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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 12.03.2009
Judgment delivered on: 18.03.2009

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CRL.A. No.246/2001

VIJENDER @BIJO ...Appellant
Through : Mr.Gagan Chhabra, Advocate.

versus

STATE ...Respondent
Through : Ms.Richa Kapoor, Advocate.

CRL.A. No.434/2001

OM PRAKASH ...Appellant
Through : Mr.Gagan Chhabra, Advocate.

versus

STATE ...Respondent
Through : Ms.Richa Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

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

: PRADEEP NANDRAJOG, J.

1. At 8.05 AM on 23.9.1997 Inspector Mahesh Kumar PW-16 was handed over copy of DD No.8, Ex.PW-8/A which recorded that a lady was stabbed near the house of one Chet Ram. Accompanied by HC Satya Prakash PW-11, he proceeded to the spot and was informed that two persons, who were injured, had been removed to Safdarjung Hospital. Both

proceeded to Safdarjung Hospital and learnt that a lady named Anita was brought dead at the hospital at 8.50 AM, as recorded in the MLC Ex.PW-15/A. A male, named Zahir Alam, was admitted in an injured condition having a lacerated injury on the scalp and an abrasion on the left elbow as per MLC Ex.PW-15/C of Zahir Alam. He was fit for making a statement. Inspector Mahesh Kumar PW-16 recorded the statement Ex.PW-13/A of Zahir Alam and made an endorsement Ex.PW-16/A thereon and forwarded the same through HC Satya Prakash PW-11 for registration of a First Information Report. The statement and the endorsement was dispatched at 11.40 AM and pursuant thereto HC Usha Rani PW-5 registered the FIR Ex.PW-5/A.

2. Back at the spot, Inspector Mahesh Kumar prepared a rough site plan Ex.PW-16/B at the instance of Ramwati PW-1, the mother of Anita. He lifted blood stained earth from the spot where Anita was stated to have been stabbed as also from a room where Zahir Alam was stated to have been injured.

3. The body of Anita was sent for post-mortem to the mortuary where Dr.Alexander PW-12 conducted the post-mortem and in the post-mortem report Ex.PW-12/A noted fifteen injuries on her person, being as under:-

“1. Lacerated wound on the left side top back of head of size 4.5 cms x .7 cms x .5 cms.

2. Lacerated wound on the right side of forehead of size 3 cms x 1 cms x 5 cm.

3. Lacerated wound on the left side of forehead 1 cm above the left eyebrow of size 3 cms x 1 cms x 5 cms.
4. Abrasion on the right side of face over the zygomatic process of size 1.7 cms x 1.2 cms.
5. Horizontal stab wound on the anterior aspect of left side chest at the level of 2nd intercostals space of size 2.3 cms x 1 cm x 32. Cms. Both the margins were sharp and clean cut. The medial edge was sharp and acute and the lateral edge was blunt. The Centre of the wound was 132 cms above the level of left heel and 2.5 cms lateral to the median plain. The direction of the wound was backwards horizontal and slightly lateral.
6. Horizontal stab wound on the anterior aspect of left side chest at the level of 5th intercostals space of size 2.5 cms x .5 cms x 3.5 cms. Both the margins were sharp and clean cut. The medial edge was sharp and acute and the lateral edge was blunt. The centre of the wound was 124.5 cms above the level of left heel and 1 cms lateral to the median plain. The direction of the wound was backwards, horizontal and lateral.
7. Horizontal stab wound on the anterior lateral aspect of left chest at the level of 6th intercostals space of size 3 cms x 1 cm x 4.5 cms. Both the margins were sharp and clean cut. The medial edge was sharp and acute and the lateral edge was blunt. The centre of the wound was 120 cms above the level of left heel and 7 cms lateral to the median plain. The direction of the wound was backwards, slightly downwards and medial.
8. Incised wound on the lateral aspect of left arm middle third of size 7 cms x .3 cms x .3 cms.
9. Oblique stab wound on the right epigastric region of the anterior abdomen of size 2.8 cms x 1 cms x 7 cms. Both the margins were sharp and clean cut. The lateral edge was upwards and blunt and the medial edge was downwards and acute. The centre of the wound was 115 cms above the level of right heel

and six cms lateral to median plain. The direction of wound was backwards, downwards and slightly medial.

