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Hukum Singh Vs. State

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Court : Delhi

Decided On : Dec-13-2011

Appellant : Hukum Singh

Respondent : State

Advocate for Def. : Mr. Sanjay Lao

Advocate for Pet/Ap. : Mr. R.K. Bali, Mr. Naveen Kumar Jain

Judgement :

$~16 * IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON: 13.12.2011 + CRL.A.175/1998 CRL.M.A.-6439 and 9030/1999 HUKUM SINGH ..... Appellant Through: Mr. R.K. Bali with Mr. Naveen Kumar Jain and Sachin Kumar Jain, Advocates. versus STATE ..... Respondent Through: Mr. Sanjay Lao, APP. CORAM: MR. JUSTICE S. RAVINDRA BHAT MS. JUSTICE PRATIBHA RANI MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT) % The appellant challenges judgment and order of the learned ASJ dated 12.01.1998 whereby he was convicted for the offences punishable under Section-302, IPC read with Section-27 of the Arms Act. By an order of sentence dated 13.01.1998, he was directed to undergo life imprisonment for the offence of murder and to undergo three years rigorous imprisonment in respect of the offence under the Crl.A.175/1998 *Page 1 of 10* Arms Act. He was also separately sentenced to pay fine..

2. The Prosecution's version was that on the night of 10.02.1993, the deceased Subhash (whose mother was the landlady of the premises, where the appellant's father and his family including the appellant himself used to live), was attacked pursuant to some altercation. The Prosecution alleged that the police received intimation about the incident which occurred around 09:28 PM that night. It was alleged that the deceased was taken to All India Institute of Medical Sciences (AIIMS). Two MLCs have been produced (Ex.PW-1/A and Ex.PW-4/B-1) in this regard. Apparently, police personnel had reached the spot and they accompanied Subhash and his wife Bimla (who deposed in the proceedings as PW-2) to the hospital. Subhash was declared brought dead. Consequently, the intimation was recorded and the FIR was lodged at 11:00 PM. The appellant was subsequently arrested and charged with committing the offence. It is the Prosecution's case that subsequent to the disclosure made by the appellant during the investigation, the murder weapon, i.e., the knife was recovered on 11.02.1993..

3. On the basis of the materials collected during the investigation, a chargesheet was filed in the Trial Court; the Trial Court framed the charges as prescribed in the previous part of the judgment. The appellant pleaded not guilty and claimed trial..

4. The Prosecution relied upon the testimonies of 22 witnesses as well as the several material exhibits including the seizure memo, Crl.A.175/1998 *Page 2 of 10* postmortem report, MLCs and FSL report etc. produced during the trial of the proceedings..

5. After considering this, the Trial Court concluded that the Appellant was guilty as charged and sentenced him to undergo imprisonment as indicated in the preceding part of this judgment..

6. It is urged by learned counsel for the Appellant that the Trial Court fell into error in overlooking certain salient and material aspects which contradicted the Prosecution's version. In this regard, learned counsel sought to highlight the conflicting testimonies of some of the PWs, prominently PWs-2, 3, 5 and .

13. It was submitted that if PW-2's version was correct, there was no corroboration about it in the evidence of PW-13 Mahesh, the deceased's brother. It was also

contended that Bimla's (PW-2) testimony about having observed the origin of the quarrel and the manner of the attack including the demeanor of the Appellant was highly unnatural and improbable. It was urged that her testimony as well as that of PW-13 could not be believed as they were included or planted to bolster the Prosecution's version. It was contended that so far as the testimony of PW-5 Brahm Prakash is concerned, the Prosecution was unable to explain how he come in to the picture and his testimonies too at large contradicted and did not support that of the other witnesses..

