

Lalit Alias Lucky vs.state

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Court : Delhi

Decided On : Oct-09-2019

Appellant : Lalit Alias Lucky

Respondent : State

Advocate for Pet/Ap. : Mr. Kanhaiya Singhal

Judgement :

\$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 1109/2018 LALIT alias LUCKY Appellant Through Mr. Kanhaiya Singhal, Mr. Nitish Mittal, Mr. Prasanna and Ms. Heena Tangri, Advocates. STATE versus Through Ms. Aashaa Tiwari, APP for the State Respondent with Inspector Balbir Singh, PS S.B.Dairy. Date of Decision:

09. h October, 2019 % CORAM: HON'BLE MR. JUSTICE MANMOHAN HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT

MANMOHAN, J:

1. Present appeal has been filed by the appellant-convict challenging the judgment dated 10th October, 2018 and the order 12th October, 2018 passed by the Additional Sessions Judge/Pilot Court, North District, Rohini Courts, Delhi in Sessions Case No.715/2017 arising out of FIR No.405/2017 under Sections IPC registered with Police Station Shahbad Dairy, whereas the charge was framed

under Section 302 IPC only. The appellant-convict had been convicted under Section 302 IPC and sentenced to undergo Page 1 of 13 CRL. A.1109/2018 rigorous imprisonment for life with fine of Rs. 20,000/- and to further undergo simple imprisonment for one year in case of default. CASE OF THE PROSECUTION2 The case of prosecution in brief is that on 21st July, 2017, Manorama Devi (PW-1) was present at the reheri of her husband-Umesh @ Umesh Singh (deceased) to help him. At about 9:15 p.m., her husband decided to go to Shahbad Dairy on his bicycle to purchase raw chowmein. When Umesh @ Umesh Singh had gone some distance, appellant-convict came on his motorcycle bearing registration No.DL7 BW5166at a high speed and her husband barely escaped being hit. Umesh @ Umesh Singh is stated to have asked the appellant-convict to drive carefully, on which he got infuriated and started abusing Umesh @ Umesh Singh. When Umesh @ Umesh Singh objected to the same, appellant-convict said, mere gaon main basey ho aur mujhe he aankey dikhate ho, tujhe to mein dekh lunga and went away saying that he would teach him a lesson. Thereafter, Umesh @ Umesh Singh proceeded to purchase raw chowmein.

3. At about 9:35 p.m. a call was received from appellant-convicts phone bearing No.7289039189 on the phone of Umesh @ Umesh Singh, which was left at his reheri. The call was attended by Manorama Devi (PW-1) and appellant-convict asked her to hand over the phone to Umesh @ Umesh Singh. She told appellant-convict that Umesh @ Umesh Singh had gone for some work, on which he again used abusive language and said, main usko aaj jan se mar dunga. She tried to pacify the appellant-convict, but he disconnected the phone after extending a threat. At about 10:00 p.m. when her husband Umesh @ Umesh Singh returned with raw chowmein, she told him about the threat extended by the appellant-convict. They wound up the Page 2 of 13 CRL. A.1109/2018 reheri and started going towards their house on foot. At about 10:15 p.m., while going towards their house, they saw the appellant-convict. According to the prosecution appellant-convict immediately caught hold of Umesh @ Umesh Singh by the neck and while saying tu dhamki ka anjam dekh le, he took out a knife from his pant and stabbed Umesh @ Umesh Singh in his chest. The incident was also witnessed by Jitender (PW-19), nephew of deceased. Umesh @ Umesh Singh was taken to hospital by PCR van where he was declared dead. ARGUMENTS ON BEHALF OF THE

APPELLANT-CONVICT4 Mr. Kanhaiya Singhal, learned counsel for the appellant-convict states that he has instructions to address arguments on the quantum of sentence only. He states that it is a fit case where the conviction under Section 302 IPC ought to be modified to Section 304 first part IPC.

5. He contends that the deceased Umesh @ Umesh Singh had abused the appellant-convict and also threatened him. In support of his contention he refers to the deposition of Manorama Devi (PW-1). The relevant portion of her testimony is reproduced hereinbelow:-

".....At about 9.35 p.m. the mobile phone of my husband rung and picked up the phone, I heard the voice of the Lucky who said meri Umesh sea baat kara de, usne mujhe gali di hai.....At about 10.15 p.m. we reached at the corner of our Gali where there is a electricity pole. I saw Lalit @ Lucky was standing near the electricity pole. Lucky caught the neck/girban of my husband with his left hand and he pulled out a knife by his right hand from his right side pocket of pant and he said, Tu dhamki ka Anjam dekh le, Luck stabbed in the chest of my husband with the knife.... 6. Learned counsel for the appellant-convict emphasises that PCR form Ex.PW-4/B as well as DD No.89B Ex.PW-9/B both mention about a quarrel. Page 3 of 13 CRL. A.1109/2018 He contends that since Manorama Devi (PW-1) and Jitender (PW-19) are silent about the quarrel having taken place between the appellant-convict and deceased, their statements cannot be relied upon.

