

Anil Kumar Vs. State

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Court : Delhi

Decided On : Sep-09-2014

Judge : Pradeep Nandrajog

Appellant : Anil Kumar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on : September 02, 2014 Judgment Pronounced on : September 09, 2014 + Crl.A.907/2012 KRISHAN KUMAR @ MONU Represented by: Appellant Mr.K.Singhal, Advocate versus STATE Represented by: + Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Dharmender Dagar (Retd.) Crl.A.246/2012 ANIL KUMAR Represented by: Appellant Mr.Ashutosh Bhardwaj, Advocate with Mr.Rohan Sharma, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Dharmender Dagar (Retd.) CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. Believing the testimony of Kulvinder Singh PW-2, the father of the deceased Bhupinder Singh, Ms.Tamanna PW-4, the fianc of Bhupinder, Ms.Anju Gulati PW-5 the maternal aunt of Tamanna and that of Umit Singh PW-7, a friend of Bhupinder Singh, the learned Trial Judge has returned a finding that the

prosecution has successfully established a motive for the crime : accused Krishan Kumar being desirous of the love of Tamanna and wanting to marry her and thus killing Bhupinder who was engaged to Tamanna. Believing Umit Singh PW-7 as a truthful eye witness, supported by the call record details Ex.PW-9/K and Ex.PW-11/C, the learned Trial Court has held that the prosecution has successfully proved that accused Krishan Kumar was in touch over the telephone with Bhupinder; Krishan Kumar speaking through the mobile No.9213597666 and Bhupinder through the mobile phone No.9268513323. At same time co-accused Anil Kumar was speaking to co-accused Krishan Kumar through Anil Kumars mobile No.9999793947. Lastly, a knife got recovered by the accused from a drain near Mata Vaishno Mandir, Gulabi Bagh which were opined by the doctor who conducted the post mortem of Bhupinder to be capable of inflicting injuries No.1 to 5 and 9 to 24, has been held to be further incriminating evidence. Injuries No.6, 7 and 8 were opined to be caused by blunt force impact. The verdict of guilt returned against Krishan Kumar and Anil Kumar is premised on Anil Kumar actively participating in the crime to facilitate Krishan Kumar inflicting 21 stab injuries on Bhupinder. The decision is dated January 20, 2012. The order on sentence is dated January 20, 2012. The two have been sentenced to undergo imprisonment for life.

2. Conceding that the call record details Ex.PW-9/K of the mobile telephone No.9213597666, which admittedly was in the name of accused Krishan Kumar, would evidence that at 21:58 hours on May 14, 2010 Bhupinder made a call to Krishan Kumar from mobile No.9268513323, the registered consumer whereof was Kulvinder Singh PW-2, followed by two more call made by Bhupinder to Krishan Kumar at 22:24 hours and 22:50 hours; further conceding that call record details Ex.PW-11/C of the mobile No.9999793947 the user whereof was co-accused Anil Kumar would evidence that co-accused Anil Kumar made telephone calls to co-accused Krishan Kumar at 21:52:55 hours, 22:12:10 hours and 22:15:55 hours on May 14, 2010, learned counsel for Krishan Kumar and Anil Kumar urged that a perusal of the testimony of Umit Singh is totally untrustworthy. Every words spoken by him is a bundle of lies. Learned counsel urged that merely because Krishan Kumar spoke to the deceased and Anil Kumar spoke to Krishan Kumar between 10.00 P.M. to 11.00 P.M would not mean that the three were in

the company of each other at the spot where Bhupinders dead body was found.

3. Conceding to the fact that the testimony of Kulvinder Singh PW-2, Ms.Tamanna PW-4, Anju Gulati PW-5 and Umit Singh establishes that Krishan Kumar was wanting to marry Ms.Tamanna PW-4, who was engaged to deceased Bhupinder and that Krishan Kumar was wanting Bhupinder to call off the engagement so that he could marry Ms.Tamanna; and thus there being a motive for the crime, learned counsel for Krishan Kumar and Anil Kumar urged that motive being a double edged weapon, it could well be the reason to falsely implicate Krishan Kumar and since Anil Kumar was in touch with Krishan Kumar on the fateful night, rope in even the later.

