

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1854-1855 OF 2010

VIJENDER @ BIJJO

...APPELLANT(S)

VERSUS

STATE (GOVT. OF NCT OF DELHI)

...RESPONDENT(S)

O R D E R

1. Heard learned counsel for the parties.
2. The appellant-Vijender has been convicted along with one co-accused named Om Prakash, for committing the murder of Anita. The deceased-Anita was the sister of the appellant-Vijender. She had been married to Om Prakash. But at the time of her death, she was living with one Zahir Alam - PW13. The issue as to whether the deceased - Anita was married to Zahir Alam, is not clear since the evidence in that regard is contradictory.
3. On 23.09.1997, according to the prosecution, co-accused Om Prakash along with the appellant-Vijender, entered the house where the deceased was living with Zahir Alam. They caught Zahir Alam and questioned him in what capacity he was keeping Anita with him. Zahir Alam claimed that he had married her in Court with the consent of her mother viz. Ramwati, but he had no papers with him at that time. Apparently, Zahir Alam was attacked by the two

accused Om Prakash and Vijender, but soon thereafter, they caught hold of Anita. According to the prosecution, Om Prakash the co-accused attacked her with a knife. The appellant-Vijender is said to have attacked her with a Thapki which is a small piece of wooden plank which is commonly used for beating clothes while washing. Injured Anita was removed to the hospital where she was declared dead. The following injuries were noticed in the post-mortem as follows:

1. Lacerated wound on the left side top back of head of size 4.5 cms x .7cms x .5cms.
2. Lacerated wound on the right side of forehead of size 3 cms x 1cms x 5cm.
3. Lacerated wound on the left side of forehead 1 cm above the left eyebrow of size 3 cms x 1cms x 5cms.
4. Abrasion on the right side of face over the zygomatic process of size 1.7 cms x 1.2cms.
15. Abrasion on the front of left knee of size 1.3cms x 1cm. According to the report of Dr. Alexander death in this case was caused due to shock and haemorrhage caused by multiple injuries mentioned above. According to him injury No. 6 and 10 were sufficient in the ordinary course of nature to cause death individually as well as collectively. He has also opined that injury No.5 to 14 were caused by sharp edged weapon/object. Injury No. 5,6,7,9 and 10 were caused by single edged sharp weapon/object. Injury No. 1 to 4 and 15 are opined to have been caused by blunt force impact. He has also given his opinion that Injury No. 5 to 14 mentioned in

the Report Exh.PW.12/A could have been caused by knife or the weapon/object similar to it. Whereas injury No. 1 to 4 and 15 mentioned in Exh.PW.12/A could have been caused by Thapki. Both these weapons had been shown to the doctor and he gave his opinion in this regard as Exh.PW.1/B and C. Even he has prepared the sketch of these weapons along with his opinion Exh. PW.12/D and E.

4. Injuries Nos. 5 to 14, were caused by a knife. The doctor opined that from amongst those injuries, injuries nos. 6 and 10 were sufficient in the ordinary course of nature to cause death individually as well as collectively. As far as injuries by the thakpi are concerned, the Doctor gave tentative opinion that injuries nos. 1 to 4 and 15 "could have been caused by Thapki".

Motive :

5. We find that the prosecution has clearly established the motive for the assault and murder of the deceased Anita. Obviously, the co-accused Om Prakash, husband of the deceased Anita, who said to be drunken, was enraged at the fact that his wife was living with another man. There is also no doubt that the appellant-Vijender must have felt ashamed at the situation in which his sister was living. It is, therefore, clear that both the accused went to the house of deceased to some how correct the situation. There is no evidence that the appellant-Vijender went there armed. Apparently, the co-accused Om Prakash was carrying a knife. It is not possible to know if the Vijender was

aware that Om Prakash was carrying a knife.

Assault

5. As noted above, the assault took place after the exchange of hot words among the two accused and Zahir Alam and eventually they turned violent and attacked on the deceased with knife and thapki.

6. On perusal of the facts of the case, the intention of the accused to assault Anita is beyond doubt. The only question for our consideration is that whether the appellant intended to kill the deceased Anita or merely beat her.

7. Having given our anxious consideration to the evidence in the case and to the submission of the learned counsel appearing on behalf of the parties, we are of the view that there is a serious doubt about Vijender's intention to kill Anita. Firstly, he was her brother. Secondly, he went to her house without any Arms. Thirdly, Zahir Alam who is the sole eye witness has not said that Vijender expressed any intention to kill Anita-deceased. Fourthly, we find that having gone unarmed, the appellant-Vijender did not look around for an arm such as knife or any other sharp weapon on her sister but pick up a wooden plank used for beating cloths for washing. Apparently, he picked up something which was lying there and handy. Section 304 of the Indian Penal Code reads as follows:

304. Punishment for culpable homicide not amounting to murder - Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life}, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

The facts referred to above lead to the inference that causing the death of Anita by the appellant contributes culpable homicide not amounting to murder. We find that there is indeed very high probability that Vijender assaulted his sister in the heat of passion upon certain quarrel and without acting in a cruel or unusual manner. Though it cannot be said that, as rightly contended by Mr. A.K. Panda, learned Senior Counsel appearing for the respondent, the appellant was not angry. We thus find that the appellant-Vijender caused the death of Anita with the knowledge that it is likely to cause death but without any intention to do so. In fact we would advert the contradictory versions on record i.e. of Zahir Alam and the mother of the deceased Ramwati about the role of Vijender.

Zahir Alam states that Vijender held Anita while Om Prakash stabbed her with knife. Ramwati however did not say any such thing. Ramwati, the mother of the deceased later denied her presence at the place of occurrence which was alleged by Zahir Alam.

8. Having regard to the overall circumstances of the case, we deem it fit and appropriate to convert the conviction of the Appellant-Vijender under Section 304 Part II from conviction under section 302 of IPC and sentence him to undergo imprisonment for a period ten years.

9. Hence, we allow these appeals partly and modify the impugned judgment and order passed by the High Court to the extent that the appellant shall undergo rigorous imprisonment for a period of ten years.

10. We have been informed that the appellant-Vijender has already undergone a sentence of 10 years. If that be so, he shall be enlarged forthwith if not required in any other case and since the appellant is on bail, his bail bonds stand discharged accordingly.

.....J.
[S.A. BOBDE]

NEW DELHI
24TH NOVEMBER, 2016

.....J.
[ASHOK BHUSHAN]

ITEM NO.102

COURT NO.10

SECTION IIC

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCriminal Appeal No(s). 1854-1855/2010

VIJENDER @ BIJJO

Appellant(s)

VERSUS

STATE (GOVT.OF NCT OF DELHI)

Respondent(s)

Date : 24/11/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE ASHOK BHUSHANFor Appellant(s) Mr. Sushil Balwada,Adv.
Mr.Sandiv Kalia,Adv.
Mr. Ravi Kumar Tomar,Adv.For Respondent(s) Mr. A.K. Panda,Sr.Adv.
Mr. A.K. Raina,Adv.
Mr. P.K. Dey,Adv.
Mr. Vimal Roy Jad,Adv.
Mr. D. S. Mahra,Adv.UPON hearing the counsel the Court made the following
O R D E RThe appeals are partly allowed in terms of the
signed order.(Madhu Bala)
Court Master
(Signed order is placed on the file)(Indu Pokhriyal)
Court Master