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Deepak Kashyap vs.state

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Court : Delhi

Decided On : Mar-19-2018

Appellant : Deepak Kashyap

Respondent : State

Advocate for Def. : Mr. Hirein Sharma

Advocate for Pet/Ap. : Ms. Kaveeta Wadia

Judgement :

$~R-117 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 793/2017 DEEPAK KASHYAP ..... Appellant Through: Ms. Kaveeta Wadia and Mr.Shashank Tripathi, Advocate. STATE versus ..... Respondent Through: Mr. Hirein Sharma, APP for State CORAM: JUSTICE S.MURALIDHAR JUSTICE I.S.MEHTA

ORDER
1903.2018 % Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 20th May 2017, passed by the learned Special Judge, NDPS-2 (Central), Tis Hazari Courts in Sessions Case No.111/2012 arising out of FIR. No.208/2012 registered at Police Station (PS) Burari convicting the Appellant for the offences under Section 302 IPC for the murder of his wife Ms. Radha (the deceased) and for the offence under Section 323 IPC for causing injury on Smt. Janki Devi (PW-5) who was trying to save her daughter Radha.

2. The appeal is also directed against the order on sentence dated 22nd May 2017, whereby for the offence under Section 302 IPC the Appellant was Crl.A.793/2017 Page 1 of 16 sentenced to imprisonment for life with a fine of Rs.25,000/-, and in default of payment of fine to undergo simple imprisonment (SI) for two months. For the offence under Section 323 IPC, he was sentenced to SI for two months with a fine of Rs. 1,000/-, and in default of payment of fine to undergo SI for two days.

3. The charge against the Appellant was that between 10.30 and 11.00 am on 7th August, 2012 at Ghari Burari, near Burari Pond, Delhi he inflicted knife blows on his wife Radha with the intention of causing her death and thereby murdered her and as such committed an offence punishable under Section 302 IPC. The second charge was that he caused a simple injury with a knife on Ms. Janki Devi (PW-5), the mother of Radha, on the aforesaid date, time and place. Case of the prosecution 4. A call was received at Police Control Room at 11.28 am on 7th August, 2012 to the effect that Shalimar place ke saamne burari maine apni wife ko chaku maar diya hai. This was immediately passed on to ASI Kishan Chand (PW-1) attached to PS Burari at 11.36 am and noted down as a DD No.22A (Ex. PW-1/A). It was handed over to Sub-Inspector (SI) Dharam Prakash.

5. The PCR form on the right hand column notes that when the police reached there, the public had caught hold of the person who had inflicted the knife injury and were beating him up. There is a further noting at 12.06 pm that Radha had been stabbed by her husband at several places on her body. The full details that emerged finally at 1.33 pm were to the effect that Radha Crl.A.793/2017 Page 2 of 16 was the wife of Deepak; that they had been married two years earlier; they have one child; that Deepak had inflicted multiple stab wounds on her and she died at the spot itself. It also noted that at the spot, the mother of Radha, Smt. Janki Devi had tried to save her and suffered a knife injury on her left hand and she had been taken to the hospital as a result. It was noted that there were quarrels taking place between the husband and wife for some days earlier and that the husband was suspicious of the wife. Investigation 6. Ramesh Kumar (PW-22) who was serving as Anti Terrorist Officer (ATO) and attached to PS Burari was one of the police officers who received the message which was flashed on the

wireless set regarding the husband of Radha stabbing her and he and Inspector Vikram Jit Singh, the then Station House Officer (SHO) rushed to the spot and found the dead body of a 23 year old lady lying on the kachha rasta near a pond behind Shalimar Palace in Ghari Burari. By the time PW-22 reached there, many public persons as well as police officials had already gathered at the spot.

7. Deepak (PW-8), who is the brother of Radha was also present there and informed the police that Radha had married the accused Deepak in the year 2010 and that she had been killed on account of non-fulfilment of demand of dowry. He further told them that his mother, Janki Devi (PW-5) had been taken away by the police to the hospital and the Appellant had been taken away to the PS.

