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Pappu @ Jolly Vs. State

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Court : Delhi

Decided On : Aug-25-2014

Judge : Pradeep Nandrajog

Appellant : Pappu @ Jolly

Respondent : State

Judgement :

$~22 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: August 25, 2014 + CRL.A. 1096/2012 PAPPU @ JOLLY Represented by: ..... Appellant Ms.Nandita Rao, Advocate versus STATE Represented by: ..... Respondent Mr.Lovkesh Sawhney, APP SI Amit Rathel, P.S. Model Town CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Pappu @ Jolly has been convicted for the offence of having murdered his friend Sanjay by causing stab injuries in the intervening night of 9th and 10th April, 2008 in a room on the second floor of Jhuggi No.N-25A/85, Lal Bagh, near Jhanda Chowk, Delhi. The conviction has been rested on the finding that the testimony of Bilal Ahmed PW-11 and Lalit Pandit PW-13 established a motive of Pappu believing that Sanjay was having an evil eye on his daughter Pinki. In other words, motive for Pappu being to discontinue Sanjays relations with his daughter by removing Sanjay from the world of the living. The learned Trial Judge has held that the testimony of Naseem PW-4, Bilal Ahmed PW-11 and Lalit Pandit, PW-13

establishes that Pappu and Sanjay were good friends and were residing together on the second floor of Jhuggi No.25-A/85 Lal Bagh near Jhanda Chowk, Delhi owned by Bilal Ahmed. The two were seen together in the night at about 9.00 P.M. Sanjay died in the jhuggi somewhere around past mid-night. Knife Ex.P-8 got recovered by Pappu which was opined by doctor who conducted Sanjays post mortem as the one with which stab injuries could possibly been inflicted on Sanjay is the next incriminating evidence found. Last incriminating evidence is pyajama and vest, collectively Ex.P-7 having been got recovered by Pappu on which as per the report of the serologist Ex.PW-1 and Ex.PW-2 human blood of the same group as that of the deceased was noted.

2. The testimony of PW-4, PW-11 and PW-13 is evidence which in criminal law is called last seen evidence.

3. It is trite that last seen evidence assumes incriminating character when the place and the time qua the deceased and the accused being last seen and when and where the dead body of the deceased was found rules out the possibility of somebody else committing the crime. As per the theory of last seen evidence unless the accused explains when he parted company with the deceased who was alive when the company was parted with, a presumption of guilt can be raised.

4. It is keeping in view said logic of the last seen evidence that we proceeded to note the testimony of the three witnesses to the last seen.

5. Naseem PW-4 has deposed in examination-in-chief as under:

I have been doing the work of Kabari in the Lal Bagh area for the last about 10 years. Deceased Sanjay had been residing in the rom at 2nd floor of my jhuggi for quite a long time. Accused Pappu present in the court today also resided with Sanjay The family members of Pappu had been residing at some other place in Lal Bagh. On the night intervening 9/10.4.08 both the accused and deceased Sanjay were present in the abovesaid room of sanjay. They used to take liquor together. I had not seen any other person visiting the room on that night. In the early morning I left for my work. When I returned back in the noon I came to know that Sanjay had been murdered and Pappu was absconding.

6. Bilal Ahmed PW-11, the owner of the jhuggi, in his examination-in- chief deposed as under:

I have been doing kabari work at jhuggi No.N25/A-85, Lal Bagh, near Jhanda Chowk, Delhi from last 20 years. I am doing my business on the ground floor and on the first floor and second floor other tenants were residing. On second floor of my shop Sanjay was used to reside who was working kabri work with me. Accused Pappu present in the court today was also doing kabari work also resides with Sanjay. The family members of accused Pappu had resides at some separate place as there was some dispute between them. Sanjay was having visiting terms with the family members of Pappu. Pappu was having objection on his relations with his family members as he was suspicious that Sanjay was having wrong intention towards his daughter Pink. This fact was told to me by accused Pappu. But I did not intervening the matter. On 09.04.2008 after 8 p.m. accused Pappu and Sanjay were present in their room and were having some quarrel. I saw them quarrelling when I was leaving from my shop. I tried to make them understand not to quarrel and left for my house. When on the next day i.e. 10.04.08 I came to my shop at about 9.00 a.m. I saw Pappu was present there but Sanjay had not gone for work. At about 1:00 noon or 1:00 p.m. cousin brother of Sanjay namely Lalit came there and gone to the room of Sanjay and after some time he, came down and told to me that Sanjay was lying in the pool of blood in his room and door of the room was locked and he saw Sanjay through a hole of the door. I had also gone along with Lalit and also saw from the hole that Sanjay was lying in the pool of blood. I have made a call on 100 No .to the police. PCR official came there and broken the lock of the room and found Sanjay in dead condition and his body was lying on the mattress in the room. His intestines had oozed out of stomach. Police officer had taken the blood from the mattress and floor into police possession. A piece of mattress was also taken into police possession Two glasses and broken lock were also seized by the police from the spot besides other articles. Two empty quarter bottles of Bonnie whisky were also taken into police possession. All the above special articles were kept in separate pullandas and sealed with the seal of MS and taken into police possession through seizure memos which were signed by me at point X. I can identify the above articles if shown to me.

