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Ashok Kumar Kohli Vs. State

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Court : Delhi

Decided On : Apr-22-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Code of Criminal Procedure (CrPC) - Section 313; ;Indian Penal Code (IPC) - Section 300

Appeal No. : Crl. Appeal No. 614/2008

Appellant : Ashok Kumar Kohli

Respondent : State

Advocate for Def. : Richa Kapoor, A.P.P.

Advocate for Pet/Ap. : Purnima Sethi, Adv.

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. Vide impugned judgment and order dated 22.11.2007 the appellant has been convicted for the offence of having murdered Pushpa at around 8:00 PM on 26.12.2005 at House No. B-155, East Vinod Nagar, Delhi; for which offence the appellant has been sentenced to undergo imprisonment for life.

2. It may be noted at the outset that when the appellant was examined under Section 313 Cr.P.C. he admitted that there used to be tension between him and Pushpa over the children and that the appellant used to beat her due to which Pushpa left with her children. But, all other incriminating evidence including the fact that along with her children Pushpa started residing at B-155, East Vinod Nagar, Delhi was denied by the appellant.

3. Appellant's conviction has been sustained on the basis of the testimony of Nitin PW-1, the eldest child of Pushpa who was aged 12 years when he deposed in Court on 7.12.2006. The date of the crime being 26.12.2005, it is apparent that Nitin was aged 11 years when his mother died.

4. Therefore, we straightway proceed to note the testimony of Nitin and other evidence to support the claim of Nitin of being in his house and what he saw.

5. At the forefront is the undisputed and uncontroverted testimony of HC Ravi Kumar PW-15 who deposed having penned DD No. 75-B, Ex.PW-15/B, recording the fact that on 26.12.2005 at 20:25 hours information was received from the PCR that a quarrel was going on at House No. B-134 East Vinod Nagar. As deposed to by HC Ravi Kumar he handed over copy of the DD entry to SI Jaswant Singh for inquiry who left the police station in the company of Const. Yogender. The second is the uncontroverted testimony of HC Daya Chand PW-17 who proved having recorded DD No. 36-A, Ex.PW-17/A, at 20:30 hours on 26.12.2005 that police control room had informed that a lady has been murdered in House No. 155-B Vinod Nagar. Both afore-noted witnesses have not been cross-examined. The relevance of their testimony is that around 8:25 PM information was flashed to the police of a lady (Pushpa) being murdered at House No. 155-B East Vinod Nagar. It proves the likely time when Pushpa was assaulted being somewhere prior to 8:25 PM.

6. The next is the testimony of Dr. Kaushal Tyagi PW-13 the author of the MLC Ex.PW-13/A which records that Meena W/o Ajay R/o R-57 East Vinod Nagar, Delhi had brought Pushpa to Lal Bahadur Shastri Hospital at 8:40 PM on 26.12.2005 and that Pushpa was dead when examined by Dr. Kaushal Tyagi. In his deposition Dr. Kaushal Tyagi has deposed that he was on duty at the hospital

on 26.12.2005 when Meena W/o Ajay brought Pushpa to the hospital at 8:40 PM and upon examining Pushpa he found her dead. Dr.Kaushal Tyagi has not been cross-examined.

7. The testimony of Dr. Kaushal Tyagi and the MLC Ex.PW-13/A proves the fact that at 8:40 PM Meena was the one who took Pushpa to the hospital. Thus, a few minutes prior thereto Meena being with Pushpa stands established.

8. It may be noted that the person whose name is recorded as Meena is actually Neena (PW-2) W/o Ajay. She resides at R-57 East Vinod Nagar. Learned Counsel for the appellant concedes that either due to a spelling mistake or on account of phonetic similarity in the two names, Dr. Kaushal Tyagi incorrectly recorded name of 'Neena' as 'Meena'.

9. In the backdrop aforesaid we note the testimony of Nitin PW-1, who stated that he was a student of Class-IV and was residing at B-155 East Vinod Nagar on 26.12.2005 with his mother Pushpa and his three younger brothers, his father, the appellant, was residing separately as he used to beat his mother who did not want to live with the appellant. At 8:00 PM on 26.12.2005 the appellant came to their house. His mother asked him why he came. Appellant gave no reply but put a jacket on the neck of his mother and pressed the neck and threatened that if she yelled he would stab her with a knife. His mother started crying and the appellant inflicted knife injury on her neck and ran away. Meena (PW-2) and her husband Ajay (PW-3) took his mother to the hospital. Police came to his house and recorded his statement Ex.PW-1/A. Later on he was taken to the hospital where he identified his mother.

