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Sanjeet Ram @ Sanjeet vs.state

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Court : Delhi

Decided On : Nov-28-2016

Appellant : Sanjeet Ram @ Sanjeet

Respondent : State

Advocate for Def. : Ms. Aashaa Tiwari

Advocate for Pet/Ap. : Mr. O.P. Saxena

Judgement :

s$~ *IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision:

28. h November, 2016 + CRL.A. 1027/2016 & Crl.M.(Bail) 1934/2016 SANJEET RAM @ SANJEET .....

... Petitioner
Through: Mr. O.P. Saxena, Adv. STATE versus Through: Ms. Aashaa Tiwari, APP for ..... Respondent the State CORAM: HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MS. JUSTICE ANU MALHOTRA JUDGMENT(Oral) GITA MITTAL, J1 The appellant assails the judgment dated 22nd February, 2016 passed by the District & Sessions Judge (East) finding him guilty of commission of offence under Section 302 IPC and 27 Arms Act with which he was charged in Sessions Case No.18/2013 registered by the Police Station Gazipur. The appellant also assails the order dated 29th February, 2016 passed on the point of sentence as a result of his conviction whereby the appellant stands sentenced to undergo life

imprisonment and to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo simple imprisonment for six months. Crl. A. 1027/2016 Page 1 of 17 2. On the 31st of December, 2012, at 13:20:16 hours, the Delhi Police Control Room received a call from phone No.9811402386 informing it that one person had been attacked with a chhura (knife) at the Murga Mandi, Gazipur Bus Depot, Delhi. The record of the Delhi Police Control Room has been proved as Exh.PW4/A.

3. Pursuant to the receipt of this information, it is reported on the police control room form itself, that HC Hariom proceeded in the police vehicle No.RON17 to the spot where he received information that one person aged
years, resident of shop No.25, Murga Mandi, Gazipur, had been stabbed by an unknown person (name unknown) who was employed in the Murga Mandi itself. He had been stabbed with a knife and that he had been removed to the hospital by his employer. This information was communicated at 1.20 p.m. to the police station Gazipur which was logged as DD no.17A (Exh.PW2/A). Copy of this record was handed over to SI Sanjeev Kumar (PW17).

4. We also find that DD no.18A (Exh.PW2/B) was logged by PS Gazipur at 01.35 hours regarding information received from Ct. Suman Lata (PCR) to the effect that one person had been brought dead from the Murga Mandi, Gazipur to the Meenakshi Hospital, Kaushambi. Copy of this information was also marked to SI Sanjeev Kumar (PW17).

5. On receipt of DD17, SI Sanjeev Kumar proceeded to shop no.25, Murga Mandi alongwith Ct. Bharat where beat Ct. Ravinder was also found. Blood was found lying in a stone near a shed. Information of one person having been injured with a knife who Crl. A. 1027/2016 Page 2 of 17 had been removed to the Meenakshi Hospital, Kaushambi, Gaziabad and declared brought dead was received.

6. SI Sanjeev Kumar (PW17) then proceeded to the said hospital alongwith Ct. Bharat and at the hospital, SI Sanjeev Kumar (PW17) collected the MLC (Exh.PW10/A) of the deceased Rajesh.

7. Vijay Ram (PW3), an eye witness to the occurrence was present in the hospital. SI Sanjeev Kumar (PW17) recorded the statement of Vijay Ram (Exh.PW3/A) and,

made his endorsement (Exh.PW17/A) thereon which was signed by PW17 at point A. This rukka was handed over to Ct. Ravinder (PW12) who proceeded with the same to the police station.

8. At 4.15 hours, FIR No.486/2012 Exh.PW2/C was registered at PS Gazipur under Section 302. Information of the registration of the case was logged vide DD No.20A. Copy of the FIR was brought back to the spot by Ct. Ravinder (PW12) and handed over to Inspector Sanjeev Kumar (PW17).

9. It appears that Inspector Ramdhan Singh (PW16) was posted as the Inspector - investigation in PS Gazipur on 21st December, 2012 who, after receipt of the information of the stabbing, had also proceeded to the spot and reached there at about 2 p.m. In his testimony, he has established the presence of SI Sanjeev Kumar, Ct. Bharat and Ct. Ravinder at the spot.