8. The crime team was called. It inspected the scene of crime, clicked photographs and lifted some fingerprints. Stab wounds were noticed on the Crl.A.793/2017 Page 3 of 16 body which was lying in a pool of blood. Blood stained mud was picked up. A blood stained white scarf was also recovered from under the dead boy. From the spot a blood stained knife was picked up and its sketch prepared (Ex. PW-8/G). The paper cover of the knife was packed in a different transparent packet. PW-22 also picked up two pairs of slippers which were sealed in two separate parcels. On the search of the jeans of the deceased, PW-22 found one mobile phone. The kangans and pyjebs of the deceased were also removed and seized.

9. A motorcycle having registration No.DL1N6289of TVS Star City make was found lying parked under the house of complainant (PW-5) which was under construction and was also seized. The dead body was then sent to the mortuary. Post mortem 10. The post-mortem of the deceased was performed at the Aruna Asaf Ali Hospital by Dr. K. Goel (PW-4) on 8th August 2012. He noticed as many as seven incised wounds. These were over the mid-line chest, over the right breast just below an adjacent to the nipple, over epigastriun at the midline towards the left side, the right ear transversely cut in full thickness, over the left side front of the base of the neck muscle deep with 1 cm long tailing at the medial end. The fifth injury noted was a combination of multiple incised wounds over several areas of the chest, the left arm, the right forearm. There was one incised wound over the

midline back of the chest and another transversely placed over back of left chest. There were few grazed abrasions. He found on exploration that Injury No.1 cut the underlying tissues cleanly Crl.A.793/2017 Page 4 of 16 directed slightly oblique, entered into chest cavity through the left second inter costal space and penetrated the Aorta (about 1 cm long cut). Total depth of the wound was 10-11 cm from the skin. Injury No.2 cut the underlying tissues cleanly and entered into the right chest cavity through right fifth inter costal space, punctured the right pleura and penetrated the lower lobe of right lung about 3 cm deep and 2 cm long. Total depth of wound from skin was about 14-15 cm. Injury No.3 cut the underlying tissues cleanly, entered into the peritoneal cavity and penetrated into right lobe of liver near its junction with left lobe about 4 cm deep and the total depth of the wound was 11 cm.

11. The medical opinion was that all injuries were ante mortem in nature. Injuries No.1 to 7 were caused by sharp edged cutting penetrating weapon. Injury No.8 was caused by friction against rough blunt surface. Cause of death was the combined effect of hemorrhagic shock and respiratory distress as a result of extensive injuries to major heart vessel (Aorta), liver and lungs. Injuries No.1, 2 and 3 were sufficient to cause of death in ordinary course of nature individually as well as collectively. 12. Subsequently, the knife that was recovered was shown to the same doctor on 31st August 2012 and in his opinion injuries 1 to 7 were possible by the said knife.

13. As far as the MLC of PW-5 was concerned, it showed that there was a laceration 5cm x 1 cm noticed on the left index finger. She was shown to have been taken to the Sushruta Trauma Centre at 9, Metcalf Road, Delhi at around 1:10 p.m. on 7th August, 2012. Crl.A.793/2017 Page 5 of 16 14. On the completion of the investigation, the charge-sheet was filed and by an order dated 2nd February 2013 charges as aforementioned were framed. Evidence of PW-5 15. On behalf of the prosecution, 24 witnesses were examined. The star witness was the injured PW-5, the mother of the deceased. According to her, after the marriage of the deceased with the Appellant which was on 15th May 2010, the mother-in-law of the deceased, her elder sister-in-law Deepa, the Appellant as well as her younger sisters-in-law Shalu and Soni used to give her beatings. The

younger sisters-in-law used to consume liquor before they did so. The beatings were to compel the deceased to bring more money as dowry. She claimed that once, the mother-in-law and sisters-in-law even tried to kill the deceased by setting her ablaze after pouring kerosene oil on her. However, the attempt failed.