4. Thus, learned counsel urged that Umit Singh testimony has to be evaluated for its creditworthiness keeping in view his conduct.

5. To appreciate the testimony of Umit Singh and the arguments of learned counsel for Krishan Kumar and Anil Kumar the backdrop facts in which criminal investigation commenced has to be noted.

6. DD No.8A, Ex.PW-23/A, was recorded by HC Rajinder Kumar PW- 23, the duty officer at P.S.Gulabi Bagh, at 7.20 A.M. on May 15, 2010 recording the information that a person who disclosed his name as Prahlad Singh Chauhan had informed that at a DDA park near gate No.1 of DDA Flats at Gulabi Bagh the dead body of a male was lying smeared in blood.

7. Insp.Dharmbir Singh PW-20, SI Sahib Singh PW-24, HC Prakash PW-16 and Ct.Vijay PW-22 left the police station carrying with them a copy of DD No.8A. Indeed, the dead body of a male with multiple stab wounds was found by them at the park near gate No.1 of the DDA Flats at Gulabi Bagh. No person at the spot could give them any indication regarding the identity of the dead body. The crime team was summoned to the spot. A search of the dead body yielded one student I-Card in the name of Bhupinder Singh son of Kulvinder Singh, one reliance mobile sim card, one passport size photograph of a girl and one visiting card of Satyam Gym Institute. The four exhibits were seized and recorded in the seizure memo Ex.PW-16/C. Nobody came to the spot or reached the spot to give any information

as to how Bhupinder was stabbed. Blood stained dried leaves, blood stained earth and control earth was seized by Insp.Dharmbir Singh PW-29, entry whereof was made in the seizure memo Ex.PW-16/A. Two handkerchiefs near the spot, one stained with blood and the other without blood were seized and entry made in the seizure memo Ex.PW-16/B. Efforts made to locate an eye witness were frustrated and hence Insp.Dharmbir Singh made the endorsement Ex.PW-29/A beneath copy of DD No.8A and sent the rukka for FIR to be registered at 10.30 A.M. from the spot on May 15, 2010.

8. It is clear that the contemporaneous events show that Umit Singh PW- 7, was not at the spot when the police personnel reached the park somewhere around 7.30 A.M. in the morning since at P.S. Gulabi Park information of a dead body lying at the spot was recorded at 7.20 A.M. The police officer remained at the spot till 10.30 A.M. as recorded in Ex.PW-29/A and till said time Umit Singh never came to the spot.

9. He was presented before Insp.Dharmbir Singh by Bhupinder father Kulvinder Singh PW-2 after Kulvinder Singh received information through the owner of Satyam Gym Institute of his son being found murdered at the park in question.

10. We now proceed to note Umit Singh testimony in Court. He deposed that Bhupinder was his friend and the two used to exercise in a Gym. Bhupinder was engaged to Tamanna about one or two months prior to when he was murdered. Accused Anil and Krishan used to meet Bhupinder and him in the Gym and used to threaten Bhupinder; wanting Bhupinder not to marry Tamanna. Bhupinder told Krishan that he should forget Tamanna because she was engaged to him. He i.e. Umit Singh tried to intervene two three times to make peace between his friend Bhupinder and Krishan Kumar and Anil Kumar, but was unsuccessful. On May 14, 2010, at about 8.15 P.M. Bhupinder came to his house and was perplexed by the fact that Krishan @ Monu was harassing his fianc Tamanna and requested him to accompany him so that both could speak to Bhupinder. Bhupinder made a call to Krishan Kumar and told him to meet him at gate No.1 of the flats constructed by DDA, but with Delhi Administration, near Gulabi Bagh. Travelling on a scooter, he and Bhupinder reached gate No.1, where Krishan Kumar and Anil Kumar met

