

Jameel vs.state

Jameel vs.state

SooperKanoon Citation : sooperkanoon.com/1217577

Court : Delhi

Decided On : Sep-04-2018

Appellant : Jameel

Respondent : State

Advocate for Def. : Mr. Hirein Sharma

Advocate for Pet/Ap. : Mr. Jagat Rana

Judgement :

\$~2 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 585/2018 & CRL.M.B. 860/2018 JAMEEL STATE Through: Mr. Jagat Rana, Advocate. Appellant versus Respondent Through: Mr. Hirein Sharma, APP for State CORAM: JUSTICE S. MURALIDHAR JUSTICE V. KAMESWAR RAO % JUDGMENT0409.2018 Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgement dated 20th January 2018 passed by the learned Additional Sessions Judge, Shahdara in SC No.52/2017 arising out of FIR No.483/2013 registered at PS Seema Puri convicting the Appellant for the offence under Section 302 IPC and the order on sentence dated 29th January 2018 whereby the Appellant was sentenced to undergo life imprisonment with fine of Rs.10,000/- and in default of payment of fine, to further simple imprisonment (SI) for three months.

2. The Appellant was charged with having murdered his wife Salma Begum at around 3:45 pm on 12th September 2013 at Jain Mandir Jhuggi, MCD Park by stabbing her with a knife. In the impugned order on sentence, after noting that the monthly income of the convict was Rs.5,000/- and that he CrI A No.585 of 2018 Page 1 of 11 does not have any movable or immovable property, the trial Court was of the view that the Appellant was not capable of paying compensation to his own children and opined that it was not a case fit for grant of compensation. Investigation and inquiries 3. The criminal justice system was set in motion when a call was received at the Police Control Room at around 3:44 pm on 12th September 2013 providing information to the effect that a stabbing incident had taken place near the sauchalya (toilet) near Jain Mandir. The short message was ek lady ko chaku maara hai jiski condition serious hai. The noting on the right hand column of the same PCR form at around 3:51 pm by the police team which reached there was that the persons present there were saying that a man had stabbed his wife with the knife and had run away and that the victim woman had been taken to the hospital already.

4. The Medico Legal Certificate (MLC) issued by GTB Hospital, Shahdara (Ex.PW-13/A) reveals that the deceased was brought to the hospital at 4:14 pm on 12th September 2013 by her son Monu @ Md. Saleem (PW-17). She was declared brought dead.

5. SI Monu Chauhan (PW-19) deposed that at around 3:56 pm, he received DD No.30A telephonically about the stabbing incident. He rushed to the spot and found that blood was lying in the park near the Jain Mandir jhuggis. A pair of ladies slippers and a dupatta were lying there and were having bloodstains. Leaving behind Ct. Ravinder Tomar (PW-18) who had accompanied him, PW-19 proceeded to GTB Hospital and obtained the CrI A No.585 of 2018 Page 2 of 11 aforementioned MLC. The daughter of the deceased Asma (PW-2) met him at the hospital. After making inquiries from her, PW-19 brought PW-2 back to the spot. He found Inspector Lekh Singh (PW-22) and the crime team present there. PW-19 recorded the statement of PW-2 at the spot (Ex.PW-2/A) and thereafter prepared the tehrir and sent it to the PS through Ct. Ravinder (PW-18) for registration of the FIR. The FIR (Ex.PW-1/A) came to be registered at 6:35 pm.

6. In the initial statement given by PW-2 to the police, she stated that she and her mother were separating the kabaad (junk) near the Jain Mandir. Her mother had asked for water which PW-2 fetched. After that, she asked PW-2 to get some tea which she did. While they were still separating the kabaad, her father (Appellant herein) came there with a knife and questioned the deceased about Md. Rafiq (PW-3). An exchange of words ensued after which the Appellant is stated to have inflicted stab wounds on the deceased with the knife and fled. Medical examination 7. The post mortem examination of the deceased was performed on the following day, i.e. 13th September 2013 by Dr. Neha Gupta (PW-12). She noticed as many as 11 incised stab wounds all over the body of the deceased. Injury nos. 3, 4, 5, and 6 which were stab wounds inflicted on either side of the chest and abdomen of the deceased were held to have been individually and collectively sufficient to cause death in the ordinary course of nature. It must be mentioned that there were also incised stab wounds (injury no.7) on the neck and several other parts of the body. The photographs of the body CrI A No.585 of 2018 Page 3 of 11 showed that even the entire intestines had obtruded as a result of the knife wounds to the abdominal area.

