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Jahid Vs. the State

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Court : Rajasthan

Decided On : Jul-06-1999

Reported in : 1999CriLJ4430; 2000(2)WLC145

Judge : M.A.A. Khan, J.

Acts : Evidence Act - Sections 134; Code of Criminal Procedure (CrPC) , 1974 - Sections 173(2); Indian Penal Code (IPC), 1860 - Sections 302 and 304

Appeal No. : Criminal Appeal No. 509 of 1996

Appellant : Jahid

Respondent : The State

Advocate for Def. : Pratap Singh, Public Prosecutor

Advocate for Pet/Ap. : Himanshu Agnihotri, Adv. for; A.K. Gupta, Adv.

Judgement :

M.A.A. Khan, J.

1. Smt. Kismat deceased (22) was married with the appellant about 6 or 7 years prior to her death in the year 1995. After the marriage some differences appeared in the relationship of the two families but on efforts having been made by the wellwishers of the two sides, the husband and wife united and were living together

in appellant's house at village Aaphoo Kheri under Police Station Jawar, Distt. Jhalawar.

2. On May 6, 1995 PW/1 Yaqub Khan, brother and PW/14 Yusuf Khan, a cousin of the deceased, besides several others of their village went to Aaphoo Kheri to participate in the marriage of the son of PW/24 Dulley Khan who was a collateral to the appellant. As per custom prevalent, the two boys had taken 'Pehnawani' (clothes) for the deceased and others in the family. Yusuf Khan returned in the evening but PW/1 Yqub Khan stayed with the deceased.

3. It is alleged that after having entertained himself on the video film till late hours of the night Yaqub Khan retired to take rest for the night. It was a room covered with a chappar over it and the appellant and the deceased used to reside therein. At about 11.00 P.M. the deceased asked the appellant to give her five rupees which she wanted to give in 'Salami' to the groom-to-be. The appellant wanted to give her two rupees only but the deceased insisted upon taking five rupees. Being irritated on such demand, the appellnat picked up an axe and gave a blow of it to the deceased which she took on her hand. The appellant gave another blow which fell on her neck and proved fatal. The appellant then came out of the room and bolted the same from outside, thus confining the brother and sister in the room and fled away.

4. Yaqub raised alarm and asked for removaing the 'Sankal' on the door but none was attracted by his cries. Yaqub Khan then made an exit in the Chapper and came out of the room. He informed Kaley Khan (23) and others of the incident and left for his village Rajpura (which was at a distance of about 5 kilometer only from Aaphoo Kheri) along with Kaley Khan in the same night.

5. At village Rajpura he informed his father PW/8 Kasam Khan of the unfortunate incident. Hakam Khan, along with some others from his family reached Aaphoo Kheri in the same night and found his daughter dead. He along with others of that village went to the police station at Jawar and lodged the report there at 6.00 A.M. on 7-5-95, PW/17 Hussain Mohd. the Station House Officer, Incharge of the Police Station registered Crime No. 45/95 Under Section 302, IPC against the appellant and commenced investigation.

6. In the course of investigation, besides preparing Punchayat nama, site maps, taking blood stained and sample soil from the place of occurrence, Hussain Khan SHO get the Post Mortem examination done on the dead body of the deceased by PW/18 Dr. Jitender Sharma, Medical Officer at the Govt. Hospital Jawar, on the spot. On his examination Dr. Sharma noted the following two injuuries on the person of the deceased:-

1. Incised wound in middle of left side of neck 5' x 1-1/2' x 2-1/2' oblique cutting muscles and blood vessels. Blood clots were visible in and around. Carotid artery and jugular vein were ruptured oesophagus and trachea were also cut.

2. Incised wound on the back of left hand at base of proximal phalanx of index and middle finger 1-1/2' x 1/2' x 1/2'. Muscles and blood vessel were ruptured and phalangeal bone was fractured. Blood clots in and around the wound were present.

7. On the basis of the facts found by him on the dead body of the deceased Dr. Sharma opined that the cause of her death was shock caused by excessive hemorrhage and the manner of her death was homicidal.