them and started abusing Bhupinder. A scuffle ensued. He intervened and separated the three and advised Krishan Kumar to keep cool. Krishan Kumar quarrelling with Bhupinder. and Anil Kumar kept on abusing and The altercation continued for some time. Telling him to stay put at gate No.1, Krishan Kumar and Anil Kumar took Bhupinder inside the complex saying that they would speak to Bhupinder alone. They told him to wait for 20-25 minutes. He waited for around 3045 minutes. Neither Bhupinder nor Krishan nor Anil returned and therefore he went back to his house. The next day morning he learnt that Bhupinder had been murdered. Accompanied by Bhupinder father he went to the spot on the morning of May 15, 2010 and told the police of what transpired last night. In his presence Bhupinders dead body was removed to the mortuary and the investigation at the spot was in his presence. On being crossexamined he said that he had reached the park in the morning at around 10.30 A.M. and saw Bhupinders dead body lying in the park. He said that he remained at the spot for 1 hours and claimed to have told Bhupinders father last night of what he had seen last night.

11. It is relevant to note that Umit Singh did not claim to have seen Bhupinder being stabbed and thus there is no evidence as to which out of the two accused stabbed Bhupinder. But from his testimony, if accepted, there would be proof that when Bhupinder was stabbed, both accused were present.

12. Now, Umit Singh conduct is most unnatural if the incident took place as deposed to by Umit Singh. He knew that there was past enmity between Krishan Kumar and Bhupinder because Tamanna was to marry Bhupinder and Krishan Kumar was in love with her. As per him, when Bhupinder called him at around 8.30 P.M. at his house to accompany him to speak to Krishan Kumar, he went to Bhupinders house and saw him perplexed because Bhupinder told him that his fianc Tamanna was being harassed. As per him Bhupinder rang up Krishan Kumar and requested him to meet him at the gate of the DDA colony in Gulabi Bagh. As per him when he and Bhupinder reached the gate of the colony, Krishan Kumar and Anil Kumar started a verbal duel with Bhupinder and the verbal duel became physical. He had to intervene to separate the three. It is not believable that in such a hostile, heated and threatening environment he would have agreed to stay put at the gate and allow his friend Bhupinder to go inside the colony in the company of

Krishan Kumar and Anil Kumar.

13. Viewing the incident through the words of Umit Singh, the inevitable conclusion has to be that without anything more added on by way of relevant facts, Umit Singhs testimony is a bundle of lies and needs to be thrown out lock, stock and barrel.

14. But, as was observed by the Supreme Court in the decision reported as (2001) 6 SCC145Takhaji Hiraji vs.Thakore Kubersing Chamansing & ors., it is the duty of the every Court to make an effort at searching out the truth on the material available on record.

15. In the context of where an accused sustains an injury of a serious nature in the same occurrence, the prosecution would be obliged to explain the injury and failure to do so would cast a cloud on the case of the prosecution, if not in full, at least as regards the true contours of the incident as drawn by the prosecution.

16. Concededly, on May 15, 2010 accused Krishan Kumar was taken by his brother-in-law Raj Kumar at 6.00 A.M. to the clinic of Dr.S.K.Gupta PW-12, who examined Krishan Kumar and wrote on Ex.PW-20/B that Krishan Kumar was having injuries on both hands. There was a deep cut on all four fingers of the right hand and the ring finger of the left hand had a cut. He gave primary medical aid to Krishan Kumar and referred him to Lok Nayak Jai Prakash Hospital for further examination.

