

Suresh @ Mucchad Vs. State

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Court : Delhi

Decided On : Aug-14-2014

Judge : Pradeep Nandrajog

Appellant : Suresh @ Mucchad

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on : August 12, 2014 Judgment Pronounced on : August 14, 2014 + CRL.A. 1326/2012 & CrI.M.A.No.8563/2014 SURESH @ MUCCHAD Represented by: Appellant Ms.Anita Abraham, Advocate versus STATE Represented by: Respondent Mr.Lovkesh Sawhney, APP for the State with SI Ajay Singh P.S.Darya Ganj CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. Suresh @ Muchhad has been held guilty for having murdered Ram Babu in the late evening of April 15, 2011 at a Tikona park (Triangular Park) adjoining Sulabh Shochalaya near gate No.3 of Lok Nayak Jai Prakash Hospital. The learned Trial Judge has believed Mohd. Izhar PW-1 and Mohd.Alam PW-3 as truthful eye witnesses. The knife Ex.P-1 opined by Dr.Kulbhushan PW-11 who conducted the post mortem on the dead body of Ram Babu as the one from which injuries could be caused to the deceased, which knife was recovered from the personal search of Suresh when he was arrested is the second incriminating evidence against him.

He has been sentenced to undergo imprisonment for life. Suresh challenges the conviction alleging that the conduct of the two eye witnesses was not consistent with a person who would witness a man being stabbed and thus would urge that Mohd.Izhar and Mohd.Aslam are not to be believed. As regards the knife he highlights that the FSL report Ex.PW-12/J and Ex.PW-12/K records that when subjected to serological analysis blood could not be detected on the knife and therefrom he urges that there would be no incriminating evidence against him.

2. The post mortem report Ex.PW-11/A records two stab wounds inflicted on Ram Babu : (i) a stab wound of length 2 cm into bone deep gaping 1 cm, oval shaped, margin clean cut, transversely present over left arm, outer aspect in upper 1/3rd , 7 cm below left shoulder tip, 31 cm above the left elbow joint in the mid line of the left arm; and (ii) stab wound of length 2.5 cm gaping 1 cm oval shape with acute margin and clean cut vertically present over the left side of abdomen 11 cm right to the mid line 8 cm above the left anterior superior iliac spine, 25 cm below the left nipple. A loop of omentum 3.8 cm X2cm is coming out through the bone. One multiple abrasion over front of left elbow joint and back of left elbow joint, and two abrasions over back of right elbow joint and over outer aspect of right thigh in upper 1/3rd are also noted. Internal examination revealed that blood was present in the peritoneal cavity. The cause of death is obviously haemorrhagic shock due to excessive bleeding. Injury No.2 was opined as sufficient in the ordinary course of nature to cause death.

3. Ram Babu was found lying dead in the morning of April 16, 2011 by somebody who conveyed the information to the duty officer at P.S.Darya Ganj. DD No.14A, Ex.PW-10/A was entered in the daily diary at 08. 45 A.M.

4. SI Dharmender Kumar PW-10 went to the spot accompanied by HC Ishwar Singh PW-7 and Ct.Sanjay PW-6. On reaching the place they saw a dead body and summoned a crime team. SI Dharmender Kumar left HC Ishwar Singh at the spot and with the help of Ct.Sanjay Singh removed the dead body to JPN Hospital and after insuring that the body was kept at the mortuary he returned to the spot and when he was in the process of lifting earth control by breaking the tiles of the pavement with a hammer and a chisel Mohd.Izhar came to the spot and disclosed

himself to be an eye witness of the incident. SI Dharmender Kumar recorded statement Ex.PW1/A of Mohd.Izhar and made an endorsement Ex.PW-10/B beneath the same and got the FIR registered. He thereafter completed the spot proceedings.

5. At about 7.30 P.M. Insp.Dharmesh Kumar was informed that Suresh @ Muchhad, the person named by Mohd.Izhar as the assailant was sitting at Asaf Ali Park. He proceeded to the park and arrested Suresh and recovered the knife Ex.P-1 during the personal search of Suresh.

6. Subsequently Mohd.Alam PW-3 also presented himself before Insp.Dharmesh Kumar and claimed to be an eye witness and thus his statement was recorded under Section 161 Cr.P.C.

7. Deposing in Court as PW-1 Mohd.Izhar stated that he was running a shop at gate No.3 of JPN Hospital and that he used to sleep on the pavement at Sulabh Shochalaya. On April 15, 2011 at 6.30 P.M. he went to the Sulabh Shochalaya and met Mohd.Alam. The two saw three or four persons one of whom was Ram Babu, a rickshaw puller, known to him for the last six or seven years, taking smack in the Tikona Park. Suresh @ Muchhad came to the park and asked Ram Babu to share smacks with him at which Ram Babu replied that he would not give even water to him, what to think of smack. Annoyed at the response Suresh who was a notorious criminal and had gone to jail several times, took out a knife and stabbed Suresh on the shoulder and left side of the stomach. Everybody ran away. He asked Ram Babu if there was a need to take him to the hospital. Ram Babu replied, holding his stomach, that he would be all right. Suresh @ Muchhad ran away and he returned to the shop. Next morning he saw Ram Babu lying unconscious with blood around. The police came. Same day somebody informed the police that Suresh was near Asaf Ali Park. He accompanied the police and pointed out Suresh who was arrested and on his personal search knife Ex.P-1 was recovered.

