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Kale Vs. the State

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Court : Delhi

Decided On : Dec-04-2014

Judge : Mukta Gupta

Appellant : Kale

Respondent : The State

Judgement :

$~9,10,13, 14 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision : December 04, 2014 + CRL.A. 1094/2014 NASIR Represented by: ..... Appellant Mr.Vivek Sharma, Advocate with Mr.Ashok Verma, Advocate versus THE STATE Represented by: + ... Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Vijay Kumar, P.S.Vivek Vihar CRL.A. 1121/2014 RAJ KUMAR @ JHUMRU Represented by: ..... Appellant Mr.Rajat Agnihotri, Advocate versus STATE OF NCT OF DELHI Represented by: + ... Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Vijay Kumar, P.S.Vivek Vihar CRL.A. 1374/2014 KALE Represented by: CRL.A. Nos. 1094, 1121, 1374 & 1459 of /2014 ..... Appellant Mr.Vivek Sharma, Advocate with Mr.Ashok Verma, versus THE STATE Represented by: + ... Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Vijay Kumar, P.S.Vivek Vihar CRL.A. 1459/2014 AKEEL Represented by: ..... Appellant Mr.Azhar Qayum, Advocate versus STATE Represented by: ..... Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Vijay Kumar, P.S.Vivek Vihar CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) Crl.M.B.No.10271/2014 in CRL.A.1094/2014 Crl.M.B.No.10317/2014 in CRL.A. 1121/2014 Crl.M.B. No.10657/2014 in CRL.A. 1374/2014 Crl.M.B.No.10795/2014 in CRL.A. 1459/2014 Since appeals are being heard, instant applications seeking suspension of sentence pending hearing of the appeal are dismissed as infructuous. CRL.A.1094/2014 CRL.A. 1121/2014 CRL.A. 1374/2014 CRL.A. 1459/2014 1. Akeel, Nasir, Raj Kumar, Kale and Shamim were charged for the offence of robbery and murder of one Pramod. Before the conclusion of trial Shamim @ Chhote @ Geje passed away and thus proceedings qua him abated. Thus, Akeel, Nasir, Raj Kumar @ Jhumru and Kale have been convicted for the offences punishable under Sections 302 and 394/34 IPC each vide the impugned judgment dated May 30, 2014 and directed to undergo imprisonment for life and fine of `2000/- for offence punishable under Section 302 IPC and to undergo rigorous imprisonment for 7 years and to pay fine of `1000/- for offence punishable under Section 394/34 IPC vide the order on sentence dated June 07, 2014.

2. Three FIRs were registered by the prosecution at PS Vivek Vihar for the incident that took place on March 22, 2008. FIR bearing No.69/2008 regarding the death of Sonu, brother of Kale, FIR No.70/2008 pertaining to the murder of Manoj, brother of Kaushal PW-6 and finally the present one being FIR No.73/2008 regarding the injuries to Pramod culminating in his death on March 31, 2008. FIR No.73/2008 was registered on March 24, 2008 at 9.30 PM on the statement of Gajender Rathore PW-2. Instant case concerns FIR No.73/2008.

3. The prosecution case rests on the testimony of Gajender Rathore PW- 2 the alleged eye-witness and friend of Pramod who was accompanying Pramod as a pillion rider and the recovery of key of motorcycle at the instance of Nasir.

4. On March 22, 2008 the PCR received a call at 13.30 PM wherein it was informed by the informant that his/her brother had been stabbed by knife. The PCR then notes that the injured has been taken to GTB hospital. It is further noted that one more injured aged 30 years, height 5.6, slim body, longish face wearing black pant and white shirt has received injury due to stone on the head and there was a stab wound also, due to which coils of his intestine were protruding out and

he has been taken in unconscious condition to GTB hospital. Further developments noted in the PCR form are that one Sonu, S/o Manohar Lal R/o 504/9, Janta Colony, Circular Road, Shahdara aged 23/24 years had been stabbed on the chest by Manoj, R/o Katra who had been brought dead at GTB hospital. The quarrel was found to be between two groups. It also notes Pramod, S/o unknown, R/o Gokulpura Jawahar Nagar, aged 30 years had received stab wounds due to which the coils of his intestine had come out and had been admitted in ICU in GTB hospital and it was not revealed that who gave the stab wounds. The developments further noted that Manoj, R/o Katra had received some injuries in the quarrel and had been admitted in Headgewar hospital.

