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Court : Delhi

Decided On : Feb-18-2016

Judge : Pradeep Nandrajog &Amp; the Honourable Ms. Justice Mukta Gupta

Appeal No. : CRL.A. No. 533 of 2000

Appellant : Raju Kumar and Another

Respondent : State

Judgement :

Mukta Gupta, J.

1. Appellant No.1 Raju Kumar and his father appellant No.2 Krishan Govind have been convicted for the murder of Ram Niwas Shukla and for causing injuries to Shashi Shukla vide the impugned judgment dated July 20, 2000 and awarded imprisonment for life and a fine of Rs. 2000/- for offence punishable under Section 302/34 IPC and rigorous imprisonment for six months for offence punishable under Section 324/34 IPC. The prosecution case rests on the testimony of Shashi Shukla PW-7, the wife of deceased Ram Niwas Shukla, who was also injured in the incident.

2. The investigation was set into motion on September 08, 1996 when a wireless information was received at 8.05 PM recorded vide DD No.20 at Police post Ganvri PS Bhajanpura. When Constable Ridku Singh reached the spot at K-21/46 C, Gautam Vihar Chowk he was informed that the injured had been removed to

GTB hospital. On reaching the hospital he found Ram Niwas, who was declared unfit to make statement whereas his wife Shashi Kala was declared fit to make statement. Statement of Shashi was recorded vide Ex.PW-7/A on the basis of which rukka was sent for registration of FIR.

3. Shashi in her statement Ex.PW-7/A stated that she was residing as a tenant at H.No.K-21/46 C, Gautam Vihar Chowk. Her husband was supplying newspapers and selling lottery tickets. On September 07, 1996 at around 7.00 AM she had a quarrel with another tenant i.e. the mother of Raju on spilling the water in the gallery. Shashi had asked Raju's mother not to spill the water due to which her children fell, however Raju's mother did not clean the water and thus they had a verbal altercation which got settled there itself. On September 08, 1996 at around 7.30 PM when her husband was having dinner after coming from work Raju, his father Ashok Thakur and his younger brother came and called her husband out. Her husband stated that he was having the dinner and will talk to them later. On this Ashok Thakur abused him that he fought with chacha-chachi and they would teach him a lesson. Ashok Thakur attacked her husband with a knife and the other three i.e. Raju, Krishan Govind and the third person caught hold of her husband. When Shashi intervened and tried to save her husband they stabbed her as well. She stated that her husband received two stab wounds on the left side of the chest, one stab wound on the right side of the abdomen and she received injuries on her shoulder, arm and back. They raised alarm when people gathered and all the four assailants ran away from spot. She and her husband were admitted at GTB hospital by her brother-in-law Raju Shukla.

4. FIR No.520/96 under Section 307/34 IPC was registered at PS Bhajanpura on this complaint. Photographs of the spot were taken and blood was lifted from spot. On September 10, 1996 Ram Niwas Shukla died in the hospital when Section 302/34 IPC was invoked. Though Raju Kumar and Krishan Govind were arrested Ashok Thakur and Ram Bahadur, the two other assailants could not be arrested, thus they were declared proclaimed offenders.

5. Dr.K.K.Banerjee PW-13 who conducted the post-mortem found the following ante-mortem injuries on the body of the deceased:

(i) Elliptical stabbed wound 4 cm x 1 cm into cavity deep was present on the lateral aspect of left side of chest 9 cm below the posterior axillary folds after removing the three interrupted stitches. The margins were clean cut with one angle more acute than the other. The wound has pierced with 7th intercostal space and made a perforation of 2 cm. On the anterior stomach with evidence of extravasation of blood in the entire tract. The length of tract is 6.3 cm.

(ii) Elliptical shaped stabbed wound 4 cm x 1 cm into cavity deep with clean cut margins and one angle more acute than the other below injury No.1 on the lateral aspect of left piercing the 9th intercostals space terminating opposite to the spleenic area.

(iii) An elliptical shaped stabbed wound 4 cm x 0.5 cm into cavity deep with clean cut margins and one angle more acute than the other was found on removing 4 interrupted stitches placed 2 cm below into injury No.2 on the lower part of lateral aspect of left side of chest piercing the left side of diaphram.

(iv) Elliptical shaped stabbed wound 4 cm x 0.5 cm into cavity deep present on the back of lower part of right side chest 4 cm away from midline and 13 cm above the natal fold on removing three interrupted stitches. The depth of the wound is 3 cm long terminating at the paravertebral area in the abdomen.

(v) Elliptical shaped stabbed wound 4 cm x 1 cm into cavity deep with clean cut margins and one angle more acute than the other present obliqually on the flank of the front of the abdomen on the right side. It is directed into abdominal cavity. ?

6. PW-13 opined the cause of death to be shock due to peritonitis and haemorrhage as a result of ante-mortem injury to the stomach and other internal organs likely to be produced by a pointed sharp edged weapon. He also opined that injury No.1, 2, 3 and 4 were sufficient to cause death in the ordinary course of nature.

7. MLC of Shashi Shukla was also collected and exhibited vide Ex.PW-16/A which noted the following injuries:

1. Clean incised wound 4 cm x 2.5 cm into 1 cm on left deltoid region.

2. Clean incised wound 1.5 cm x 1.5 cm on under surface of left upper arm, depth not explored.

3. Clean incised wound 4 cm x 3 cm x 1 cm on left scapular region.

4. Superficial clean incised wound 2 cm long in interscapular region. ?

8. In Court Shashi Shukla stood by her version and nothing material could be elicited to show that she was not an injured witness or that she was not present at the spot or that she bore enimity with the appellants to falsely implicate them.

