

Nand Lal Vs. State

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Court : Delhi

Decided On : Feb-26-2014

Judge : Sanjiv Khanna

Appellant : Nand Lal

Respondent : State

Judgement :

\$~ *IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:- 26th February, 2014 + CRIMINAL APPEAL5621999 NAND LAL Through Appellant Mr. Akshay Sapra, Advocate. versus STATE Through Respondent Ms. Rajdipa Behura, APP. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL SANJIV KHANNA, J.

Appellant Nand Lal by the impugned judgment dated 19 th April, 1999 has been convicted under Section 302 of the Indian Penal Code, 1860 (IPC for short) for murder of Rubi Kumar in the intervening night between 15th and 16th December, 1992 at A-260, Mukandpur Colony, Delhi. The conviction arises out of FIR No.486/1992, police station Samaipur Badli, which became subject matter of Session Case No.135/1994. The appellant was also charged under Section 376 IPC, but has been acquitted. State has not preferred any appeal against the said acquittal. By order of sentence dated 29th April, 1999, the appellant has been sentenced to imprisonment for life and fine of Rs.5,000/-. In default of payment of fine, he has to undergo rigorous imprisonment for 3 months.

2. Learned counsel for the appellant has submitted that 3 material witnesses, namely, Pancham Singh (PW-2), Nek Ram (PW-10) and Ajay Pal Sharma (PW-11) have turned hostile and this seriously dents the prosecution version. It is further submitted that the seizure memos were witnessed by Bindeshwari Singh (PW-3), father of the deceased and Ram Narain (PW-4), a friend of PW-3. He states that independent public persons had not signed/witnessed the seizure memos and therefore doubts exist. Our attention was drawn to the unscaled site plans Ex.PW-17/A and PW-17/L and the scaled site plan Ex.PW-9/A and it was submitted that there are major discrepancies in the two sets of plans. It is argued that the present case could well be of honour crime committed by the parents/relatives of the deceased as they had objected to the relationship between the deceased and the appellant. In alternative, it is submitted that the motive has not been fully established. Lastly, it is highlighted that there are major discrepancies in the ocular evidence of Bindeshwari Singh (PW3), Ram Narain (PW-4) and Nand Kumari (PW-12).

3. We have considered the said contentions, but do not find any substance or merit in the same. It would be wrong and incorrect to disbelieve the testimonies of PWs 3, 4 and 12. PWs 3 and 12 are parents of the deceased and PW-4 was a neighbour residing in the same colony adjacent/near the house where the deceased was residing.

4. Bindeshwari Singh (PW-3) and Nand Kumari (PW-12) have deposed that deceased Rubi Kumari, aged about 16 years at the time of occurrence, was their elder daughter. Appellant Nand Lal started visiting their house about one year prior to the date of occurrence. They had seen the appellant and deceased Rubi Kumari talking to each other. PW-3 in the examination-in-chief has stated that he suspected ill intention on the part of the appellant and had asked his daughter not to visit the house of the appellant. 15 to 20 days prior to the date of occurrence, the appellant had expressed desire to marry Rubi Kumari and this fact was told to him by his wife. The appellant, however, was told that Rubi Kumari had to be educated and PW-12 had rejected the said marriage proposal. PW-12, the mother in her examination-in-chief had stated that the appellant used to refer to Rubi Kumari as his sister and she treated him like a brother. Subsequently, the

appellant had proposed and expressed his desire to marry Rubi Kumari, but they were not inclined as they wanted their daughter to complete her education. Thereafter, PW-12 had started accompanying Rubi Kumari to school and on return as well. PWs 3 and 12 have further deposed that that on 15th December, 1992, Rubi Kumari had served food to PW-3 and left the house at about 7.30 p.m. to relieve herself as there was no bathroom/toilet in the house. She did not return even after about an hour. PWs 3 and 12 searched for their daughter at different places. At about 10.30 p.m. they went to the police station to make a report, but were asked to continue with the search and only if she would not be traced, report would be entertained. PW-3 has stated that he along with his wife Nand Kumari (PW-12), Ram Narain (PW-4) and Ajay Pal Sharma (PW-11), who had turned hostile, visited the house of the appellant, but the outer gate as well as the door of the room was locked. Thereafter, they returned back. At about 4 a.m., they again went to the house of the appellant and found that the gate on the boundary wall was locked from the outside, but as per PW-3, the room inside appeared to be open. They scaled the boundary wall and knocked at the door of the room. After prolonged knocking, the appellant opened the door and was queried about Rubi Kumari. CrI.A. 562/1999 The appellant then signalled Page 4 of 17 towards the room. As per PW-3, PW-12 entered the room and saw that Rubi Kumari was lying dead under the quilt. She cried. PW-3 and others caught hold of the appellant and Ram Narain made a telephonic call informing the police, who came to the spot.