17. Concededly, the ring finger of the left hand of Krishan Kumar was totally cut i.e. decapitated, as was conceded by learned counsel for Krishan Kumar and Anil Kumar who frankly confessed that they saw Krishan Kumars said condition when they met him during and after the trial. Sh.Ashutosh Bhardwaj, Advocate for co-accused Anil Kumar who appears for him in the appeal was his counsel at the trial and says that he saw Krishan Kumar whenever he used to appear during the trial.

18. Now, we can understand what had happened. The nugget of truth can be recovered. The chaff can be separated from the grain.

19. The fact that Umit Singh could tell the police that deceased Bhupinder spoke to Krishan Kumar at around 10.00 P.M. on May 14, 2010, a fact corroborated from the call record details Ex.PW-9/K, is sufficient proof of the truthfulness of Umit Singhs claim that he was present with Bhupinder at 21:58 hours on May 14, 2010 when Bhupinder made a call to Krishan Kumar. There is truth in his statement that Bhupinder wanted Krishan Kumar to meet him at the gate of the DDA flats and thus both went to the gate of the DDA flats. To this extent he is a truthful witness. But thereafter, he has intertwined and weaved a lot of lies and has hidden the truth. Probably it became his compulsion to do so because Krishan Kumar had suffered a grievous injury during the altercation which ensued. The grievous injury, being four fingers of the right hand of Krishan Kumar having a deep cut and the ring finger of the left hand being decapitated at the middle of the proximal phalanx i.e. the middle and the distal phalanx chopped of (wrongly stated by Dr.S.K.Gupta as having a mere deep cut). Umit Singh was thus obliged to disclose how Krishan Kumar received the said grievous injury.

20. We cannot loose sight of the fact that the backdrop to the unfortunate incident is the past, of Krishan Kumar being in love with Tamanna and she being engaged to Bhupinder. This troubled Krishan Kumar and thus Krishan Kumar and Bhupinder turning bitter friends. The fight was over the affection of a girl. Krishan Kumar was still hoping to win over Tamannas affection and Bhupinder was wanting him to get out of the path of Tamanna. In this backdrop, when Krishan Kumar, who was in the company of Anil Kumar met Bhupinder who was in the company of Umit Singh, the possibility of Bhupinder and Umit Singh converting a hot verbal dialogue in to a physical fight and teaching Krishan Kumar a lesson of his life by chopping of the ring finger of his left hand cannot be ruled out. The physical manifestation would be of the intention to teach a lesson to Krishan Kumar : Lo and behold, we have chopped off your ring finger. We have incapacitated you for your life to enjoy the pleasure of a wedding ring put on your ring finger. The injuries on the hands of Krishan Kumar would show that he caught hold of the knife. This explains a deep cut on the four fingers of the right hand and the ring finger of the left hand being decapitated. The retaliation was the assault on Bhupinder. It is apparent that this is what had happened which led Krishan Kumar to run away in panic and thereafter speak a nugget of truth by weaving with

a lot of lies. It indeed is a difficult task for a Judge to separate lies which is interwoven with truth for the reason so inextricably linked are the two that removing one scars the other. Seldom do Judges come across cases of the kind where lies can be neatly severed from the truth and the truth retained.

21. It is trite that if the attendant circumstances of a case probabalize a version, whether put or not to witnesses during cross-examination, or when examined under Section 313 Cr.P.C., it is the duty of the Court, as any other rational and prudent person would so do, to find the true version of what happened.

22. Thus, if we view the truth as aforesaid, conduct of Umit Singh would be explainable. But if we see the truth as spoken of by him, his conduct would belie the truth as projected by him. In the later situation we have to throw out the case of the prosecution lock, stock and barrel because the only evidence we would have is that of motive, accused Krishan Kumar being in touch over the telephone with accused Anil Kumar and accused Krishan Kumar being in touch with the deceased. The three not being proved to be in the company of each other at the time and at the spot when the deceased suffered homicidal injuries.