10. Inspector Ramdhan Singh (PW16) called the crime team which reached the spot and inspected it. Crl. A. 1027/2016 Page 3 of 17 11. Photographs of the scene of the crime were taken by Ct. Satya Narayan (PW8), a member of the crime team.

12. PW16 had thereafter lifted exhibits consisting of blood sample on a gauze; earth control; earth control with blood which were kept in a small plastic containers and taken into possession vide memo Exh.PW16/A and converted into a parcel affixed with the seal of RDS.

13. The investigating officer (PW16) has also caused the rough site plan to be prepared on the pointing out of the eye witness Vijay Ram (PW3) which site plan has been exhibited as Exh.PW3/DA during trial.

14. It is in the testimony of Inspector Ramdhan Singh (PW16) that the appellant also pointed out the place of the incident vide Exh.PW9/F.

15. It is necessary to advert first to the statement made by Vijay Ram which formed the rukka and was the basis for the registration of the case. In this statement (Exh.PW3/A), Vijay Ram had disclosed that Rajesh (deceased); Sanjeet Ram (the appellant before us) and he hailed from the same village being Village

Dharampur Narain, PS Meena Pur, Distt. Muzzafarpur, Bihar. The witness has stated that Sanjeet Ram, son of Buddan Ram was working in shop No.52, Murga Mandi, Gazipur as a labourer. On 31st December, 2012, at about 1 p.m., Rajesh, son of Bilas Ram aged about 36 years, was present at Shop No.25, Murga Mandi, Gazipur and was chatting with him (the witness). At that time, Sanjeet, armed with a knife used for cutting chicken, came there and attacked Rajesh on Crl. A. 1027/2016 Page 4 of 17 the left side of his chest as well as on his back. PW3 Vijay Ram also stated that Rajesh and Sanjeet Ram were married in the same village and there was some differences over this marriage and they had fought because of this reason on a prior occasion as well. Vijay Ram stated that he was occupied with Rajesh and took him to the Meenakshi Hospital, Kaushambi, Gaziabad where the doctor declared him brought dead. Vijay Ram (PW3) also informed the police that Sanjeet had killed Rajesh with the knife on account of prior enmity.

16. Inspector Ramdhan Singh (PW16) stated that he made a search for Sanjeet Ram, the appellant herein but he could not be traced on that date. Inspector Ramdhan Singh (PW16) then proceeded to the mortuary of Lal Bahadur Shashtri Hospital, prepared the inquest papers; informed the near relatives of the deceased Rajesh and got preserved his dead body in the mortuary.

17. On 3rd January, 2013, the deceased was identified by his brother Bhola Ram (Exh.PW6/A) and his father Vilas Ram (Exh.PW7/A).

18. Inspector Ramdhan Singh (PW16) has also prepared the death report Exh.PW16/C and made a request for the post mortem vide Exh.PW16/D.

19. The autopsy of the deceased Rajesh was conducted by Dr. B.N. Acharya (PW1) at 3 p.m. on 3rd January, 2013 and had given his findings and opinion vide the post-mortem report (Exh.PW1/A). The doctor has observed the following injuries on the body of the deceased: Crl. A. 1027/2016 Page 5 of 17 1. Incised stab wound on Lt. Side of neck 1.5 cm below clavicle 2 cm from mid line and 9 cm above Lt. Nipple and 124 cm from left heel of size 6 cm x 1.8 cm x 10 cm Shape - spindled shape and acute angle downward.

2. Incised stab wound present above 121.5 cm above the right heel on back of chest, 2 cm from midline, 3 cm above lower border of right scapula and 19 cm below right shoulder tip. Size - 5.5 cm x 2.3 cm x 10 cm.

3. Lacerated wound left eyebrow on middle of size 1.3 x 2 cm. Injury no.1 enters the chest cavity by cutting second rib in between 1st and 2nd rib and injury no.2 enters the chest cavity and cut the lung as described in column no.2.

