

Laxman Yadav Vs. State

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Court : Delhi

Decided On : Sep-13-2013

Judge : Indermeet Kaur

Appellant : Laxman Yadav

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:

09. 09.2013 Judgment delivered on:

13. 09.2013 CRL.A. 1235/2010 LAXMAN YADAV Through Appellant Ms. Nandita Rao, Adv. versus STATE. Through Respondent Mr. Sunil Sharma, Adv. for the State. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 The accused had been charge-sheeted and ultimately found guilty for having committed the murder of his deceased wife Sita Devi. The date of offence is 28.06.2007; Sita Devi was found lying dead in a pool of blood on the second floor of her matrimonial home i.e. house No.M-452, Shakurpur, Delhi. She had been stabbed twice under her chest. Her dead body had been discovered by her landlady Hardevi (PW-5) who on the fateful day noticed that there was no light switched on in the room; she pushed open the door; on switching on the light, she found the dead body of the victim lying on the floor. 2 At 9.25 PM of 28.06.2007 on

DD No.31-A (Ex.PW-19/A) was recorded in the local police station Saraswati Vihar which information had been conveyed by Savitri Devi (PW-4) (who in turn had been informed by Har Devi-PW-5 landlady of the deceased) and which was to the effect that her tenant Sita Devi had been murdered. This call had been made from the PCO of Mukesh Kumar Mishra (PW-3). 3 Rukka was received by SI Braham Prakash (PW-13A) pursuant to which the FIR (Ex.PW-13/A) was registered under Section 302 of the Indian Penal Code (IPC). 4 Inspector Dharambir Singh (PW-19), SI R.K. Mann (PW-16) along with constable Ratipal (PW-9) reached the spot. The matrimonial home of the victim and the appellant was on the second floor of the house. The dead body of the victim was found lying on the floor; two sharp wound injuries were noted between the breast and the abdomen; blood was lying scattered on the clothes, bed-sheets and pillow. Pieces of broken bangles were also lying near the dead body. 5 Crime team was summoned. SI Matadin (PW-6) along with photographer constable Dalbir Singh (PW-10) reached the spot; 17 photographs were taken of the scene of crime of which one negative was washed out ; 16 positives were proved as Ex.PW10/1 to Ex.PW10/16 and the 17 negatives were proved as Ex.PW-10/17 to Ex.PW10/33. Crime team report (Ex.PW-6/A) was prepared. 6 Exhibits were lifted from the spot which were taken into possession vide seizure memo Ex.PW-16/A. Scaled site plan Ex.PW7/A was prepared by SI Manohar Lal (PW-7); the rough site plan initially prepared by the IO was proved as Ex.PW-20/C. 7 The version of the prosecution was unfolded in the statement of the witnesses. It was revealed that the appellant was an auto rickshaw driver who used to ply the auto of his employer Sanjay (PW12) during the night time; PW12 was driving the auto during the day. Dev Chander Yadav (PW1) was the brother of the victim. His testimony was to the effect that his sister was married to the appellant about 8-9 years ago; the couple was initially living at village Madhiya, Bihar; no child was born out of their wedlock; the accused used to beat his sister right from the inception of the marriage; there were demands of a T.V. and a motor-cycle; his sister was turned out from the matrimonial home. Just two months prior to the incident, a panchayat was organised and the appellant apologized for his acts and promised to keep his sister happy pursuant to which on the intervention of the panchayat, his sister had been sent back to the matrimonial home. She stayed in Bihar for one month and thereafter the couple went to Delhi

and started living at Shakarpur. Ram Chander (PW2) cousin of the victim identified her dead body. 8 Post-mortem on the deceased was conducted on 05.07.2007 i.e. seven days after the date of the incident by Dr. Kulbhushan Goel (PW13) of the B.J.R.M. Hospital. Two external injuries were noted upon her person. They read as under:

External Injuries:- Dried blood seen at upper abdomen.

1. Incised penetrating wound 2.5 X 1.2 X ?. cm placed vertically and slight oblique over epigastria region about 3.5 CM Rt. to midline and about 4 CM below xiphoid process. Lower angle of the wound is more acute than the upper one.