9. Learned counsel for the appellants contends that the deceased, his wife and the appellants were tenants in different rooms in H.No.K-21/46 C, Gautam Vihar. At the time of incident large number of people were present, there being other tenants in the said house, however no other independent witness has been examined by the prosecution. The appellants examined three defence witnesses to prove the plea of alibi of Raju and Krishan Govind and to prove that Shashi Shukla has falsely implicated the appellants as she was shouting that she would implicate all the tenants of the house, however the learned Trial Court failed to consider the defence evidence. Reliance is placed on the decision reported as 2000 SCC(Crl) 9 Ramashish Yadav and Ors. Vs. State of Bihar.

10. In the statement under Section 313 Cr.P.C. Raju and Krishan Govind took the plea that they had been falsely implicated. According to Raju he had gone to house of his cousin Rajinder Dubey which was 2-3 streets away from their house whereas Krishan Govind stated that he did not remember whether he was present at his house at 7.30 PM on September 08, 1996 and that there was no occasion for him to catch Ram Niwas Shukla. He then stated that he never entered the house of Ram Niwas Shukla on the said date.

11. DW-1 Darshan Lal is the informant to the PCR. He stated that when he heard the noise of quarrel he was sitting inside his tenanted room on the second floor and from the jaalof his floor he watched towards the first floor. There were exchange of hot words between one tenant Shukla and his wife. On seeing this he dialled 100 number informing about the quarrel. He came back within 10 minutes

when he saw Shukla in an injured condition and his wife crying loudly and stating that she will implicate all the tenants in the building as she and her husband had neither been rescued nor saved from Thakur. He again rushed and informed the PCR. This version of DW-1 Darshal Lal is an after-thought as no such suggestion was given to Shashi Shukla that she was exhorting to falsely implicate all the tenants nor this plea was taken in the statements of appellants recorded under Section 313 Cr.PC.

12. DW-2 Radhey Shyam has been examined to prove the plea of alibi of Krishan Govind. According to DW-2 he ran a barber's shop and at about 7.00 PM he was shaving Krishan Govind when he heard a noise from the house of Krishan Govind. When he enquired about the quarrel from the Krishan Govind he told him to continue with the shave as it was a matter of routine. He finished shaving and took the money. He came out and saw one lady taking her husband in a scooter and saying that Thakur had stabbed her husband.

13. DW-3 Rajinder Parshad has been examined to prove the plea of alibi of Raju Kumar. He deposed that on September 08, 1996 at about 7.00 PM when it was raining he asked Raju Kumar to sit in his drawing room. Raju came to his house at about 7.00 PM and sat in the television room. Due to electricity cut Raju remained at his house for an hour.

14. The versions of Radhey Shyam and Rajinder Parshad are also an after-thought as no such suggestion has been given to Shashi Shukla. Shashi Shukla in her deposition stated that before her husband could go out both Raju and Krishan Govind along with Ashok Thakur and another brother of Ashok Thakur entered their house. Ashok Thakur asked her husband as to what he has said to his uncle and aunty i.e. Govind and his wife. Ashok Thakur started abusing her husband and stabbed him on the right side of the chest. Raju, Krishan Govind and the brother of Ashok Thakur caught hold of her husband when Ashok Thakur stabbed him. When she tried to rescue her husband Raju caught her. Ashok Thakur also gave knife blows on her finger, left arm near the shoulder and back near the neck. She clarified that none of her neighbourers of the first floor witnessed the stabbing.

15. Version of Shashi Shukla is corroborated by the site plans unscaled and scaled Ex.PW-15/C and PW-9/A which show that the incident took place inside the room from where blood was lifted. Since the incident took place inside the tenanted room of the deceased and Shashi Shukla, the other tenants on the first floor or second floor could not have witnessed what was going on inside the room.

16. It is trite law that it is not the quantity of the evidence but the quality of evidence led by the prosecution to prove the case beyond reasonable doubt against the accused. The conviction can safely be based on the testimony of a sole eye-witness whose presence gets further credited if the eye-witness is a natural witness or an injured witness. In the present case Shashi Shukla was not only a natural eye-witness but also an injured eye-witness.

17. Learned counsel for the appellant relies upon Ramashish Yadav (supra) to contend that the offence if committed by the appellants would fall under Section 304 or 324/34 IPC as the appellants cannot be attributed with the common intention to murder. It is well settled that common intention can be formed on the spur of the moment. Some of the factors relevant to determine common intention are the nature and gravity of injuries, background of the incident and nature of weapon used. In the present case there was no provocation from Shashi Shukla and the issue with regard to spilling of the water had been settled a day earlier. Raju and Krishan Govind along with Ashok Thakur and Ram Bahadur came together when Ashok Thakur was armed with a knife. As many as 5 stab injuries were inflicted on Ram Niwas Shukla and when Shashi Shukla intervened to save her husband she was also inflicted with as many as 4 incised wounds on the shoulder, upper arm and scapular region. The appellants i.e. Raju and Krishan Govind continued catching hold of Ram Niwas Shukla the deceased in the meantime. Thus the present is a case where it can safely be inferred that the accused in furtherance of their common intention caused the murder of Ram Niwas Shukla.

18. In view of the statement of Shashi Shukla a natural, injured eye-witness present at home in the evening, we find no infirmity in the impugned judgment convicting the appellants for offences punishable under Sections 302/34 and

324/34 IPC and the order on sentence.

19. Appeal is dismissed. Appellants will surrender to custody. Their bail bonds and surety bonds are cancelled.

20. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

21. TCR be returned.

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