

Satish and ors. Vs. State

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Court : Delhi

Decided On : May-22-2014

Judge : Sanjiv Khanna

Appellant : Satish and ors.

Respondent : State

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL
No.571/1999 Date of decision:

22. d May, 2014 % SATISH AND ORS. Appellants Through Mr. M.L. Yadav, Advocate. Versus STATE Respondent Through Ms. Rajdipa Behura, APP for the State. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL SANJIV KHANNA, J.

(ORAL): Mangal, one of the appellant, has expired and the present appeal has been pressed on behalf of Satish and Subhash who are aggrieved by their conviction under Section 302 read with Section 34 of the Indian Penal Code 1860 (for short IPC) for murder of Maya Devi. The appellants were also convicted under Section 324 read with Section 34 of IPC for having caused simple injuries to Kitab Singh. The impugned conviction arises out of FIR No.410/96, P.S. Sultan Puri, which became subject matter of Sessions Case No.394/96.

2. By order on sentence dated 30th September, 1999, both the appellants have been sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/- each under Section 302 IPC, and in default of payment of fine to undergo further rigorous imprisonment for a period of two months each. For the offence under Section 324 IPC, they have been directed to undergo rigorous imprisonment for a period of one year each.

3. On the question of occurrence in question, the prosecution relies upon testimonies of the injured eye witness Kitab Singh (PW-1), and Shashi Kumar (PW-4), brother of Kitab Singh and husband of the deceased Maya Devi. PW-1 in his deposition recorded on 29th January, 1997 had identified the two appellants and stated that on 18 th April, 1996, when he was going to Nangloi with the deceased Maya Devi, they were confronted by the two appellants along with Mangal (deceased) and Raj Kumar (who has not been arrested and declared a proclaimed offender). Maya Devi was questioned why she had lodged a complaint against them in the police station. They urged that Maya Devi should be taught a lesson. Thereupon, Mangal (deceased) caught hold of Maya Devi and the appellant Satish inflicted injuries on her with a knife. Raj Kumar (proclaimed offender) caught hold of PW-1 and the appellant Satish threw a stone on his leg, as a result of which PW-1 had suffered an injury. Appellant-Subhash also caused injuries on the chest and left thumb of PW-1. Kitab Singh (PW-1) had claimed that his foot broke i.e., he had suffered a fracture. CRL A5711999 After causing Page 2 of 15 injuries, the two appellants along with Mangal (deceased) and Raj Kumar (proclaimed offender) escaped. The police came and took the deceased Maya Devi and Kitab Singh (PW-1) to the Deen Dayal Upadhaya Hospital (for short DDU) where they were examined. Subsequently, Maya Devi died due to the injuries caused. In the cross-examination, Kitab Singh (PW-1) deposed that the appellant Subhash had hit him with a big stone which could be lifted with both hands. But neither the said stone nor the knife was recovered in his presence.

4. Shashi Kumar (PW-4) in respect of the occurrence of 18th April, 1996 has testified that at about 11.30 A.M., Maya Devi and Kitab Singh (PW-1) had gone towards Budh Bazar Road where they were accosted by the appellants Satish and Subhash, Mangal (deceased) and Raj Kumar (proclaimed offender). Mangal

(deceased) caught hold of his wife Maya Devi and the appellant Satish caused injuries on his wife with a knife, whereas Raj Kumar (proclaimed offender) caught hold of Kitab Singh (PW-1) and the appellant Subhash inflicted injuries on him with a knife. He claimed that he had raised alarm and thereupon the appellants along with Mangal (deceased) and Raj Kumar (proclaimed offender) ran away. However, in the cross-examination, PW-4 had stated that the incident had taken place on the main road and he was informed by a third person about the quarrel as he was in his own house. The said occurrence had taken place 5-7 minutes after Maya Devi had left the house. He did not intervene or rescue the injured Kitab Singh (PW-1) or his wife Maya Devi, and when he reached the spot, 10-15 persons were already present. It, therefore, appears that Shashi Kumar (PW-4) was not a witness to the actual occurrence and had reached the spot immediately after the occurrence, when he heard noise and was informed about the quarrel by a third person, as deposed in his cross-examination. However, this would not deviate and negate the testimony of Kitab Singh (PW-1), the injured eye witness who was certainly present at place and time of occurrence. The presence of PW-1 was also proved and established beyond doubt in view of his MLC, Ex.PW13/A, recorded at DDU Hospital at 1.10 PM. The MLC of Kitab Singh (PW-1) records that the patient was conscious and oriented and had suffered an incised wound of one inch on the right side of chest. Other wounds were also indicated in the said MLC. History of assault has been mentioned as a cause of the said injuries received by the patient. The averments made by Kitab Singh (PW-1) that the appellant Satish had broken his foot does not appear to be correct as this is not borne out from the MLC Ex. PW13/A. The MLC also records that some of the injuries were caused by a sharp weapon, while others were blunt in nature. Other possible exaggerations in the statement of Kitab Singh (PW-1) have been discussed below.

