

Pawan Vs State

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Court : Delhi

Decided On : Aug-09-2010

Judge : Mr. Badar Durrez Ahdmed ; Mr. V.K. Jain. J J

Appeal No. : CRL.A. 259/1997

Appellant : Pawan

Respondent : State

Advocate for Def. : Mr Sanjay Lao, Adv.

Advocate for Pet/Ap. : Ms Kamna Vohra, Adv.

Judgement :

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

ORDER

1. This appeal is directed against the judgment dated 18th February 1997 and Order on Sentence dated 19 th February 1997, whereby the appellant was convicted under Section 302 of IPC and was sentenced to undergo imprisonment for life and to pay a fine of Rs1000/- or to undergo R.I. for six months in default.

2. The case of the prosecution, in brief, is that in the night intervening 26th/27th July 1994, deceased Shankar was sleeping in the street in the varanda of a medical store. The appellant, who came later after seeing the movie, also went to the street to sleep there and later committed murder of the deceased, giving a knife blow in his abdomen. Eye Witnesses account

3. The case of the prosecution is based primarily on the ocular testimony of complainant Faudari Kumar and his roommates Chhotu, Ashok Kumar, Bhopal and their landlord Suresh Chand. It is also the case of the prosecution that after committing murder, the appellant absconded from the spot and later when he was arrested, the knife used for committing the murder was got recovered by him from the bushes near a drain in Chirag Delhi.

4. The complainant Faudari Kumar brother of the deceased came in the witness box as PW-5 and stated that in the month of July, 1994, he was residing on the first floor of House No. 180, Chirag Delhi along with Bhopal, Chhotu, Ashok and his younger brother deceased Shankar. He further stated that on 24th July 1994, the appellant Pawan Kumar gave a rupee 10 note to the deceased and asked him to bring half litre of milk. When the appellant asked the deceased to return the balance amount of Rs4.50 left with him after purchasing the milk, he claimed that the appellant himself owed that much amount to him. A quarrel ensued between them on this issue, but both of them were pacified, though the appellant threatened to settle the score with the deceased. He further stated that on 27th July 1994, the appellant came back at about 2.00 AM after seeing a movie, brought his bed from the first floor and went to sleep in the street where the deceased Shankar was already sleeping in front of a medical store. On hearing the noise of the deceased and the appellant, he along with Bhopal, Ashok and Chhotu came to the ground floor and found that the appellant had stabbed his brother Shankar with a knife and ran away from there. He removed Shankar to hospital where he was declared dead. PW-4 Bhopal, who was residing in the same premises along with the complainant, Chhotu, Ashok, deceased Shankar and the appellant stated that at about 2.00 AM they heard a noise and ran towards the ground floor and found that the appellant had stabbed the deceased with a knife and ran away from there. In cross-examination, he stated that he was at a

distance of 10-15 paces when the appellant stabbed Shankar with knife. He chased the appellant, but could not catch hold of him. PW-3 Ashok Kumar, who was residing with the complainant and others in that house, corroborated the deposition of PW-4 and PW-5 and stated that in the night, the appellant and the deceased were sleeping on the ground floor and he saw that the appellant thrust the knife in the abdomen of Shankar and fleeing away from there. However, in cross-examination, he admitted that when he reached the ground floor, deceased Shankar was lying there, smeared with blood. He also claimed that all of them had come down together after hearing the noise. PW-2 Chhotu stated that when they came downstairs on hearing the noise, he saw the appellant fleeing from there.

5. PW-1 Suresh Chand is the landlord of the premises in which the above referred witnesses were residing together. He confirmed that in July 1994 Faudari Kumar, deceased Shankar, the appellant Pawan, Bhopal Rai and Chhotu were living in two rooms as his tenants. He also identified the appellant Pawan Kumar in the Court. He stated that he woke up in the night at about 2.00-2.30 AM and saw deceased Shankar lying in the street and blood oozing out of his stomach. He also found 6-7 Biharis, who were his tenants standing near him. Obviously he was referring to Faudari Kumar, Bhopal and Chhotu as his tenants, who were seen by him standing near the deceased. In cross-examination, he stated that Faudari Kumar and Chhotu had told him that the appellant Pawan had run away after inflicting knife injuries on the person of deceased Shankar. Recovery of weapon

6. PW-16 SI Govind Sharma is the IO of the case, who carried out investigation. He stated that while searching for the appellant along with the complainant, he found him at the bus stand of Swami Nagar and arrested him. The appellant made disclosure statement Ex. PW5/G and got recovered the knife Ex. P-3 from the bushes near Ganda Nala, Chirag Delhi. However, no blood was found on the knife, when it was examined in CFSL. Motive