8. Mohd.Izhar was cross-examined and nothing was brought out to discredit him.

9. Mohd.Alam PW-3 has deposed in sync with Mohd.Izhar and nothing has been brought out during cross-examination to discredit him.

10. The only argument advanced that the hearing of the appeal by learned Amicus Curiae was the most unnatural behaviour (and we use the language of the learned counsel) of the two eye witness. Learned counsel highlighted that if the two saw Suresh stab Ram Babu, taking into account the injuries suffered by Ram Babu, it was not possible that the two would not realize that Ram Babu required to be immediately taken to the hospital which was at a hands distance from the place where the incident took place. Learned counsel highlighted that Mohd.Izhar has deposed that he saw blood oozing from the stomach of Ram Babu when he was stabbed and he asked Ram Babu whether there was a need to take him to the hospital. Learned counsel highlighted that this was strange behaviour because if one sees somebody stabbed, one would not ask the victim whether he should be taken to the hospital. Instinctively, one would take the victim to the hospital. Counsel further highlighted that it was strange that Ram Babu, in spite of being so grievously injured, responded to Mohd.Izhar saying that he would be all right. Counsel urged that the nature of the injuries on Ram Babu would have made him shriek and cry in pain and any person around would have responded to the summons for rescue i.e. the shrieks and would have taken Ram Babu to the casualty of LNJP Hospital.

11. The arguments appear attractive, but overlook the fact that it is an admitted fact that Ram Babu was stabbed in a public place adjoining gate No.3 of LNJP Hospital. We take judicial notice of the fact that 24 hours a day, 365 days in a year there is heavy movement of people outside the gate of LNJP Hospital and there is not even a fraction of a moment when there is no human moment outside the gate of the hospital. Thousands of relatives and well wishers of hundreds of patients move in and out of the gate, day in and day out. Yet, nobody responded to the cries and shrieks of Ram Babu, who was grievously injured! But that would presume that Ram Babu shrieked and yelled. The two eye witnesses have said that Ram Babu was taking smack. It tells us that the man was heavily doped.

12. The injuries on the person of Ram Babu tell us that such an injured person would be in a position to, if not run at least stagger a few yards. Ram Babu was at gate No.3 of LNJP Hospital. His instincts would have made him proceed in the direction of the casualty of the hospital. He did not do so. It is apparent that

something had overpowered his instincts and his senses and thus he was not reacting as a normal human being. That something which has over powered his senses was smack. He was highly intoxicated. There is no other rational explanation for his conduct. This explains nobody hearing shrieks and thus not responding to try and give any aid to Ram Babu.

13. But what about the conduct of Mohd.Izhar and Mohd.Alam. To any rational human being, their conduct would seemingly be unnatural. Mohd.Izhar, as per his testimony, saw Ram Babu injured on the shoulder and the left side of the stomach. He saw him being assaulted with a knife. He saw him bleed. Yet he did not remove Ram Babu to the casualty of LNJP Hospital. He claims that he volunteered to remove Ram Babu to the casualty of the LNJP Hospital but did not do so because Ram Babu said that he would prefer to lie down hoping that everything would be fine.

14. We transpose ourselves on the streets and in the slums. Only then can we comment upon the conduct of those who live their lives in the streets and in the slums.

15. Assuming Ram Babu yelled and yelled at the top of his voice when he was injured. And yet there was no response. If this was the first time that a wail of hopeless misery, pain and anguish had sounded on the ears of the pavement dwellers, it perhaps would have been treated as a summons for rescue. But because the pavement dweller had heard it so often that the cries and the shrieks, may be desperate, were of no concern to him. The excruciating bitter cry of the victim had become to be as familiar in the ears of the men and women residing on the pavement as the dull roar of the streets or as the moaning of the wind passing through the trees. And such kinds of crime rise un-increasingly, year in and year out, and the pavement dwellers are too busy or too idle, too indifferent or too selfish, to spare it a thought. Only now and then, on rare occasions, do we find a clear voice being heard giving more articulate utterance to the miseries of the miserable victim, only a few in the slums and pavements pause in the regular routine of their daily duties.

16. We shudder as we realize for one brief moment, what life means to the inmates of the slum and the pavements. We do not blame the slum and the pavement dwellers for their insensitive attitudes. The condition of their environment brutalizes them into worse than beasts. The fatalism of despair and the profitless emotion displayed is the result of the consciousness being burnt in the inferno of their present life.