10. On being cross-examined he stated that actually Pappu was his father and had left his mother and that the accused whom he and his brother used to call 'Papa' was not their father. He denied that Pappu was the one who had killed his mother. On being questioned as to how Neena and Ajay came to his house he said that immediately after the occurrence he went to their house and that he remained in their house and hence did not see them remove his mother to the hospital. He clarified that the landlady of Ajay later on told him said fact. He said that when he returned to his house he saw blood outside the room and that the police came

after about 10/15 minutes of his mother being removed to the hospital. He stated that the police took his signatures on two blank sheets and that Neena's statement was recorded in his presence.

11. Neena PW-2 deposed that on 26.12.2005 at about 8:00 PM Nitin PW-1 came to their house and informed that his father had given a knife blow on his mother and hence she and her husband Ajay went to Pushpa's house and saw Pushpa in an injured condition in the street outside her house in a pool of blood. She and her husband removed Pushpa to LBS Hospital and when she asked Pushpa as to how she sustained the injury, Pushpa could only utter 'Ashok Ashok' and could speak no further. At the hospital the doctor declared Pushpa dead. That Pushpa along with her children shifted to East Vinod Nagar two months prior to the incident. On a leading question being put with the permission of the Court, she admitted that she had told the police that Pushpa told her that her husband Ashok had stabbed her. She admitted having told the police that the appellant and Pushpa used to frequently quarrel. On being cross-examined she said that she and her husband entered the house of Pushpa and saw blood and only when they came out they saw Pushpa on the street. She stated that her and her husband?s statement was recorded at the police station. She stated that her and her husband's clothes got smeared with blood of Pushpa when they removed her in the TSR to the hospital. She stated that Nitin stayed behind in her house when she and her husband went to Pushpa's house when Nitin told them that the appellant had stabbed Pushpa. She admitted that four children were born to Pushpa from her earlier husband Pappu and that on account of Pappu illtreating Pushpa she left Pappu and thereafter, though not married to the appellant who was already married and had a child from his wife, started residing with him as husband and wife and that the appellant loved Pushpa. She admitted that the appellant used to pay money to Pushpa.

12. Ajay PW-3, husband of Neena deposed in sync with his wife save and except stated that when and his wife went to the house of Pushpa, Nitin followed them.

13. Suffice would it be to record that while cross-examining Neena, her testimony that Nitin came to her house and informed her and her husband that the appellant

had stabbed his mother has not even been challenged; not even a suggestion has been put to her that said claim of her was false. As regards Ajay, a bald suggestion has been given to Ajay at the tail end of the cross-examination that he has deposed falsely; a suggestion which he denied.

14. The photographs Ex.PW-7/A1 to Ex.PW-7/A6 show blood inside a room, just outside a room on the street and on the street.

15. Since Pushpa was removed to the hospital before the police could arrive, it is obvious that Pushpa's movements have to be gathered from the photographs. It is apparent that Pushpa had stumbled out on to the street, but could not shriek for the obvious reason she had as many as 17 stab injuries as recorded on her post-mortem report Ex.PW-20/A, proved at the trial by Dr. Vinay Kumar Singh PW-20, who conducted her postmortem. The 17 injuries are as under:

1. Incised wound, of 18 x 4 cm, present over upper side of leg muscle deep, 135 cm above toe and 1 cm lateral to sympsismenti along lower left jaw, margins regular, both ends acute, external jugular vessels, internal caroted vessels incised.

