELD: The facts do not justify applicability of Exception 4 to s.300 – Admittedly, there was no pre-meditation in the incident – The 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 accused* E *as he lost his temper suspecting the deceased of having misappropriated the fare that he had been collecting – The deceased also had no role to play – The accused had taken undue advantage of his position inasmuch as he had run to the scooter, opened the boot, taken out a knife and caused the injury on the person of the deceased who was a young,* F *unarmed boy – 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 primarily the circumstances preceding the incident and not exclusively during the incident are to be seen – Appeal dismissed.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. of 2093 of 2009.

From the Judgment & Order dated 9.4.2009 of the High

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Court of Delhi at New Delhi in Criminal Appeal No. 351 of 2005.

Sanjeev Bhatnagar, Brig. M.L. Khatter, Kusum Chaudhary for the Appellant.

Ashok Bhan, Sadhana Sandhu, Anil Katiyar for the Respondent.

The following Order of the Court was delivered

ORDER

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. The 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

A 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 B 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 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 C 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 D 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 E 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 F Code as an outcome of a sudden quarrel. He has pointed out that only one injury of small dimensions had been caused by the appellant to the deceased and that too in the 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. G 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 H 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;

(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 was, therefore, also a clear case where the appellant had taken undue advantage of his position. It is also well settled that

A 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 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
B Exception 4.

7. We, accordingly, dismiss the appeal.

R.P. Appeal dismissed.