

Vishweshwar @ Munna Vs. State

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Court : Delhi

Decided On : Oct-28-2013

Judge : Veena Birbal

Appellant : Vishweshwar @ Munna

Respondent : State

Advocate for Pet/Ap. : Ms. Anu Narula

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision: October 28, 2013 CRL.A. 1359/2010 VISHWESHWAR @ MUNNA Appellant Through: Ms. Anu Narula, Adv. Appellant present in custody. versus STATE Respondent Through: Mr.Yogesh Verma, APP. SI Umed Singh, P.S. Nangloi. CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

* 1. This criminal appeal is directed against the judgment dated 23 rd December, 2009 passed in SC No.19/3/09 arising from FIR No.711/08, P.S.Nangloi under section 302 IPC whereby the appellant has been held guilty for the offence punishable u/s 304 Part II IPC and the order of sentence dated 7th January, 2010 whereby the appellant has been sentenced to undergo RI for 10 years with fine of Rs.10000/- and in default to further undergo SI for one year.

2. At the outset, learned counsel for the appellant, on instructions from appellant who is present in J.C, has submitted that appellant is not challenging his

conviction u/s 304 Part II IPC. It is submitted that appellant has already undergone sentence of six years and three months and he be released on the sentence already undergone by him.

3. The case of the prosecution is that FIR Ex.PW5/A was registered on the statement Ex.PW3A of Rajesh Kumar, PW-3 made to SI Rajender Sharma, PW-12 wherein he had stated that he was working in a shoe factory in Udyog Nagar Peeragarhi, Delhi and was living in a rented accommodation at D-10, Extension II-D, Nangloi. The name of the owner of said house was Jagdish @ Dhori Lal. The appellant was the servant of Jagdish @ Dhori Lal and was working in his dairy and lived in a courtyard outside their rented accommodation. Rajesh Kumar, PW-3 had alleged that prior to 4-5 days of the occurrence, appellant had purchased a deck which he used to play on a high volume due to which disturbance was being caused to them. Despite being asked not to play the same on high volume, appellant did not desist. On 20th December, 2008 in the evening he was again playing music at a very high volume. At about 9.30 pm complainant PW3 requested him not to play the music in high volume. Hearing that appellant got angry and started abusing him. Thereupon, their owner i.e. Jagdish @ Dhori Lal came and on his intervention, appellant had switched off the deck. Thereafter, they went for sleep. In the morning i.e. on 21st December, 2008 at about 6.30 am when he was taking a stroll in the Gali, his sister Laxmi i.e. deceased had gone to ease herself in a nearby house i.e. bearing no.D-6 Extension-II, Nangloi which was the house of Jagdish @ Dhori Lal. He had alleged that appellant was present there and was giving Bhusa (fodder) to the buffaloes. Thereafter he returned back to his house. Immediately, thereafter deceased came crying in the house and told that appellant had stabbed her with a knife in her breast. She was bleeding from the right side of breast portion and fell down in the court yard. He along with his brother Mukesh, PW-2 took her to Deep Charitable Dispensary where the doctor gave some stitches on the wound and advised them to take her to Satya Bhama Hospital. While they were taking her to said hospital, Laxmi died on the way. They brought her back to their house and arranged for her cremation and thereafter took her to cremation ground at Kamruddin Nagar where police came and took the dead body in their possession.

4. The police machinery had come up in action on receipt of DD no.12A which was recorded at Police Station Nangloi and copy of same was given to SI Rajender Sharma, PW-11 and Constable Shaadi Lal who reached Shamshan Ghat Kamruddin Nagar where dead body of Laxmi was lying having a cut injury which was stitched. Inquiry was made from the father and brothers of the deceased who did not disclose anything at that time. On suspicion, the body was brought to SGMH mortuary wherein post-mortem was got done on 22.12.2008. After post-mortem, dead body was handed over to the relatives of the deceased. On inquiry, Rajesh Kumar, PW-3, brother of the deceased made statement Ex.PW3A on the basis of which aforesaid FIR Ex. PW5/A was registered. During investigation, clothes of the deceased were seized by preparing necessary memo in this regard. The statement of other witnesses were also recorded. The appellant was also arrested during the course of investigation who made disclosure statement Ex.PW3G and got recovered knife ExP1 from a heap of fodder which was seized by completing necessary formalities in this regard.

