

NooruddIn Vs. State

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Court : Delhi

Decided On : Nov-24-2014

Judge : Mukta Gupta

Appellant : Nooruddin

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: November 18, 2014 Judgment Delivered on: November 24, 2014 % + CRL.A. 811/2012 NOORUDDIN Represented by: Appellant Mr.K.B.Andley, Sr.Adv. instructed by Mr.M.Shamikh, Adv. versus STATE Represented by: + Respondent Ms.Aashaa Tiwari, APP with SI Rizwan Khan PS Seelampur. CRL.A. 820/2012 SHAHID Represented by: Appellant Mr.Shafiullah, Adv. versus STATE GOVT. OF NCT OF DELHI Respondent Represented by: Ms.Aashaa Tiwari, APP with SI Rizwan Khan PS Seelampur. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Nooruddin and Shahid assail the judgment dated June 06, 2012 whereby they were convicted for offences punishable under Sections 302/34 IPC for the murder of Ikramuddin and the order on sentence dated June 07, 2012 directing them to undergo imprisonment for life and to pay a fine of `5000/- each.

2. The prosecution case rests on the testimony of two eye-witnesses Mohd.Faiyad PW-1 and Mohd.Akeel PW-2 which is assailed by the learned counsel for the appellants on the ground that Mohd.Faiyad and Mohd.Akeel were not present at the spot. Further even accepting the version of Mohd.Faiyad and Mohd.Akeel, the site plan would evince that they could not have witnessed the incident from the house of Mohd.Shahid. Even as per the case of prosecution Ikramuddin and Faiyad had gone to the house of Shahid and thus were the aggressors making probable the version of defence that Ikramuddin and Mohd.Faiyad came to the house of Mohd.Shahid along with 10/12 persons and in the melee who caused gunshot injury was not known. The weapon of offence has not been recovered till date. The story of the prosecution that Nawab gave pistol to Nooruddin who fired the shot and returned the same to Nawab is highly improbable. Further the prosecution version is falsified by the testimony of Mohd.Furkan PW-3. In the alternative it is contended that since the incident happened in a sudden commotion the appellants at best are liable to be convicted for the offence punishable under Section 304/34 IPC and thus they be released on the period already undergone.

3. The defence of the appellant Mohd.Shahid in answer to question as to whether he has to say anything else in his defence is as under:

I was having affair with Ms.Shaina who was the niece of the Ikramuddin. Ikramuddin and his family members were opposed to this relation and they had objected to Ms.Shaina but failed. Thereafter, they started giving threats to me. They threatened to kill me. On the date of occurrence, the deceased Ikramuddin along with ten young person, came to my house and one of them, called me. I came out from my house. They started beating me and dragged me to adjacent wide street. They were beating and abusing me. It was a dark night and there was no light there. A voice of gun shot was heard and immediately, they started to run away from there. However, PW Mohd.Faiyad, after the said occurrence, was caught by me and my family members and even, some neighbors helped us in apprehending him. Thereafter, telephonic call was made by my family to PCR from the mobile phone of my father. Meanwhile, Nooruddin also came there by chance after 5/10 minutes. He also helped me in apprehending Mohd.Faiyad. PCR

officials came at the spot and Mohd.Faiyad was handed over to PCR police. I have been falsely implicated in this case. Nothing has been recovered at my instance. I stated true facts before the SHO/IO but they concocted their own version as they failed to find the real culprit, even after, detailed inquiry from us and PW-1 Mohd.Faiyad who was also suspect. Ultimately, I along with my relatives have been falsely implicated in this case.