16. Thereafter in the year 2011 the deceased returned from her matrimonial home when she was two months pregnant. When the child was one month and seven days old, on the asking of the Appellant, PW-5 sent her daughter with the new born son to her matrimonial home. Again the Appellant, his sisters and his mother attempted to kill the deceased as well as their new born as they were all in the habit of consuming liquor and bhang, and thereafter the deceased never visited her matrimonial home. PW-5 also stated that on 4th August, 2012 at around 3:00 a.m., the Appellant entered their house after climbing the gate and gave beatings to the deceased. Despite a call made on the 100 number and a visit to the PS Mukherjee Nagar, no action was taken by the police on PW-5s complaint. Crl.A.793/2017 Page 6 of 16 17. As far as 7th August, 2012 itself is concerned, PW-5 recalled that it was a Tuesday as the deceased was working in a Beauty Parlour which used to have holidays on Tuesday. She and Radha had reached Burari at the site of construction of the new house of PW-5 at about 10:30 a.m. When they reached the construction site, the Appellant was already present and had parked his motorcycle there. The Appellant asked the deceased to demand Rs. 7 lakhs from PW-5, who refused saying that PW-5 did not have that much of an amount. Thereafter the Appellant demanded Rs. 7 lakhs from PW-5 herself. She also refused and the Appellant then left the spot.

18. After staying at the spot for 15-20 minutes, when PW-5 and the deceased were returning home, the Appellant met them again on the way, parked his motorcycle and started walking with them. Whilst walking, he continuously quarrelled with PW-5 and the deceased demanding money upon which the deceased then told him to come to their house, i.e., the house of PW-5 and talk peacefully. On that he gave an elbow blow to the deceased as a result of which she fell to the ground. Immediately the Appellant pulled out a knife from the side of the belt of his pants and gave continuous knife blows to the deceased. PW-5 tried to shout and save her daughter. The Appellant then gave her a knife blow which

landed on the index finger of her left hand and thereafter threw her in a nearby pit. When she managed to come out from the pit, she noticed that her daughter had already expired and the Appellant started running from the spot after throwing the knife there itself. On the shouts of PW-5, people gathered there chased the Appellant and apprehended him at a distance of about 5-10 minutes walk from the spot. Crl.A.793/2017 Page 7 of 16 Two or three persons also called the police. One of them called from the mobile number of PW-5 as well. Statement of the accused under S. 313 Cr PC19 When the evidence gathered against him was put to him, the Appellant denied the incriminating circumstances. He denied that he and his family members had demanded a car from the family of Radha at the time of her marriage and that after marriage also they used to compel her to bring dowry and subject her to cruelty.

20. The Appellant admitted as correct that in the year 2011, the deceased returned to her parental house when she was two months pregnant as her parental house was a short distance away and she generally used to go there. He also admitted as correct that when the son was 1 month and seven days old he had asked his mother-in-law to send Radha to her matrimonial home. He however, denied that after she returned him and his family again attempted to kill her and that he and his family members used to consume liquor/bhang. He also denied the suggestion that on 4th August, 2012 at around 3:00 a.m., he entered the house of his in-laws after climbing over the gate and subjected his wife to beatings and that the PCR was informed and that PW-5 and others visited PS Mukherjee Nagar but the police did not initiate any action against him.

21. As far as the incident of 7th August, 2012 is concerned, according to the Appellant, his brother-in-law Deepak (PW-8) contacted him on phone and asked the Appellant to take his wife back to the matrimonial home. According to him PW-8 asked the Appellant to reach the formers house Crl.A.793/2017 Page 8 of 16 under construction in the area of Burari. After some time he again called and stated that the Appellant should reach PS Burari. While on his way to the house under construction, the Appellant met PW-8 and his friend, whereupon he accompanied them to PS Burari where the police asked him to call his mother and sisters and then he was detained and not let off. He denied having raised any

demand of Rs.7 lakhs from his wife or his mother- in-law that day. The Appellant denied the entire incident as spoken to by PW-5.

22. The Appellant claimed that he had not caused any injury with any knife on the person of his wife at the given date, time and place. He denied having purchased any knife. He admitted that he was using a mobile phone which had the connection of his brother-in-law. Defence witnesses 23. The Appellant examined four witnesses. These witnesses were in support of his plea that he had, in fact, been called by his brother-in-law, Deepak (PW-8) to the place. However, these were witnesses who were themselves not privy to the so-called telephone call. It was only hearsay evidence.

