

Modh.Aslam at Aslam Vs. State

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Court : Delhi

Decided On : Oct-20-2011

Judge : Pradeep Nandrajog, J.

Acts : Indian Penal Code (IPC) - Sections 302, 307, 397, 304, 308; Arms Act - Section 27; Code of Criminal Procedure (CrPC) - Section 157

Appeal No. : CRL.A.187 of 1999

Appellant : Modh.Aslam at Aslam

Respondent : State

Judgement :

1. Judgment and order dated 30.11.1998 passed by the Learned Trial Judge convicting appellant for offences punishable under Sections 302, 307, 397 IPC and Section 27 Arms Act is in challenge.

2. The prosecution case emerging at the trial, shorn of unnecessary details, was that the appellant and his alleged accomplices; Mohd.Salim and Mohd.Hanif who have been acquitted entered premises bearing Municipal No. I-10 Jangpura Extension, New Delhi on 10.5.1992 at around 3.30 PM with intention to commit robbery and were armed with deadly weapons. Their entry was noted resulting in hue and cry being raised. The robbery got aborted. A crowd gathered. The accomplices managed to flee. Appellant was apprehended at the spot by the crowd and before he could be finally pinned down, he fired at the deceased Ram

Prakash Nagar and his younger brother Ram Murti Nagar. The former died and the latter was injured. With the help of the security guard at House No.I-14, Jangpura Extension, appellant was apprehended and handed over to the police at the spot itself.

3. Perusal of the judgment penned by the learned Trial Judge reveals the trinity of incriminatory circumstances emerging against the appellant on the strength of which finding of guilt has been rendered are as under:-

(i) The appellant was apprehended with a .32 bore Wesley and Scott revolver while attempting to flee from the spot. Six used cartridges and four live cartridges were also recovered.

(ii) The opinion of the CFSL connected the above-said revolver found in possession of the appellant with the bullet extracted by the doctor who conducted the post-mortem on the dead body of the deceased as also with the 6 used cartridges.

(iii) The appellant was identified at the dock by Ms.Anuranjani Nagar PW-3, Ms.Anuragini Nagar PW-4 and Ram Murti Nagar PW-5; who were the occupants of the house where robbery was attempted and thus were the natural eye-witnesses to the occurrence with no animus to falsely implicate the appellant.

4. Criminal Justice machinery was set into motion upon the statement of Ms.Anuranjani Nagar PW-3 daughter of Ram Murti Nagar PW-5. It would be fruitful to endow a moment of careful consideration upon this statement Ex.PW-3/B which reveals the vivid picture of events that had transpired till then. A translation thereof is reproduced as under:-

"Statement of Ms. Anuranjani Nagar D/o Ram Murti Nagar R/o I-10 Jangpura Extension, New Delhi, Aged 21 years.

Stated that I reside at the abovesaid address with my parents, sister and brother on the ground floor. I am pursuing M.A in Spanish from School of Languages at J.N.U. My Tau ji- Shri Ram Prakash Nagar and Tai- Sushila reside at the first floor of the said premises. Today at around 3.30 p.m during the day when I woke up

from sleep I heard noise of screaming coming. I first went towards the back of our house and then I took the stairs to the first floor where I saw that my Tai was lying on the floor of the drawing room and three persons were beating her and Tau ji was present in the room upstairs. I caught hold one person from the collar and inquired what the matter was. On this that man pushed me on the ground and pointed a revolver towards me and inquired where was the money and the jewellery. In the meantime, my father Ram Murti Nagar and my sister Ragini came upstairs and my father caught hold of the person who had pointed revolver towards me. On this I got up and rushed downstairs while screaming. My father and Tau also came down grappling with all the three persons. At the main gate near the parked car a person whose name I have come to know as Aslam S/o Aalamuddin R/o Gali Mahal, Punjabi Fatak, Delhi with the help of a revolver in his right hand fired at my Tau Ram Prakash who fell down there. My father was trying to catch hold of the other two but gun shot was fired by Aslam. The other persons gave knife blows whose description is aged 24/25 years, black coloured, medium height. My father also got injured due to the gun shot. In the meantime all the three accused succeeded in running. I brought my father inside the room. The third person who made me to lay down upstairs had also fired from the gate. His description was 25/26 years, black coloured, small moustache and having a height of approximately 5 ½ feet. Hearing the noise many persons came out. Aslam was apprehended by Azad Singh, Security Guard I-14 Jangpura alongwith another person and brought him. From his possession a revolver and six empty cartridges and four live cartridges have been recovered. I have identified him. It is he who had injured by gun shots my father and Tau, and he has been handed over to the police. Those who have run away can be identified by me if they are produced before me. My father and Tau have been taken to the hospital in car by neighbours Om Kumar."