7. The motive for the murder is alleged to be a quarrel which took place between the appellant and the deceased a few days before this incident when the deceased refused to return a sum of Rs 4.50 which was left with him after purchasing milk for the appellant. Not only the complainant but also PW-2 Chhotu,

PW-3 Ashok Kumar and PW-4 Bhopal specifically stated about this quarrel between them. Cause of death

8. PW-8 Dr A.K. Sharma conducted postmortem on the dead body of deceased Shankar on 27th July 1994 and found the following injuries:- "Penetrating stab incised wound with protruded abdomen was placed horizontally on the middle front of abdomen. After reducing omentum the size of the wound was 3x1 cm x cavity deep, its right outer angle was acute, left outer angle was obtuse. It was 5cm above the umbilicus and 11cm below the apigastrium. On exploration of wound, it was found directing backwards slightly upwards and passed through following structures and terminating finally injuring abdominal aorta: skin subcutaneous tissues muscles peritoneum transverse mesocolon - duodenum and Aorta. Peritoneal cavity contained about 3.5 liter of blood. Total depth of the wound was 11cm." Cause of death was found to be hameorrhagic shock following injury No.1 caused by penetrating sharp edged weapon and the injury was opined to be sufficient to cause death in the ordinary course of nature. He also examined the weapon sent to him for opinion and was of the view that the injury on the dead body of Shankar could have been caused by the weapon produced before him by SI Govind Sharma. Version Of the Appellant

9. In his statement under Section 313 Cr.P.C., the appellant admitted that in July 1994 he along with Faudari Kumar, Dinesh, Ashok and deceased Shankar was residing as a tenant in two rooms on the first floor of House No. 180, Chirag Delhi, which is owned by Suresh Chand. He, however, denied having any quarrel with the deceased. He admitted that in the night intervening 26th/27th July 1994 he came back in late hours after seeing movie and went to the street to sleep. He also admitted that deceased Shankar was also sleeping in the street in the varanda of a medical store. He, however, denied having stabbed the deceased and run away from there. He denied that he was arrested from the bus stand of Swami Nagar and claimed that he himself had gone to the Police Station to inform police about the death of Shankar. The alleged recovery of knife was also denied by him. Analysis of evidence

10. It is an admitted case that the deceased, the appellant and the eye-witnesses of this case were living together in two rooms let out to them by PW-1 Suresh Chand. It is also an admitted case that in the night of 26th/27th July 1994, the appellant had returned late after seeing a movie and had gone to sleep downstairs in the street. It is also an admitted case that deceased Shankar was already sleeping in the street when the appellant went there to sleep.

11. We see no reason to disbelieve the ocular testimony of PW-3 Ashok Kumar, PW-4 Bhopal and the complainant PW- 5 Faudari Kumar. The appellant does not claim any enmity or ill-will between him or any of these witnesses. Hence, none of them had any motive or reason to depose falsely against him and implicate him in the murder of deceased Shankar. It is true that PW-5 Faudari Kumar happens to be the brother of the deceased but, his testimony cannot be rejected merely because he happens to be related to the deceased. A relative cannot be considered to be an interested witness merely on account of his relationship with the deceased unless it is shown that he had a grudge against the accused and, therefore, had a motive to drag him in a false case. In fact a relative of the deceased would ordinarily be the last person to screen the real offender and implicate the innocent person. A person can be said to be interested only if it is shown that he had a motive, direct or indirect to get the accused somehow convicted, on account of a previous animus, which he had with him. Even the testimony of an interested witness is not per se unworthy of credence, the only rule of prudence being that it should be subjected to a careful scrutiny, and should be accepted, if, on such scrutiny it is found to be reliable and probable. Since the complainant Faudari Kumar admittedly was residing in House No. 180, Chirag Delhi and the site plan Ex. PW16/B shows the incident took place in the veranda of a house situated just opposite that house, at about 2.00 AM when the inmates of the house are expected to be present there, his reaching the place of occurrence immediately on hearing the noise of quarrel cannot be disputed. In any case, the testimony of Faudari Kumar finds corroboration from the deposition of other eye-witnesses, who were natural witnesses of the incident since all of them were residing there and had also reached the spot on hearing the noise.

