

State Vs. Khem Singh and anr.

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Court : Delhi

Decided On : Aug-22-2014

Judge : Pradeep Nandrajog

Appellant : State

Respondent : Khem Singh and anr.

Judgement :

§~6 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 492/2012 & Crl.M.A. 17013/2012 (delay) STATE Represented by: Appellant Ms. Aashaa Tiwari, APP for the State with SI Roshan Lal, P.S. Nangloi, Delhi Versus KHEM SINGH & ANR. Represented by: Respondents Mr. Kaushal Kaushik, Advocate. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

2208.2014 % 1. By the present petition, State seeks leave to appeal against the judgment dated October 24, 2011 passed by the learned ASJ acquitting the respondents of the charge under Section 302/34 IPC.

2. In nutshell, the prosecution case is that D.D. No.6 was recorded at PP Nihal Vihar on July 29, 2004 at about 11.20 A.M., regarding a dead body lying at the marriage hall of village Nilothi. On the police reaching the spot they found a dead body having only the undergarments on it with a blood soaked pant lying nearby

over the roof of the said marriage hall. Bankey Lal, the resident of the said village met at the spot and got recorded his statement. He stated that he was running a nursery in the Farm House of one Rajender and was also working as Gardner in Kamal Public School. His cousin Tej Pal the deceased was also selling plants after taking the same from the said nursery as a street hawker. Tej Pal was residing with one Gambhir Singh for about 4-5 days at the nursery and thereafter he started residing at the nursery in Village Nilothi along with Khem Singh. According to Bankey Lal, on July 28, 2004 at about 9 P.M. Tej Pal took his cooler from the Gambhir Singh and kept the same with Khem Singh and at about 10 P.M. Tej Pal was in the marriage hall with the person who used to sleep there. Tej Pal was addicted to drinking. The complainant identified the body at the spot to be of Tej Pal, however he did not know who murdered Tej Pal on the said night.

3. Thereafter, the statement of eye witness Ram Shanker (PW-4) was recorded who stated that Tej Pal was killed by Gambhir Singh and Khem Singh. On the arrest of Gambhir Singh and Khem Singh, pieces of handle of the hand pump were recovered.

4. Raghubir Singh (PW-2) stated that Gambhir Singh used to tease the wife of Tej Pal due to which quarrel took place between Gambhir Singh and Tej Pal, and after the quarrel Tej Pal left the farm house of Bharat Singh and started residing with the accused Khem Singh. On July 28, 2004 when bhajan sangeet was going on at the said marriage hall, he saw Tej Pal, Gambhir Singh and Khem Singh taking liquor near the said hall. On July 29, 2004 during noon time he came to know that Tej Pal had expired.

5. The autopsy surgeon opined the cause of death to be by blunt force and also noticed presence of alcohol in the body. The surgeon also opined that the injury was caused by the handle of the hand pump.

6. Bankey Lal has only deposed that Tej Pal came to the residence of the Gambhir Singh to take back his cooler on July 28, 2004 and took the cooler back. He came to know on the next date at about 10 A.M. that Tej Pal has been murdered. The evidence of Bankey Lal is of no avail to the prosecution. Raghubir Singh has been disbelieved by the learned trial court. In cross-examination Raghubir Singh stated

that for the first time he got the information about the death of Tej Pal on July 30, 2004. He further stated that on the intervening night of 28/29th July, 2004 he had gone to bed at about 12.30 A.M. and that 6-7 persons namely, Lodhi, Rajput, Shyam Singh, Bhurey who were also living there were present in the evening of July 28, 2004 and had gone to Vatika at about 10.30 P.M. when kirtan was going on. He further admitted that on July 28, 2004 he saw both Khem Singh and Gambhir Singh only at the kirtan when the same was going on in the community centre itself and nowhere else. Thus, this witness resiled from his earlier version.

7. Left with the testimony of Ram Shankar (PW-4) the eye witness, the learned trial court noted that Ram Shankar had deposed that at about 2.30 or 3 A.M. he woke up on hearing of quarrel of both the accused and Tej Pal and saw Gambhir Singh and Khem Singh beating Tej Pal. He stated that Khem Singh was beating Tej Pal with the iron handle of the hand pump and Gambhir Singh was beating the deceased with fist and blows. He tried to pacify them but they did not agree and at about 5 A.M. he woke up and went for his work to sell his plants and after he came at about 2 P.M. he got to know that Tej Pal was no more.

8. Learned trial court came to the conclusion that despite the alleged incident happening in his presence, he neither tried to intervene nor informed anyone. CRL.L.P. 492/2012 This witness was admittedly detained at the Police Page 3 of 5 Station for one night and was one of the suspects of murder. The dead body was preserved for 72 hours as no clues were found. None of the documents show that there was a mention of any eye witness at that time. The initial investigating officer himself has stated that up to about 5 P.M. on July 29, 2014 he did not come across any person claiming to be the eye witness of the case. Thus the learned Trial Court rightly disbelieved Ram Shanker to be the eye witness.

9. Even the recovery of weapon of offence i.e. the two pieces of handle of the hand pump were never shown to the autopsy surgeon in order to seek his opinion as to whether the injury could be suffered by the deceased on his head by the said pieces of handle. In the absence of the said weapon being connected to the offence committed, the recovery was not incriminating against the respondents.

10. Dr. Ashish Jain PW-18 in cross-examination has stated that the injuries can occur by falling on a hard and blunt surface from a height. It is well settled that if two views are possible than the one in favour of accused has to be accepted.

11. There being no evidence against the respondents, the learned trial court granted benefit of doubt to them and in our opinion rightly so. The findings of the learned trial court are neither perverse nor illegal.

12. Further, the present leave to appeal petition has been filed belatedly after a period of 220 days. There being no proper explanation for the delay, we are not inclined to condone the delay in filing of the leave to appeal as well.

13. Accordingly leave petition and application are dismissed. PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

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