7. Learned counsel also highlighted the aspect of "suspicious circumstances" which could be gathered during the investigation. In this regard, it is submitted that the crime team went to the site at 11:00 Crl.A.175/1998 *Page 3 of 10* PM, but it did not record the complainant's name or even the deceased's name even though the concerned witness PW-21 claimed to have been at the spot. Learned counsel stressed that the Prosecution's case on the one hand was that the informant's (PW- 13's) statement had been taken down in the hospital around 11:00 PM; this was not supported by the testimony of the concerned SHO. Learned counsel also heavily stressed on the cross examination of PW-21, who during the proceedings admitted that the statement of the informant was recorded not at the hospital but at the site of the crime, contrary to the version of PW-16, the ASI concerned..

8. It was argued in the alternative that even if the findings of the Trial Court were to be upheld, all the facts, even as per the Prosecution's version pointed to the conviction for the lesser offence, i.e., under Section-304 Part-I, IPC. Learned counsel contended that PW-2 and PW-13 had both stated that the Appellant's father was a tenant of their family for more than 30 years. There were frequent disputes and quarrels with regard to the handing over of the possession of the premises. Learned counsel pointed that even PW-2 mentioned that on the day of the incident, the attack by the Appellant was preceded by a quarrel. It was in the heat of the moment that the appellant took out the knife and delivered the blows to which Subhash succumbed later..

9. Learned APP submitted that the Trial Court's findings do not call for any interference. It is argued that all the material witnesses, Crl.A.175/1998 *Page 4 of*

10 i.e., PWs-2, 3, 5 and 13 have corroborated each other about all material particulars in regard to the attack and its origin. It was submitted that as per the testimonies of PW-2 and 13, the manner in which they proceeded to the spot and the corroboration which was given by the testimony of PW-5 clearly established that it was the Appellant alone who was the perpetrator of the crime. PW-5 was close to the incident but saw it later on; however PW-2 happened to notice the quarrel and, therefore, apprehended some mishap which led her to alert PW-13. Both thereafter rushed to the spot, by which time, the appellant had attacked the deceased with the knife..

10. It was submitted that both the MLCs which are produced and are part of the Trial Court's record clearly show that the deceased was taken to the hospital by two policemen and his wife PW-2 Bimla. The consistent Prosecution version right through was that the statement of PW-13 was recorded in the hospital itself around 11:00 PM. Learned counsel relied upon the Ex.PW-13/A in this regard which clearly recorded that the statement of informant PW-13 was recorded in the hospital and dispatched around 10:45 PM. Having regard to these circumstances, submitted the APP, there was nothing improbable or suspicious about the fact that the Crime Team report did not contain the name of the complainant or the accused. Learned counsel here submitted that PW-21 had reached the spot independently and the recording of the statement of informant took place without his participation. In these circumstances, it is natural that the Crime Crl.A.175/1998 *Page 5 of 10* Team report did not contain those particulars which are not highlighted as suspicious circumstances. Learned counsel submitted that even though the evidence on record suggests that there was a previous history of consistent quarrel, the Court in the present case ought to take into consideration the fact that the appellant used a buttondar knife which is not commonly available. He also stressed on the fact that the two injuries were inflicted upon the left side of the deceased's chest were responsible individually and jointly for his death. It was also urged that the Appellant has been convicted for the offences he was charged under the Arms Act..

11. We have considered the materials on record. A combined reading of the testimonies of PW-2, 3, 5 and 13 would show that apparently PW-2 happened to

be on the second floor of the house where she and the deceased lived together. She was at the vantage point to observe the goings on. She deposed that on the fateful day, the Appellant met the deceased who brought up the issue about tenancy. The quarrel apparently took place at an intersection not too far away from the premises (where the deceased lived) i.e. about 30 feet or so, the PW-2 sensed a quarrel brewing. She deposed having alerted PW-13 about this. She stated that they both rushed to the spot and by then the appellant had attacked her husband. The nature of the attack has been corroborated by PW-13 even though some of the details are lacking. This lacuna is natural, in the opinion of the Court, for two reasons. The witnesses were deposing at least after four years Crl.A.175/1998 *Page 6 of 10* after the incident; more importantly PW-13 was not the first one to perceive the attack or sense it. The first person was PW-2; she conveyed the same to the PW-13 and both of them rushed to the spot. As far as testimonies of PW-3 and 5 are concerned, the Court noticed that they similarly saw the incident but from a different vantage point. If this view of the matter is taken, it is natural that oral perspective of the parties who witnessed it would be different. In view of the fact that the depositions were recorded more than four years after the incident, the explanation as to why some of these so called inconsistencies crept in during the trial would be natural one. We, therefore, see no infirmity in the Trial Court's appreciation of the evidence..