12. According to PW-1 Suresh Chand, Faudari Kumar and Chhotu had told him that the appellant had run away after inflicting knife injuries on the person of deceased Shankar. The statement made by Faudari Kumar to PW-1 soon after the incident, being his previous statement made immediately after the incident is corroborative of his deposition in the Court. Any former statement made by a witness at or about the time when the incident took place becomes usable as of corroborative value under Section 157 of the evidence Act. Though such statements are not part of the main transaction, they have a probative value for corroborative purpose, if made without delay. If delay was involved in making such a statement, its utility would be restricted to confronting the maker for contradicting him. Such a statement would then have no corroborative value. Whether the statement was made at or about the time of the incident can be decided on the facts of each case. No hard and fast rule can be laid down for it. The principle is that the time interval between the incident and the utterance of the statement should not be such as to afford occasion for reflection or even contemplation. If the time interval was so short as between the two that the mind of the witness who made the statement was well connected with the incident without anything more seeping in, such statement has credence, and hence can be used, though not as substantive evidence, as corroborating evidence, on the principle contained in Section 157 of the Evidence Act.

13. PW-2 Chhotu also corroborated the deposition of the complainant Faudari Kumar to some extent when he stated that when he reached the ground floor on hearing the noise, he saw the appellant fleeing from there. So far as PW-3 Ashok Kumar is concerned, he fully corroborated the deposition of Faudari Kumar when he said that on reaching the ground floor, he saw that Pawan Kumar gave knife blow in the abdomen of Shankar and fled from there. He also confirmed that there was light at the place where the incident took place. Hence, the witnesses were in a position to see that part of the incident which took place in their presence. He specifically denied the suggestion that he did not witness the deceased being stabbed by the appellant. PW-4 Bhopal also corroborated his testimony since he stated that he had seen the appellant stabbing Shankar with a knife and running away from there. He also chased the appellant, though he could not catch him. The ocular testimony of PW-3 Ashok Kumar, PW-4 Bhopal and PW-5 Faudari

Kumar which finds some corroboration from the testimony of PW-1 Suresh Chand and PW-2 Chhotu is sufficient to prove that the appellant had stabbed deceased Shankar with a knife and had then run away from the spot.

14. Though the issue on which the quarrel took place seems to be rather petty, we need not go further in this aspect since the motive for committing the crime becomes immaterial in view of the ocular testimony of PW-3 Ashok Kumar, PW-4 Bhopal and PW-5 Faudari Kumar. We need to appreciate that motive is something which remains in the mind of the culprit and, therefore, it may not be possible to prove it during trial.

15. No doubt if there is clear proof of motive for the crime that lends additional support to the finding of the court that the accused was guilty but absence of clear proof of motive does not necessarily lead to the contrary conclusions. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes it may appear that the motive established by the prosecution is a weak one but that by itself is not sufficient to lead to any inference adverse to the prosecution. Most of the times it is only perpetrator of the crime alone who knows as to what circumstances prompted him to taking a course of action leading to the commission of crime. The mere fact that the prosecution failed to translate the mental disposition of the accused into evidence does not necessarily mean that no such mental condition existed in his mind.

16. In *Nathuni Yadav & Ors. v. State of Bihar*: AIR1997 SC 1808 the Supreme Court, inter alia, observed as under:- "Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable."

17. The testimony of the prosecution witnesses shows that the appellant had run away from the spot though he was chased by some of them. There is no explanation from the appellant as to why he fled from the spot immediately after the murder of the deceased. Though the appellant claims that he himself had gone

to police station, to inform the police, this obviously is false, since the police had already been informed and in fact was looking for him at that time.

18. The testimony of PW-16 SI Govind Sharma shows that the knife Ex.P-3 was got recovered by the appellant from under the bushes near Chirag Delhi drain. It was opined by PW-8 Dr A.K. Sharma, who conducted the postmortem on the dead body of the deceased that death could have been caused by the weapon produced before him. Absence of blood on the knife alleged to have been recovered from the appellant may not be material considering that the appellant was not arrested immediately after the incident and, therefore, had ample opportunity to remove blood stains, before throwing the knife in the bushes. Hence, even if we exclude the recovery of knife from consideration, the ocular testimony of the witnesses coupled with the fact that: (i) he had a quarrel with the deceased a few days before this incident (ii) he admittedly went to sleep at the same place where the deceased was sleeping (iii) he ran away from the spot after the murder; proves it beyond reasonable doubt that he had killed the deceased using a knife for this purpose. If the witnesses produced by the prosecution are found to be reliable and trustworthy and inspire confidence in the mind of the Court, failure to recover the weapon of offence may not be fatal to the prosecution case.

