

Pradeep Shah Vs. State

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Court : Delhi

Decided On : Sep-19-2014

Judge : Pradeep Nandrajog

Appellant : Pradeep Shah

Respondent : State

Judgement :

\$~5 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: September 19, 2014 + CRL.A. 1460/2012 PRADEEP SHAH Represented by: Appellant Mr.Murari Chaudhary and Mr.Vivek Sood, Advocates versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Veena Sharma, FRRO and SI Mahendra Koli, P.S.Subzi Mandi. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. In view of the testimony of Sangeeta PW-5 and Smt.Devki Devi PW- 6, finding corroboration from the testimony of Raj Kumar PW-1 and Smt.Kalpana Devi PW-2 and the fact that the appellant absconded after the incident, vide impugned decision dated December 02, 2008, the appellant has been convicted for the offence of having murdered his sister-in-law Gauri Devi.

2. The only contention urged at the hearing of the appeal today is that DD No.3 Ex.PW-7/A, records that the informant has informed that near Khanna Market,

Mithai Pul, near animal hospital, the artery of the neck of a man has been cut (aadmi ke gale ki nas kaat di hai); and whereas Gauri Devi died due to head injuries.

3. We fail to understand the logic of the said argument for the reason the informant is Chandan PW-7 who has deposed that appellant was a habitual drunkard and was residing in a jhuggi opposite that of his uncle Raj Kumar. Deceased Gauri Devi was the wife of Raj Kumar and was the real sister of Kalpana Devi. At around 12.00 mid-night, on the intervening night of May 30, 2008 and May 31, 2008, after consuming alcohol the appellant returned to his jhuggi and abused his wife because she did not open the door. Deceased Gauri Devi was sleeping outside his jhuggi with Deviki Devi i.e. his mother. He was sleeping at a distance of 5-10 meters away. He heard cries. He rushed to the spot and saw appellant running from there. Blood was oozing from the head of Gauri Devi whom he took to St. Stephens Hospital using a hand-cart nearby and also informed the police over the number 100.

4. While cross-examined he has not been confronted with the contents of DD No.3, and thus no argument can be advanced to discredit Chandan PW-7 with reference to the contents of the DD entry.

5. It is not unknown that when information is conveyed over the telephone, the recipient of the information records somewhat differently in the log book.

6. Raj Kumar PW-1, the uncle of Chandan Kumar PW-7, deposed that Gauri Devi was his wife. The accused was his real brother. Kalpana Devi was the wife of the accused. She was also the real sister of his wife. Accused used to remain drunk and used to quarrel with his wife. At 12.00 mid-night he received a call from his son that the accused had killed his wife and he reached home.

7. It is apparent that Raj Kumar is not an eye witness.

8. Kalpana Devi PW-2, the wife of the appellant deposed that Gauri was her elder sister and the accused was her husband. At around 12.00 mid-night on May 30, 2008, the appellant was outside the jhuggi and she was sleeping inside after

bolting the door from inside. On hearing commotion, she came out and found Gauri Devi lying on the ground. The appellant was not to be seen. She deposed that after 4-5 days of the incident, the accused (her husband) rang up from Ambala at her STD booth.

9. Kalpana Devi is also not an eye witness to the incident but is a witness to prove that at the mid-night the accused was outside the jhuggi i.e. was present at the scene of crime.

10. As we have already brought out from the testimony of Chandan Kumar PW-7, it is proved that the jhuggi of the accused was adjoining the jhuggi where deceased used to reside with her husband Raj Kumar.

11. Sangeeta PW-5, the daughter of the accused has deposed that she was a witness to her father hitting her aunt Guari Devi with a sil (a piece of stone used for grinding). She has deposed that she tried to catch her father but he managed to flee.

12. Devki Devi PW-6 has deposed that she was in Delhi for the treatment of her ground-daughter Supriya at St.Stephens Hospital and was staying at the jhuggi of Raj Kumar. She deposed that Raj Kumar and accused Pradeep Shah were her relatives. On May 30, 2008 she was sleeping in the night outside the jhuggi along with Gauri Devi. Sangeeta daughter of the accused was also sleeping on a thela. Accused came and switched on the light and she asked why he had done so. Accused replied that he had done nothing. All of a sudden accused picked up a sil and hit on the head of Gauri Devi. She and Sangeeta raised an alarm and tried to catch the accused who managed to run away.

13. All aforesaid witnesses have been subjected to cross-examination and nothing has been brought out to discredit their version.

14. It is apparent that having a short fuse, without any cause or reason, without any provocation, the wanton act of hitting the deceased on the head using a sil was committed by the appellant. That the appellant absconded has been proved by the testimony of the aforesaid witnesses and additionally we note that as

deposed to by his wife after he rang up from Ambala at the STD booth of his wife after 4-5 days, as deposed to by SI Ram Niwas PW14, the police party went to Ambala from where the appellant was apprehended. Suresh Batra PW-11 has deposed that from his shop outside Ambala Railway Station he was also running a STD booth and had two Airtel connections 9996445543 and 9896766857. He used to maintain call details. A boy name Dinesh, but confirmed by him to be appellant, had made a call from his STD booth, entry whereof was made by him in his diary photocopy whereof was Ex.PW11/A and the computer generated bill of the phone call made was Ex.PW-11/B.

15. Dr.S.Lal PW-17 who conducted the post mortem of Gauri Devi has authored the post mortem report Ex.PW-17/A, as per which the under noted external injuries were found on Gauris dead body:

1. Contusion of size 7x5 cm on left side head over left frontal area.
2. Contusion 8x5 cm over right side of head in right parieto-temporal region of head.
3. Laceration 0.6x0.2 cm x muscle deep on right ear lobule. 16.
4. Swelling with deformity on the left hand with fracture of 4th and 5th metacarpals.
5. Multiple abrasion in area of 3x3 cm on back of left hand. The cause of death obviously was craniocerebral damage consequent upon blunt force impact to the head as per injuries No.1 and 2.

17. Injury No.4 and 5 are obviously defence injuries. The evidence that Gauri Devi tried to ward off the attack.

18. It means that number of blows directed towards Gauri Devi were quite a few and certainly not one or two. Injuries No.1, 2 and 3 show repeated blows struck on the head and the face. Cumulatively read, injuries No.1 to 5 would evidence at least 10-15 blows directed towards the head of Gauri Devi, some of which she managed to block and the rest reached their target.

19. The internal examination of the dead body of Gauri, as per the post mortem report Ex.PW17/A, would evidence effusion of blood in skull layer on left frontal and right parieto temporal of head. Fracture of frontal bone on left side and fracture of right parieto temporal bone, fracture of middle cranial portion. There was deffuse subarachnoid and subdural haemorrhage of both parieto temporal lobes.

20. Even assuming that the intention of the appellant was to cause an injury on the deceased and he did not have the intention to kill her; intentionally, the blows being struck and the skull being the target and the weapon being a sil, knowledge has to be attributed to the appellant that the injuries inflicted were sufficient in the ordinary course of nature to cause death. Knowledge has to be attributed to the appellant that the act committed by him was so eminently dangerous that in all probability it would cause death.

21. Noting that the appellant has been sentenced to imprisonment for life, we dismiss the appeal maintaining the conviction as well as the sentence.

22. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
JUDGE SEPTEMBER19 2014 skb

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