

Ram Lal Vs. State

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Court : Delhi

Decided On : Apr-26-2013

Judge : Sanjiv Khanna

Appellant : Ram Lal

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL NO. 1317/2012 Reserved on :

17. h April, 2013 Date of Decision:

26. h April, 2013 % RAM LAL Appellant Through Mr. Bhupesh Narula, Advocate. Versus THE STATE Respondent Through Mr. Sanjay Lao, APP for the State. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE V.P. VAISH SANJIV KHANNA, J:

1. The appellant Ram Lal impugns his conviction vide judgment dated 15th October, 2009. under Section 302 of the Indian Penal Code, 1860 (IPC) for murder of Kalam on 6th September, 2006 at about 9.30-10.00 p.m. He has been sentenced to life imprisonment and fine of Rs.10,000/-, which, upon realization, is to be equally distributed amongst the family members of the deceased.

2. There is ample evidence to show that Kalam died a homicidal death pursuant to injuries suffered by a sharp edged weapon. Dr. Sapna (PW-3), who was working

as a Junior Resident at Safdarjung Hospital, had examined Kalam and had prepared his MLC (Ex.PW3/A). The said MLC (Ex.PW3/A) records that at 10.35 P.M. Kalam was brought to the hospital with alleged history of assault and two lacerated wounds.

3. Kalam subsequently died and inquest papers were prepared. The autopsy was conducted by Dr. Yogesh (PW-8). The post mortem report (Ex.PW8/A) records the following two external injuries:1. Stab wound vertically placed 1 cm below left nipple 10 cm from middle eye of size 2.5 cm .6 cm between found and fifth ribs going into the chest cavity, backwards and medially up to 7.5 cm, perforating lower margin of upper lobe of left lung and reaching up to left ventricle of heart with a cut of 2.5 cm .5 cm.

2. Cut injuries present over (a). Right palm proximal to little finger of size 3.2 cm .8cm(b) left middle finger middle phalanx back of size 2.21 cm.(c) first web space of left hand 1.21 cm. Cause of death was opined to be shock as a result of ante mortem stab injury to left side of the chest which perforated the left lung i.e. injury No.1. We shall subsequently refer to the opinion given by PW-8 when we deal with the question whether the appellant is the perpetrator, who had caused the said injuries.

4. The deceased Kalam was taken to the hospital by Mani Lal, who has appeared as PW-1. He has deposed that he was running a leather factory at Kapashera and the appellant Ram Lal and deceased Kalam used to work in his factory. On 6th September, 2006, he had come to the factory at about 6 p.m. and found that the appellant had consumed liquor. On being questioned, the appellant informed that he had given Rs.50/- to the deceased Kalam and had sent him to bring more liquor. As deceased did not return, the appellant had taken umbrage. At about 9.30 p.m. both the deceased and the appellant returned and an altercation took place between them over Rs.50/-. PW-1 had even offered to pay the said amount to the appellant, but he was adamant that the deceased should pay. PW-1 thereafter went to the roof of the factory, but rushed downstairs when he heard noise/cries. There he found that the appellant had a pair of scissors in his hands. Appellant and deceased were grappling with each other. He intervened and

separated them. He also sustained injuries on his left hand. The deceased had sustained injuries on his chest and was bleeding profusely. PW-1 took the deceased to the hospital and after half an hour Kalam died. The police reached the hospital and recorded his statement Ex.PW1/A. The appellant had absconded and was arrested on 10th September, 2006 from ISBT Kale Khan and his personal search (memo Ex.PW-1/G) was prepared. Munni Lal (PW-1) was a witness to the said memo. The appellant had made disclosure statement Ex.PW1/H and on the basis of the disclosure statement, one pair of scissors was recovered near the boundary wall of Delhi Jal Board. He has identified the sketch of the scissors marked Ex.PW1/J.