5. Learned counsel for the appellants has drawn our attention to the deposition of Kitab Singh/PW-1 and Shashi Kumar/PW-4, recorded on 22nd January, 1998 after they were recalled for further crossexamination. PW-1 and PW-4 in their cross-examination recorded on recall have completely denied the occurrence and involvement of the two appellants. PW-1 has gone to the extent of stating that he had gone for his job and returned on 18th April, 1998 at about 2.30 PM and was not present with the deceased Maya Devi when she was stabbed. He

subsequently came to know that the deceased Maya Devi had suffered injuries. Similarly, PW-4 who was the husband of the deceased Maya Devi on his recall cross-examination conducted on 22nd January 1998, had stated that he had not spoken to or told the police, the names of the appellants and he did not know them. He had come to know about the occurrence at about 12.30 PM from a neighbour.

6. We are not inclined to accept and rely upon the testimonies of PW-1 and PW-4 as recorded on 22nd January, 1998. Complete summersault taken by PW-1 and PW-4 does not inspire confidence. We are inclined to substantially accept the testimonies of PW-1 and PW-4 as they were earlier recorded on 29th January, 1997 and 29th April, 1997 respectively, subject to the reservation expressed by us on 1).

7. The main issue raised by the learned counsel for the appellants in the present appeal pertains to justification of the conviction under Section 302 IPC. It is submitted that the conviction of the appellant Satish should have been under Section 299 read with Section 304 Part I or II IPC. It is further submitted that a common intention cannot be attributed to the appellant Subhash for the injuries caused to the deceased Maya Devi. His role as per the testimony of PW-1 was confined and restricted to the injuries caused by a stone on Kitab Singh (PW-1).

8. The MLC of the deceased Maya Devi though available on the trial court record was not proved and has not been given an exhibit number. Learned counsel for the appellants has drawn our attention to the death summary report prepared by the DDU Hospital dated 21 st April, 1996. The said report was filed by the prosecution and is part of the trial court record and in view of the submission made by the learned counsel for the appellants, the same has been marked as Ex.PX. The death summary report or intake and output record of DDU Hospital mentions that there were nine stab wounds with suspect of hemoperitoneum. The operation findings refer to two lacerated wounds and one CIW injured wound over the outer wall of stomach up to mucosa. In the diagrams, locations of the injures have been indicated. It is recorded that after the operation the patient had shown changes during the first two days but on 21st April, 1996 in the morning at 9 AM the patient

had pulled out the ryles tube and fistula. She had earlier also done the same on three occasions. After the surgery the patient was conscious. Attempt was made to fix IV line but without success and the patient was shifted to ICU from the ward. Subsequently, at 1.30 PM the patient suddenly suffered cardiac arrest and died.

9. The post mortem on the body of the deceased Maya Devi was conducted by Dr. Kamal Singh (PW10). He had deposed that the post mortem was conducted on 22nd April, 1996 at 1.50 PM and the cause of death to the best of his knowledge and belief was due to injuries which were ante mortem in nature. These injuries were caused by a sharp edged weapon and injuries No.4 and 6 were sufficiently or otherwise collectively sufficient to cause death in an ordinary course of nature. Death was due to shock resulting from injuries. This is contrary to what has been deposed in the death summary report which mentions that the death was due to cardiac arrest, though it can be argued that the injuries might have caused the cardiac arrest. In the cross-examination, PW-10 went on to state that there were 15 injuries which were again not proved or established and not stated in the death summary report. He had stated that most of the injuries were grievous and there were some stab injuries. On the said aspect, we would refer to the testimony of Kitab Singh (PW-1) who had deposed that only one knife wound was given by the appellant when he deposed that the appellant Satish had inflicted injury on the deceased Maya Devi with a chhuri. Ex. PX refers to two injuries, other injuries it appears were not significant.