8. Hussain Mohd. SHO seized the blood stained cloth of the deceased and the blood stained Baniyan of Yaqub Khan. He arrested the appellant on 7-5-95 at 5.30 P.M. and on an information, allegedly given to him by the appellant on the following day, he recovered a blood stained axe from another room of the appellant. However, the relevant report from the F.S.L. was not brought on the record, either of the trial Court or of this Court.

9. After having completed the investigation a report Under Section 173(2), Cr.P.C. was submitted against the appellant. After trial of the appellant for charge Under Section 302, IPC the learned Addl. Sessions Judge, Jhalawar, Camp at Aklera held him guilty of the offence punishable Under Section 304, Part I, IPC convicted him thereunder and sentenced him to undergo rigorous imprisonment for 10 (Ten) years and also to pay a fine of Rs. 1000/- vide his judgment and order under appeal dated 24-8-1996, made in Sessions Case No. 86/96 (68/95).

10. Mr. A.K. Gupta, the learned counsel for the appellnat was fair enough to agree that it was fully established on record of this case that Smt. Kismat deceased had died a homicidal death on the relevant day, time and place. In this respect I accept the testimony of Dr. Sharma who has stated that the injuries caused to the deceased on her neck with a sharp edged weapon were sufficient in the ordinary course of nature to cause death and that she had died of such bodily injury.

11. The question whether an offence punishable Underm Section 302, IPC was committed in her death is not before this Court as the State has not preferred any appeal against the impugned judgement of the learned trial Judge. Moreover, I agree with the trial Court that it was not a pre-planned and calculated act of her assailant to cause her death and that the injury on her neck was caused at the spur of moment and, therefore, the case would not fall Under Section 302, IPC. Whether it falls Under Section 304, Part I, as found by the learned trial Court and asserted by the learned Public Prosecutor before me or Under Section 304, Part II as urged by Mr. Gupta, can be decided only after the argument of the learned counsel that the present appellant is not proved to be the author of the injuries to the deceased, in negatived.

12. The main contention of Mr. Gupta was that although as many as 28 witnesses were examined by the prosecution at the trial of the appellant to prove their case against him but almost all of them, except. PW/1 Yaqub, the brother of the deceased turned hostile. It was submitted that Yaqub being an interested witness his sole testimony should not make the basis of conviction of the appellant particularly when his conduct suffers from the infirmity of not trying to Save his sister from the assault on her. Mr. Gupta further submitted that when the entire facts and circumstances of the case are taken into account it becomes evident that the FIR was lodged with delay and that it was anti-dated and that the theory stated therein was afterthought. In this respect Mr. Gutpa placed reliance on AIR 1958 SC 59 (sic) AIR 1980 SC 638 : 1980 Cri LJ 446 and 1994 SCC (Cri) 1551.

13. It may be stated at the very outset that although the prosecution had examined 28 witnesses in this case but a majority of them, whether they were formal witnesses or material witnesses, turned hostile. It is borne out clearly from the

record of the lower Court that the prosecution witnesses were, perhaps, so interconnected with both the parties that they did not like even to state such formal facts which did not connect the appellant with the commission of the offence in this case. Out of the 28 witnesses PW/1 Yaqub was the sole eye-witness to the unfortunate incident and he did support the prosecution case.

14. It is the well settled position of law that conviction of an accused may safely be based on the sole testimony of a single witness. In fact Section 134 of the Evidence Act gives statutory recognition to the principle that in Indian law no particular number of witnesses is required to prove a fact. It lays stress on the quality of evidence rather than on its volume or quantity. The requisite condition is that the solitary evidence of the witness should suffer from no infirmity or self-contradiction on material points and should be in accordance with the normal human conduct. It must be of sterling worth. If such be the quality of the testimony of the single witness, then conviction of the accused may safely be based on such evidence.