5. Rubi Kumari had injuries on left side of her neck and on her hands, right palm etc. Statement of PW-3 marked Ex.PW3/A was recorded, which became the rukka and FIR in question was registered. The police also took into possession gadda, pillow and the quilt. These articles were siezed vide memo Ex.PW3/C, which was signed by PW-3 at point A. The cot was also seized by the police vide memo Ex.PW3/D. The clothes worn by the appellant, which were blood stained, were also taken into possession vide memo Ex.PW3/E. Appellant was interrogated by the police and he produced a knife type object, which was seized and sketch of which was prepared and proved as Ex.PW3/G. The dead body of Rubi Kumari was subsequently cremated. PW-3 identified the objects/material seized from the house i.e. gadda, pillow, quilt, the clothes worn by the appellant, the knife as well as the clothes worn by the deceased i.e. salwar, underwear, shirt etc.

6. The so called discrepancies highlighted by the learned counsel for the appellant are minor in nature and natural. On the main issue/question, that the deceased Rubi Kumari had gone missing at about 7.30 p.m. on 15th December, 1992; that Rubi Kumari was known to the appellant; that Bindeshwari Singh (PW-3), Ram Narain (PW-4) and Nand Kumar (PW-12) had visited the residence of the appellant at night and found the main gate to be locked and again at 4 a.m. when they climbed over the boundary wall and knocked on the door and thereafter the appellant opened the door and Rubi Kumari was found lying dead with injuries, stands reiterated, affirmed and proved beyond doubt by PWs 3, 4 and 12. On the said vital and core facts, there is hardly any contradiction in the testimony of PWs 3, 4 and 12. PW-3 has deposed that the house of the appellant was at a walking distance of 5 minutes from their house. The contention by the learned counsel for the appellant that PW-3 has deposed that the appellant did not have illicit relationship with the deceased shows and proves that statements made by PW-3 and PW-12 is false and lacks credence, cannot be accepted. PW-3, father of the deceased in his examination-in-chief had stated about the ill intention of the appellant. At the same time, in the cross-examination, he refused to accept that the deceased had any illicit relations with the appellant as he had never seen them in any objectionable state. The fact that PW-3 had deposed that he had lodged a complaint with the police in writing, but the said paper was not produced is inconsequential and will not and does not dent the testimony of PW-3. PW-3 had stated that the police personnel were reluctant to record any FIR or complaint and had asked them to try and locate Rubi Kumari first. We also do not think that the seizure memos can be doubted for the reason that PW-3 had signed them as witness. PW-3 is father of the deceased, but this did not disqualify him from being a witness to the seizure memos. PW-3 cannot and should not be disbelieved as to the seizure memos etc. as an interested witness and, therefore, deposing falsely. PW-3 and PW-12, being father and mother of the deceased respectively, were interested in speaking out the truth so that the perpetrator of the crime, who killed their daughter, is punished and does not escape rigors of law. We have examined their court deposition with care and caution to rule out false implication to save and protect themselves or someone close.

7. Testimony of PW-3 and 12 gets full support from the court statement of Ram Narain (PW-4), who has been categorical and firm in his testimony. He has stated that at about 7.45 p.m. on 15th December, 1992 after returning from work, he was informed by PW-3 and PW-12 that their daughter was missing and they had gone searching for her. They also went to the police station Samaipur Badli, but were asked by the police officers to inform them as and when the girl was found. At about 4 a.m. in the morning, PW-4 along with PWs 3 and 12 had gone to the house of the appellant, which was found to be bolted from inside. They knocked at the door and after sometime the appellant opened the door. They inquired about Rubi Kumari and the appellant pointed out that she was lying on the bed in the house. PW-12 went inside the room and when she removed the quilt, Rubi Kumari was found lying dead. PW-12 started crying and PW-4 became nervous. Appellant was apprehended from the spot itself and PW-4 made a telephone call to the police. Police came and PW-4 signed various papers and had deposed about seizure of the incriminating material from the spot. He also identified, the quilt, gadda, pillow and the clothes worn by the deceased as well as the appellant and the knife which was seized. PW-4 has accepted that they had gone to the police station and a complaint was made by PW-3, but in the said complaint he had not named the appellant. This, to our mind, does not dent the prosecution version or make the ocular testimonies of PWs 3, 4 and 12 debateable or doubtful.

8. Jagmal Singh (PW-5) has stated that on 15th December, 1992 at about 5.15 a.m. when he was returning after night duty, he found that police had assembled outside the house of the appellant. He inquired from the persons gathered there and came to know that daughter of PW-3 had been killed. PW-3 was standing there and he had spoken to him. PW-5 also saw the dead body of the Rubi Kumari inside the room. The appellant was residing in the said room and present at that time. In the cross-examination PW-5 had stated that there was a doctor as a tenant, but he had not seen the said doctor at the spot at night or in the early morning.

