

Gurmeet Singh Vs. State

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Court : Delhi

Decided On : Sep-29-2014

Judge : Mukta Gupta

Appellant : Gurmeet Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: September 18, 2014 Judgment Delivered on: September 29, 2014 % + CRL.A. 1138/2014 GURMEET SINGH Represented by: Appellant Ms.Aishwarya Rao, Advocate. versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP for the State with inspector Rajesh Kumar, PS Rajouri Garden. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Gurmeet Singh is convicted of the murder of his sister Kanwaljeet Kaur by inflicted head injury on her by a hammer. He assails the judgment on the ground that the FIR was registered belatedly after a period of two months, no blood was recovered on the hammer as per the seizure memo, however, strangely enough FSL report notes presence of blood on the hammer. The witnesses have stated that the deceased received injuries due to fall as told to them by the deceased. The learned Trial Court wrongly discarded the dying declaration. The injuries were compatible to that of fall.

2. The prosecution case rests on circumstantial evidence being initiated on a call received from wireless on May 28, 2011 at about 2.55 p.m. that an incident of quarrel had taken place at J-3/2, Rajouri Garden, near Bhandari Hospital vide DD No.26A at Ex PW-10/A.

3. SI Abhishek Verma, PW-12 went to the spot and came to know that the injured Kanwaljeet Kaur had been removed to DDU Hospital. She was found in unconscious state and was not fit for statement. Gurmeet Singh and Amreek Singh, brothers of the Kanwaljeet Kaur and Baljeet Singh and Tejender Mohan Singh, brothers-in-law of Kanwaljeet Kaur were present in the Hospital. On enquiries they told that Kanwaljeet Kaur had fallen from the stairs in the house. He went to the spot, took photographs and searched for an eye witness, however, found none. Thus DD entry was kept pending and the observations were recorded vide DD No.35A Ex.PW-12/A. On the same day at about 10.00 p.m. an information was received from DDU Hospital regarding the death of Kanwaljeet Kaur, dead body was preserved and the inquest proceedings conducted.

4. The post mortem examination of the deceased was done by Dr.Santosh Kumar (PW-4) who exhibited his report as Ex.PW-4/A and noticed the following external injuries:

1. One bruise of size 5.0cm x 4.0 cm present on the lateral aspect of mid left forearm with reddish brown in colour.

2. One bruise of size 3.0 cm x 2.0 cm present on the medial aspect of the right arm with reddish brown in colour.

3. One bruise of size 4 cm x 4.0 cm present on the right forearm with reddish brown in colour.

4. Lacerated (stitched) wound of size 6.0 cm x 1.0 cm x bone deep present on the left parietal region of head with bruised and irregular margins on further exploration of the wound sub scalp extravasations of blood revealed in to adjacent area along with fractured (linear fracture) left parietal bone extended anteroposteriorly.

5. 5. Lacerated (stitched) wound of size 4.0 cm x 10 cm x bone deep present on the left parietal region adjacent to external injury no.4 and placed 1.5 cm apart. The margins of the wound irregular and ragged with collection of blood in Subscalp at adjacent area.

6. Lacerated (stitched) wound of size 6.0 cm x 1.5 cm x bone deep present on the left perito-temporal region of the head with irregular and ragged margins. On further exploration of the wound the Subscalp blood collection at neighbouring site along with fractured left temporal and sphenoid bones of Skull.

7. One punched out lacerated wound of circular in shape with having diameter of 4 cm present on the left temperoparietal region of head with loss of underlying scalp. On exploration of the wound the underlying bone found depressed fracture (signature fracture) having diameter of 4.0 cm with broken into pieces and driven into underlying brain tissue which caused laceration of parietal and temporal lobe of left cerebral hemisphere.