20. The doctor has also reported the following internal injuries on the body of the deceased : Chest - Internally I found 2nd rib was cut. Pleural cavity - blood/clot in the cavity. Lungs - Left lung shows cut mark 5 x 1.5 cm x 1.5 cm. Right lung shows cut mark of size 3.5 cm x 1 cm on both side of the lung. Heart shows cut mark of 1.5 cm x 1 cm x 1.5 cm. 21. So far as the cause of death of the deceased was concerned, it was opined by the postmortem doctor that the death was caused due to hemorrhagic shock consequent injury to heart and lungs. IT was opined that the injury no.1 & 2 were ante-mortem and also that Crl. A. 1027/2016 Page 6 of 17 they were individually and collectively sufficient to cause death in ordinary course of nature and had been caused by single sharp edged weapon. Injury No.3 which was also ante-mortem had been caused by blunt object.

22. The doctor had conducted the post mortem. The doctor had opined the time of death as 72 hours prior to the commencement of the post mortem.

23. We may note that the post mortem doctor had also examined the blue pant, brown lower pant, cream coloured shirt, half jacket which the deceased was wearing at the time of the post mortem. The doctor has observed that the clothes of the deceased had cut marks which were corresponding to the injuries which had been identified by him.

24. We may also note that when Rajesh was taken to the Meenakshi Hospital, he was first examined by Dr. Rajesh Kr. Sethi at 1.20 p.m. on 31st December, 2012 who had noted the history of assault by knife on his MLC (Exh.PW10/A) and noted the following injuries on the body of the deceased : A4 deep LW present on left side in 2nd ICS. A4 deep LW present on Rt side in Interscapuler region A1 lw on left eye brow The prosecution examined Dr. Rajeev Kumar (PW10) to prove the

MLC.

25. The clothes of the deceased were sealed with the seal of Mortuary, LBS Hospital and taken into possession by Inspector Ramdhan Singh (PW16) vide Exh.PW16/B. Crl. A. 1027/2016 Page 7 of 17 26. The appellant could be arrested only on 16th January, 2013 at 5.30 p.m.pursuant to secret information received by the police. He was interrogated vide Exh.PW9/A and arrested vide arrest memo Exh.PW9/B. The personal search of the appellant was effected vide memo Exh.PW9/C.

27. The prosecution has contended that pursuant to the disclosure Exh.PW9/A, the appellant led the police to a vacant land opposite the Flower Market, Gazipur and got recovered a knife (churi) from the bushes. Inspector Ramdhan Singh (PW16) prepared a sketch of the churi (Exh.PW9/D). We find that in Exh.PW9/D, Inspector Ramdhan Singh has not only drawn the sketch of the knife but has also carefully noted its dimensions. The sketch bears the left thumb impression of Sanjeet. The churi was duly deposited in the malkhana.

28. It appears that the knife was not put to the post mortem doctor (PW1) for an opinion as to whether this could be the weapon of offence. However, we find that under cover of a letter dated 28th January, 2013 from the SHO, PS Gazipur the recovered articles in sealed parcels relating to FIR48613, were sent from the malkhana through Ct. Yashveer (PW5) to the Forensic Science Laboratory, Rohini, Delhi.

29. The Forensic Science Laboratory has caused the list of the articles contained in the parcel to be prepared which was communicated to the police vide a letter dated 1st May, 2013 (Exh.PW15/D) and reads thus : Crl. A. 1027/2016 Page 8 of 17 DESCRIPTION OF ARTICLES CONTAINED IN PARCEL : One Parcel 1 cloth parcel sealed with the seal of RDS containing exhibit 1 kept in a plastic container. sealed Exhibit 1 brown stains. : Small stone pieces having One sealed cloth parcel sealed with Parcel

the seal of RDS containing exhibit 2 kept in a plastic container. Exhibit

as Earth Control. Small stone pieces described Parcel

One sealed cloth parcel sealed with the seal of LBSH DFMT containing exhibit 3a 3b, 3c, 3d, 3e, 3f, 3g & 3h. Exhibit 3a stains. Exhibit 3b stains. Exhibit 3c stains. : : : One shirt having brown One jacket having brown One banian having brown Exhibit 3d having brown stains. : One pyjama (track suit) Exhibit 3e stains. Exhibit 3f brown stains. : : One dirty pant having brown One underwear having Crl. A. 1027/2016 Page 9 of 17 Exhibit 3g : Two metallic strip (kada). Exhibit 3h locket having brown stains. : A bunch of cloth strings with : Parcel 4 One sealed envelope sealed with the seal of LBSH DFMT containing exhibit 4. Exhibit 4 described as blood on gauze of deceased. : Dark brown gauze cloth piece Parcel

the seal of RDS containing exhibit 5. One sealed cloth parcel sealed with Exhibit

One chhuri. 30. The Laboratory conducted an analysis on these articles and reported as follows : 1. Blood was detected on exhibits 1, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 4 & 5.

