

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1285 OF 2009
(Arising out of SLP (Crl.) No.8930 of 2008)

Jai Kumar

... Appellant

Versus

State of Haryana

... Respondent

JUDGMENT

S.B. Sinha, J.

1. Leave granted.
2. The appellant is before us claiming parity with his co-accused Subhash for obtaining the benefit of a judgment of this Court in Subhash v. State of Haryana since reported in [(2007) 12 SCC 63].
3. At the outset, we would like to place on record that this appeal is barred by 896 days. Ordinarily, we would not have condoned the delay but we had issued notice both on SLP as also on the application for condonation

of delay only on the premise that the appellant had raised a contention before this Court that he and his co-accused Subhash are similarly situated.

4. Appellant was charged for commission of offences punishable under Sections 392, 397 and 302/34 of the Indian Penal Code. The occurrence took place on 9.10.1991. A First Information Report was lodged by one Mane Ram (PW8) who alleged that he along with the deceased Raghbir Singh had gone to village Kaillana in a tractor to bring 'barma' (an instrument for drawing water) from one Nandlal. After collecting the same, they left for their village at about 12 noon. They reached a village commonly known as 'Pugthala' and purchased liquor from a liquor vendor. The deceased separately purchased a nip of liquor and carried the same with him. When they reached near village Chamrara, the appellant, son of Basu Sardar, Jai Kumar, Subhash and Joginder Singh met them. Son of Basu Sardar took away the nip of liquor from the deceased and consumed it. All of them again consumed some illicit liquor. They came back at the place where they had met Mane Ram and Raghbir Singh.

For some reasons or the other, an altercation took place between son of Basu Sardar, Subhash and Jai Kumar. Son of Basu Sardar caused an injury on the head of Subhash and fled away. Subhash was being taken to village Pugthala for his treatment. Accused Joginder Singh drove the tractor

towards village Bajana along the bank of a canal. They reached village Kasandi and near the bridge of the canal, Joginder Singh stopped his tractor and started robbing money from the pocket of the deceased Raghbir Singh. When PW8, Mane Ram and Subhash intervened, Joginder Singh caught hold of Mane Ram and threw him in the canal. Appellant and Joginder Singh caught hold of Raghbir Singh and also threw him in the canal. The deceased tried to save himself by catching hold of the grass grown on the bank of the canal. Appellant and the said Jagmohan Singh kicked him on his face and he was again thrown in the water. He could not come out. Mane Ram, however, knew swimming and he came out of the canal at some distance. He after coming out, searched for the deceased and the tractor. He could neither find the deceased nor the tractor. Mane Ram and Jai Singh went to village Mandi at about midnight and informed Amar Singh (PW6), father of the deceased. The First Information Report was lodged thereafter.

5. All the accused including Subhash and the Appellant were convicted for commission of offences under Sections 392, 397 and 302 read with Section 34 of the Indian Penal Code. Appeals filed before the High Court were dismissed. Subhash alone approached this Court. Contention raised on his behalf that he was falsely implicated was not accepted. The circumstances which were placed on record on the basis of the evidences of the witnesses were stated, thus :

“12. The evidence and material available on record further reveal circumstances to prove the guilt of the appellant: (1) The first circumstance is the recovery of the dead body of Raghbir Singh (the deceased) from the place of occurrence. (2) Sub-Inspector Man Singh (PW 11) recovered Tractor No. HR 06 8501 from the possession of the accused persons which was the same tractor robbed by the accused. (3) The third circumstance is recovery of “barma” by Sub-Inspector Man Singh (PW 11) from the possession of Joginder Singh (the co-accused) in pursuance of his disclosure statement.”

6. The other contention that Mane Ram (PW8) lodged the First Information Report after a great delay and, thus, a serious doubt is cast on the case set up by the prosecution was also negated. While, however, considering the involvement of Subhash, vis-à-vis, the Prosecution case, it was held :

“14. Be that as it may, it is not the case of the appellant that after occurrence of the incident some deliberations took place in order to falsely implicate the appellant in the case. No suggestion of any enmity between the appellant and PW 8 has been made. There is no reason to disbelieve the sequence of events narrated by PW 8. In such view of the matter mere delay in lodging the first information report, in the facts and circumstances of the case cannot be held to be fatal to the prosecution case.

15. For all the aforesaid reasons we hold that the prosecution has been able to establish the guilt of the appellant beyond all reasonable doubt for conviction under Section 392 read with Section

397 IPC for having robbed money and tractor. The sentence of rigorous imprisonment for a period of 7 years for each of the offence under Section 392 read with Section 397 IPC is accordingly upheld.

16. The question that falls for our consideration is whether the facts and circumstances and the evidence available on record justify the conviction of the appellant under Section 302 read with Section 34 IPC for having caused death of Raghbir (the deceased). The evidence available on record does not suggest that there has been any intention of causing the death of Raghbir (the deceased). The case falls under Part II of Section 304 IPC. The appellant committed the offence of culpable homicide not amounting to murder. The appellant is accordingly convicted under Part II of Section 304 IPC and sentenced to undergo rigorous imprisonment for 7 years. The sentences to run concurrently.”

7. It is true that this Court in Subhash (supra) opined that no case has been made out for his conviction under Section 302 read with Section 34 of the Indian Penal Code and, thus, the conviction was converted into under Section 304, Part 2 thereof.

8. Overt acts on the part of the appellant, however, together with Jagmohan Singh were totally different. The deceased even after being thrown in the canal tried to save himself desperately. He wanted to come out of the canal by catching the grass. He was kicked on the face and again thrown in the canal. The fact that he was in an inebriated condition is not in

dispute. He, therefore, upon receiving injuries, unlike Mane Ram (PW8) could not have swum to the shore to save his life.

9. We, therefore, are of the opinion that the case of the appellant is not in *pari materia* with that of Subhash. He has rightly been convicted under Section 302 of the Indian Penal Code. There is no merit in the appeal. It is dismissed accordingly.

.....J.
[S.B. Sinha]

.....J.
[Deepak Verma]

New Delhi;
July 21, 2009