The Investigating Officer also seized the pant and shirt worn by the appellant vide memo Ex.PW1/L. The said pant and shirt was identified by PW-1 as Ex. P5 and P6, respectively. The scissors was identified by PW-1 as Ex.P4. The pant (Ex.P3) belonging to PW-1, which was seized, was also identified by him.

5. Learned counsel for the appellant has relied upon the cross- examination and submitted that PW-1 himself was a prime accused and the police had grave doubts viz. PW-1s involvement. It is accordingly submitted that PW-1 is not a reliable and credible witness. PW-1 in his cross-examination has stated that he had remained with the police throughout the night and sometimes they used to take him to the police station and hospital. He has also stated that there were four other employees in the police station including one Kamal, who was related to the appellant Ram Lal. Police used to call all of them daily to the police station. He has further deposed that he was freed from the police station after two days and was asked to trace the appellant. He reiterated in the cross-examination that the appellant was arrested from Saria Kale Khan on 10th September, 2006 at about 8.00-8.30 p.m.

6. We have examined the statement made by PW-1. However, we are inclined to accept the statement made by PW-1 as truthful, credible and one which should be accepted. In fact, the statement made by PW-1, in the cross-examination, that he was repeatedly asked to come to the police station and was put under restrain, reveals that he is a truthful witness, who did not conceal or hide any fact from the

court. We do not agree with the contention of the appellant that PW-1's conduct is doubtful and he can be the perpetrator who had caused injuries on Kalam. There are several reasons for the same. PW-1 had himself taken the deceased to the hospital. On the basis of PW-1's statement (Ex.PW1/A), rukka was recorded and sent to the police station for recording of FIR at about 1 a.m. on 7th September, 2006. The FIR in question i.e. FIR No. 308/2006 was registered under Section 302 IPC vide DD No.2A at 2 a.m. on 7th September, 2006. Copy of the said FIR (Ex.PW10/A) was received by the concerned Metropolitan Magistrate on 7th September, 2006 at about 10 a.m. In the rukka and the FIR, name of the appellant Ram Lal is clearly mentioned. He has been described as a perpetrator of the crime. Mani Lal (PW-1) himself was slightly injured and Dr. Sapna (PW-3) in her deposition has testified that Dr. Vipin Kumar had prepared the MLC of Mani Lal dated 7th September, 2006 marked (Ex.PW3/B). In addition to the said MLC, we have also on record the OPD card of Mani Lal (PW-1). In the case history or the brief facts, which were sent along with the inquest report, name of the appellant is mentioned.

7. The appellant in his statement, recorded under Section 313 Code of Criminal Procedure, 1973 (Cr.P.C.), has accepted that he and the deceased Kalam were working in the factory of PW-1. On the question of arrest on 10th September, 2006, he has stated that this was incorrect and Mani Lal (PW-1) and other police officials called him from Mathura and had falsely implicated him in the present case. He has further stated that nothing was recovered from him or at his instance and the police had obtained his signature on blank papers while he was in police custody.

8. The appellant was arrested on 10th September, 2006 and, as per the prosecution case, he thereafter had made the disclosure statement Ex.PW1/4.

1) as well as by SI Mahesh Soni (PW-7). The scissors was recovered near the boundary wall of Delhi Jal Board. PW-7 prepared sketch (Ex.PW1/J) of the scissors and had also seized the same vide memo Ex.PW1/K.

9. PW-7 had also seized the pant and shirt of the appellant, which he was wearing at the time of occurrence, vide memo Ex.PW1/L. He was wearing the same

clothes as per the police version at the time of arrest. Similar statement has been made by Constable Ram Mehar (PW-5). However, we are inclined to discard the evidence with regard to the seizure of the blood stained pant and shirt as it is highly improbable that the appellant would have worn the same clothes even after four days of the occurrence, when he returned to Delhi and was arrested.

