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Pradeep Vs. State

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Court : Delhi

Decided On : Sep-29-2014

Judge : Pradeep Nandrajog

Appellant : Pradeep

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: September 26, 2014 Judgment Delivered on : September 29, 2014 + CRL.A. 1139/2014 PRADEEP Represented by: ..... Appellant Mr.Avninder Singh, Advocate with Ms.Sumi Anand, Advocate versus STATE Represented by: ..... Respondent Mr.Varun Goswami, APP CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. Charged for having murdered his wife in the room taken on rent by Mahender PW-2, the co-brother of the appellant in which room Mahender and his wife were staying with the appellant and his wife and their minor daughters, on May 15, 2011 around 10.00 P.M., vide impugned decision dated July 10, 2014, the appellant has been convicted and vide order on sentence dated July 14, 2014, he has been sentenced to undergo imprisonment for life.

2. The incriminating evidence against the appellant held proved by the prosecution is :- (i) the recovery of the phawra Ex.P-1 at the instance of the appellant, which as per the doctor who conducted the post mortem of the dead body of the deceased was capable of causing injuries found on the dead body of the deceased; (ii) the testimony of PW-1 and PW-2 establishes the appellant being present in the house when the offence was committed and he was the assailant; and (iii) the appellant having absconded.

3. Appellant challenges his conviction urging that Sangeeta PW-1, resiled from what she stated during examination-in-chief when she was crossexamined. So did Mahender PW-2.

4. Process of law was set into motion when an unnamed informant rang up the Police Control Room at 22:01:06 hours on May 15, 2011, informing that in the building of Bittu Building Material, Chanchal Park, Nangloi, Najafgarh Road, a man has hit his wife with a phawra and had killed her. The information was noted in the PCR Form Ex.PW-18/A by Ct.Soni Kumar PW18, who was attending Channel No.128.

5. The duty officer at P.S.Ranhola to whom said information was conveyed by the Police Control Room recorded DD No.48A, Ex.PW-11/A, and handed over the same to Ct.Raj Kumar PW-11 who in turn handed over the same to Insp.Sajjan Singh PW-23, the SHO of P.S.Ranhola for investigation. Insp.Sajjan Singh along with his staff reached the building of Bittu Building Material Supplier, Satyam Vihar, Chanchal Park, Nangloi. SI Amit and HC Shyam Lal had already reached there. They saw blood in a room inside the building. They saw broken bangles and one ear ring. They learnt that the injured had been removed to SGM Hospital by her family members in a PCR van. Insp.Sajjan Singh accompanied by SI Amit Sharma reached SGM hospital and collected the MLC of Santoshi, wife of the appellant, who had been brought dead. The body had already been shifted to the mortuary of the hospital. The two returned back to the spot and met Sangeeta PW-1 whose statement Ex.PW-1 was recorded in which she disclosed that the appellant had struck his wife Santoshi on the head with a phawra and had fled. Based on the statement Ex.PW-1/A, FIR Ex.PW-4/A was registered. Crime team

was summoned. Scene of the crime was photographed. Blood sample on a gauge, blood stained earth control, earth control without blood, pieces of broken glass bangles and one ear ring were lifted and sealed in separate pulandas. The seizure was drawn up in the seizure memo Ex.PW-1/C6 Mahender PW-2 also met Insp.Sajjan Singh and told him that while removing the deceased to the hospital his pant i.e. the pant of Mahender got stained with blood. Insp.Sajjan Singh seized the pant vide seizure memo Ex.PW-2/A.

7. The appellant was apprehended the next day evening i.e. May 16, 2011 from near the community centre in Chanchal Park whose disclosure statement Ex.PW-2/G was recorded. He led Insp.Sajjan Singh PW-23 to a vacant plot and from within the bushes got recovered the phawra Ex.P-1 which was seized vide memo Ex.PW-2/J.

8. Dr.Manoj Dhingra PW-19 conducted the post mortem on the dead body of Santoshi on May 16, 2011 and authored the report Ex.PW-19/A noting therein that the cause of death was cranio cerebral brain damage due to multiple injuries to the head. Two injuries on the head, one on the left side 4 cm above left ear and the other over left side of scalp, 4 cm above injury No.1 being parallel to each were noted with fractures of underlying parietal and frontal bone present. The third injury was a defence injury being a wound over right forearm above the wrist joint. The phawra Ex.P-1 was sent to Dr.Manoj Dhingra for his opinion concerning the injuries on the person of Santoshi and as per his opinion Ex.PW-19/B the injuries could be caused by the phawra.

9. The site plan to scale would evidence that Bittu Building Material Supplier has constructed rooms along the boundary of his plot with a large open area in between, probably used for storing building material. The place of incident is one such room which opens into the inner courtyard space just referred hereinbefore where building material is stored.

10. The place of the crime is not in dispute. That Santoshi died a homicidal death is not in dispute. The appellant denied each and every incriminating circumstance put to him when he was examined under Section 313 Cr.P.C. and this is what he had to say :

I am innocent and I have been falsely implicated in the present case. I was not present at the spot when the incident took place. I was lifted from the house No.533, Bittu Building Material Supplier, Satyam Vihar, Chanchal Park, Delhi at around 10:30 p.m. and I was tortured by the police officials and they took my thumb impressions on blank papers. NO disclosure statement was made by me and no Phawra was recovered at my instance.