2. Bruised abrasion, 2.5 x 1 cm present over right side of neck 6 cm below right ear.

3. Abrasion, 1 x 5 cm over middle of neck, 6 cm below chin.

4. Abrasion, 3.5 x 1 cm, 1 cm lateral to outer canthas of right eye.

5. Abrasion, 1 x 5 cm, over the lateral 1/3rd of right eye brow.

6. Abrasion, 1 x 5 cm, middle of the forehead.

7. Abrasion, 5 x 5 cm, over back of the right elbow.

8. Abrasion, 5 x 2 cm, 2 cm below right knee joint.

9. Abrasion, 5 x 5 cm over left lateral mallilus.

10. Abrasion, 1 x 5 cm lower left knee joint.

11. Laceration 2 x 2 cm vertically placed above knee joint.

12. Incised wound 1 x 5 cm outer side at left little finger, bone deep margin sharp and regular, angle acute.

13. Incised wound 1.5 x 1 cm subcutaneous tissue deep over base of little middle finger vertically placed.

14. Incised wound of 1 x 1 cm subcutaneous tissue deep over hypothener aspect of left palm oblique placed margin sharp & regular.

15. Incised wound of 2 x 5 cm, subcutaneous tissue deep present over hypothener aspect of left palm oblique placed margin sharp & regular.

16. Abrasion 3 x 1 cm present over inner aspect of the left forearm 4.5 cm above wrist joint.

17. Abrasion 1 x 5 cm over back of the left elbow 2 cm below and over inner aspect.

16. Injury No. 1 proved fatal as per the doctor. Indeed, the neck of Pushpa was cut deep enough evidenced by the fact that not only the external jugular vein but even the internal caroted vessels were cut. The other injuries show the fight put up by Pushpa to save herself. Thus perhaps except whispering, Pushpa could speak no louder.

17.We now note the submissions urged at the hearing of the appeal today. We shall note each submission and deal with it at seriatim.

18. It is firstly urged that Nitin could not be an eyewitness as he has not explained the injuries on Pushpa inasmuch as he deposed that his father i.e. the appellant inflicted a knife blow on the neck of his mother. It is also urged that the post-mortem report of Pushpa does not show any ligature on her neck and hence claim of Nitin that at the first instance his father tried to throttle his mother with a jacket is false.

19. Now, attempt to throttle and throttle are two different things. As per Nitin using a jacket an attempt was made to throttle his mother and this account for no ligature mark being detected on the neck of Pushpa. Nitin has not used the expression 'single stab'. He has simply said that when the attempt to throttle his mother failed, the appellant stabbed his mother on the neck. Being 11 years of age when he saw what happened it is but obvious that the unexpected events overtook Nitin and this explains his testimony without graphic details. From this trivial aberration it would be preposterous to conclude that Nitin was not an eye-witness. As noted above, claim of Neena that Nitin came running to her house and told her that appellant had stabbed his mother in the neck has not been refuted by challenging the testimony of Neena and thus we find corroboration to the claim of Nitin of being in his house not only through the testimony of Neena but even Ajay.

20. Besides, the incident took place somewhere around 8:00 PM. The day was 26.12.2005. Last week of December is peak winter time in Delhi. The sun sets by around 5:40 PM. There is total darkness by 6:00 PM. It is time for children to be in their house. Nitin's presence in his house is natural.

21. It is then urged that Nitin does not claim to have seen his mother running out. It is urged that admittedly Pushpa managed to go outside the room where she was stabbed. It is urged that even said fact shows that Nitin was not present in the house.

22. The argument overlooks the deposition of Nitin that on seeing his mother being stabbed in the neck he immediately ran to the house of Neena aunty. This explains Nitin not seeing and hence not deposing that his mother stumbled out.

23. It is urged that Nitin is a liar inasmuch as he claims that Neena?s statement was recorded in his presence but Neena claims that her statement was recorded in the police station.

24. Trivial slip ups by persons do not justify they being labelled as liars; to do so would mean that just about all of us would be liars. Deposing of events in the distant past after a year or so of the incident entails loss of memory and hence hiccups here or there. To be branded as a non-truthful person, the embellishments

have to assume the proportion of either improvements or contradictions which render the statements unworthy of acceptance.

25. Now, Nitin seeing the investigating officer talk to Neena aunty at the spot and his thinking after one year and hence his saying that Neena aunty's statement was recorded by the police at the spot is explainable as a perception of an honest truthful boy.

26. It is then urged that Nitin claims to have stayed back in the house of Neena aunty when Neena aunty and Ajay uncle, on receipt of information from him of the appellant stabbing his mother, went to his house and Neena deposing to the contrary shows that the two witnesses have contradicted each other.