9. The aforesaid depositions receives full support from the statements of the police officers, who had immediately reached the spot after the occurrence. ASI Satbir Singh (PW-22) had reached the spot of occurrence first along with Constable

Arvind Kumar (PW-15). They had scaled the boundary wall as the main gate was locked. Inside they found persons standing with the dead body of a girl aged 16 to 17 years. The appellant was also present and his clothes were blood stained. Similar statement has been made by SI Madanjit Singh (PW-17) and SI Ramesh Narang (PW-20). PW-17 has deposed about seizure of the incriminating material/evidence at the spot, i.e. quilt, gadda, pillow, the clothes knife etc.

10. We have examined the unscaled site plans Exhibit PW- 17/A and PW-17/L and compared them with the scaled site plan Ex.PW-9/A but do not find any discrepancy though there is one error in the scaled site plan. The scaled site plan shows the boundary wall as well as the gate of the boundary wall. The room is identified and door to the said room has been demarcated. However point C has been wrongly shown as the door in the scaled plan. The door is clearly visible and shown in the unscaled and scaled site plans. The width of the door in the scaled plan is mentioned as one metre. This error does not help or support the appellant or create any doubt about the prosecution version.

11. The CFSL report Exhibit PW-17/E opines that human blood of AB Group was found on the clothes of the deceased and the clothes worn by the appellant as well as quilt, pillow and gadda. Semen stain of Group A was found on the underwear worn by the deceased Rubi Kumari. Human blood was found on the knife but the blood group could not be ascertained for want of reaction.

12. Pancham Singh (PW-2), Nek Ram (PW-10) and Ajay Pal Sharma (PW-11) may have turned hostile but this does not mean that we should disregard the statements of PWs 3, 4 and 12, who are clear and categorical in their court depositions. The said depositions are supported by the police witnesses, namely, SI Madanjit Singh (PW-17), SI Ramesh Narang (PW-20) and ASI Satbir Singh (PW-22) as well as the CFSL report Exhibit PW17/E.

13. The contention of the learned counsel for the appellant that this may be a case of honour violence by the parents, who did not approve of the relationship, is misconceived. No such suggestion was given to any of the witnesses including PWs 2 and 12. Dead body of Rubi Kumari was found in the room in occupation of the appellant, who was present when the dead body was seen for the first time.

14. The appellant in his statement under Section 313 Criminal Procedure Code, 1973 (Cr.P.C. for short) had stated that he was not in the house on the said night and had gone to Model Town for work and when he returned the subsequent morning, he noticed that one-two police officers were present. He claimed that he did not know how the dead body of Rubi Kumari was found in his room when he reached his residence in the morning, he had found the main door as well as the door of his room were open. CrI.A. 562/1999 In other words, the appellant in his statement under Page 11 of 17 Section 313 Cr.P.C. accepted that dead body of Rubi Kumari was found in his room and Bindeshwari Singh (PW-3), Ram Narain (PW-4) etc. were present there. He was arrested at the spot.

15. The appellant had produced two defence witnesses Anarsi Bhagat (DW-1) and Jagmohan (DW-2). Anarsi Bhagat (DW-1) had claimed that appellant was already married to one Hiramati in 1988 and in 1991 his wife had come to Delhi and lived with him. Husband and wife were having cordial relationship. In his cross-examination, DW-1 accepted that he had never visited the appellant and his wife during their stay in Delhi and did not know where they were living. He had come from Bihar and was asked to give statement by the appellant. The alleged marriage between appellant and Hiramati, daughter of his brother had taken place in village Sipha but no marriage card was printed and they did not have any child. At the time when the DW-1 testified, Hirawati was staying with her parents. Jagmohan (DW-2) had claimed that the appellant was working as an electrician and on 15th December, 1992 he was working at E-12, Model Town with him and the work was spread over to 23 days. He claimed that appellant had worked from 14th December, 1992 to 16th December, 1992 continuously and on 16th December, 1992 at about 5 a.m. he had dropped the appellant at the bus stand. In the cross-examination, DW-2 has accepted that he did not talk to the appellant in those days and had also gone to the Police Station but was told that he would be called as and when required. He had not made any statement in writing stating that he was with the appellant on the intervening night of 15th and 16th December, 1992. He claimed that he had gone to the Police Station Samaipur Badli on 19th and 20th December, 1992 and had met one Sikh Sub-Inspector, who was the IO. We are not inclined to accept the testimony of DW-2 in view of the clear and categorical statements made by PWs 2, 4 and 12 about the presence of the

appellant in the said room as well as other material/evidence on record.

16. The post-mortem report of the deceased was proved by Dr. A.K. Barua (PW-18) and has been marked Exhibit PW18/A. As per the post-mortem report, the following 22 injuries were detected on the body of the deceased:

(1) One bruise size 1.5 c.m. 1 c.m. on the outer aspect of right eye.