23. The position would thus be that Bhupinder was the one who spoke to Krishan Kumar and told him to meet him at the gate of the colony inside which, in the park, Bhupinders dead body was found. Bhupinder took with him Umit Singh. The possibility of two carrying a knife cannot be ruled out because as per the evidence it was these two who had summoned Krishan Kumar. Krishan Kumar was assaulted. The ring finger of his left hand was chopped of. In the process, when he obviously tried to protect himself, four fingers of the right hand received a deep cut. Krishan Kumar did not go to a doctor nor tell anyone of the grievous injuries suffered by him. He tried to hide the truth of what had happened, till when next day morning at around 6.00 A.M. his brother-in-law Raj Kumar saw him and took him to Dr.S.K.Gupta. Just as Krishan Kumar was hiding the truth, so was Umit Singh. He had seen a retaliatory assault by Krishan Kumar and Anil Kumar on Bhupinder. Not that he was scared of the assault. He was scared of he having to explain the injuries on Krishan Kumar. He simply ran away. His claim to have returned to the spot when the police was present is false for the reason if this was so, the rukka

would have been sent after recording his statement and not by making an endorsement beneath the copy of the daily diary that the dead body was sent to the mortuary and no eye witness was present.

24. Learned counsel for Krishan Kumar and Anil Kumar had argued that if this was the true incident i.e. Krishan Kumar being attacked during a verbal altercation and he being made permanently disfigured by the ring finger of the left hand being chopped off, a finger through which one receives the pleasure of an engagement or a wedding ring being put by ones beloved, it would be a case of a sudden and a grave provocation entitling Krishan Kumar and his friend Anil Kumar to the benefit of Exception 1 of Section 300 of the Indian Penal Code.

25. We have already noted above while referring to the decision of the learned Trial Judge that all stab injuries on the body of Bhupinder were opined to be caused by one knife allegedly got jointly recovered by Krishan Kumar and Anil Kumar. Thus, the weapon of offence was one and not two. The possibility of this weapon of offence, used to cause injury to Bhupinder, being brought by Bhupinder and Umit Singh cannot be ruled out; for after all there was only one weapon of offence used to cause grievous injuries on the hands of Krishan Kumar. The prosecution has not led any evidence nor made any attempt during investigation to recover the knife used to cause grievous injuries on the hands of Krishan Kumar.

26. Thus, we have to take our decision ahead by considering whether a young man aged around 20 years, in love with a girl whom he finds is marrying his friend, is unable to convince his friend to call off the relationship with the girl and tries to meet the girl inviting a response from his friend in the form of the ring finger being cut off. The message by the act would be the one we have recorded in paragraph 19 above : Lo and behold, we have chopped off your ring finger. We have incapacitated you for your life to enjoy the pleasure of a wedding ring put on your ring finger. The question would be whether this act would be a sudden and a grave provocation.

27. Exception I to Section 300 of the Penal Code reads : Culpable homicide is not murder if the offender, whilst deprived of the power of selfcontrol by grave and sudden provocation, causes the death of the person who gave the provocation or

causes the death of any other person by mistake or accident. The Exception is subject to three conditions : (i) that the provocation is not sought or voluntarily provoked by the offender; (ii) that the provocation is not given by anything done in obedience to law or by a public servant in the lawful exercise of the powers of such public servants; and (iii) that the provocation is not given by anything done in the lawful exercise of the right of private defence.

28. Mens rea plays a dominant role in the determination of felonies and misdemeanours. Since time immemorial, societies have striven hard to draw the distinction between hot blooded crimes and cold blood crimes. Albeit with an intention, hot blooded killings were treated as less heinous homicides. Malice after thought was an expression used to denote a calmly premeditated killing to distinguish between killings which had no malice in the form of a pre-thought.