19. It is true that only a single knife blow was given to the deceased. However, in the facts and circumstance of the case, that by itself does not bring the case of the appellant with the purview of explanation IV to Section 300 of IPC which is punishable under Section 304 thereof. The prerequisite condition for the applicability of explanation IV to Section 300 of IPC are that (i) the culpable homicide is committed without premeditation (ii) it is committed in a sudden fight (iii) it is committed in the heat of passion upon sudden quarrel and (iv) the offender does not take any undue advantage and does not act in a cruel and unusual manner. In such a case there is no deliberation or determination to fight with each other and a fight takes place at the spur of the moment for which both the parties need to share the blame. The number of wounds suffered by the deceased alone is not a decisive factor in such cases, the necessary requirement being that the accused must act suddenly and the occurrence should not be premeditated or

preplanned.

20. The single blow to the deceased may in some cases entail conviction under Section 302 of IPC whereas in other case it may fall within the purview of Section 304 thereof. The question with regard to the nature of offence needs to be determined on the facts and circumstances of each case, the guiding factor being the nature of injury, whether it is on a vital or non-vital part of the body, the weapon used for offence, ferocity of the attack, whether the injury was inflicted during the struggle or grappling, circumstance and manner in which the injury is caused and all other relevant factors which would help the Court in determining the intention or knowledge of the offender.

21. The intention and knowledge are two separate states of mind and knowledge of the consequences of the act is not the same thing as the intention that those consequences should ensue. Ordinarily where a person commits an act, he is presumed to know the natural consequences of the act committed by him. The mere fact that the injury caused to the deceased is sufficient to cause death in the ordinary course of nature does not necessarily mean that the accused intended to cause the injury of that nature. Ordinarily, when an accused inflicts a blow with a deadly weapon, such as a knife, the presumption is that he intended to inflict injury caused by him. But, there may be circumstances which could rebut such a presumption.

22. In *State of Karnataka v. Vedanayagam* (1995)¹ SCC 326 the accused inflicted a single knife blow on the chest resulting in instant death and the trial court convicted him under Section 302, but, on appeal being preferred, the High Court of Karnataka altered the same to one under Section 304 Part II. When the matter was brought to Supreme Court, judgment of the trial court convicting the accused under Section 302 was restored observing "there is no doubt whatsoever that the accused intended to cause that particular injury on the chest which necessarily proved fatal. Therefore, Clause Thirdly of Section 300 IPC is clearly attracted.

23. In *Mahesh Balmiki alias Munna v. State of M.P.* 1999 Cri. LJ 4301 the accused gave a single fatal blow with knife on the chest on the left side of the sternum between the costal joint of the 6th and 7th ribs, fracturing both the ribs and track of

the wound going through the sternum, pericardium, anterior and posterior after passing the ribs and thereafter entering the liver and perforating a portion of stomach. There, conviction under Section 302 of the Penal Code was upheld by the Supreme Court.

24. In the case before us, we have no evidence that there was a fight between the appellant and the deceased. The only evidence we have is that the witnesses heard a noise of the appellant and the deceased and when they reached downstairs, the appellant was found stabbing the deceased with a knife and then running away from the spot. It has come in evidence that the appellant took his bed for going downstairs to sleep. There is no evidence that the appellant normally used to sleep downstairs at the same place where the deceased was sleeping. Therefore, his going to the same place where the deceased was already sleeping is an indicator of preplanning in his mind. A person going to sleep late in the night is not expected to keep a knife with him. The very fact that the appellant carried and then used a knife, at the dead hours of the night and that too after going downstairs on the pretext of going to sleep there shows that his intention was to use that knife to commit murder of the deceased. A perusal of the MLC of the appellant shows that no injury was found on his body. The postmortem report of the deceased also does not show injuries other than the knife wound. This would indicate that in fact there was no fight between the appellant and the deceased. The MLC of the deceased Ex. PW2/A shows that he was brought dead to the hospital. This would mean that his death was instant and in all probability at the place of occurrence itself. The stab wound was given in the abdomen of the deceased, which is a vital part of the body. The wound was found to be 11 cm deep. Thus the knife blow was given with such a ferocity and such a force that the deceased died instantly as a result of the injury caused to him. The relations between the appellant and the deceased were not cordial as stated by the eye-witnesses. There is no evidence of any grappling between the appellant and the deceased. In these circumstances, it is difficult to bring this case within the purview of explanation IV to Section 300 of Indian Penal Code. In any case, it was not the argument before us that the case of the appellant was covered under Section 304 of IPC. CONCLUSION

25. For the reasons given above, we find no merit in the appeal. During the course of arguments, we were informed that the appellant is absconding. He be, therefore, arrested and be committed to prison to undergo the remaining part of the sentence awarded. The appeal is dismissed.

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