7. On being cross-examined Bilal Ahmed stated that Sanjay never complained to him that Pappu used to suspect of Sanjay having an evil eye on his daughter. He clarified with respect to his testimony by way of examination-in-chief concerning Pappu and Sanjay working for him as kabadies. He stated that both used to bring scrap articles to his shop and used to operate independently.

8. Lalit Pandit PW-13 in is examination-in-chief deposed as under:

Deceased Sanjay S/o Sita Ram Pandit was my cousin brother. He had came to Delhi 5-6 years prior to occurrence. He used to did kabada work with accused Pappu and resides with him at the room on secod floor of jhuggi No.N-25/A-85 Lal Bagh, near Jhanda Chowk, Delhi. Sanjay and Pappu were fast friends. The family members of accused Pappu were residing separately in Lal Bagh. I also used to visit Sanjay of and on. I was not having the complete knowledge as to why the relation of Pappu with his wife was restraint. Sanjay was having visiting terms with the family of accused Pappu. And because of said visiting terms accused Pappu was having suspicion that Sanjay was having relations with his daughter. This fact was told to me by deceased Sanjay. On 09.04.2008 I had gone to Lal Bagh and when at about 9:00 p.m. I was returning to my house accused Pappu and Sanjay were standing outside their room and Sanjay had invited me to his room but because I was in hurry I did not visit the room of Sanjay. On the next day i.e. 10.04.2008, on the asking of my Chacha I had gone to the room of Sanjay at about 1.30 p.m. I had inquired about Sanjay from the landlord Bilal Ahmed. He told me that Pappu was roaming here and hence Sanjay might be also present there. I had gone upstairs to the room of Sanjay but the room was locked. I had peeped through the hole in the door and saw that Sanjay was lying in a pool of blood on the mattress on ground. I came down and told the fact to Bilal Ahmed who had also accompanied me to the door of room of Sanjay. He also peeped through the hole in the door and found Sanjay lying on the mattress in a pool of blood. He had then call on 100 No.through his mobile. Soon police had arrived at the spot. Policemen had broken open the lock of the door of room. All of us had gone inside. I had seen that the intestines of Sanjay below his neck till the end of stomach were oozing out. He was only wearing underwear. He was lying in dead condition. Pappu was not found around two glasses and two quarter bottles of

which I do not remember the brand were lying on the ground besides Sanjay. I had never seen Sanjay taking liquor. But the accused was used to taking liquor daily.

9. The photographs taken by the crime team of the seen of the crime being Ex.PW-6/1 to Ex.PW-6/12 show that the intestines of Sanjay have oozed out from the belly. The post mortem report Ex.PW-1/A notes as many as 15 injuries with a sharp object capable of causing incised and stab wounds.

10. We would be failing not to record that the photographs of the room which are from different angles do not show any whisky bottle or glasses as claimed to have been recovered by Bilal Ahmed.

11. It is apparent that when Sanjay was stabbed he would have yielded and shrieked, but in spite thereof nobody in the slum cluster heard the shrieks. The post mortem report probabilizes the time of the death as between 12 mid-night to 2.00 A.M. The hustle and bustle of people in the slum would obviously be not there. Even the slum would be silent at that time. Yet no body head the shrieks.

12. It is apparent that shrieks in the slums which are so common did not invite the attention of anybody. Otherwise it is just not possible that a person who is stabbed 15 times would not cry and the cries are not heard by people in the locality.

13. What we intend to bring out is that in slum people hardly notice movement of people just as they hardly hear even the terrifying shrieks of those who cry in pain when grievously injured; as was Sanjay.

14. Thus, somebody walking up the staircase unnoticed from the ground floor to reach Sanjay on the second floor at any time looms large in the realm of reality; it is the reality of slums which cannot be ignored.