On internal examination Dr.Santosh Kumar noticed some Sub scalp haematoma and contusions. He also noticed Subdural haematoma and subarachnoid haemorrhage on bilateral temporal, parietal and occipital region. Fracture of the left temporal and partial lobe with fracture of middle cranial fossa was also present. He opined that the cause of death was due to head injury subsequently to hard, heavy and forceful blunt impacts over the head. According to him all injuries were ante mortem in nature and injuries No.4, 5, 6 and 7 individually as well as in combination are sufficient to cause death in the ordinary course of nature. Injury No.7 could be inflicted by hammer like object. On cross-examination Dr.Santosh Kumar clarified that injuries 2, 4, 5 & 6 were not possible due to fall from stair case.

6. Though all the family members stated that Kanwaljeet Kaur had fallen and Baljit Singh had gone to the extent that he had enquired from Kanwaljeet Kaur about the incident she replied that she had fallen from stairs thus introducing a dying declaration as well but the post-mortem report revealed to the contrary. Thus on receipt of post mortem report on July 20, 2011. SI Abhishek discussed the matter with senior officials and a formal FIR under Section 302 IPC was registered on

July 29, 2011 and the investigation was handed over to Inspector Ram Niwas. This explains the delay in registration of FIR.

7. Inspector Ram Niwas deposed that since while perusing the DD entries and the post mortem it was late night on July 29, 2011 so on July 30, 2011 they went to the spot at J-3/2, Rajouri Garden, near Bhandari Hospital. They did not find Gurmeet Singh at the spot and it was found that he was at Chander Vihar, Delhi. It was found that at the time of incident besides Gurmeet Singh, Kanwaljeet Kaur (deceased) and their old mother, no one else was present in the house. Pursuant to arrest disclosure statement of Gurmeet Singh was recorded, who got recovered a hammer from beneath the wooden almirah in the house. The hammer was sent for opinion to Dr. Santosh Kumar, Ex. PW-4, who opined that all the injuries i.e. external injuries mentioned in the post mortem report were possible from the weapon of offence i.e. the hammer produced.

8. Since Dr. Santosh Kumar did not observe any obvious blood stain on the hammer or handle of it, learned counsel for the appellant submits that the hammer not being blood stained was not connected with the offence committed. The hammer was sent to the FSL for examination and as per the report Ex. PW-8/A the blood was detected on the hammer which gave no reaction though but was of human origin. It is thus apparent that because the stain was very small which could not have been deciphered from naked eyes no conclusive reaction could be given regarding the grouping of the blood on the hammer but be that as it may the hammer was blood stained.

9. Indubitably if there is ocular evidence and the medical evidence, ocular evidence has to prevail, however, if the medical evidence rules out completely the possibility of ocular evidence then the same cannot be relied upon. In AIR 2013 SC1085 Kuria & Anr. v. State of Rajasthan the Court held: Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical

evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

10. In the present case, post mortem report completely rules out the possibility of death of the deceased due to fall and opines that the injury was caused by the hammer. In view of the fact that Kanwaljeet Kaur died a homicidal death caused by number of injuries inflicted by hammer which explains the DD No.26A received at police station, Rajouri Garden with regard to an incident of quarrel, the onus shifts on Gurmeet Singh, the appellant who was present at the spot to explain how Kanwaljeet Kaur died a homicidal death in terms of Section 106 of the Indian Evidence Act. The presence of Gurmeet Singh at the spot is deposed by SI Abhishek Verma who found him at the Hospital.

11. No explanation has been rendered in the statement under Section 313 Cr.P.C. by Gurmeet Singh except stating that he has been falsely implicated, his mother was the eye witness and she has not been deliberately produced and now she was not keeping well and has lost her senses, he had cordial relation with his sister and had spent a period of 33 years without any quarrel.

12. The explanation rendered is not plausible, hence in view of the conduct of Gurmeet Singh and his non-explanation of the injuries to the deceased, we uphold the conviction of Gurmeet Singh for the offence punishable under Section 302 IPC and the order on sentence. The appeal is dismissed. Appellant will suffer the remaining sentence.

13. T.C.R. be returned.

14. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE SEPTEMBER29, 2014 nk

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