(2) Incised wound on the left side front of base of neck placed obliquely of size 3.5 c.m. 1.5 c.m.

(3) Incised wound on the right nipple size 3 c.m. 0.5 c.m.

(4) Incised wound on medial aspect of right arm near axillary pit of size 3 c.m. 2 c.m. muscle deep.

(5) Incised wound upper outer aspect of right arm placed vertically size 3 c.m. 1 c.m. muscle deep.

(6) Incised wound on the right forearm on its upper posterior medial aspect of size 3 c.m. 1.5 c.m. muscle deep.

(7) Incised wound on the middle of right forearm size 2.8 c.m. 1 c.m. muscle deep.

(8) Incised wound on the right forearm 3 c.m. medial to the injury No.7 of size 2 c.m. 0.5 c.m. muscle deep.

(9) Incised wound on the dorsal aspect of right wrist size 8 c.m. 1 c.m. muscle deep.

(10) Incised wound on left arm size 5 c.m. 2 c.m. bone deep.

(11) Incised wound postero medial aspect of left forearm size 2 c.m. 1 c.m. muscle deep.

(12) Incised wound antero medial aspect of left forearm size 3 c.m. 1 c.m. muscle deep.

- (13) Incised wound on left hand size 1 c.m. 0.2 c.m. skin to muscle deep.
- (14) Incised wound on left little finger size 1 c.m 0.2 c.m.
- (15) Incised wound on the right sole (heel) size 3 c.m. 0.8 muscle deep.
- (16) Incised wound lateral aspect of the left thigh 8 c.m. 2 c.m. muscle deep.
- (17) Incised wound left thigh 8 c.m. below injur No.16 of size 2.5 c.m. 2 c.m. muscle deep.
- (18) Incised wound on later aspect of left thigh size 8 c.m. 1 c.m. muscle deep.
- (19) Incised wound on the left calf size 7 c.m. 2 c.m. muscle deep.
- (20) Incised wound on the left foot near the sole size 7 c.m. 2 c.m. muscle deep.
- (21) The incised wound on the lower lateral aspect of left breast size 1 c.m. 0.2 c.m. skin deep.
- (22) Incised wound on the left epigastric region size 1 c.m. 0.5 c.m. muscle deep.

17. PW-18 has stated that injury No.(2) had cut the left common carotid artery (blood vessel) near the root. Massive effusion of blood clot was seen around the injury area. The total depth of this injury was 3.5 cm. Injury No.3 had entered the right chest cavity through the third inter-costal space and had cut the right lung on its middle lobe. The total depth of the injury was 6 cms. He opined that injury Nos. 2 and 3 individually and collectively were sufficient to cause death in the ordinary course of nature. The death was due to haemorrhage shock resulting from the injuries. The knife was examined by him and he had opined that incise wounds on the body of the deceased were possible by the weapon in question and he had given written opinion on the said aspect on 13th January, 1993. The knife marked Exhibit P-8 was shown to him.

18. Learned counsel for the appellant emphasised that some of the injuries are due to blunt object but no such blunt object was recovered. This, to our mind, does not dent or contradict the prosecution version that the appellant is the perpetrator,

who had committed the said offence.

19. Learned counsel for the appellant has drawn our attention to statement of Nek Ram (PW-10), who was owner of building No.A-260, Mukandpur Colony. In the examination in chief, he has stated that he had permitted brother of the appellant to reside in the room four years back but he did not know who was actually residing in the said room. However, he claimed that three-four persons belonging to Bihar used to live in the room. He claimed that he was not aware that Appellant-Nand Lal used to live there or not. He was cross-examined by the Public Prosecutor as he did not support the prosecution version. For the reasons set out above, we are not inclined to accept his testimony which is selfcontradictory. Presence of the appellant at the spot in the morning has been proved beyond doubt. Appellant used to reside in the same room, a fact even accepted in the Section 313 Cr.P.C. statement.

20. In view of the aforesaid findings, we do not find any merit in the present appeal and we affirm the decision of the trial court. We also affirm the order of the sentence. The appellant was granted suspension of sentence by order dated 29 th May, 2001 as he had already undergone 8 years 2 months custody and the appeal was not likely to come up for hearing in near future. The appellant was directed to furnish personal bond in the sum of Rs.10,000/- with two sureties of the like amount. Later on, as the appellant did not appear, his bail bonds were cancelled and had thereafter furnished fresh bail bonds in the sum of Rs.10,000/- with one surety of the like amount in terms of the order dated 19th July, 2013. The appellant will now surrender within one month from today to undergo the remaining sentence. Trial court records will be sent back along with the copy of this judgment. In case, the appellant does not surrender within one month, trial court will take necessary and required steps. The appeal is disposed of. SANJIV KHANNA, J.

G.P. MITTAL, J.

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