4. The explanation of Nooruddin in response to the question as to whether he wanted to say anything else in his defence is as under:

On the date of occurrence, I came to the house of Shahid to meet him. I saw that PW Mohd.Faiyad was apprehended by Shahid and his family members and he was trying to run. I also helped them to hold him. Thereafter, PCR officials came at the spot and Mohd.Faiyad was handed over to PCR police. On humanitarian ground, I along with three-four persons of the locality went to the hospital to see the injured Ikramuddin. When I reached there I was beaten by the relatives and friends of the deceased. However, due to intervention of police, I was saved and I was taken to the Police Station. Blood was oozing out from my nose and head, at that time, due to which, my shirt was having blood stains. I requested the police for providing me medical treatment but no treatment was provided to me. I remained in the police station throughout the night. I was also interrogated by the then SHO and other police officials. I clearly told them that I am not aware about the present case and I am innocent. SHO/IO has seized my clothes which I was wearing at that time. When the police could not find the real culprit despite the inquiries made from us, I have been falsely implicated in this case.

5. The two defence witnesses i.e. Vashi Ahmed DW-1 the father of Shahid and Ravinder Kumar DW-2 a neighbour of Shahid are of no avail, as both had not seen the incident. Vashi Ahmed stated that when he came home he got to know that his family members and son had been taken to the Police Station, he remained in the Police Station throughout the night and in the morning his wife and other children except Shahid were permitted to go however he was not allowed.

6. The process of law was set into motion on receipt of an information recorded vide DD No.30A at 10.21 PM on April 15, 2008 at PS Seelampur informing about a

quarrel at Jamalu Ka Bagh, Gali No.2, Mandirwali Gali and that a boy had been caught hold who had fired a shot. HC Jasvir Singh PW-26 while posted at PCR (N/E Zone) Delhi on receipt of the call reached the spot and found one person lying in injured condition. He was bleeding from his head and thus he was taken to GTB hospital and got admitted there. This witness in his cross-examination denied that the apprehended person was handed over by the family of the accused persons to him. From the Police Station ASI Subhash Chand PW-24 along with HC Krishan Pal reached the spot on receipt of DD No.30A. He found blood and one coin of fired bullet lying at the spot. The injured had already been taken to GTB hospital. In the meantime beat officer HC Joginder reached the spot who was asked to guard the spot and he along with HC Krishan went to GTB hospital. There he collected the MLC of injured Ikramuddin who was declared brought dead and found one eye-witness Mohd.Faiyad. CrI.A.Nos. 811/2012 & 820/2012 recorded the statement of Mohd.Faiyad on the basis of which rukka was sent at 11.45 PM on April 15, 2008 and FIR No.160/2008 under Sections 302/34 IPC and 27 Arms Act was registered at PS Seelampur.

7. Mohd.Faiyad in his statement Ex.PW-1/A made to ASI Subhash Chand stated that on April 15, 2008 he along with his friend Ikramuddin were going to their house after having dinner at hotel Darbar. While having dinner Ikramuddin told him that Shahid sent obscene messages to his mother and sister and also abused them on the phone. Shahid was living in their neighbourhood. Thus Ikramuddin asked him to accompany to the house of Shahid so that they could talk to him as to why he was troubling them. At around 10.10 PM at night Faiyad and Ikramuddin reached the house of Shahid who started abusing them and stated that he would call his maternal uncle. Soon thereafter Shahids maternal uncle Nooruddin and one more boy came to the place and immediately on coming they started abusing Ikramuddin and Faiyad. They stated as to how these two persons dared to come to their house to raise the grievance. In the meantime Shahid and the person accompanying Nooruddin caught hold of Ikramuddin and Nooruddin gave slaps to Ikramuddin. Further Nooruddin took out a pistol and kept the same near the right ear of Ikramuddin and shot the fire. Ikramuddin fell down immediately and Nooruddin gave the pistol to his accomplice who ran away from the spot taking away the pistol. He stated that he could recognise the person accompanying

Nooruddin and that Shahid, Nooruddin and their friend had even beaten him and thus legal action be taken against them.