15. Pappu has examined Ram Bahadur DW-1 and Katta DW-2 who have deposed that Pappu was working as a kabadi and was residing with his wife and children at jhuggi No.C-82, Lal Bagh. The two have withstood the test of cross-examination.

16. Now, if we read the testimony of PW-4, PW-11 and PW-13 it is apparent that they have spoken about Pappu residing with Sanjay and at the same breath have

spoken of Sanjay visiting Pappus house. They have spoken that Pappu was not on the best of terms with his wife. They have spoken of Pappu suspecting Sanjay having an evil eye on his daughter. This means that Pappu was visiting the house where his wife and daughter were residing. This could well mean that Pappu used to reside with his wife and daughter but socialize with his friend Sanjay where he used to sit and drink. Life in the slum clusters is entirely different than what one finds in organized colonies. People eat, sleep and make merry at leisure. At the drop of the hat they sleep at the friends house; at the drop of the hat they consume alcohol; they would sleep on a rehdi; at the drop of the hat, after making merry, they would sleep under trees; at the drop of the hat, after making merry they would sleep on the platforms. For them returning to their abodes is not a daily affair.

17. It is to be kept in mind that as per Naseem it was Sanjay who had been residing on the second floor for quite some time. Even Bilal Ahmed, the owner of the jhuggi has stated that it was Sanjay who used to reside on the second floor of the jhuggi. He has not stated that Pappu was residing in the jhuggi as his tenant. He has deposed in his testimony that Sanjay was his tenant. What he has simply said is that Pappu was on visiting terms with Sanjay and Sanjay was on visiting terms with the family of Pappu and Pappu used to reside with Sanjay. He has further deposed that Pappus family was residing at some other place and there was some dispute between Pappu and his wife.

18. Possibility of Pappu having spent time with Sanjay on the fateful night and returning to his jhuggi cannot be ruled out. The claim of PW-4 that he did not see any other person visiting the second floor that night is neither here nor there for the reason the likely time of death of Sanjay is between midnight to 2:00 A.M. and by that time PW-4 would be fast asleep.

19. We have already discussed hereinabove as to why we have held that Sanjay would have shrieked and cried in pain when he was injured before he died. If PW-4 did not hear the cries of Sanjay, there can hardly be any credence to his testimony that he did not hear or see anybody going upstairs.

20. It is trite that in a case of circumstantial evidence, the evidence should not only be of a kind which unerringly points towards the guilt of the accused but should also rule out the innocence. The testimony of the three witnesses to the last seen, keeping in view that the death took place between 12.00 mid-night to 2.00 A.M. may point the finger of accusation towards Pappu but does not rule out that the possibility of somebody else being the assailant.

21. That leaves us with the evidence of the knife in question, opined to be the possible weapon of offence got recovered by Pappu and the pyjama and vest got recovered by Pappu on which blood of the same group as that of the deceased was detected.

22. Now, disclosure statement that he was wearing the pyjama and the vest cannot be used against Pappu being inadmissible in evidence and not covered by Section 27 of the Evidence Act, unless some other person identified the same as being worn by Pappu on the fateful night. The prosecution has not put that the pyjama and the vest to any of the three witnesses of the last seen evidence to elicit when they saw Pappu and Sanjay together was Pappu wearing the pyjama and vest in question. That would mean that the prosecution has only established that Pappu has got recovered a pyjama and a vest on which blood of the same group as that of the deceased was detected and Pappu also got recovered a knife which was opined to be the possible weapon of offence.

23. If the incriminating worth of the last seen evidence is diminished, recovery of these ordinary objects, in a case of circumstantial evidence is not sufficient to hold that the chain of circumstances or the circumstantial evidence renders creditworthy a finding that Pappu was the assailant of Sanjay.

24. In cases of murder in slums we notice that the line of investigation always adopted is to find out as to who was the person last seen with the deceased. Virtually in every case the person concerned makes a confession the moment he is arrested. A knife and blood stained clothes worn by him are ostensibly recovered and used as evidence.

25. The appeal is allowed. The impugned judgment dated October 31, 2011 convicting Pappu is set aside. He is acquitted of the offence of having murdered Sanjay. Sentence dated October 31, 2011 is set aside. Pappu is directed to be set free if not required in any other case.

26. Copy of this order be sent to the Superintendent, Central Jail Tihar for compliance.

27. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE AUGUST25 2014 skb

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