5. After completion of investigation, a report u/s 173 Cr.P.C was filed against the appellant before the Ld.M.M. After supplying copy of documents to the appellant, the case was committed to the Sessions Courts. After completion of the prosecution evidence, the statement of appellant was recorded u/s 313 Cr.P.C. wherein the incriminating evidence was put to him. The appellant denied the same and stated that he was an innocent person and was falsely implicated in the case. However, no evidence was led in defence.

6. After hearing learned counsel for the parties and considering the evidence of the prosecution, the learned Addl. Sessions Judge held that charge u/s 302 IPC is not made out against the appellant and convicted him u/s 304 Part II IPC and sentenced him as has been stated above. The benefit u/s 428 Cr.P.C. was also given to the appellant. Aggrieved with the same, present appeal is filed.

7. Learned counsel for the appellant has submitted that appellant is not challenging his conviction u/s 304 Part II IPC. It is submitted that appellant was 18 years of age at the time of incident and he has already undergone sentence of six years and three months and considering his age, he be given chance to reform

and be released on the sentence already undergone by him.

8. The star witnesses of the prosecution are the brothers of deceased i.e., Rajesh Kumar, PW-3 and Mukesh, PW-2.

9. Rajesh Kumar, PW-3 has categorically deposed that appellant was the servant of their landlord Jagdish @ Dhori Lal and was working in his dairy. At the relevant time appellant was residing in a courtyard. He has deposed that the appellant had purchased a deck 4-5 days prior to the date of occurrence and he used to play music at a high volume. On 20th December, 2008 in the evening he was again playing music at a very high volume. At about 9.30 pm he requested him not to play the music in high volume on which appellant became angry and started abusing him. Thereupon, their owner Dhori Lal came and on his intervention appellant had switched off the deck. Thereafter, they went for sleep. In the morning on 21st December, 2008 at about 6.15 am, his sister Laxmi had gone for easing out outside the house in another house no.D-6 Extension-II, Nangloi which also belonged to Dhori Lal where appellant was giving Bhusa (fodder) to the buffaloes and he had seen him doing so. After taking walk he came back to his house. After some time, at about 6.30 am, Laxmi came crying and told that appellant had stabbed her with a knife in her breast. He has deposed about taking her to hospital and has also deposed the time when deceased expired. He also deposed about arrival of the police. Rajesh Kumar, PW-3 has deposed that initially he did not tell anything to police as they never wanted to get involved with police/court. However, on enquires made by the police, he had made the statement Ex.PW3/A. The postmortem of the deceased was conducted on 22nd December, 2008. The police had apprehended the appellant on his pointing out vide memo Ex.PW3B. The personal search of the appellant was conducted vide memo Ex.PW3C. The appellant also pointed out the place of occurrence vide memo Ex.PW3D. Appellant also got recovered knife Ex.P1 vide memo Ex.PW3F in his presence which was seized by the police after completing the formalities. The clothes of his deceased sister were also seized vide memo Ex.P2 (1 to 4 colly). He has also identified the knife Ex.P1.