2. Incised penetrating wound 3 X 1.3 X ?. CM vertically slightly oblique over epigastria region about 2.5 CM Lt. to the midline and about 4 CM below xiphoid. Lower angle is more acute than the upper angle.

9 Cause of death was hemorrhage shock consequent upon injuries to liver and stomach. All injuries were anti mortem in nature caused by sharp cutting penetrating weapon. Abdominal injuries No.1 & 2 mentioned in the post-mortem report were sufficient to cause death in ordinary course of nature; mode of death reported was homicidal; post mortem report had been proved as Ex. PW-13/A. 10 The appellant had absconded. He was not available. In fact in his statement under Section 313 of the Cr.PC his version in answer to question No.12 was that on 27.06.2007 in the morning he had left the TSR with its owner (PW-12); he had lunch at his home and at about 01:00 PM after informing his wife he went to Gannaur Mandi looking for a job stating that he would return back on 28.06.2007; on 28.06.2007 when at about 10:30 PM he returned to his house; he saw neighbours and police gypsies collected at the spot; he was informed that his wife has been murdered; the appellant went to his friends house (Sunil) who was residing in D-Block; on the next day, his friend took him to a lawyer at Tis Hazari Courts where he was advised not to go back as the police was searching for him; he thereafter surrendered before the Court. 11 The appellant was arrested on the same day i.e. on 13.01.2008 vide arrest memo Ex.PW-11/A. He made a disclosure statement Ex.PW11/C. Pursuant to this disclosure statement, he got recovered the weapon of offence which he had allegedly used in the crime; it was a knife. This

recovery was effected from a park behind the cremation ground where it had been hidden behind bricks and stones. It was taken into possession vide Ex.PW-11/E. This weapon was sent for a subsequent opinion to the doctor who after seeing the knife had opined that injuries No.1 & 2 noted in the post-mortem report (Ex.PW-13/A) could have been caused by the said knife. The CFSL vide its report Ex.PW-17/A and Ex.PW17-B had also opined human blood on this weapon. 12 This was the sum total of evidence collected by the prosecution. 13 As noted supra, in the statement of the appellant recorded under Section 313 of the Cr.PC his version was that he was living happily with his wife; he was a loving husband; his signatures were obtained on blank papers; he is innocent and in no way connected with the crime. 14 No evidence was however led in defence. 15 The trial Court vide the impugned judgment convicted the appellant for the offence under Section 302 of the IPC; it had noted that apart from the fact that it being an admitted position that the murder had been committed in the matrimonial home, the appellant having absconded for more than seven months coupled with the motive which has been elicited in the version of the prosecution which was to the effect that the parties had been married for about 8-9 years but no child had been born out of their wedlock which was always a bone of contention between the married couple coupled with the fact that the appellant had also got recovered the weapon of offence were the cumulative circumstances forming a chain of link evidence which had ultimately led to his conviction. Vide order of sentence dated 30.09.2010, the appellant had been sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-; in default of payment of fine to further undergo RI for six months. 16 On behalf of the appellant, arguments had been addressed at length. Learned counsel for the appellant points out that the cardinal principal of criminal jurisprudence is that the prosecution must stand on its own legs to prove the guilt of the accused; there are clear missing gaps in this link evidence which has been sought to be established by the prosecution; the trial Judge has failed to note that it was the appellant who had himself surrendered before the Court; his explanation is satisfactory; he had in his statement under Section 313 of the Cr.PC candidly and fairly admitted that when he reached the spot at 10:30 PM on the fateful day of 28.06.2007, he learnt about the murder of his wife and noticed that his house had been surrounded by the police; at this stage, he had little choice but