15. Now coming to the testimony of Yaqub PW/1 we find that he has stated that he had gone to the house of the deceased in order to deliver the 'Pinhoni' (Cloths) to her at the occasion of a marriage in the family of the collaterals of her in laws. It can hardly be disputed that in the cultural and social background of our society such customs are still prevalent observed in several communities. It was, therefore, not an unnatural conduct of this younger brother of the deceased to have gone to the house of his sister at such occasion. Then Yaqub has stated that after having entertained himself on the film, shown at the video Cassettes, out-side the house of the appellant he had retired to the room wherein he had to take night rest. He further stated that he was lying on the cot and the deceased was sitting by his side and insisting upon getting Rs. 5/- from the appellant in order to give the same, by way of 'salami' to the groom-to-be. The facts so stated by the witness do not appear to be unnatural and against human conduct. It is customary on such occasions that provisions for the entertainment of the guests are made by the person arranging the marriage ceremony of his dependent. Yaqub, being a boy of 20 years only would have liked to entertain himself by the film-show and after the show was over to have retired for night rest. It is also customary for elderly

relations in the family to reward their youngsters with some money or presents on their offering respects and salutations to them at such occasions. The deceased could have asked her husband to give her some money to be paid to the groom to be by way of 'salami'. It was also not an unnatural conduct on her part to have asked the appellant to give her five rupees instead of two.

16. Mr. Gupta, at one stage of his argument, vehemently urged that there was some contradiction on the point as to whether the deceased had demanded two rupees or five rupees and the appellant had refused to give her any amount at all or wanted to give her two rupees only. There may be such contradiction on that point but it is not a material contradiction. The fact, which is established, is that the deceased had demanded some money from the appellant in order to give the same by way of 'salami' to the groom-to-be and such demand had irritated the appellant.

17. Then again, it was not an abnormal conduct of the deceased to have been sitting on the cot where Yaqub was lying for night rest. It is fully established on record that the Gadda on the cot was found blood stained and that the baniyan which Yaqub was putting on by way of nightdress had received some blood spots. This position of facts affords corroboration to the testimony of Yaqub.

18. The place of occurrence was a room coverd by a Chappar on it. The presence of the deceased, the appellant and the solitary witness Yaqub in that room at that hours of the night was not at all unnatural or abnormal. The standard of living of the parties suggests that the said room was being used by the appellant and the deceased as their living room. The younger brother of the deceased could have been accommodated therein for the night rest. It is a thing of common experience that close relations do share the same room according to the living conditions of the parties concerned.

19. Yaqub has further stated that the appellant had picked-up the axe, which was hung on a khoonti in that room and blowed the same on the deceased which the deceased took on her hand. An irritated hasband, who was not capable of meeting or not willing to accept the demand of a wife could have felt irritated and behaved in that manner. That the appellant gave a blow with the axe to the deceased,

which she took on her hand is corroborated by the testimony of Dr. Sharma who had found an injury on the back of the hand of the deceased cutting her fingers. Yaqub has further stated that the appellant had given another blow to the deceased on her neck and such blow had fallen on her neck. Such a version of the witness is also corroborated by the testimony of Dr. Sharma who had found the incised wound on the neck of the deceased.

20. Proceedings further, we find that Yaqub has stated that the appellant had then gone outside of the room and bolted the door thereof from outside and ran away. This version of the witnesses is corroborated by his conduct of making an exit in the chappar in order to come out of the room. On his inspection of the place of occurrence on the following day, Hussain Mohd. SHO noticed and noted a 2 ft. long and 2 ft. wide opening in the Chapper of that room.

21. The witness has further stated that after coming out of the room he had contacted PW/23 Kaley Khan, who had accompanied him to village Rajpura where he informed his father, PW/ 8 Kasam Khan of the unfortunate incident. This part of the testimony of the witness was assailed on the ground that Kaley Khan was declared hostile as he did not support the version given by Yaqub Khan.