10. In cross-examination, Rajesh Kumar, PW-3 has deposed that on the day of occurrence he woke up at 6.00 am and was taking a stroll in the street. He had seen appellant at about 6.15 am on that day when he entered H.No.D-6 for giving fodder. His sister i.e. deceased had gone at H.No.D-6 for using toilet. The appellant was also present in H.No.D-6. After taking stroll he had come back to his house. At about 6.30 am, his deceased sister had come back and was shouting that she was stabbed by the appellant with a knife. In his further cross-examination, he has deposed that their landlord Dhori Lal lives 100 sq.yd from their house in another house. He had gone to inform Dhori Lal about the incident on foot. Dhori Lal had come along with him to his house within 3/4 minutes and deceased was taken to Deep dispensary which is about half km. from their house. He had taken Laxmi in his laps on foot and his brother Mukesh, PW-2 was also with him. At about 6.45 am, they reached the said dispensary. They did not tell the doctor how she sustained injury. The doctor at the said dispensary applied some stitches on her sister and asked them to take her to Satyabhama Nursing Home. He has deposed in detail as to when his sister breathed her last. At about 7.30 am, she was brought back to the house. In cross-examination, Rajesh Kumar, PW-3 has also deposed that appellant was apprehended by the police in his presence. He has deposed having seen the appellant entering H.No.D-6 which is near to their house at about 6.15 am. Thereafter his sister had gone there. He has deposed that he had seen the appellant at H.No D-6, when his sister entered there and his sister had told him that appellant had stabbed her with a knife. Further in his cross-examination, he has deposed that one night prior to the occurrence at about 9.30 pm, there was altercation between them as appellant was playing music in his deck on high volume and he asked him not to play music on a high volume to which the appellant abused him and with the intervention of their landlord Dhori Lal, the appellant switched off the deck. His deposition on material points was not demolished. His deposition is in consonance with statement Ex.PW3/A on the basis of which FIR was registered.

11. Mukesh, PW-2 has deposed in the same manner as has been deposed by his brother Rajesh. There is no material contradiction in the statement of PW2 as compared to PW-3. The material deposition was also not demolished in cross-examination.

12. Om Parkash, PW-4 father of the deceased has also deposed that the dead body of his daughter was identified by him vide statement Ex.PW4/A after the post-mortem.

13. As per post-mortem report Ex.PW14A proved on record by Dr.Manoj Dhingra, PW-14, the cause of death was haemorrhage and shock and consequent to penetrating injury to the chest caused by single edged sharp weapon and the injury was sufficient to cause death in the ordinary course of nature. He has deposed that injury on the body of the deceased could be caused by a sharp edged weapon i.e., knife Ex.P1. In the cross-examination, he has deposed that time since death was about 24 hours which also corroborates the deposition of Rajesh Kumar, PW3 and Mukesh, PW2.

14. The evidence of Rajesh Kumar PW-3 clearly establishes that he had seen deceased going to ease herself on the day of occurrence at about 6.15 a.m. at House No.D-6 where appellant was already present. Immediately thereafter deceased had come back to her house with an injury on the right breast and told that she was stabbed by the appellant. The appellant was known to them as he was living in the courtyard of their house belonging to Jagdish @ Dhori Lal. The appellant has also not denied being an employee of Jagdish @ Dhori Lal. It has also come in the evidence that on the previous night there was a quarrel with appellant on the point of volume of music system. The evidence of Rajesh Kumar PW-3 and Mukesh PW-2 also establishes that immediately after the occurrence when deceased had returned back home she stated that she was stabbed by the appellant. The deceased had known the appellant. The evidence on record also establishes that deceased remained alive for some time after the incident and stitches were also given to her wound in the Deep Charitable Dispensary. In these circumstances, the learned ASJ has rightly accepted the evidence of aforesaid PWs that deceased had told them that she was stabbed by the appellant. Further the same stands corroborated with medical evidence i.e. post mortem report Ex.PW14A opined on cause of death Ex.PW14B proved on record by Dr.Manoj Dhingra, PW-14. The arrest of appellant and recovery of knife Ex.P1, also stands established from the evidence on record.

15. The learned ASJ has rightly convicted the appellant under Section 304 Part II of IPC. The conviction of appellant is therefore upheld.

16. As regards sentence, learned counsel for appellant submits that appellant was 18 years of age at the time of occurrence. His age is not challenged by State. Further, there is evidence on record about his age also. The appellant has already undergone sentence of 6 years and three months. He is not involved in any other case except the present case. The appellant has got a widow mother. At the relevant time he was working in a milk dairy.

17. Considering the totality of facts and circumstances, his substantial sentence is reduced from RI of 10 years to imprisonment already undergone by him. The sentence of fine of Rs.10,000/- is maintained. In default of payment of fine, he will undergo SI for one month. Appeal stands disposed of with aforesaid modifications in sentence. VEENA BIRBAL, J OCTOBER28 2013 ssb

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