29. Presenting his report which led to the enacting of the Indian Penal Code, Lord Macaulay said : We agree with the great mass of mankind, and with the majority of jurists, ancient and modern, in thinking that homicide committed in the sudden heat of passion, on great provocation, ought to be punished, but that in general it ought not to be punished so severely as murder. It thought to be punished in order to teach men to entertain a peculiar respect for human life : it thought to be punished in order to give men a motive for accustoming themselves to govern their passions; and in some few cases for which we have made provision we conceive that it ought to be punished with the utmost rigor. In general, however, we would not visit homicide committed in violent passion which had been suddenly provoked with the highest penalties of the law. We think that to treat a person guilty of such homicide as we should treat a murderer would be a highly inexpedient course A course which would shock the universal feeling of mankind, and would engage the public sympathy on the side of the delinquent against the law. 30. The offender when so inflamed by passion that he was for the moment not the master of his mind reduces the wrong to one of homicide not amounting to murder. A person who acts so inflamed by passion obviously retaliates. Thus, the inflammation by passion must bear a reasonable relationship to the provocation as was held in the decision reported as (1941) 3 All Er 272 Mancini vs.DPP.

31. A loss of self control caused by fear, panic, sheer bad temper or circumstances has to be distinguished from a provocation which results in loss of self control. The provocation therefore must be such as would upset not merely a hasty, hot-temper and hyper-sensitive person but would upset also a person of ordinary sense and calmness. It must be something heard or seen by the offender so as to derange the offender. After all, anger is a passion to which good and bad man are both subject, and mere human frailty and infirmity ought not to be punished equally with ferocity or other evil feelings. The standard of conduct, being that of a reasonable person, to be expected has to keep in mind the age of the offender, the cultural, the social and the emotional background of the society to which the offender belongs because the conduct expected of a young person cannot be measured on the standard of a mature adult. A Judge has not to be influenced by considerations of exemplary restraint or exceptional, ideal behaviour of highly cultured people. The test of whether provocation is entitled to succeed is a dual one : the alleged provocative conduct must be as such as (a) actually caused in the accused, and (b) might cause in a reasonable person, a sudden and temporary loss of self-control as the result of which the offender kills the one who gave the provocation. Since provocation is an external stimulus it can be objectively gauged. But loss of self-control is a subjective phenomena and can be inferred from the surrounding circumstances alone. What may amount to a grave and sudden provocation is a question of fact. It is a misnomer to believe the defence of provocation has to be raised by the defence with onus of proof on the defence that the situation was not one of provocation, lies on the prosecution to establish. The numbers of wounds caused during the occurrence are not a decisive factor. The Courts have to be careful when provocation takes the form of physical assault of such a nature as would be expected to arouse overwhelming passion in the person attacked, for it will not always be easy to distinguish the victim immediate retaliation from a resistance by way of self-defence. As has been noted by KENNY on Outlines of Criminal Law, 19th Edition para 118 (P.172) it is therefore not surprising that the early authorities did not always keep homicide under provocation separate from homicide in self-defence. In 1917 there was a judgment of the Court of Criminal Appeal which did not clearly distinguish the two : (1917) 12 Cr.App.R221R vs.Letenock. In the decision reported as AIR 1978

SC768Tarseem Ali Vs. State of Haryana, the facts were that the victim and the two accused went out for hunting and they were drunk. The accused killed the victim by gunshot and before the occurrence some quarrel took place between them. It was held that the death occurred either because of a sudden quarrel or on a sudden provocation. The accused were convicted for the offence punishable under Section 304 Part I IPC. The Supreme Court held that the case attracted exception I or IV to Section 300 IPC.

32. The provocation has to be not only grave but even sudden. Since the desire of measured revenge distinguishes a revenge under a provocation, the distance of time between the provocation and the assault has to be kept in mind.

33. We dispose of the two appeals altering the conviction of the appellants from the offence punishable under Section 302 IPC to the offence punishable under Section 304 Part I IPC and for which we sentence the appellants to undergo rigorous imprisonment for a period of ten years. The appellants would be entitled to the benefit of Section 428 Cr.P.C. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE SEPTEMBER09 2014 skb

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