10. Learned counsel for the appellants has drawn our attention to the MLC of the appellant Subhash which was not given exhibit number before the trial court. However, in view of the reliance placed by the learned counsel for the appellants, the same has been taken into consideration by us and has been marked as Ex.PY. The said MLC records that the patient i.e., appellant Subhash was brought by Constable Rajbir Singh of P.S. Sultan Puri to the DDU Hospital for medical examination. The patient had alleged history of assault and claimed that he was wounded by a knife during a fight for knife. The appellant Subhash had received multiple incised wounds on right hand with main injury below the right thumb and two incised wounds on the left thumb.

11. These are important and relevant circumstances required to be taken into consideration before we decide the question whether the appellants have been rightly convicted under Section 302 read with Section 34 IPC or should have been convicted for culpable homicide not amounting to murder under Section 304 read with Section 34 IPC. Deceased Maya Devi had died after three days of hospitalization and we have already referred to the death summary report as to the reason for cause of her death recorded therein.

12. At this stage, it would be important to refer to the testimony of Kitab Singh (PW-1) and Shashi Kumar (PW-4) as to the dispute/quarrel which had taken place on 17 th April, 1996. Shashi Kumar (PW-4) had stated that on 17th April, 1996 he was beating a drum on behalf of an election candidate seeking votes, when two boys namely Ladi and another, whose name he did not know, were quarrelling. The second boy came and asked Shashi Kumar (PW-4) about Ladi. Thereupon, PW-4 had given the identity and the details of Ladi, who was standing at a distance of 5/7 ft. The accused thereupon had come to PW-4 and objected and quarrelled with him why he had given the address of Ladi and identified him. In the meanwhile, the deceased Maya Devi came there and she was abused. Later Maya Devi informed the police and had also brought two constables. The accused, however, had run away from the spot. Similar statement was made by PW-1 about the occurrence on 17th April, 1996 that the deceased Maya Devi had gone to the police station and lodged a report against the accused. On 18th April, 1996 at about 11.30 AM the police had come to their house in connection with the complaint but the accused had run away from their houses.

13. So called complaint made by the deceased Maya Devi has not been brought on record and we do not know the details and the nature of the complaint. As noticed above, PW-1 and PW-4 in their subsequent depositions after being recalled for cross-examination had completely resiled and exonerated the appellants but we have rejected the said depositions and have relied upon their first depositions. However, it is not the case of the prosecution that the appellants, Mangal (deceased) and Raj Kumar (proclaimed offender) were known as Ladi. Even if we accept that earlier occurrence had taken place on 17th April, 1996, it is clear that the said occurrence cannot be called and regarded as a major quarrel to

constitute a reason/motive for murder. There is no allegation that on 17th April, 1996 any physical violence had occurred. At best there was exchange of words. In this context, we would now like to refer to the statement of Kitab Singh (PW-1) as to the actual occurrence and what had happened on 18 th April, 1996 when injuries were inflicted on Maya Devi and PW-1. The exact testimony of PW-1 is reproduced below:

On 18.04.96, we were going to Nangloi along with my deceased Bhabi Maya Devi and when we reached in the Budh Vihar Chowk, Accd. Satish, Subhash, Mangal present in the court and Raj Kumar who is not present in the court were coming in front of us and they told that Maya Devi had lodged a complaint against us in the PS and she be taught a lesson. Accd. Mangal caught hold of Maya Devi and accd. Satish inflicted injury on her with churi. Raj Kumar caught hold of me and accd. Subhash present in the court had thrown stone on my leg, as a result, I received injury. Accd. Subhash also caused injury on my chest and left thumb.

14. What is clear and intelligible from the statement of PW-1 Kitab Singh is that the accused who were present had accosted PW-1 and the deceased Maya Devi. They had stated that Maya Devi should be taught a lesson. Separate and specific role was attributed to Mangal (deceased) and the appellant Satish on the one hand and Raj Kumar (proclaimed offender) and the appellant Subhash on the other hand. The appellant Subhash had thrown a stone on the leg of PW-1 and had also caused injuries on chest and left thumb of PW-1. PW-1 has not deposed and stated about use of knife on PW-1 or that appellant Subhash had caused injuries or attacked Maya Devi. In this connection, it would be appropriate to notice the injuries which were suffered by the appellant Subhash as noticed in his MLC marked as Ex.PX. The said injuries were caused by a sharp edged weapon on the right hand and left thumb of the appellant Subhash. It therefore appears that there was a fight after a verbal exchange and injuries were also caused to the appellant Subhash. Sharp weapon was used to cause injuries on the appellant Subhash. This indicates that there is a possibility that someone from the other side was armed and possibly had used a sharp edged weapon.