24. Parveen Kashyap (DW-3) stated that on the day of the incident, he received a call from his sister-in-law Shalu stating that they had received a telephone call from P.S. that the Appellant had been apprehended by the police. In his cross-examination, he confirmed that Appellant was using a mobile phone, the SIM for which was got issued by DW-3. He confirmed all the documents in connection thereto that had already been marked through Crl.A.793/2017 Page 9 of 16 PW-21. He also confirmed that his motorcycle bearing no.DL-8CN-6289 was borrowed by the Appellant and he had seen it parked inside the PS when he went there.

25. None of these witnesses are actually helpful to the Appellant in showing that it was PW-8 who called him to the spot. The CDRs do not bear out any such call made by PW-8 to the Appellant. Therefore, this entire defence was a false one. Contentions of the Appellant 26. The trial Court concluded that PW-5 who was the injured witness was reliable and truthful and that her evidence could safely constitute the basis of the conviction of the Appellant. Naturally, therefore, the effort of learned counsel for the Appellant was to show that PW-5 was not a truthful or a reliable witness. It was first contended that PW-5 did not mention the presence of PW-8 at all and, therefore, she should not be believed.

27. The Court finds that in his deposition, PW-8 does talk of being present at the spot and seeing PW-5 in an injured condition. He watched her being taken to the hospital. It is entirely possible that since he reached the spot only after she was already injured, PW-5 did not notice PW-8. The Court, therefore, does not see any

inconsistency in the evidence of PW-5 in this regard.

28. The presence of PW-5 at the spot is spoken to even in the PCR form report at an earlier point of time. Having gone through the evidence of PW-5 very carefully, the Court is unable to come to the conclusion that she is not a Crl.A.793/2017 Page 10 of 16 truthful or reliable witness. On the contrary, she appears to be a natural witness. The incident took place at the site of construction of her new house. The police did find her in a pit in an injured condition struggling to get out.

29. The entire case of the Appellant that he was not present and did not inflict the injuries is also plainly disproved by the fact that he was arrested from the spot itself. The public had already apprehended him and were beating him up, as has been noted in the right hand PCR column, when that happened. This defence is therefore totally false.

30. The learned counsel for the Appellant pointed to the evidence of the shopkeeper, Mahavir (PW-6) who sold the knife to the Appellant on 7th August, 2012 at around 10.00 am. This was when the Appellant had left on his motorcycle after meeting PW-5 and the deceased for the first time that morning at the construction site. They had already had an altercation by that time on his making a demand of Rs. 7 lacs from both the deceased and PW- 5 and them refusing the demand.

31. It was sought to be contended by the Appellant that it was unusual that in the bill that was prepared for the sale of the knife, the name of the Appellant was written when in fact for the purchase of an article worth just Rs.60/-, admittedly, PW-6 does not issue bills with the name of the purchaser. In the considered view of the Court, this is hardly a material discrepancy which should persuade the Court to disbelieve this witness given the fact that the multiple stab injuries found on the deceased were clearly caused by the sharp edged weapon which was recovered from the site itself. Crl.A.793/2017 Page 11 of 16 32. The Court is unable to be persuaded that it was not the Appellant who killed his wife by stabbing her all over the body. The death was plainly homicidal. Nature of the offence 33. Learned counsel for the Appellant then tried to persuade the Court that the present case should be considered as one of culpable homicide not amounting to murder

covered by Exception (4) to Section 300. It was sought to be suggested that the refusal by the deceased and PW-5 to accede to the Appellants demand for money which led to the quarrel should be seen as sufficient provocation for the killing and that this was not a case of pre- meditation.