to leave the spot as he was under apprehension of arrest and that is why on legal advice from his lawyer, he remained missing; this missing was only for the aforesaid reason. The prosecution had failed to establish that there was any quarrel or tiff between the married couple; the parties were in fact living happily. Attention has been drawn to the testimony of PW-5 who had stated that the married couple never used to fight with one another; submission being that this testimony of the landlady who was living on the ground floor of the same building and being aware of the relationship between the parties and as such the theory of motive as set up by the prosecution stands diminished; motive could not be proved; the appellant was in fact not in the house on the date of the incident; no witness has deposed to the said effect; presence of the appellant in the house on the fateful day has not been proved. On no count has the prosecution been able to prove its case. The appellant is entitled for benefit of doubt and a consequent acquittal. 17 Submissions have been countered by the learned APP. It is pointed out that the all links in the chain of evidence stand complete. Not only has the prosecution through the version of PW-1 established that the parties had a marital discord and the bone of contention being the fact that the even after 8-9 years of marriage, they did not have a child, PW-12 has also confirmed the version of the prosecution that on 28.06.2007, the appellant has returned the TSR to him in the morning; the married couple being alone in the room at the time of the incident, it was for the appellant to give an explanation as to how his wife stood murdered and this was especially so in view of the fact that there was no forced entry or breaking open of the room door which is evident from the version of PW-5 who had stated that when she pushed the door it opened. On no count, does the impugned judgment call for any interference. 18 We have appreciated the arguments of the learned counsel for the parties and perused the record. 19 It is an admitted position that Sita Devi had been murdered within the four corners of her matrimonial home. The post mortem conducted on 04.07.2007 had approximated the death seven days ago; exact time of death was however not known. 20 PW-12 Sanjay the employer of the appellant has on oath deposed that he was the owner of TSR No.DL-1R F 7033.he used to drive the TSR during the day time and at night, the appellant Laxman used to drive it. He has further deposed that the TSR was returned by the appellant in the morning after washing

the same; the key and the money was also returned and thereafter the accused did not come back to take the TSR for driving as he earlier used to do during the night shift. This witness was silent on the date when the TSR was returned to him but in his cross-examination by the learned APP, he clarified that due to lapse of time, he could not recollect the date but TSR had been returned back to him by the appellant on the morning of 28.06.2007. Vehement submission of the learned counsel for the appellant that this witness had been cross-examined by the learned APP and being a hostile witness, no reliance can be placed upon his version is a submission without any merit. Learned Prosecutor had taken permission of the Court only to seek a clarification on the date which was subsequently clarified with a further rider that because of lapse of time, PW-12 could not recollect the date. Nothing has also been elicited in his cross-examination to discredit him. In fact this witness appears to be natural and spontaneous; he is definitely not a tutored witness; full credence has to be given to his evidence. This argument of the learned counsel for the appellant is thus rejected. 21 PW-5 Har Devi was the landlady of the one room accommodation which had been rented out to the appellant and the victim. In her examination in chief, she has deposed that the room had been rented to the couple about 16-17 days prior to the incident; the couple had no child; she was not aware of the relations between the parties; the appellant used to stay at home during day time. In the evening at about 07:00-08:00 PM, she saw that there was no light in the room of the appellant and Sita Devi; she went up-stairs and called Sita by name; on opening the door, she found Sita lying dead on the floor with broken bangles pieces scattered around her. This witness had been declared hostile and had been permitted to be cross-examined by the learned APP on certain aspects; material aspect being that she had never heard the couple fight or that the bone of contention was not the fact that the couple did not have a child; this version however was in conflict with the version which she had given before the police (Ex.PW-5/D1). This witness was also hostile on the fact that she had seen the appellant return home at about 08:00-09:00 AM of 28.06.2007; she denied the suggestion that she was deposing falsely as she has been won-over by the accused. The defence counsel chose not to cross-examine the witness and this was obviously for the reason that this witness has been won-over. 22 There is no

