

Ramesh Mehto Vs. State

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Court : Delhi

Decided On : Dec-09-2014

Judge : Pradeep Nandrajog

Appellant : Ramesh Mehto

Respondent : State

Judgement :

\$~2 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision : December 09, 2014 + CRL.A. 1409/2014 RAMESH MEHTO Represented by: Appellant Dr.Jose Verghese, Advocate with Mr.Jawahar Singh, Ms.Priya Singh, Mr.Dhruv Jose and Ms.Anima Kujur, Advocates versus STATE Represented by: Respondent Mr.Varun Goswami, APP Insp.J.P.Meena, PS Mehrauli CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) Crl.M.B.No.10722/2014 Since we have proceeded to hear arguments in the appeal we dismiss Crl.M.B.No.10722/2014, which seeks suspension of sentence pending final hearing of the appeal. Crl.A.No.1409/2014 1. The preface by the learned Trial Judge to the impugned decision dated May 30, 2014, reads as under:

1. Honours is to be saved and upheld at all costs be it the life of ones own or the life of someone else has been and to a great extent, is still the philosophy of a good number of persons in this country and elsewhere. The honour may have

different definitions in different societies, but then certain aspects are universally accepted. One doesn't feel the guilt of doing something which is otherwise not acceptable, if it is done to uphold the honour. It gives a kind of justification to the so-called wrong doer, and his own conscience, his family, friends and society may or may not find him on the wrong side of law and society, be it the case otherwise.

2. The motive for the crime is to be found in the statement Ex.PW-18/B made by the niece of the appellant before the learned Metropolitan Magistrate under Section 164 Cr.P.C. She has named the deceased as the one who had raped her. The appellant being the maternal uncle was obviously enraged and the motive would be revenge.

3. The date of the crime in the instant case is the intervening night of March 21, 2009 and March 22, 2009.

4. Involvement of the police commenced when DD No.61A, Ex.PW- 20/A was recorded by HC Satbir Singh PW-20 at P.S. Mehrauli at 12:35 mid-night. Investigation was entrusted to ASI Raj Singh PW-28, who left for the disclosed place i.e. C-1/277, Aaya Nagar. Said information was conveyed to Insp.Balram PW-36, the Addl.SHO of the concerned police station. Even he reached house No.C-1/277, Aaya Nagar. The appellant had been locked inside room No.3 on the first floor of the building, in which dead body of the deceased Fuljens Kujur @ Raju was lying. A tenant in room No.12 of the same building, Gajraj PW-1, Pawan Panwar PW-2 the landlord, and few other persons in the neighbourhood were present. Gajraj informed Insp.Balram that he was a tenant in room No.12 where he was sleeping, when at around 12:15 in the middle of the night he heard shrieks of bachao-bachao. The sound was coming from room No.3, where appellant resided as a tenant. He ran towards the room and saw Fuljens Kujur @ Raju, a tenant in room No.11, lying injured in the room taken on rent by the appellant. Apprehending that appellant would run away, he closed the door and latched it from outside and informed the police over the telephone.

5. Making an endorsement Ex.PW-36/C beneath Gajrajs statement Ex.PW1/A, Insp.Balram got the FIR registered. The appellant who was apprehended at the spot was found to be injured on the palm of his right hand and therefore was sent

for being medically examined as also medical aid as was warranted. The weapon of offence was seized. Scene of crime was photographed. Rough site plan to scale was prepared by Insp.Balram.

6. The appellant was examined on March 22, 2009 by Dr.Kanhiya Lal Aggarwal who wrote the medical treatment slip Ex.PW-30/B, proved at the trial by Dr.Kumesh Patekar since Dr.Kanhiya Lal Aggarwal had left the hospital. He wrote on the medical treatment slip that the appellant was having an incised wound on the palm of his right hand.