7. He points out that when appellant-convict made a call on the phone of the deceased, the said call lasted 167 seconds, which indicates that there was something more which transpired than what Manorama Devi (PW-1) had deposed. He states that Manorama Devi (PW-1) had not spoken about any threat extended by her deceased husband, which clearly shows that she was not stating the complete truth and was trying to cover the provocation given by her deceased husband.

8. Learned counsel for appellant-convict further contends that the presence of Manorama Devi (PW-1) and Jitender (PW-19) is highly doubtful as per the Crime Team Report Ex.PW-18/A wherein it has been stated that kisi namalum vyakti ne chhati ke paas chaku mar diya. He points out that they had not even produced

their bloodstained clothes. In support of his arguments, he relies upon the following judgments:-

"A. Krishan Kumar @ Monu vs. State, 2014 SCC OnLine Del 4615, wherein it has been held as under:-

"20.....It indeed is a difficult task for a Judge to separate lies which is interwoven with truth for the reason so inextricably linked are the two that removing one scars the other. Seldom do Judges come across cases of the kind where lies can be neatly severed from the truth and the truth retained.

21. It is trite that if the attendant circumstances of a case probabalize a version, whether put or not to witnesses during cross-examination, or when examined under Section 313 Cr.P.C., it is the duty of the Court, as any other rational and prudent person would so do, to find the true version of what happened. Page 4 of 13 CRL. A.1109/2018 B. Rakesh @ Toni vs. State, 2014 SCC Online Del 6986, wherein it has been held as under:-

"19.....It is the natural tendency of a person or his friend to underplay the contributory part of the role played by a person in a drama if the drama results in a tragedy and simultaneously exaggerates the contributory part of the role played by the antagonist. In the instant case the recording in the PCR form Ex.PW-15/A and the unproved MLC of the appellant have told to us what actually happened and the same belies the version of the two eye witnesses that the origin of the assault was the act of bullying by the appellant. The appellant is not a bully. He is an ordinary human being with all associated follies of a human being. He got angry when the deceased collided with him and he fell down. C. Anil @ Hunny vs. State, 2017 SCC OnLine Del 8582, wherein it has been held as under:-

"28..... We find force in the argument made by the counsel for the appellant that the shop adjoining the place of incident is a meat shop and there is every possibility that the appellant had picked the knife from the said shop as there is no evidence on record to show that the appellant was carrying a knife with him. This shows that the appellant did not have the requisite intention to kill the deceased and the incident had happened on the spur of moment which was ensued in a

scuffle during which there was hot exchange of words between the appellant and the deceased. There was no motive which could have impelled the appellant to commit the murder of Sanjay..... ARGUMENTS ON BEHALF OF THE STATE.

9. Per contra, Ms. Aashaa Tiwari, learned APP for the State contends that the Trial Court had rightly convicted the appellant-convict under Section 302 IPC and the offence committed by the appellant-convict did not fall under any of the exceptions under Section 300 IPC. She relies upon the Page 5 of 13 CRL. A.1109/2018 impugned trial Court judgment wherein it has been held as under:-

"141. Defence counsel has contended that as it was a single blow and there was no such intention to cause death, therefore, the offence u/s 302 IPC is not made out and only section 304-II IPC is attracted. In my opinion there is no such law that in case of single blow or injury the accused cannot be convicted u/s 302 IPC. In fact in the judgment relied upon by defence counsel cited as Gurmukh Singh Vs. State of Haryana (Supra), wherein it was held: Before we part with the case, we would like to clearly observe that we are not laying down that in no case of single blow or injury, the accused cannot be convicted under section 302 Indian Penal Code. In cases of single injury, the facts and circumstances of each case has to be taken into consideration before arriving at the conclusion whether the accused should be appropriately convicted under section 302 Indian Penal Code or under section 304 Part II Indian Penal Code. 142. Keeping in view this judgment it is clear that a person can be held guilty u/s 302 IPC even in case of single blow. Keeping in view the facts and circumstances of the case particularly that accused was agitated / infuriated because Umesh has asked him to drive carefully. He has already extended threat to kill him. He was waiting for the deceased along with a knife. He gave the blow with the knife on the left side of the chest i.e. the vital part. The blow of the knife was so forceful that it has cut the right ventricle of the heart of deceased and also cut the anterior and posterior pericardium. All the facts clearly show that accused was not only having the intention but also the knowledge and that is why he gave the blow with knife Ex.PW1/Article-1 on the left side of the chest and also with force resulting into death. Keeping in view the facts and circumstances of the present case, in my opinion it is a case of murder. The onus which was on the prosecution has been discharged. Accused is accordingly