rule of law which states that evidence of a hostile witness is to be rejected enbloc; it is not to be washed off the record altogether. It is for the Judge to consider in each case whether as a result of such cross-examination and contradiction, the witness has been altogether discredited or not. Thus, while ignoring that part of the testimony of PW-5 which on oath in Court was in contrast with her version (Ex.PW-5/D1) yet on other aspects she has corroborated her version (Ex.PW-5/D1) on oath in Court. This version establishes that the appellant used to drive the TSR in the night and during the day, he used to stay at home; this was his routine. Also admittedly it was PW-5 who had first noted the dead body of Sita as there was no light in the room and on switching on the light, she had noticed Sita lying dead on the floor. This was around 7-8 PM; she had informed her employer Savitri (PW-4) who rung up the police from the booth of Mukesh Kumar Mishra (PW-3). 23 A co-joint reading of the versions of PW-12 and PW-5 thus evidence that on the morning of 28.06.2007 after returning the TSR to his employer (PW-12), as per practice, the appellant returned back to his house. He must have remained in the house during the day. 24 The fact that the appellant used to remain in the house in the day and used to ply the TSR in the night shift has also been admitted by the appellant himself in his statement under Section 313 of the Cr.PC. His version in this statement is to the effect that he used to do night duty which was not liked by his wife. His further explanation is to the effect that one day prior to the incident i.e. on 27.06.2007, he had left the TSR in the morning with PW-12 and after having lunch, he went to Gannaur Mandi looking for a job telling his wife that he would return back on 28.06.2007. 25 This explanation is palpably false as it is clearly contrary and in conflict with the version of PW-12 and PW-12 being an independent witness and in fact known to the appellant would have no reason to have given a wrong date and deposed falsely against him. The version of PW12 had in fact established that the appellant had returned the TSR to him in the morning of 28.06.2007. The further statement of the appellant that he had gone to Gannaur Mandi on 27.06.2007 is also false as if this was the case nothing prevented him from bringing evidence in defence to establish this submission. That apart this defence had surfaced for the first time only in his statement under Section 313 of the Cr.PC which was recorded on 22.09.2010. No suggestion has been given to any of the witnesses of the prosecution; who had been examined

prior in time that he was not present in the house on 28.06.2007 for the reason that he had gone to Gannaur Mandi on 27.06.2007 looking for a job. Obviously this defence had been set up on legal advice at a later date and not matching with the earlier cross-examination of the witnesses of the prosecution, this Court is constrained to hold that this explanation is wholly sham and bogus. 26 Law is well settled. A false explanation by an accused to build up a defence which is otherwise contrary to the established version of the prosecution leads to drawing of an adverse inference against such an accused. 27 The Apex Court as way back as in AIR 2000 SC 25. By now it is well established principle of law that in a case of circumstantial evidence where an accused offers false answer in his examination under S. 313 against the established facts that can be counted as providing a missing link for completing the chain. 28 The presence of the appellant in the matrimonial home on the fateful day is thus established. As noted supra, the murder had taken place in their one room tenement. The victim had died pursuant to two stab wounds which had been inflicted upon her. Both the wounds were in the chest area. This was not a case where there was any forced entry in the house or there was any evidence of a ransacking which could suggest that a third person had entered the house for some other motive. The room was also not locked. PW-5 has been categorical on this submission; when at 7-8 PM, she saw no light in the room, she pushed open the door and on opening it, she found the dead body of the victim lying on the floor; blood was scattered all over the clothes and broken bangles of the victim were lying on the floor. The murder had taken place obviously prior in time i.e. prior to 7 PM. 29 In these circumstances, who was to answer and explain the murder of the victim?. It has to be none other than the appellant; he was the only person other than the victim who was the occupant of this room. 30 Section 106 of the IPC specifically postulates that where any fact is especially within the knowledge of any person, the burden of proving it is upon him. 31 Section 106 of the Evidence Act reads as under: 106. Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations 32 It was for the appellant to explain and answer as to how his wife had died; as already noted his sham and bogus explanation was not only misleading but clearly untrustworthy. 33 In (2003) 7 SCC 3. Babu S/o Raveendran Vs. Babu S/o