12. So far as the discrepancy with regard to the omission by the Crime Team to mention the complainant's name or that of the victim is concerned, this Court is satisfied that PW-21 who had reached the spot and was proceeding with the investigation did not have the aid of the PW-13's statement recorded by the PW-16 in the hospital. Therefore, naturally, the Crime Team could not be furnished with the relevant particulars as to the name of the accused or the name of the complainant. Though much emphasis was placed upon the cross- examination of PW-21, who stated that the informant's statement was recorded at the site, we are, at the same time, not oblivious to the circumstance, that in his case, deposition was recorded four years and nine months after the incident. Lapse of memory naturally occurs in Crl.A.175/1998 *Page 7 of 10* the course of time. That brings the discussion to the question as to what would be the appropriate conviction - either under Section-302 or 304 IPC. The relevant provision here would be under

Section-300, IPC: - "Exception 4.--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation It is immaterial in such cases which party offers the provocation or commits the first assault.".

13. The previous decisions of the Courts have ruled that the origin or nature of the quarrel is immaterial having regard to the exception. The rider, however, in all these cases is that the accused should not take the undue benefit of the position in which the deceased is placed. In such circumstances, one of the vital point of enquiry always is the kind of weapon which was used by the accused as well as the entirety of circumstances. The law on this in this regard is enunciated by the Supreme Court in Virsa Singh v. State of Punjab AIR 1958 SC 465 and explained later in numerous other decisions. We do not wish to dwell on these decisions, except to mention the following decisions: - (i) Surinder Kumar v. Union Territory, Chandigarh (1989) 2 SCC 217; Crl.A.175/1998 *Page 8 of 10* (ii) Prakash Chand v. State of H.P., 2004 (11) SCC 381; and (iii) Shaikh Azim v. State of Maharashtra, 2008 (11) SCC 696.

14. In the present case, the evidence on record points to the history of quarrel between the appellant and the deceased's family. The latter owned the premises in which the appellant's family lived; appellant's father was a tenant for more than 30 years. The landlord wanted the premises to be vacated; the tenants were not agreeable. This resulted in constant quarrels. On the day of the incident too, apparently, Subhash brought up the conversation with the appellant who had a quarrel and in a sudden fit decided to end the matter altogether and proceeded to attack him. However, the Court is conscious of the fact that the appellant inflicted four knife injuries, out of which, two were sufficient to cause death independently and cumulatively. Death did occur almost immediately in this case..

15. Having regard to these facts, the Court is of the opinion that conviction under Section-302 IPC was not warranted. The same is accordingly altered to one under Section-304, Part-I, IPC..

16. The Appellant was in jail during the trial and even after the conviction. He was released on bail during the pendency of these proceedings. The nominal roll discloses that he has spent more than 6 years in jail as on 16.10.1999. In these circumstances, we are of the opinion that ends of justice would be met if the sentence is substituted to seven years rigorous imprisonment. The Appellant Crl.A.175/1998 *Page 9 of 10* would, of course, be entitled to reckon the benefit of the sentence undergone post trial as well as during the under trial period in accordance with law. The appellant is directed to surrender before this Court on 19th December, 2011 to serve the remainder of the sentence. The State shall make appropriate arrangement to ensure that the appellant is taken into custody in compliance with these directions..

17. The matter shall be listed formally for reporting compliance on 19th December, 2011..

18. The Appeal - Crl.A.175/1998 - is partly allowed in the above terms..

19. Bail bonds are hereby cancelled. S. RAVINDRA BHAT (JUDGE) PRATIBHA RANI (JUDGE) DECEMBER 13, 2011 /vks/ Crl.A.175/1998 Page 10 of 10

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