7. Post mortem of the dead body of Fuljens Kujur @ Raju was conducted by Dr.R.P.Singh who authored the post mortem report (proved at the trial by Dr.Sanjay Kumar as Ex.PW-35/A), as per which, 13 injuries were noted on the dead body of Fuljens Kujur @ Raju, of which injuries No.5, 6 and 7 were opined to be sufficient to cause death in the ordinary course of nature. On the same day, Insp.Balram PW-36 made an application to Dr.R.P.Singh seeking an opinion whether the injury on the palm on the right hand of the appellant could be caused by the knife recovered from the room where the appellant resided, and in which room the dead body of the deceased was recovered, as also for the opinion qua the injuries on the dead body of the deceased.

8. Dr.R.P.Singh gave an opinion Ex.PW-35/C, that the injuries on the dead body could be caused by the knife in question and vide opinion Ex.PW-35/E, opined that the injury on the palm of the right hand of the appellant could also be caused by the same knife and further, that the injury could be the result of a scuffle.

9. The learned Trial Judge has found it to be an open and shut case for the reason, though the niece of the appellant was not examined as a witness, Sh.Ravinder Singh PW-18, working as a Metropolitan Magistrate at Patiala House Courts deposed that he had recorded Kumari SSKs statement Ex.PW-18/B. As we have noted above in the said statement Kumari SSK named the deceased as the one who had raped her.

10. Treating the same as the motive for the crime, the learned Trial Judge has held that revenge being the motive, the appellant caused the injuries on the

deceased with the intention to kill him, and for which finding, the testimony of Gajraj PW-1, Pawan Panwar PW-2, ASI Raj Singh PW-28 and Insp. Balram PW-36 has been believed to the effect that Gajraj had seen the appellant in his room where deceased was lying injured. He had bolted the door and latched it from outside. The landlord Pawan Panwar PW-2 was called for. He reached the place. So did reach the two police officers. The appellant was apprehended at the spot. He had an incised wound which was fresh on the palm of his right hand.

11. The learned Trial Judge has unfortunately not discussed the evidentiary worth of two vital pieces of evidence. The first is the testimony of the witnesses of the prosecution, corroborated with the site plan, (both rough and to scale) that the appellant was a tenant in room No.3. The deceased was a tenant in room No.11. The deceased was found in room of the appellant and not that the appellant had gone to the room of the deceased. The second is the MLC Ex.PW-30/B of the appellant, evincing an incised injury on the right palm which was opined to be capable of being the result of the scuffle.

12. The two pieces of evidence do not rule out the possibility of the deceased entering the room of the appellant with the knife to either pressurize the appellant to in turn pressurize his niece to withdraw the allegations made by her against him or to influence the appellant in some way or the other to get out of the sticky situation in which the deceased found himself to be in. There is a possibility that the appellant managed to snatch the knife from the hand of the deceased, and this would be as per the incised cut injury on the palm of the appellants right hand. In the heat of the moment, slowly poisoned by what the deceased had done to the niece of the appellant, the appellant launching the lethal assault. It would be a situation akin to a slow burning reaction, which the Court spoke of in the celebrated decision reported as (1993) 96 CrI.App. R133R vs.Ahluwalia.

13. In our opinion the said two vital circumstances do not rule out Explanation I to Section 300 of the Indian Penal Code being attracted i.e. a culpable homicide not amounting to murder if the offender, while deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation. The provocation in the instant case being the deceased entering the

room of the appellant with knife and threatening the appellant to ensure that his niece does not press the rape charge against him.

14. We dispose of the appeal altering appellants conviction to having committed the offence of culpable homicide not amounting to murder, punishable under Section 304 Part I of the Indian Penal Code and for which we sentenced him to undergo rigorous imprisonment for a period of ten years and pay fine in sum of `1000/- (Rupees One Thousand only); in default of payment of fine to undergo simple imprisonment for one month.

15. TCR be returned.

16. Two copies of the decision shall be sent to the Superintendent Central Jail Tihar. One for his record and the other to be supplied to the appellant. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE DECEMBER09 2014 skb

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