34. The law in relation to the applicability of Exception-4 to Section 300 was explained in Ghapoo Yadav v. State of M.P. (2003) 3 SCC528 where the Supreme Court held: To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in the Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue Crl.A.793/2017 Page 12 of 16 advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage". 35. Recently this Court in the case of Brij Mohan Vs. State, Crl.A.No.170/2002 (decided on 15th February, 2018) held as under:-

"18. The ingredients that are required to be satisfied in order that the offence may be brought within Exception-4 to Section 300 IPC are as under:-

"(i) The crime must be committed without premeditation. (ii) It must be committed in a sudden fight in the heat of passion upon a sudden quarrel. (iii) The offender should not have taken undue advantage. (iv) The offender should not have acted in a cruel or unusual manner.

19. The Legislature has taken care to clarify that it is immaterial in such cases as to which party offers the provocation or commits the first assault.

20. While two of the ingredients of Exception-4 are that the killing should be without premeditation and should take place in a sudden fight upon a sudden quarrel in the heat of passion, it is not enough that if two ingredients alone are satisfied. The offenders will necessarily also have to show that they did not take undue advantage and importantly that they did not act in a cruel or unusual manner.

21. The words 'undue' to qualify 'advantage' and 'cruel or unusual' to qualify 'manner' signify proportionality. For e.g., if the victim is unarmed but the offender is armed, and is not in a position to defend himself effectively against the attack upon him by the offender with the weapon, the offender could be said Crl.A.793/2017 Page 13 of 16 to be taking undue advantage of the vulnerability of the victim. Further, when the offender is shown to have used the weapon, the Court has to further ascertain whether the offender in using such weapon acted in a cruel or unusual manner. Here the nature of the weapon, the manner in which it was wielded, the place on the body where injuries were caused and the number of the injuries would be important factors to determine if the offender acted in a cruel or unusual manner. 36. In Surinder Kumar v. Union Territory, Chandigarh, (1989) 2 SCC217the Supreme Court held that if on a sudden quarrel a person in the heat of the moment picked up a weapon lying handy and caused injuries, one of which was fatal, such person could have the benefit of Exception 4, provided he did not act in a cruel manner. It was observed: 7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly..... 37. The learned counsel for the Appellant, on the other hand, relied on the

decisions in Sekar @ Raja Sekharan Vs. State, (2002) 8 SCC354and Rakesh Vs. State of Madhya Pradesh, (2007) 14 SCC504 Crl.A.793/2017 Page 14 of 16 38. As far as the aforementioned two decisions cited by the learned counsel for the Appellant are concerned, the facts of these cases clearly show that there was a provocation given by the party attacked to the other party which was the aggressor, and there was clearly, on the facts of each of those cases, a fight that preceded the attack.

39. In the present case, if one examines each of the requirements under the ambit of Exception-4, in the first place it cannot be said that there was no pre-meditation. The Appellant left the deceased and PW-5 after having had his demand of Rs.7 lakhs refused, went to the shop of PW-6, purchased the knife and then came back. Therefore, it was not an attack at the spur of the moment. Secondly, there was no fight as such or even a sudden quarrel. The deceased was only asking the Appellant to come to her place so that they could normally sit down and talk peacefully, and that too about something which was a long drawn out issue i.e demand of money by the Appellant and his family and could hardly be stated to be sudden. This can hardly be said to be a provocation warranting a stabbing spree on the part of the Appellant. Thirdly, the victim should not have been in a vulnerable position. Here there were two women who were totally unarmed whereas the Appellant was armed with a knife. Fourthly, the Appellant should not have acted in a cruel and unusual manner. The sheer number of stab wounds all over the body, along with the other factors mentioned above, makes it impossible for the case to be brought in under Exception-4 to Section 300.

40. The only conclusion that is possible is the one arrived at by the trial Court, namely, that the Appellant is guilty of murder punishable under Crl.A.793/2017 Page 15 of 16 Section 302 IPC. Consequently, the Court is unable to find any error having been committed by the trial Court either in the matter of convicting the Appellant of the offences punishable under Section 302 IPC or even as regards the offence under Section 323 IPC. The eye witness testimonies having been completely corroborated by the medical evidence, there is no scope for taking a different view either on the conviction or on the sentences awarded to the Appellant.

41. The appeal is accordingly dismissed. MARCH19 2018 Pratima/anb S. MURALIDHAR, J.

I.S. MEHTA, J.

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