8. Post-mortem of Ikramuddin was conducted by Dr.Sumit Tellewar PW-13 who noted the following ante-mortem external injuries on his body:

1. Reddish bruise 2 cm x 2.3 cm present on the tip of left shoulder joint.
2. Lacerated wound measuring 6 cm x 6 cm x cavity deep within abrasion collar and blackening at its anterior border present on the left temple region of the skull with singeing of hair around it. The track of the wound goes inwards, medially and posteriorly fracturing the temporal bone it enters the left cranial cavity then lacerating through the left temporal and parietal lobes reaches the mid line. Still progressing further lacerating through the mid brain and brain stem region and fracturing the body of sphenoid bone crosses the mid line and going further and posteriorly lacerate the right posterior parieto temporal lobes of the brains and then fracturing through the right side of occipital bone it communicates exteriorly by an exit wound measuring 2.5 cm x 3 cm present on the right side occipital scalp 4.5 cm behind right ear and 9 cm away from the mid line. The entire track of the wound is haemorrhagic.

9. Dr.Sumit Tellewar who authored the post-mortem report Ex.PW-13/A opined that the cause of death was shock as a result of ante-mortem head injuries produced by a projectile from a firearm. The injury No.2 as described in the post-mortem report was an ante-mortem injury and sufficient to cause death in the ordinary course of nature and time since death was about 12 hours. He also handed over the blood stained cloths of the deceased to be sent over to the FSL.

10. Though Nooruddin and Shahid were arrested and charge-sheeted however the third accused purported to be Nawab could not be arrested and was thus declared a proclaimed offender. Further during the course of investigation even the fire-arm could not be recovered. Thus the prosecution case rests solely on the testimony of the two eye-witnesses Mohd.Faiyad and Mohd.Akeel.

11. Mohd.Faiyad PW-1 in his deposition before the Court has deposed in sync with his statement on the basis of which FIR was registered except the fact that before the Court he stated that Nawab took out a katta from his shirt and gave to Nooruddin who caught Ikramuddin by his hair and shot him by the same katta after putting it on the forehead of Ikramuddin. Ikramuddin fell down on the ground. Nawab snatched katta from Nooruddin and fled away from the spot. In cross-examination he denied the suggestion that there were 10/12 persons when they went to the house of Shahid. He further denied that they brought Shahid from his house to point A at Gali No.2 as shown in the site plan Ex.PW-1/C2. He stated that there was no other public person when they reached at the house of Shahid and that Nawab was concealing the katta in his shirt before he handed over the same to Nooruddin. He further stated that after firing of the bullet Nooruddin and Shahid gave beatings to him and denied the suggestion that he was confined by the family members of Shahid and they handed him over to the PCR on the arrival of the Police. He stated in his cross-examination that the accused persons left him when the crowd collected and ran away and that they ran away towards the main road but he could not chase them as he was having a plaster in his leg and thus he was not in a position to chase them. He denied the suggestion that from the spot he was taken to the hospital by the Police as the Police suspected him to be the real culprit.

12. Mohd.Akeel PW-2 deposed that on April 15, 2008 at about 10/10.15 PM he was getting his mobile card re-charged from a shop situated at the corner of a gali in Jamalu Ka Bagh, he received an information that some quarrel was going on in gali No.2 Jamalu Ka Bagh. He immediately reached there and saw that Ikramuddin had been caught by two persons one was Shahid and the other person he did not know but he could identify him if shown. He identified Shahid present in the Court as one of the accused. He further deposed that the third person Nooruddin present in the Court caught Ikramuddin by his hair after putting his katta fired a shot on his temple and Ikramuddin fell down on the ground. He also deposed that his cousin brother Faiyad was also present on the spot who had also seen the incident. According to Akeel, Nawab took katta from Nooruddin and fled away from the spot and thereafter Nooruddin and Shahid started doing some hathapayai with Mohd.Faiyad PW-1 and he intervened in the matter to save