held guilty and convicted u/s 302 IPC. COURTS REASONING¹⁰ Having heard the learned counsel for the parties and after going through the record, this Court is of the view that it is essential to first Page 6 of 13 CRL. A.1109/2018 analyse the inter-relationship between Sections 299, 300, 302 and 304 IPC. The Supreme Court in State of Andhra Pradesh vs. Rayavarapu Punnayya & Anr., (1976) 4 SCC382 has held as under:-

"21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder contained in Section 300. If the answer to this question is in the negative the offence would be culpable homicide not amounting to murder, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304, of the Penal Code. (emphasis supplied) 11. An offence is stated to be culpable homicide not amounting to murder, punishable either under Part I or Part II of Section 304 IPC, if:-

"a) It comes under any of the five exceptions mentioned under Section 300 IPC, or CRL. A.1109/2018 Page 7 of 13 b) It does not come under the four clauses of the definition contained in Section 300 IPC.

12. Consequently, if any of the Exceptions mentioned under Section 300 IPC are attracted, the offence would be punishable under Part-I of Section 304 IPC.

13. In the present case, the appellant-convict and deceased did not have an inimical relationship, rather as per deposition of Manorama Devi (PW-1) wife of the deceased and Jitender (PW-19) nephew of the deceased, the appellant-convict used to eat chowmein at the reheri of the deceased. It is also apparent from the record that appellant-convict and the deceased were neighbours. Further, the incident in the present case had arisen out of a petty issue i.e., collision of the motorcycle driven by the appellant-convict and the bicycle of the deceased. Thereafter, appellant-convict had used a small kitchen knife measuring 14 cms. in length and 2.7 cms. in width, to give a single blow and had caused no other injury to the deceased.

14. In similar facts, in the case of Sukhbir Singh vs. State of Haryana, (2002) 3 SCC327 the Supreme Court has held as under:-

"4. The case of the prosecution, as disclosed by Gulab Singh (PW10 in his report lodged in the police station, is that on 22- 9-1986 it had rained in Village Tiwari. At about 5-5.15 p.m. when the rain had not completely stopped and it was still drizzling, Gulab Singh (PW10, brother of the deceased, had come to his brother's residence where they were smoking hukka and chatting. Ram Niwas, son of Lachhman (deceased) was sweeping the street in front of his house with a broom and that some mud splashes stuck Sukhbir Singh at a time when he was passing in the street. Sukhbir Singh felt offended and is alleged to have abused Ram Niwas. When Sukhbir Singh and Ram Niwas were abusing each other, Lachhman separated them and gave two slaps to Sukhbir Singh. Sukhbir Singh went away declaring Page 8 of 13 CRL. A.1109/2018 that a lesson would be taught to them. After sometime all the 9 accused persons came at the spot. Sukhbir Singh, Behari and Ram Chander, accused were carrying bhalas, accused Pala, Tara and Baljit were carrying gandasas and accused Kidara, Darya and Raj were carrying jailwas. Sukhbir Singh challenged Lachhman to come out so that a lesson could be taught to him. When Lachhman proceeded towards the door of his house saying that the matter should not be aggravated and as soon as he reached the door of his

house, accused Sukhbir Singh gave two thrust-blows with his bhala on the upper-right portion of his chest. Lachhman fell down, whereafter accused Ram Chander caught hold of the legs of Lachhman and dragged him out in the street. Accused Behari gave a bhala-blow on the left side of the chest of Lachhman. When Murti, wife of Lachhman tried to rescue her husband, accused Tara dealt a blow with gandasas which she warded off by her hand. Accused Pala and Baljit also gave two gandasas-blows each to Lachhman. By that time Jagdev, Kitab Singh and Azad Singh had also arrived at the spot. Ram Niwas, son of Lachhman was given a spear-blow on the right side of his chest by Ram Chander while accused Darya gave blow with jailwa lathiwise on his head. When Prem Raj, father of the deceased Lachhman and his brother Bikram tried to rescue Lachhman, accused Pala hurled a gandasas-blow on the head of Prem which was warded off by his left hand. Accused Kidara gave two blows with jailwa on the head of Prem. Accused Raj gave three jailwa-blows lathiwise to Bikram on his right hand. Accused Pala gave two gandasas-blows on the head of Gulab Singh while accused Baljit gave a gandasas-blow on his left foot. Kitab Singh, Azad Singh and Jagdev Singh (PWs) then pushed the accused towards their houses. All the injured persons were removed to the Primary Health Centre, Ganaur. Lachhman, the injured succumbed to the injuries and the other injured persons were given medical treatment....