2. Blood could not be detected on exhibit 2. 31. A serological examination was conducted by the Biological Division of the Laboratory on the articles as well and a separate report dated 1st May, 2013 Exh.PW15/B has been submitted reporting as follows : Crl. A. 1027/2016 Page 10 of 17 Exhibits Species of Origin ABO Grouping / Remarks 1 Stone piece Human No Reaction 2 Stone piece No reaction ------ 3a Shirt 3b Jacket 3c Banian 3d Pyjama 3e Pants 3f Underwear 3g Metallic stripe 3h Locket 4 Blood gauze 5 churri Human Human Human Human Human Human Human Human O Group No Reaction O Group No Reaction O Group O Group No Reaction No Reaction stained Human O Group Human No Reaction 32. A DNA examination was also taken on Exhibit 4. The Laboratory has reported that DNA samples were generated from the source of Exhibit 4 (blue pant of deceased Rajesh) were counted in the source of Exh.PW3a, the shirt of deceased Rajesh and Exhibit 5 i.e. the churi. The laboratory has thereafter concluded as follows : DNA profiling (STR analysis) were performed on the source of exhibit 4 is matching with the DNA profile from the source of exhibit 3a & 5 Crl. A. 1027/2016 Page 11 of 17 33. The Forensic Science Laboratory confirms the presence of the same DNA on the knife as well as clothes of Rajesh supporting the case of the

prosecution that the knife recovered on the pointing out of the appellant was used for the commission of the offence.

34. Mr. O.P. Saxena, learned counsel for the appellant has carefully taken us through the testimony of Vijay Ram (PW3), an eye witness.

35. After completion of investigation, the police filed a charge sheet on 12th April, 2013 against the appellant Sanjeet in FIR48612 under Section 302 of the IPC and 27 of the Arms Act. By an order passed on 22nd April, 2013 the Metropolitan Magistrate committed the case for trial to the court of the learned Additional District & Sessions Judge. The trial court framed charge under the above statements against the appellant by an order dated 29th May, 2013.

36. The trial court carefully considered the matter and noted that so far as the knife was concerned, the prosecution had not filed any notification to show that the recovered knife allegedly used in the commission of the offence fell in the prohibited category of knives concluding that the recovery showed that the knife was not a dangerous weapon rather it was a meat cutting knife. Consequently, in the absence of any notification showing prohibition of any kind with regard to the recovered knife, it was held that no charge could be framed under Section 27 of the Arms Act against the appellant. As such charge under Section 302 of the Crl. A. 1027/2016 Page 12 of 17 IPC was only framed against the appellant for committing the murder of Rajesh.

37. The appellant pleaded not guilty and claimed trial. The prosecution examined 18 witnesses during trial. The incriminating circumstances were put to the appellant under Section 313 of the Cr PC and he was given an opportunity to explain the same. The appellant opted to lead defence and examined Sanjay Ram (DW1).

38. So far as the defence witness is concerned, this witness has suggested that there was a dispute between Vijay Ram and the appellant with regard to the property of the appellant in District Muzzafarpur, Village Ziromai Chowk which was encroached by Vijay Ram and his father and they had constructed house on the said land.

39. The witness also stated that he knew Sulekha Devi, widow of deceased Rajesh who had illicit relations in the village. He also adverted to her remarriage within three months of the death of her husband and due to illicit relations of Sulekha, there used to be quarrels between deceased Rajesh and his wife who used to trouble and quarrel with his sister Munni Devi as deceased Rajesh used to abuse her when she intervened in their quarrel in the village. The witness has explained that the appellant was married to the sister of the deceased namely Munni Devi and was therefore his brother-in-law.