10. As noticed above, the appellant has not disputed his arrest on 10th September, 2006, though he has claimed that he was called from Mathura and thereafter arrested. The scissors was shown to Dr. Yogesh (PW-8) and he opined in his subsequent opinion dated 27th November, 2006 (Ex.PW8/B) that the injuries on the chest of the deceased was possible by the scissors examined by him. He had also prepared the sketch of the said scissors marked Ex.PW8/C. At this stage, we may note that the FSL report (Ex.PXPY) records that blood was detected on the scissors, but the blood group could not be ascertained.

11. The appellant had examined four witnesses in his defense. Kamal Singh (DW-1) has stated that on the date of occurrence at night police had knocked at his door and then he came to know about the death of Kalam. Thereafter, they took him, PW-1 and some others and confined them for three days. They all went to Mathura as police wanted to implicate someone. They picked the appellant from Mathura and handed over him to Delhi Police. In the cross-examination he has accepted that these facts were being disclosed for the first time before the Court and he had not made any complaint to the police officers or senior police officers. It is claimed that these facts were not disclosed because of fear. He has deposed as incorrect, the suggestion give by the Additional Public Prosecutor that PW-1 had committed murder of Kalam. As recorded, the appellant was named as the perpetrator of the crime/injury in the FIR itself. Thus, the question of police wanting to implicate and arrest anyone does not arise.

12. Mahavir Singh (DW-1A) has stated that he did not know anything about the case, but he had worked in the factory of PW-1. PW-1 had two factories in the same compound but they were separated by a wall. The appellant and DW-1A were working in the same factory, but the deceased Kalam was working in a different factory. He has accepted as correct that he was not present and had left

the factory at about 8 p.m. on the date of occurrence. Manik Chand (DW-2) has deposed on the similar lines as DW-1 and DW-1A that he did not know anything about the case and has accepted that at the time of occurrence he was not present. Kamal Singh (DW-3) again has deposed on the similar lines as DW-1, DW-1A and DW-2 and has accepted that at the time of occurrence he was not present in the factory. DW-3 has deposed that he had never worked in the factory of PW-1 and has stated that the deceased was working with Manik Chand in a different factory. (we hope and trust that DW1 and DW3 are different persons).

13. The statement of the defense witnesses do not cast or create any predilection or doubt about the prosecution case and involvement of the appellant as the perpetrator, who had caused the injuries to Kalam. The appellant has in his statement under Section 313 Cr.P.C. accepted as correct that he and the deceased Kalam were employees working in the factory of PW-1. Statements of the defense witnesses that the appellant was not an employee of PW-1 are clearly false and dubious assertions.

14. The next question, which arises for consideration, is whether the appellant has been rightly convicted under Section 302 IPC and whether the Exception 4 to Section 300 is applicable to the facts of the present case. From the deposition of PW-1, the sole eye witness to the occurrence, it is clear that the appellant and deceased had consumed alcohol. Smell of alcohol is confirmed in the MLC (Ex.PW3/A) of the deceased. The deposition of PW-1 in the Court is somewhat at the variance to the first statement (Ex.PW1/A) made by him to the police. In the statement Ex.PW1/A it was stated that on 6th September, 2006 at about 9.30 p.m. he had gone to the terrace to have food when he heard abuses and came down. There he had found that the appellant and the deceased were fighting with each other and the appellant was demanding that the deceased should return Rs.50/- because he had not brought liquor. PW-1 tried to intervene and separate them. He had tried to pacify by even offering to immediately pay Rs.50/- and would deduct the said amount from the salary payable to the deceased. This had happened in the passage in front of the factory. Upon this, the deceased started walking out of the factory. At that moment, the appellant who was behind him, suddenly took out 10 inches scissors commonly used for cutting at the factory, and hit the deceased

on his chest. PW-1, in the court, has deposed to the effect that, at about 9.30 P.M., the deceased and the appellant had a quarrel but he intervened and pacified them. Thereafter, he went to the roof of the factory but rushed down when he heard noises. There he found the appellant was having scissors in his hand and the deceased had sustained injuries on the chest. Both of them had grappled and he had to intervene to separate them.