5. FIR No.73/2008 was registered on March 24, 2008 under Section 307/394/34 IPC when Gajender Rathore PW-2 went to the Police Station Vivek Vihar and got recorded his statement. Statement of Gajender Rathore loosely translated is as under:

Gajender Rathore, S/o Ram Kumar Rathore, R/o C-1/26 Welcome, Seelampur, 3rd Delhi, aged 23 years have Phone No.9990415857 stated that I am residing at the above address and was making purses at the same address. On March 22, 2008 around 1.00 Clock in the afternoon I was going with my friend Pramod on his motorcycle No.DL3SA W-1763 at Circular Road, Jawala Nagar, Shahadara for getting liquor. When they were coming after purchasing liquor around 1.30 PM they found quarrel going on at the corner of main road, circular road and one boy was lying on the road stained with blood and on the other side at the Chabutra (raised platform) one lady was sitting with a man in her arms who was also blood stained. I asked Pramod to turn the vehicle. In the meantime 4/5 boys came to beat them, out of which two boys had knives in their hand and the other boys had dandas. Out of the two boys having knives in their hands one gave stab blow to Pramod on his stomach and snatched his motorcycle. They tried to catch me as well, however I succeeded in running away. I made a call to the Police from PCO and when I came back after making the call Pramod was being taken by the Police in the vehicle. I was busy taking care of my friend Pramod S/o Mahesh R/o Jagdish Ka Makan, F-Block, Nahar Road near Anand Public School, East Jawahar Nagar, Loni, Ghaziabad and since now his condition is better I have come to the

Police Station to make the statement. I can recognise the boys if brought before me and I want action against the boys.

6. The endorsement in the rukka itself notes that MLC of Pramod dated March 22, 2008 was collected in FIR No.70/2008 which has been brought on to this file as the identity of Pramod has been revealed and FIR registered. Gajender Rathore while appearing as PW-2 deposed in sync with his statement on the basis of which FIR was registered.

7. The other eye-witness Koshal PW-6 the sister of Manoj deceased turned hostile. Koshal deposed before the Court that on the day of Holi she was cooking food at about 7.00 AM and someone told her that her brother Manoj was lying on the road in an unconscious condition. She reached circular road, where she was informed about her brother having been taken to Headgewar hospital in the cycle rickshaw arranged by one Rajender. At the hospital the Police person tried to identify the accused persons but I did not know anyone else so I could not identify them. This witness did not support to the prosecution case and thus she was confronted with her previous statement by the learned APP. The suggestions put to Koshal which she denied were that on March 22, 2008 a quarrel took place between her brother Manoj, her husband Vijender and his friend Jitender and Sushil with Sonu and his associates namely Jhumroo, Nasir, Kale, Akeel, Shamim @ Chhotu and in the said quarrel Manoj and his associates caused knife injuries to Sonu due to which Sonu expired and when Manoj tried to run away outside the gali, Kale, Nasir, Jhumroo, Chhotu and Akeel gave beatings to Manoj and her husband Vijender, Jitender and Sushil ran away from the spot. In the meantime two motor-cyclists passed from the gali who were stopped by Kale, Nasir, Jhumro, Chhotu and Akeel and at that time Nasir and Jhumro were having knives in their hands, Akeel was having brick in his hand and Kale and Chhotu were having wooden bamboo planks in their hands. They started to beat the motor-cyclists. The pillion rider on the motorcycle ran away and they snatched the motorcycle. All these suggestions were denied by Koshal and for the reason that though Manoj had passed away but her husband was surviving and was associated with Manoj in the assault of Sonu.

8. The only evidence led by prosecution in the present case against the appellants besides the recovery of key of motorcycle from Nasir is the statement of Gajender Rathore PW-2. Statement of Gajender Rathore on the basis of which FIR No.73/2008 was recorded belatedly after more than two days thus giving sufficient time to weave the story which did not even show genesis of the occurrence as noted above in the PCR information. From the PCR calls which were soon relayed soon after the incident it is clear that the quarrel took place between the two groups wherein stab injuries were given and in the process Sonu, Manoj and Pramod died. In view of the concealment of the genesis of the occurrence by PW-2 Gajender Rathore and the fact that FIR was registered belatedly, we are of the considered opinion that implicit reliance cannot be placed on Gajender Rathore and conviction of the appellants cannot be based solely on his testimony.

9. As regards the recovery of the key of motorcycle No.DL3SA W-1763 from Nasir it may be noted that the motorcycle was lying abandoned near Ajmeri Gate from March 22, 2008 till March 31, 2008 and was recovered by PW-13 HC Rakesh on March 31, 2008. Though the prosecution sought to rely on the pointing out memo of Raj Kumar with regard to place near Ajmeri Gate where motorcycle was parked, however the learned Trial Court rightly rejected it. HC Rakesh who seized the motorcycle on March 31, 2008 under Section 66 D.P.Act did not state that the motorcycle was lying unlocked or as to how it was started by him. Further the prosecution has led no evidence to show that this key was of motorcycle No.DL3SA W-1763.

10. Thus, granting the benefit of doubt we acquit the appellants of the offences charged with. Appeals are disposed of setting aside the impugned judgment of conviction and order on sentence. All the four appellants i.e. Nasir, Raj Kumar, Kale and Akeel be released forthwith if not required in any other case.

11. T.C.R. be returned.

12. Five copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other four to be handed over to the appellants. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE DECEMBER04 2014 /ga

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