Bahuleyan & Anr the Supreme Court had noted the solitary circumstance was of the accused and the deceased being last seen in the company of each other. The relationship of the deceased and the accused was of a husband and wife. The place of death was their matrimonial home. The place where the dead body was found was also the matrimonial home. There was no evidence of an intruder; it was held that in such a situation, the circumstance leadings to the death of the deceased stood shifted to be explained by the accused, for it is only he who is to be expected to know the manner and the circumstances under which his wife had died. 34 The conduct of the appellant also speaks volumes. It was not only unnatural and unbecoming of a husband but to put it mildly it was preposterous. As per his version (in his statement under Section 313 of the Cr.PC), when he came back to the matrimonial home in the morning of 28.06.2007; he learnt that his wife had been murdered. Instead of attempting to find out as to how the murder had taken place and who had committed this dastardly act upon his wife for which a normal husband would have been grieved and sorrowful, the appellant choose to abscond from the scene. He did not even go to the matrimonial home. Instead, he went to his friend Sunil who lived in the adjacent block. Sunil was also not examined in defence. Sunil advised him to visit a lawyer. This was on the next day. That whole day, the appellant stayed in the house of Sunil. This behaviour was nothing but the conduct of a guilty mind. The version of the appellant that he was a loving and affectionate husband is clearly not borne out from this conduct. Thereafter the appellant choose not to return to the matrimonial home and in fact evaded the police for almost seven months. During this period, the police was obviously searching for him and coercive steps had also been taken against him. It was only thereafter that on 13.01.2008 he surrendered before the Court. It was obviously for the reason that the appellant had now little choice left in the matter. 35 The appellant was arrested on the same day i.e. on 13.01.2008. Pursuant to his disclosure statement, he had got recovered the weapon of offence which was a knife from Tikona park behind the cremation ground situated near the Britannia Chowk, M-Block, Shakarpur, Delhi. This knife was found wrapped in a polythene concealed under the bricks and stones. Learned defence counsel has vehemently argued that Investigation Officer (PW-20) is not clear as to from where from the recovery was effected; in one part of his testimony he has stated that the recovery

was effected from tikona park and in another part of his testimony he has mentioned that it was from the cremation ground; this version cannot be relied upon. Further argument being that no public witness had also been joined. 36 Both these arguments have been appreciated in the light of the facts of the case. The recovery memo has been proved as Ex.PW-11/E. PW-11 along with PW-20 had accompanied the appellant at the time when the recovery had been effected. Both these witnesses have categorically stated that public witnesses had been asked to join the investigation but none agreed. It is a hard reality that public witnesses do shy from joining police investigation; this is nothing unusual. 37 The Apex Court in this context in 2001 (9) SCC 57.P.P. Beeran Vs. State of Kerala has noted that non-joining of a public witness will not demolish the recovery. 38 Both PW-11 and PW-20 have also been categorical in stating that the recovery was effected from the park which was near the Shamshan Ghat i.e. the cremation ground. In no part of the versions have they shifted their stand. The weapon of offence was in fact concealed under the earth behind bricks and it was only after the bricks and stones had been removed that the weapon could be recovered. It was wrapped in a polythene. Both the witnesses are trustworthy on this point. Recovery stands proved. 39 PW-13 the doctor had also opined that the injuries as noted in the post-mortem could have been caused by this weapon. The CFSL vide its report Ex.PW-17/A had also noted that the weapon of offence contained human blood. 40 The motive for the crime appears to be the bone of contention which the couple was nursing for the reason they could not have a child despite the fact that they had been married for 8-9 years; it being an admitted position that the couple was childless. PW-1, the brother of the appellant had deposed that the parties were initially staying in Bihar; differences had arisen between them and it was only two months prior to the date of incident that his sister (the victim) had rejoined the appellant in the matrimonial home. PW-1 had also deposed that two months prior to the incident a panchayat had been held and it was only on the intervention of the panchayat that his sister had agreed to rejoin her husband. This was at Bihar where they stayed for one month and it was only one month prior to the date of incident that the couple came to Delhi. This version of PW-1 is also corroborated by the version of PW-5 who has stated that she has given the room on rent to the appellant just 20 days ago. Nothing has been elicited in the cross-examination of

PW-1 which could discredit this version. 41 As noted supra, the submission of the appellant that no panchayat had in fact been held could not be dis-believed for the reason that if this has been the position, nothing prevented the appellant from calling any member of panchayat (as the panchayat was held in the village of the appellant himself); he however chose not to do so. The appellant in fact had again tried to mislead the Court. In the crossexamination of PW-1, he had sought to set up a defence that his brother-in-law has asked him for a loan of Rs.10,000/- which he could not honour and this was the reason why he had been falsely implicated by PW-1. 42 This being a case of circumstantial evidence and the law on this aspect being clear, this Court notes that all the links in the chain of evidence stand established. The single hypothesis of the guilt of the accused stand proved. The hypothesis of his innocence stands excluded. The conviction of the appellant calls for no interference. The appeal is without any merit. Dismissed. **INDERMEET KAUR, J KAILASH GAMBHIR, J** SEPTEMBER 13 2013 A

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