15. The scissors in question is used by tailors and would have been easily available in the factory or with the appellant, since he was a tailor by occupation and worked in a factory where leather goods were manufactured. Both the appellant and deceased were inebriated and had consumed considerable amount of liquor. There were certainly heated arguments as the deceased had taken Rs.50/- from the appellant and had not brought liquor, which the appellant wanted to consume.

16. It is apparent that the quarrel had taken place between 9.30 p.m.-10 pm on 6th September, 2006 and by about 10.35 P.M. Kalam had been taken to the hospital as per the MLC Ex.PW3/A. As the appellant had caused injuries resulting in death of Kalam, we have to take the statement of PW-1 on the appellants conduct in the quarrel with some reservation as there could be some element of exaggeration or overemphasis as to the wrongful act and culpability of the appellant viz. Kalam. In the preceding paragraph, we have brought out the difference between the two versions, Ex.PW1/A, which formed the rukka and the statement of PW-1 recorded in the Court. In the court testimony PW-1 has stated that when he came down the scissors in the appellants hands was visible and that the deceased had inflicted injuries on the appellants chest. He did not actually see how and from where the appellant had got hold of the scissors and how the verbal quarrel had turned into a physical one. He was not privy to the whole altercation and was certainly not present when the arguments escalated and the injury was caused. We cannot say with full conviction who had first picked up the scissors or had tried to hit the other person physically. In these circumstances, we feel that the case is one of sudden fight and falls within the parameters of the fourth exception to Section 300 IPC. It is apparent that both the appellant and Kalam were friends and had drinks together. There was a quarrel on a trivial issue of Rs.50/- as Kalam had taken the

money from the appellant, but had not brought the liquor, as the deceased expected. There is a doubt whether the appellant was the first to physically assault the deceased. The weapon i.e. the scissors was available in the factory as it is an implement and tool used by the workers and was not specially procured to commit the said crime. In all probability it was picked up from the spot itself.

17. In these circumstances, we give benefit of doubt to the appellant and hold that he did not take undue advantage and/or had not acted in a cruel or gruesome manner in the absence of any direct or other evidence to show what actually transpired after the altercation took an ugly turn, while PW-1 had gone to the roof/terrace to have food. The fact that PW-1 had gone to the terrace to have food shows that he had no cause to fear that there could be such grave consequences of the fight or the fight would escalate. When the quarrel exacerbated PW-1 was upstairs and there is no account of what actually transpired, in that interim period. It is pertinent to mention that only one injury was caused, though it was inflicted on a vital part. PW-1 has averred that the deceased had initially walked into the hospital and was conscious, but subsequently he vomited and expired within half an hour. Looking at the totality of these circumstances, we convert the conviction of the appellant from Section 302 IPC to Section 304, Part I IPC.

18. The next question relates to the quantum of sentence. Keeping in view the injuries caused, the trivial issue on which the quarrel had taken place and the initial attempt made by PW-1 to pacify, we feel that the appellant should be sentenced to Rigorous Imprisonment for a period of 12 years with fine of Rs.10,000/-. In default of payment of fine, he shall undergo Simple Imprisonment for a further period of 4 months. We are not inclined to reduce or give lesser punishment to the appellant, in the present case, keeping in view that the injury was caused at the vital part of the body i.e. the chest with a pair of scissors.

19. Accordingly, the appeal is partly allowed. Conviction of the appellant is converted from Section 302 IPC to Section 304, Part I IPC. The sentence is altered to Rigorous Imprisonment for a period of 12 years and fine of Rs.10,000/- with stipulation that in case of default or failure to pay the fine, the appellant shall undergo Simple Imprisonment for a period of 4 months. Fine, if collected, shall be

paid to the legal heirs of the deceased Kalam. -sd(SANJIV KHANNA) JUDGE -
sd(V.P. VAISH) JUDGE APRIL 26 2013 NA

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