Mohd.Faiyad from them. He deposed about the seizures which were made in his presence. In the cross-examination he admitted that it was dark at the place of incident, however stated that there were one or two bulbs of the lighting of the neighbourhood. This witness clarified that the distance between him and the place where the incident of shooting took place was about 30 meters and he saw the same from straight angle. He was a little ahead from the turning of street No.1 which is a wide street. When confronted with the rough site plan Ex.PW-1/C2 he stated that he was standing at point X. This witness was also given suggestion that Ikramuddin along with Faiyad and 10/12 persons had come to the residence of Shahid with criminal intent and during the course of fighting/ beating given to the accused Shahid someone might have fired and the person could not be ascertained who had fired due to gathering, which suggestion he denied. He further denied the suggestion that Faiyad and his colleague were suspect and therefore Faiyad was apprehended by the public and handed over to the PCR.

13. Defence has sought to take the benefit of the cross-examination of Mohd.Furkan PW-3 who identified the dead body of Ikramuddin. In crossexamination he stated that when he reached the hospital he found that accused Nooruddin was being beaten in the hospital however he was not bleeding. He further could not tell the names of the persons who were beating him in the hospital and when he reached the Police Station accused Nooruddin was sitting in the Police Station. He also deposed that Shahid used to make obscene calls and SMS to his niece. They had told Ikramuddin to make Shahid understand not to make obscene SMS and calls to her. Thereafter Shahid made calls to Ikramuddin and abused him over the telephone and on this Furkans mother said that it was no use to talk to Shahid and they should better talk to his father.

14. From the cross-examination of the witnesses the defence sought to build up the story that at the time of incident Ikramuddin and Faiyad along with nearly 10 other persons had come to the house of Shahid and thus in melee who shot Ikramuddin was not known. Thus the presence of Shahid at the spot and the incident is not disputed. Further even as per the prosecution case Ikramuddin and Faiyad had gone to the house of Shahid. In crossexamination Faiyad denied that from his house Shahid was taken to point A at Gali No.2 in the site plan. This is

contrary to the site plan. As per the rough site plan Ex.PW-1/C2 the place of occurrence is point A in the Gali No.2 which was 455 centimetre wide as the blood and the cartridge case were found at point A and B in the scale site plan Ex.PW-7/A. A perusal of the site plan would show that from the house of Mohd.Shahid one cannot witness the incident happening at point A in the site plan as it took place in the street which was after taking the left turn from Shahids house and in between there are built up houses.

15. This leaves us with the testimony of Mohd.Akeel PW-2 who was also present near the spot at point X in the rough site plan Ex.PW-1/C2 and thus could have seen the incident. According to Mohd.Akeel he saw Ikramuddin being caught by two persons one of whom was Shahid and the other he could identify on being shown whereafter Nooruddin caught Ikramuddin by his hair and shot him with katta after putting the same on the temple of Ikramuddin who fell down on the ground.

16. The version of the defence that Faiyad had been caught by the family members of Shahid and was handed over to the PCR is denied by the PCR official. What emerges from the evidence on record is that Ikramuddin, Mohd.Faiyad, Mohd.Akeel with few other persons had gone to the house of Mohd.Shahid to make him understand not to make obscene calls to Mohd.Faiyads mother and sister and being out-numbered Shahid called his uncle Nooruddin who came with Nawab and during that altercation the incident took place. Thus the case falls within the exception to Section 302 IPC and that Nooruddin shot Ikramuddin in the course of a sudden quarrel attracting Exception (IV) to Section 300 IPC. Similar view was taken by the Supreme Court in (1987) 2 SCC652Radha Kishan Vs. State of Haryana and (2004) 11 SCC381Prakash Chand Vs. State of H.P.

17. The conviction of the appellants is thus altered to one under Section 304 Part-I IPC. The appellants have undergone nearly 7 years of imprisonment including remissions. The sentence of the appellants is thus reduced to the period already undergone. The appeals are accordingly disposed of. Superintendent Tihar Jail will release the appellants forthwith if not required in any other case.

18. T.C.R. be returned.

19. Three copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the others to be handed over to the appellants. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE NOVEMBER 24 2014 ga

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