8. Subsequently, when the knife used to commit the offence was produced before the same doctor, she opined that the injuries mentioned in the post mortem report were possible by the same weapon. PW-12 was subjected to cross-examination but nothing useful emerged to doubt that the deceased died a homicidal death as a result of the multiple stab wounds caused with the knife. Arrest and seizures 9. The Investigating Officer (IO), viz. Inspector Lekh Singh (PW-22), stated that on the basis of secret information, they were able to locate the Appellant near Dargah Firozshah Kotla on 19th September 2013, and apprehend him. His personal search was undertaken and his disclosure statements recorded. He purportedly disclosed inter alia that he had thrown the weapon of offence in the drain near the shop of Ajju kabaadi and that the clothes worn by him were thrown at the godown at Plot No.11 in Vikram Enclave. He is supposed to have then led the police to both places and got recovered the knife and bloodstained white kurta. The trial 10. After the chargesheet was filed, charges were framed by the trial Court by an order dated 24th March 2014 in the manner indicated hereinbefore. On behalf of the prosecution, 25 witnesses were examined. When the incriminating

circumstances were put to the Appellant under Section 313 CrI A No.585 of 2018 Page 4 of 11 Cr PC, he denied each one of them. He maintained that he had been falsely implicated as his step children were attempting to grab his property. No defence witness was examined. Trial Court judgment 11. In the impugned judgment, the trial Court came to the following conclusions: (i) The eye witness testimony of Asma (PW-2) and the testimony of Monu (PW-17) was reliable and truthful. There was no reason to disbelieve their testimonies as they had remained consistent throughout. Their testimonies could be safely relied upon for determining the guilt of the Appellant. (ii) PW-22 had been able to explain the apparent discrepancy as regards the place of arrest of the Appellant being mentioned in the arrest memo (Ex.PW-21/A) as PS Seema Puri instead of the actual place of arrest. PW-22 clarified that no document had been prepared at the spot where they remained only for about 10-15 minutes. (iii) The prosecution had been able to prove the recovery of the weapon of offence which in the FSL report was shown to contain human blood although the DNA profile could not be generated on account of degradation. That the weapon used was a kitchen knife was also proved. (iv) In view of the reliable testimony of PW-2, the lack of independent witnesses to the recoveries did not affect the case of the prosecution adversely. The motive for the commission of the crime was explained by Md. Rafiq (PW-3). He deposed that on 12th September 2013 at CrI A No.585 of 2018 Page 5 of 11 around 2:30 pm, while he was present at the house of his elder sister- in-law, the Appellant came there and questioned him about being there. He lost his temper and directed him to leave the place failing which he would kill him. When PW-3 replied that he was not afraid of the Appellant, the latter threatened him by stating that if he did not obey his direction, his mother, i.e. the deceased, would be killed. PW-3 was not the biological son of the Appellant who had divorced his mother six months prior to the incident.

12. The trial Court also discussed the apparent discrepancies regarding the time when the incident took place and concluded that these were not major contradictions which could discredit the case of the prosecution. As regards the bloodstains on the kurta of the deceased not matching with the blood group of the deceased, the trial Court opined that since the Appellant was arrested seven days after the incident, there was ample time for him to mislead the investigation. Thus,

it was held that this discrepancy did not cast any doubt on the case of the prosecution.

13. The Court has heard the submissions of learned counsel for the Appellant as well as learned APP for the State. Evidence of PW-2 14. The prosecution relies heavily on the testimony of Asma (PW-2) who was aged around twelve years at the time of the deposition in Court on 15th May 2014. Although she initially stated that the incident took place at around 4:15 pm, in her subsequent cross-examination, she clarified that it Crl A No.585 of 2018 Page 6 of 11 was around 3:45 pm when the Appellant fled the spot after giving knife blows to the deceased. This discrepancy, in the considered view of this Court, is not serious enough to discredit her entire testimony particularly since she appears to be consistent as regards the material aspects of the incident as spoken of by her in her initial statement to the police. Further, although in her examination-in-chief she mentioned about the Appellant coming from behind and slitting the throat of her mother, in response to further questions put to her by the APP, she clarified about the multiple stab injuries given by Appellant to her mother on the neck, chest, stomach, hand, etc.

15. It was repeatedly urged by learned counsel for the Appellant that PW-2 was a planted witness and her presence at the spot did not appear to be natural. The Court is unable to agree with the above submission. It has emerged in the cross-examination of PW-2 that she was attending school in the 5th standard and that her school that day had been over by 1 pm. She specifically mentioned both in her initial statement to the police as well as in her deposition in Court that her mother had first asked for water and then again for tea which she fetched on each occasion. There is no question of a twelve year old child seeking to falsely implicate her father when perhaps she was dependent on him and her mother for her own survival. Not a single justification is provided for doubting the motives of PW-2 and why she would falsely implicate her own father.