15. In view of the aforesaid discussion, we find it difficult to accept that the appellant Subhash had common intention under Section 302 read with Section 34 IPC as to the knife injuries on Maya Devi, which were inflicted by the appellant Satish with a chhuri, while Mangal (deceased) had caught hold of her. This may have happened at spur of moment when altercation took place. Injuries on the appellant Subhash indicate attempt to snatch the knife, or a sharp edged weapon. Kitab Singh (PW-1) has not attributed any specific words or utterances to the appellant Subhash. Even as per the version given by Kitab Singh (PW1) and Shashi Kumar (PW-4), the appellants, Mangal (deceased) and Raj Kumar (proclaimed offender) had accidentally met Maya Devi and Kitab Singh (PW-1). We do not think it would be safe to hold that the appellant Subhash had common intention, especially noticing the fact that he had only given injuries by throwing a stone on the leg of Kitab Singh (PW-1) and caused minor injuries on his chest and left thumb. However, for the reasons stated above we find sufficient grounds to convict the appellant Subhash under Section 324 IPC for the injuries caused to Kitab Singh (PW-1). The said conviction under Section 324 IPC is maintained.

16. This brings us on the question whether conviction of the appellant Satish should be converted from Section 302 IPC to Section 304, Part I IPC. We have already referred to the death summary report marked as Ex.PX, as well as the MLC of Subhash marked as Ex.PY. We have quoted the testimony of PW-1 as to the actual occurrence. We have also noted the difference between the testimony of PW-10 Dr. Komal Singh and the post mortem report and what has been stated and opined in the death summary report Ex. PX. The purported happening on 17th April, 1996 has not been deposed to by any of the police officers. Even the investigating officer SI Bhoop Singh PW-12 did not refer to any occurrence or incident of 17th April, 1996. PW-12 has referred to DD Entry No.19-A which was handed over to him and thereupon he had reached the spot, but no one met him there. DD Entry 19-A again has not been proved and given exhibit number but is available on trial court record. The said DD Entry records that one lady Constable Prabha had informed that one boy at Aman Vihar Crossing had been stabbed with a knife. This also to some extent supports the version given by Subhash in his MLC Ex. PY. The medical examination of Subhash was undertaken pursuant to an application given by SI Bhoop Singh PW-12 that refers to DD Entry No.19-A.

17. However, learned counsel for the State has drawn our attention to the fact that the FIR was registered at 3.30 PM and refers to the previous occurrence on 17th April, 1996. Be that as it may, we have noticed that some doubts exist as to the occurrence of 17th April, 1996. Whether acrimony and antagonism generated on 17th April, 1996 had resulted in the occurrence of 18th April, 1996, or more had happened immediately before the said occurrence is something which remains uncertain and debatable.

18. In these aforesaid circumstances, serious doubts persist whether the version given by Kitab Singh (PW-1) and Shashi Kumar (PW-4) about the previous occurrence on 17th April, 1996 is correct as they were overstating and exaggerating the 17th April incident to implicate the appellant Satish and others for an offence under Section 302 IPC.

19. In view of the aforesaid discussion, possibility of a sudden quarrel without premeditation covered by exception 4 to Section 300 cannot be ruled out.

20. Keeping in view aforesaid facts and the reasons, we convert the conviction of the appellant Satish from murder to culpable homicide not amounting to murder under Part I of Section 304 read with Section 299 IPC.

21. This brings us to the question of sentence which should be imposed on the appellant Satish. As per nominal roll, he has already undergone incarceration of three years, eight months and eight days as on 29th December, 1999. The appellant Satish was directed to be released on bail on suspension of sentence vide order dated 25 th August, 2000. In other words, the appellant Satish appears to have undergone the rigorous imprisonment of more than four years and four months excluding remission. We sentence the appellant Satish to undergo rigorous imprisonment for a period of seven years and impose fine of Rs.1000/-. In default of payment of fine he shall undergo simple imprisonment for a period of two months for the offence under Section 304 Part I, IPC. The appellant Satish shall surrender within a period of one month to undergo the remaining sentence.

22. As far as the appellant Subhash is concerned, we have maintained his conviction under Section 324 IPC. He had been sentenced to undergo rigorous

imprisonment for a period of one year by the trial court. As per the nominal roll dated 29th October, 1999 of the appellant Subhash, he had already undergone rigorous imprisonment of three years and seven months. The appellant Subhash was subsequently released on suspension of sentence after order dated 25th August, 2000 was passed. In these circumstances, the appellant Subhash has already undergone the sentence imposed under Section 324 IPC. Therefore, his personal bond and surety bond are discharged.

23. The appeal is disposed of. SANJIV KHANNA, J G.P. MITTAL, J MAY22 2014
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