17. Speaking of, as he journeyed across the heart of the lost continent : Africa, Mr. Henry M. Stanley in his book *In Darkest Africa* published by Charles Scribners Sons in 1891, described the Amazon forest, which offered an almost impregnable barrier to his advance, and in his own phrase as he : marched, tore, ploughed, and cut his way for one hundred and sixty days through this inner womb of the true tropical forest, the mind of man, with difficulty, endeavoured to realize the immensity of the wooded wilderness where the rays of the sun never penetrate, where in the dark dank air, filled with the steam of the heated morass, human beings dwarfed into pygmies and brutalize into cannibals lurk and live and die.

18. The slums and the pavements are akin to this immense forest. There is no sun light, pasturage and peaceful meadows. And if there is a brief ray of light, it is ghastly. The oppressive loneliness, amid life which is chilling, disinterests the heart of the poor. The horrors grow darker as the cold of early morning, the comfortless gray of dawn, the dead white mist, the everdripping tears of their dew, the deluging rains and the appalling thunders burst. And when the night comes with its thick palpable darkness, and as they lie hurdled in their damn little huts, and under the open sky, as they hear the tempest overhead and the howling of the wild winds, the shock of the trembling earth sends their hearts with fitful leaps to their throats. And as they renew their morbid broodings, and asks themselves, how long is this to last?. Is the joy of life to end thus?. Must we jog on day after day in this cheerless gloom and this joyless duskiness, until we stagger and fall and rot among the toads?.

19. Nothing demoralizes a human more than : I may do my best but yet I will achieve nothing. Drunkenness and drugs become the panacea. A population sodden with drink, steeped in vice, eaten up by every social and physical melody,

these are the persons whose conduct we are called upon to discuss.

20. We think that there is nothing to discuss. The privilege of perpetual hard life breaks the spirit and the vigour of the once willing worker who becomes a broken down drudge, sodden with wretchedness and despairing of all help in this world. The horror of the great darkness gradually obscures all the light from the life of the sufferer. The reactions are un-concerning and may appear abnormal to the others. But are explainable as normal for the slum and the pavement dweller.

21. The complete irrationality in the conduct of Ram Babu and the two eye witnesses is thus explainable : viewed from the eyes of the pavement dweller.

22. In this context it assumes importance that as deposed to by SI Dharmender Kumar PW-10 he had seized the dead body of Ram Babu and had deposited it at the mortuary of LNJP Hospital. After returning to the place of the crime Mohd.Izhar met him when he was breaking the tiles of the pavement with a hammer and a chisel to lift blood control earth. By the time Mohd.Izhar met him the dead body was not at the spot. In his statement Ex.PW-1/A Mohd.Izhar correctly described the two injuries which were inflicted on Ram Babu. This lends credence to Mohd.Izhars claim of being an eye witness.

23. It was urged that it is a case of street brawl and thus the act of Suresh is without any design in the head and hence would classify as culpable homicide not amounting to murder.

24. Ex.PW-12/D informs us that Suresh carries a knife with him and has been convicted four times for offences under the Arms Act. He is an accused for an offence punishable under Section 379 IPC. He has been convicted in the instant case. He knows the potential damage which a knife could cause and that he was carrying the knife with him and stabbed Ram Babu who refused to share smack with him, and that would be no reason or justification to stab anyone. There being no evidence that Suresh was under the influence of any intoxicating drug it has to be held that when he took out the knife which he was carrying it was done with the intention of causing bodily injury to Ram Babu. The two fatal blows were struck with full force. The direction of the two injuries shows that full blooded blows with

the arm extended vertically up, with the knife in the wrist, and then with full force brought down with the knife directed towards Ram Babu. One wound caused the injury over the left arm and the length of the incised wound gives us an indication of the force with which the blow was struck. The second stab wound on the left side of abdomen which proved to be fatal also evidences the ferocity of the blow. As per Section 300 thirdly of the Penal Code culpable homicide is murder if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

25. Before bringing the curtains down we need to discuss facts brought to our notice in CrI.M.A.No.8563/2014. Bringing on record a query sent by the appellant under the Right to Information Act and reply received thereto from the Municipal Corporation of Delhi, it is sought to be brought out that no stall or tehbazari rights were granted by the Municipal Corporation of Delhi to Mohd.Izhar outside gate No.3 of LNJP Hospital. Therefrom a contention was advanced that Mohd.Izhar PW-1 who claimed to be an eye witness and justified his presence by deposing that he was running a shop at Gate No.3 of LNJP Hospital is false. Nothing turns on the reply sent to the appellant by the Municipal Corporation of Delhi for the reason it is not uncommon for street vendors to be carrying on business on the streets without a license or a permission, and when Mohd.Izhar said that he was running a shop he was obviously giving credence to his avocation, for it is apparent that he was selling petty retail goods from the pavement. He did not have a shop as is conventionally understood. For if he had one he would not be sleeping on the pavement, a fact stated by him on oath.

26. We dismiss the appeal and affirm the sentence to undergo imprisonment of life inflicted upon Suresh.

27. The appeal and application are dismissed.

28. Two copies of the present order be sent to the Superintendent Central Jail Tihar. One for his record and the other to be given to Suresh @ Muchhad.

29. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
JUDGE AUGUST14 2014 skb

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