5. In his statement recorded under Section 313 Cr PC Sukhbir Singh, the appellant, stated that the complainant party had placed earth in the street in front of their house and thereby blocked the flow of the rain water. When he was removing the blockage to facilitate the flow of water, Lachhman (deceased), Page 9 of 13 CRL. A.1109/2018 Gulab Singh, Bikram, Prem Raj and Ram Niwas came there and restrained him from removing the earth. When he was insisting to remove the blockage, accused Behari and Pala also came in the street. The accused persons were attacked by the complainant party. Sukhbir Singh, along with two other accused persons, also caused injuries to the complainant party in their self-defence..... xxx xxx xxx 17.....Sudden fight, though not defined under the Act, implies mutual provocation. It has been held by the courts that a fight is not per se palliating circumstance and only unpremeditated fight is such. The time gap between quarrel and the fight is an important consideration to decide the applicability of the incident. If there intervenes a sufficient time for passion to

subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder but if the time gap is not sufficient, the accused may be held entitled to the benefit of this exception. the occurrence, 18. In the instant case, concededly, there was no enmity between the parties and there is no allegation of the prosecution that before the appellant and others had premeditated. As noticed earlier, the occurrence took place when Sukhbir Singh got mud splashes on account of sweeping of the street by Ram Niwas and a quarrel ensued. The deceased gave slaps to the appellant for no fault of his. The quarrel appeared to be sudden, on account of heat of passion. The accused went home and came armed in the company of others though without telling them his intention to commit the ultimate crime of murder. The time gap between the quarrel and the fight is stated to be a few minutes only. According to Gulab Singh (PW10) when Sukhbir Singh was passing in the street and some mud got splashed on his clothes, he abused Ram Niwas. They both grappled with each other whereupon Lachhman (deceased) intervened and separated them. Accused Sukhbir had abused Lachhman who gave him two slaps. The said accused thereafter went to his home after stating that he would teach him a lesson for the slaps which had been given to him. After some time he, along with other accused persons, came at the spot and the fight took place. His own house Page 10 of 13 CRL. A.1109/2018 is at a different place. There is a street in between his house and the house of Lachhman (deceased). On the northern side of his house, the house of the appellant is situated. Similarly Ram Niwas (PW11) has stated that after the quarrel the accused went towards his house and within a few minutes he came back with other accused persons. It is, therefore, probable that there was no sufficient lapse of time between the quarrel and the fight which means that the occurrence was sudden within the meaning of Exception 4 of Section 300 IPC. 19.....The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel

followed by a fight, the accused who was armed with bhalā caused injuries at random and thus did not act in a cruel or unusual manner. (emphasis supplied) 15. This Court is of the view that the appellant-convict used the knife to cause bodily injury which resulted in death of the deceased. Consequently, it has to be assumed that he had knowledge that by such act he was likely to cause death of the deceased when he administered the knife blow. Moreover, the intention was to cause bodily injury and that injury was sufficient in ordinary course of nature to cause death.

16. However, the present case falls within Exception 4 of Section 300 IPC which reads as under :-

"300. Murder.-Except the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or- in Page 11 of 13 CRL. A.1109/2018 Secondly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or- Thirdly-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or- Fourthly-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. xxx xxx xxx Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. Explanation.-It is immaterial in such cases which party offers the provocation or commits the first assault. In the present case, the offence had been committed without any 17. premeditation in the heat of passion upon a sudden fight/quarrel as the whole incident was over in less than an hour.

18. Furthermore, the incident had occurred due to a minor dispute and the appellant-convict did not take any undue advantage and/or did not act in a cruel/unusual manner and had given only a single knife blow.

19. Keeping in view the aforesaid mandate of law as well as the factual scenario, this Court is of the view that appellant-convict is entitled to benefit of Exception 4 to Section 300 IPC and consequently, is convicted under Section 304 Part-I IPC. Page 12 of 13 CRL. A.1109/2018 20. Accordingly, appellant-convict is sentenced to ten years rigorous imprisonment under Section 304 Part-I IPC. Sentence of fine stands unaltered.

21. With the aforesaid modification of sentence, present appeal stands partly allowed. Copy of judgment be sent to Jail Superintendent. MANMOHAN, J SANGITA DHINGRA SEHGAL, J OCTOBER09 2019 rn Page 13 of 13 CRL. A.1109/2018

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