Attested S/d

S/d Insp. S.H.O H.Nd 10/5/92 10-5-92

5. The tehrir thereon, Ex.PW-12/A, records that in pursuance of D.D No.10-A Insp.Ajit Singh PW-19, S.I.Lalit Mohan and Ct.Khagnesh Kumar PW-12 reached I-

10 Jangpura. ASI Buni Singh PW-10 had already reached the spot before the arrival of Insp.Ajit Singh. ASI Buni Singh handed over the .32 bore revolver recovered from the appellant which was duly seized and taken into possession by Insp.Ajit Singh after sealing the same with seal „A.Singh'. Seizure Memo to this effect has been proved during Trial Ex.PW-3/A. The memo has been witnessed by Ms.Anuranjani Nagar PW-3 and the security guard Azad Singh; who had apprehended the appellant but unfortunately could not be examined as a witness as he could not be traced during trial, despite best efforts. The tehrir further records that upon being informed by ASI Buni Singh that the injured persons namely Ram Prakash and Ram Murti had been taken to AIIMS, Insp.Ajit Singh visited the hospital and seized the MLC of Ram Prakash Nagar from which it was revealed that the patient was brought dead. MLC of Ram Murti Nagar recorded the factum of having suffered dangerous shot gun injuries and the patient being unfit for statement. In wake of such attending circumstances statement of Ms.Anuranjani Nagar PW-3 was recorded and on the basis of the same F.I.R No.174/92 Ex.PW- 12/B P.S. Hazrat Nizamuddin was registered at 6.40 PM by the Duty Officer HC Yashwant Singh PW-22 when the rukka was brought to the police station by Ct.Khagnesh Kumar.

6. Copy of the F.I.R was also duly transmitted to the illaqa magistrate and senior officials in compliance of statutory requirements embodied under Section 157 Cr.P.C by Ct.Shiv Charan PW-13. It is pertinent to note that the special report was delivered at the residence of the illaqa magistrate at the same evening at about 7.45 PM and nothing has emerged on record to discredit the same or to suggest ante-timing of the F.I.R.

7. Reading of the contents of the fardbayan of Ms.Anuranjani Nagar PW-3 unequivocally evinces the fact that she has given a vivid and detailed narration of the manner in which the unfortunate incident unraveled in front of her eyes. The fardbayan and tehrir recorded thereon highlight that the appellant had already been apprehended near the spot and that the weapon found in possession of the appellant had also been seized by the police.

8. Upon careful analysis of the testimonies of witnesses and documents produced by the prosecution on this aspect we find no infirmity arising from the same and the evidence inspires confidence. The crucial documents which set the criminal justice machinery into motion such as the fardbayan, tehrir and the seizure memo of the revolver and the cartridges have been prepared with promptitude and are contemporaneous documents which rule out the scope of confabulations consequent to false implication.

9. The ocular evidence of the three eye-witnesses PW-3, PW-4 and PW-5 who have no animus against the appellant has remained unshaken in material particulars despite extensive cross-examination and in fact stands corroborated by scientific evidence adduced by the prosecution. As rightly observed by the Learned Trial Court the opinion of the CFSL Ex.Px-3 connects the revolver found in possession of the appellant with the bullet extracted by the doctor conducting the post-mortem as also the used cartridges picked up from the spot.