11. It is trite that where a wife is murdered in her matrimonial house and the presence of the husband is established, law casts an obligation on the husband to explain how his wife died and if he does not do so an adverse inference can be drawn against the husband of being the assailant. More so in India, for the reason we find that the every tenth murder appeal we are hearing has the husband before us as the convicted accused. The victim is the wife. The place of the crime is the matrimonial house. The other nine out of ten murder appeals which we are dealing with has the place of the crime outside the house and the victim is a male. It appears that married women in India are safer on the street than in their matrimonial homes.

12. Learned counsel for the parties were not at variance that the room where Santoshi was murdered was actually the residence of Mahender whose wife was the real sister of the deceased Santoshi. Thus, appellant and Mahender were co-brothers. Sangeeta is the sister of Mahender.

13. Sangeeta PW-1 deposed on December 07, 2011 that she was present in Mahenders room, having come to Delhi two or three days prior to the date of incident. The appellant and Mahender returned after work at 8:00 PM and had meals. The two left the house. She along with her children, Santoshi and Santoshis daughter were sleeping when she heard a sound of something hitting and as she got up she saw the appellant with a phawra Ex.P-1 in his hand and injuries on the ear and hand of Santoshi who was bleeding. She raised an alarm and appellant fled. Santoshi was removed to the hospital. Her statement Ex.PW-1/A was recorded.

14. But when cross examined on March 28, 2012 said that since there was no light she could see nothing. She denied having heard any sound of anything hitting.

She denied having seen the appellant with a phawra. Thus Sangeeta was cross examined by the learned APP, during which cross examination she affirmed that she had told the Court on December 07, 2011 that she had seen the accused holding a phawra in his hand and accused tried to hit Santoshi and ran away.

15. Mahender PW-2 deposed that on the night in question he and the accused were on the roof when he told the accused to bring beddings to the roof. He heard cries of his sister Sangeeta and ran downstairs. He saw Santoshi in a pool of blood with head injuries and Sangeeta told him that the accused had caused injuries to Santoshi and had run away.

16. It is apparent that Mahender PW-2 is a witness to the contemporaneous utterance of Sangeeta and his evidence would be relevant and admissible under Section 6 of the Evidence Act.

17. Mahender PW-2 further deposed regarding appellant being apprehended, he making a disclosure statement and getting recovered the phawra, but turned hostile when shown the phawra Ex.P-1. He denied that this was the phawra got recovered by the accused. But he admitted that the pant Ex.P-4, stained with blood, was handed over by him to the Investigating Officer.

18. At this stage we note that Mahenders examination-in-chief was conducted on December 07, 2011 and ended at the stage when he had to be shown the phawra Ex.P-1. The next date was Mrach 28, 2012, when he was shown the phawra Ex.P-1 and then he said that this was not the phawra got recovered by the accused.

19. During cross examination he contradicted himself by saying that Sangeeta did not name any person who had hit Santoshi. But he maintained that he had taken Santoshi to the hospital.

20. The FSL Report Ex.PW-24/B notes that on the phawra Ex.P-1 human blood was detected. On the pant Ex.P-4 human blood was detected.

21. It may be true that Sangeeta and Mahender who fully supported the case of the prosecution during examination-in-chief tried to demolish the case of the prosecution when cross examined after three months of their examinationin-chief,

but two things stand out even with respect to the testimony of the two in cross examination. Firstly that both were present at the scene of the crime when Santoshi received the injuries and secondly that the appellant was also present at the scene of the crime. The scene of the crime was the room taken on rent by Mahender which he was sharing as a resident with his co-brother : the appellant. The appellants wife and children were living along with Mahender and his wife. Sangeeta the sister of Mahender had come for a casual visit two or three days prior. No outsider was involved in the crime. It had to be an insider. The appellant absconding from the place of the crime is proof of his guilt. If somebody else had injured his wife, it would be the appellant and not his co-brother Mahender who would take Santoshi to the hospital.

22. We understand Mahender and Sangeeta trying to save the appellant. Not that they had too much love for him. The reason has come in the testimony of Sangeeta and Mahender. The reason is Santoshis three children, all daughters, were being looked after by Mahender. It made practical sense for Mahender and Sangeeta to try and get the appellant out of jail so that he could take care of his daughters, who had become a burden on Mahender.

23. We concur with the view taken by the learned Trial Judge that the prosecution has successfully established its case against the appellant of having hit his wife Santoshi on the head with the phawra Ex.P-1. Two powerful blows were inflicted on the skull, parallel to each other above the left ear : the two cuts being separated by 4 cm. The powerful blows had fractured the underlying parietal and frontal bone. Cranio cerebral damage have resulted.

24. The offence committed by the appellant is that of murder of his wife.

25. The appeal is dismissed.

26. Two copies of the present decision be sent to the Superintendent Central Jail Tihar for his record.

27. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE SEPTEMBER29 2014 mamta

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