27. We see no contradiction for the reason what Nitin claims to apparently say is that he did not immediately follow Neena and Ajay to his house. That he deposed that the police reached his house after 10-15 minutes and recorded his statement shows that he did go back to his house. That apart, we fail to understand as to what is the effect of this contradiction pointed out. Except for pointing out a contradiction, it has not been further argued as to in what manner the same affects the credibility of the witnesses.

28. It is then urged that neither Neena's nor Ajay's clothes, which they claimed got stained with the blood of the deceased, were seized by the police and this proves that the two never rescued Neena by removing her to the hospital.

29. Now, if the investigating officer is lax, it does not mean that truth must lose. As noted above in para 6 above, Dr. Kaushal Tyagi PW-13, has not been cross-examined and thus his testimony that Neena W/o Ajay brought Pushpa to LBS Hospital at 8:40 PM has to be accepted. We have percipient evidence of Dr. Kaushal Tyagi to corroborate claim of Neena that she and her husband removed Pushpa to the hospital.

30. It is then urged that Neena and Ajay claim to have entered the house and saw blood inside and then came outside and saw Pushpa on the street. It is urged that if Pushpa was already on the street, it makes no sense for the two to have gone

inside the house. The natural conduct would be to immediately rush Pushpa to the hospital. It is urged that this shows that Neena and Ajay have not deposed full facts in a truthful manner.

31. We do not know as to under what circumstances Neena and Ajay failed to notice Pushpa on the street when they entered her house. No such question was put to them. Had one been put to them, some answer would have been given and then we could have tested their credibility. It is settled law that no argument can be built on a conduct or an assumption unless the person concerned is questioned on the same.

32. One reason as to why Neena and Ajay did not notice Pushpa on the street is probably, as stated by Ajay, that it was dark outside coupled with the fact, as stated by Ajay, that when they came out of the house they saw Pushpa at a distance of 5 to 6 houses from her house. It has not been made clear whether this distance was towards the side of their house or towards the opposite side of Pushpa's house. It is possible that in a stage of stupor Pushpa walked 5 to 6 houses away in the other direction and if this be so, it is but natural, there being darkness outside, that Pushpa's presence on the street went unnoticed. It could well be that so shocked and overcome by events were Neena and her husband and the only thought in their mind was to immediately go to Pushpa's house and hence everything else went unnoticed. Does it not happen, when on a mission, that everything else other than the mission is missed by the mind. After all, it was only Arjuna who could see, neither the branches nor the leaves, but only the pigeon which he had to shoot when Guru Dronacharya took his disciples to test their shooting skill.

33. We see no reason why Neena and Ajay would tell a lie that Pushpa told them that Ashok i.e. the appellant had stabbed her.

34. The last submission urged is that the testimony of Neena shows that the appellant had loved Pushpa and the problem was the four children of Pushpa from her first husband. Learned Counsel urges that it is apparent that the appellant was overcome with emotion and hence he acted in a fit of rage. Thus, counsel urges that the act of the appellant attracts the offence of culpable homicide not

amounting to murder.

35. We reject the argument for the simple reason there is evidence that the appellant used to beat Pushpa who left his house and took away her children. It is apparent that the appellant who was married and had a child had some kind of an infatuation for Pushpa. If the argument as above is accepted it would mean that every male who has an infatuation for a female, on being spurned, would be entitled to kill the female under pain of a lesser offence i.e. the offence of culpable homicide not amounting to murder. Repelling the overtures of an infatuated lover would not make out a case of Exception IV to Section 300 IPC being attracted. The concept of acting under the impulse of passion envisaged under Exception IV to Section 300 IPC is premised on the passion and the impulse being preceded upon a sudden quarrel.

36. Further, the seventeen injuries on the person of Pushpa shows the determined mind of the appellant. His act was preceded by a threat when Pushpa was attempted to be strangulated that if she yelled, her throat would be slit. Pushpa was faced with a Hobson's choice. Either to suffer strangulation in silence or to cry for help. Obviously, the latter was a better option for it could have summoned a rescue, which unfortunately never came. Further, it shows that the appellant acted with cruelty.

37. We find no merit in the appeal which is dismissed.

38. Since the appellant is in jail, we direct that a copy of the instant decision be sent to the Superintendent, Central Jail Tihar for being made available to the appellant.

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