10. Learned senior counsel appearing on behalf of the appellant fairly submits that no worthwhile challenge can be made to the conclusions arrived by the learned Trial Judge on the aspect of involvement of the appellant but seeks to urge that the act committed by the appellant would not amount to the commission of the offence of murder. The offence committed is that of culpable homicide not amounting to murder. Learned senior counsel urges that the intention of the accused was to rob the occupants of the house and there was no intention to commit murder. Counsel submits that with a view to facilitate his escape from the premises shots were fired by the appellant at the two male members of the house, who were grappling with him proved fatal qua Ram Prakash Nagar. It was thus canvassed that the culpability of the highest degree implicit in Section 300 ought not to be attracted. In order to fortify the submission, learned senior counsel places reliance on the judgment of the Supreme Court reported as (2003) 7 SCC 441 Sukhdev Singh Vs. Delhi State (Govt. of N.C.T of Delhi), wherein the Supreme Court altered the conviction of the appellant therein from Section 304 Part I IPC to one under Section 304 Part II IPC. In the said case the accused was a Personal Security Officer attached to a Municipal Councillor and had an altercation with the deceased as the deceased had parked his three-wheeler

scooter opposite the office of the Municipal Councillor despite objection. After a heated exchange of words, the accused boarded the vehicle and asked the deceased to drive to the police station. The deceased took a wrong route to which the accused objected and another altercation ensued at which the accused fired from his pistol. The first bullet hit an innocent by-stander, who got injured. Thereafter, the accused fired again, this time hitting the deceased resulting in death. The Supreme Court found the accused to be guilty for the offences punishable under Section 304 Part II and 308 IPC. The Supreme Court observed that Exception IV to Section 300 would clearly be attracted as it was a case of sudden fight, in heat of passion whereof the act was committed without any cruelty or the accused taking undue advantage.

11. Counsel then relies upon the decision reported as (2009) 15 SCC 366 Balkar Singh Vs. State of Uttarakhand wherein the Supreme Court was pleased to alter the conviction of the appellant therein from under Section 302 IPC to one under Section 304 Part I. In the said case there was enmity between the appellant/accused and the deceased. On the day of the incident the accused had requested the deceased to take some wine with him but the deceased had curtly turned down the request. The deceased left on a tractor with his friends and feeling insulted the accused went inside his house and returned with a gun. He fired a few shots from a far distance, as a result, on being hit the deceased died.

12. Though not expressly said, the signature tune of the judgment guides us that the Court found the probable intention was to fire out of anger and with no particular motive i.e. a mindless act and since the distance from where the shot was fired and the place where the deceased was hit was considerable, knowledge of a lower degree was attributed to the accused.

13. In the present case shots were fired from a close range which fact emerges from a perusal of the post-mortem report Ex.PW-8/A which indicates tattooing around the wound. It is a trite proposition recognized by the Supreme Court itself that there can hardly be precedents in criminal cases as each case turns on its own peculiar facts. In the judgment reported as 2003 (3) JCC 1513 Megh Singh Vs. State of Punjab it was observed that circumstantial flexibility, one additional or

different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact based. It would also be noteworthy to reproduce the illuminating observations of the Calcutta High Court on this aspect. In the judgment reported as AIR 1973 Cal 48 H N Bakshi Vs. Ram Jauhar it was held that it is an abuse of authorities to extract from judgments general statements of the law made in relation to the facts and circumstances of particular cases and treat them as concluding cases in which the facts and circumstances are entirely different and which raise questions to which their authors were not directing their minds at all.

14. Adverting our attention to the facts of the instant case we find that the appellant along with others had entered the premises of the Nagar Family with a view to commit robbery and in order to execute the said illegal object, appellant was armed with a revolver. He fired when he and his accomplices were surrounded by a mob. He fired from a close range. He may have no intention to kill but it can safely be said that he voluntarily caused the death and for which we highlight the definition of the word „Voluntary' as per Section 39 of the Indian Penal Code and the illustration thereunder which read:

39. "Voluntarily" - A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

15. We are fortified in our view by the observations of the Supreme Court in the judgments reported as (1978) 3 SCC 330 Bhagwan Munjaji Pawade Vs. State of Maharashtra and (2010) 12 SCC 381 Vijender Kumar @ Vijay Vs. State of Delhi wherein the fact that the accused was armed with dangerous weapon and the deceased was unarmed resulted in conviction being sustained for the offence of murder.

16. The appeal is accordingly dismissed. The bail bond and the surety bond furnished by the appellant are cancelled. The appellant shall surrender to suffer the remaining sentence.

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