22. In my opinion the truth in the testimony of Yaqub Khan is required to be appreciated more in the context that Dr. Sharma had conducted autopsy in village Apu Khera at 9.30 A.M. on 7-5-95 and not in the fact of the fact that Kaley Khan did not corroborate him. He had accompanied Hussain Mohd. SHO from Jawar which was at a distance of 8 KM from village Apu Kheri. That means that Hussain Mohd. had come to know of the incident at the police station at about 6.00 A.M. or so. And that is the version of the prosecution. The case of the prosecution is that on coming to know of the incident through Yaqub in the night of 6/7-5-95 at village Rajpura PW/8 Kasam Khan along with some other persons of his village had gone to village Apu Kheri and therefrom he had gone to Jawar and reported the incident to Hussain Mohd. SHO there. Hussain Mohd. had registered the case at 6.00 A.M. on 7-5-95. The sequence of events thus clearly show that Yaqub had informed his father PW/8 Kasam Khan of the incident during that very night and Kasam Khan and others had gone to village Apoo Kheri in that very night. Thus it is seen that

neither any delay was caused in lodging the FIR nor was the same anti-dated. There is no evidence on the record of the case to suggest that any person other than PW/8 Kasam Khan had informed Hussain Mohd. SHO of the incident. There exist no reasons for rejecting the testimony of PW/8 Kasam Khan, PW/17 Hussain Mohd. SHO and PW/18 Dr. Jitender Sharma on the point.

23. The cases relied upon by Mr. Gupta no doubt lay down the proposition that delay caused in lodging the F.I.R. may adversely affect the truthful character of the prosecution theory. Such a proposition can hardly be disputed. But I find no facts to apply such proposition to the present case. The argument advanced by Mr. Gupta in that respect is, therefore, rejected.

24. After having made a detailed discussion of the sole testimony of the only eye-witness in this case I agree with the learned trial Judge that the testimony of PW/1 Yaqub Khan is trustworthy, reliable and may be made the basis for the conviction of the appellant for the death of Smt. Kismat. The witness is no doubt a close relation of the deceased and as such may be said to be an interested witness though he cannot be branded so simply on the ground that he is the younger brother of the deceased. But at the same time he is the most natural witness to the unfortunate incident in the facts and circumstances of this case. He is not found faltering on any material point and his testimony gets corroboration from his natural conduct and behaviour and from other independent evidence on record as discussed above. He cannot be blamed for having not tried to save the deceased from the assault opened on her by the appellant for the obvious reason that the assault opened was so sudden and in quick succession that a boy of 20 years, lying on the cot, could have hardly dissuaded an irritated husband from assaulting his wife. Moreover, the appellant was then blowing a dangerous weapons and Yaqub could have felt terrified by the behaviour of the appellant.

25. After having examined the testimony of Yaqub from all possible angles, I find it of sterling worth and reliable. Since his testimony fully establishes that the appellant was the author of the injuries caused to the deceased which resulted in her death, he has rightly been held responsible for causing the death of the deceased by violence.

26. Now coming to the question as to what offence was committed by the appellant in this case I find that it was a sudden act of the appellant committed at the spur of moment. He did not intend to cause death of the deceased. In the moments of anger he did cause such bodily injuries to her as were sufficient in ordinary course of nature to cause death. The particular injury caused on the neck of the deceased by the appellant proved fatal. There might not be an intention of the appellant tocause the death of the deceased by causing that bodily injury to her, but his act could have given him knowledge of the likely consequences of the act intentionally done by him. The act so done by him constituted the offence, punishable Under Section 304, Part I, IPC and he has been rightly convicted thereunder.

27. For sentence I find that the appellant is a young man in histwenties. He has already lost his life companion by his own act of violence done in the weaker moments of irritation and anger. His past may haunt him throughout his life. Under such circumstances I feel that some reduction in the substantive sentence of imprisonment awarded to him would do Justice to the parties.

28. In the result the conviction of the appellant on the charge Under Section 304, Part I, IPC is upheld. However, his sentence of imprisonment is reduced from ten years to seven years R.I. The impugned judgment and order shall stand modified accordingly. The sentence of fine is maintained.

29. In view of the above modification in the substantive sentence of imprisonment of the appellant, his appeal is partly allowed.

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