40. So far as the incident is concerned, the witness stated that when it occurred, he was in the village. However, in the cross Crl. A. 1027/2016 Page 13 of 17 examination, the witness stated that the appellant as well as deceased Rajesh belonged to the same village and had also married in the same village, further that the appellant as well as deceased Rajesh used to go to the village together and return together as well. The witness admitted that he was not present in Delhi on 31st December, 2012.

41. We have considered the submissions of Mr. O.P. Saxena, learned counsel for the appellant as well as Ms. Aashaa Tiwari, learned APP for the State at great length. Our attention has been drawn to the testimony of Vijay Ram (PW3), an eye witness to the occurrence who has deposed on the same lines as the first statement given by him which formed the rukka (Exh.PW3/A) and could not be shaken in the cross examination. The testimony of the solitary eye witness establishes beyond any doubt that on 31st December, 2012, the appellant had fatally inflicted churi blows noted in the post mortem report above on the chest and back as well as on the neck and back of deceased Rajesh. The ocular evidence of PW3 is corroborated by the Forensic Science Laboratory Exh.PW15/A, Exh.PW15/B and Exh.PW15/C.

42. The knife (churi) stands recovered on the pointing out of the appellant. Though the same was recovered from an open place more than 12 days after the occurrence, however, on a forensic examination conducted thereon, the forensic science report Exh.PW15/A has reported presence of human blood on it. The DNA examination has confirmed that the DNA source matched Crl. A. 1027/2016 Page

14 of 17 with the source of the DNA on the sample of the blood gauze of deceased Rajesh. Even if the recovery of this knife were to be disregarded, there is sufficient ocular eye witness evidence which establishes the commission of the offence by the appellant beyond reasonable doubt.

43. Mr. Saxena, learned counsel for the appellant was unable to shake the testimony of the material witnesses on any count which could impact the truthfulness of the testimony of the witnesses. Mr. O.P. Saxena has vehemently urged that the appellant had been able to establish that Vijay Ram (PW3) was nursing a motive on account of the land dispute between the parties. The appellant set up a plea of false implication in his statement under Section 313 of the Cr PC.

44. We find that in the impugned judgment dated 22nd February, 2016 the learned trial judge has carefully scrutinized the evidence brought on record and also examined at length the submissions made on behalf of the defence. It appears that the appellant was represented by amicus curiae before the trial court as well who attempted to cast a doubt on the prosecution evidence pointing out contradictions. We have also been taken through the testimony of the witnesses from its perspective and find that there are no contradictions in material particulars. It is trite that minor contradictions in matters of detail are immaterial so far as the truthfulness of the witness is concerned. (Ref: AIR 1985 SC48State of U.P. v. M.K. Anthony; AIR 2007 SC2257 State of Crl. A. 1027/2016 Page 15 of 17 Rajasthan v. Om Prakash & Air 2009 SC152State v. Saravanan & Ors.).

45. On a consideration of the entirety of the evidence placed before the trial court, we are of the view that the alleged motive would be irrelevant. The prosecution case rests on eye witness account. The account of PW3 immediately after the offence as recorded in Exh.PW3/A is identical in all material particulars to his court testimony which could not be shaken in the cross examination. Furthermore, the oral testimony is corroborated in all material particulars by the evidence of the Forensic Science expert and the position which existed on the spot when the police reached the spot which was soon after the incident.

46. It has been contended by Mr. O.P. Saxena, learned amicus curiae submitting that there is no evidence that the witness was working in the shop No.25 and that

no public witnesses have been examined. This aspect was put to the appellant while recording his statement under Section 313 of the Cr PC. The witness has simply denied the same without stating where he was working. Be that as it may, what is material aspect in the present case is not the fact whether the witness was working at Shop No.25 with the deceased but his presence at the spot when the offence was committed.

47. We are of the view that the prosecution has established beyond reasonable doubt that the appellant was present at the spot and he has been clearly linked to the commission of the offence. Crl. A. 1027/2016 Page 16 of 17 48. For all these reasons, we find no merit in this appeal which is hereby dismissed. GITA MITTAL, J ANU MALHOTRA, J NOVEMBER28 2016/kr Crl. A. 1027/2016 Page 17 of 17

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