16. It was then pointed out that in her cross-examination she had stated that at the time of incident I along with Nazma and Ruby were present at the Crl A No.585 of 2018 Page 7 of 11 jhuggi and that this contradicted her statement that she was

present at the spot when her mother was stabbed which was about five minutes away from her jhuggi. However, this statement which occurs in the cross-examination of PW-2 must be read in the context of the statements made prior and subsequent thereto which read as under: At the time of incident, my brother Rafiq was living with us. At that time he also used to deal in junk. He was not having mobile phone at that time. At that time no one was having mobile phone in my family. Jain Mandir is at the distance of about five minutes from my jhuggi. At the time of incident, I along with Nazma and Ruby were present at our jhuggi. It is correct that Jain Mandir is situated in a thickly populated area. 17. When read together with the above statements, it is plain that the witness is explaining that when the incident took place, they were all residing at their jhuggi and that at the precise time when the stabbing took place, she was present where her mother was. She in fact also states that there were 10- 12 persons present at the spot at the time of the incident because some other persons were also sorting the kabaad. Even the Appellant used to deal with kabaad at Preet Vihar, Laxmi Nagar. She was also careful to mention that her brother Monu (PW-17) on that particular day did not accompany PW-2 and her mother for that purpose. He was in fact supposed to help the Appellant and the quarrel with the deceased was triggered on the fateful day with the deceased telling the Appellant that Monu (PW-17) would not accompany him for that job. Evidence of PW-17 18. PW-2 has also been corroborated by Monu (PW-17) himself who speaks about remaining in the jhuggi at the relevant time and the neighbour Crl A No.585 of 2018 Page 8 of 11 informing him that his mother had been killed by the Appellant. Thereafter, PW-17 rushed to the spot where he found his mother lying in a pool of blood and not speaking. He stated how PW-2 who was present there informed him that the deceased had been killed by the Appellant. He then lifted his mother's body and put it onto the rehri and took her to GTB Hospital.

19. Learned counsel for the Appellant pointed out that there was no evidence to show that either the rehri or the clothes of PW-17 were bloodstained if in fact he had lifted the deceased and taken her to the hospital. The Court has already adverted to the MLC which mentions that the deceased was brought to the hospital by PW-17. This is sufficient corroboration of the fact that it was PW-17 who took her to the hospital. As regards his own clothes or the rehri not having

bloodstains, his cross-examination does not show that any such suggestion was given to him. In any event, the mere fact that the clothes of PW-17 may not have been collected does not discredit either his testimony or the testimony of PW-2.

20. The Court concurs with the conclusion reached by the trial Court that the unshaken testimony of PW-2, corroborated in certain key aspects by that of PW-17, is truthful and reliable and can safely form the basis for deciding the guilt of the Appellant. Scene of crime 21. The learned counsel for the Appellant pointed out that the place of the incident itself was not clear. The PCR form mentioned it to be near the sauchalya whereas according to PW-2, it was near the Jain Mandir. Referring to the scaled site plan (Ex.PW-15/A), it was submitted that there is CrI A No.585 of 2018 Page 9 of 11 no mention therein of either the sauchalya or the Jain Mandir and the place of incident is shown to be in an open park.

22. The Court has also viewed the unscaled site plan (Ex.PW-21/H) which does indicate the location of the sauchalya and the Jain Mandir which were for some reason not indicated in the scaled site plan. Also, the incident happened near the Jain Mandir jhuggis as originally noted by the police and there is no precise address as such indicated in either the unscaled or scaled site plans. Considering that the deceased was being helped by PW-2 in sorting out the kabaad, there is no major contradiction in PW-2 describing the location where the incident took place.

23. This is essentially a case based on direct evidence where the 12 year old daughter of the Appellant has spoken clearly and cogently about his stabbing her mother multiple times resulting in her death. The observations of the Supreme Court in Kalyan v. State of U.P. (2001) 9 SCC632 which was relied upon by the learned counsel for the Appellant regarding the distance to be travelled from the conclusion from may be to must be cannot apply in the facts and circumstances of the present case. The prosecution has been able to establish beyond reasonable doubt that it is the Appellant and no one else who murdered his wife. For the aforementioned reasons, the Court finds no grounds to interfere with the impugned judgment and order on sentence of the trial Court.

24. The appeal and the application are dismissed. The trial Court record be returned together with a certified copy of this judgment. CrI A No.585 of 2018 Page

10 of 11 25. Considering that no compensation was awarded to the dependants of the deceased by the trial Court and considering that the Victims Compensation Scheme under Section 357A Cr PC is to be administered by the Delhi State Legal Services Authority (DSLSA), the Court directs the Secretary DSLSA to examine the matter and ascertain if any dependent children of the deceased require to be compensated and/or assisted in any manner whatsoever. For this purpose, a copy of this judgment be delivered immediately to the Secretary, DSLSA who will take a decision thereon and implement it within three months from today. SEPTEMBER04 2018 mw S. MURALIDHAR, J.

V. KAMESWAR RAO, J.

Crl A No.585 of 2018 Page 11 of 11

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com