10. Oblique stab wound on the right umbilical region of the anterior abdomen of size 2.5 cms x 1 cms x 3 cms. Both the margins were sharp and clean cut. The medial edge was sharp and upwards and the lateral edge was blunt and downwards. The centre of the wound was 111 cms above the level of right heel and 9 cms lateral to median plain. The direction of the wound was backwards, lateral and slightly downwards.

11. Incised wound on the vertical aspect of middle phalanx of right ring finger of size 1 cm x .3 cm x .3 cm.

12. Incised wound on the lower third medial aspect of right thigh of size 1 cm x .5 cms x .5 cms.

13. Incised wound on the superior lateral aspect of right knee of size 3 cms x .5 cms x 1.2 cms.

14. Incised wound on the left side of pelvis, over the left posterior, superior, iliac spine of size 3 cms x 2 cms x .5 cms.

15. Abrasion on the front of left knee of size 1.3 cms x 1 cm."

4. He recorded that internal examination showed that the stab wound No.5 had pierced the left upper lobe of the lung at the medial border and that injury No.6 had punctured the right ventricle of heart and the inferior vena cava. Injury No.7 was noted to have cut through the intercostal muscles and the pleural cavity and thereafter had pierced the lower lobe of the left lung. He opined that the said injuries were individually and collectively sufficient in the ordinary course of nature to cause death. He opined that injuries No.1, 2, 3, 4 and 15 were caused

by blunt force impact with a blunt object and that injuries No.5 to 14 were caused by a sharp edged weapon.

5. Since in his statement, Ex.PW-13/A, Zahir Alam had named the appellants as the assailants of Anita and named appellant Vijender as the one who had hit him with a thapki (a wooden bat shaped object used for washing clothes), the police started searching for the appellants who were found absconding from their respective houses and were ultimately arrested on 29.9.1997 near Prakash Puri Ashram, Gurgaon. Both were interrogated. Appellant Vijender made a disclosure statement Ex.PW-16/G and inter alia stated that the thapki with which Zahir Alam and Anita were assaulted by him was hidden by him and that he could get the same recovered. Appellant Om Prakash made a disclosure statement Ex.PW-16/H and inter alia stated that a button operated knife, used by him to stab Anita, was hidden by him and that he could get the same recovered. Thereafter, appellant Vijender led the police to Oberoi Farms and from near a wall got recovered a thapki Ex.P-2 which was seized vide seizure memo Ex.PW-16/L, sketch whereof drawn by Inspector Mahesh Kumar is Ex.PW-16/K. Appellant Om Prakash led the police to the shop of Vijender and got recovered a button operated knife Ex.P-1 which was seized vide seizure memo Ex.PW-16/J, sketch whereof drawn by Inspector Mahesh Kumar is Ex.PW-16/I.

6. SI Madan Pal, a draftsman was later on taken to the site, who under instructions of Inspector Mahesh Kumar prepared the site plan to scale Ex.PW-10/A.

7. On 21.10.1997 the thapki and the knife were sent for opinion to Dr.Alexander, who opined that injuries No.1, 2, 3, 4, and 15 on the person of Anita could possibly be caused by the thapki and that the remaining injuries could be caused by the knife.

8. During investigation, Ramwati PW-1, mother of Anita disclosed to Inspector Mahesh Kumar PW-16 that Vijender had hit Anita with the thapki and Om Prakash had stabbed her with a knife. Amarjeet PW-2 informed the police that around the time when Anita was stabbed, in his taxi, he had dropped the appellants at village Khatwali. Anand Prakash PW-3, a resident of the area, was associated as an independent witness when the knife was recovered pursuant to the disclosure statement of Om Prakash and after he i.e. Om Prakash led the police to the shop of Vijender from where the knife was recovered.

9. A charge-sheet was filed against the appellants for having murdered Anita and for having attempted to murder Zahir Alam.

10. At the trial, Amarjeet PW-2 and Anand Prakash PW-3 turned hostile and did not support the case of the prosecution.

11. Ramwati PW-1 also did not support the case of the prosecution save and except to a limited extent of deposing that Anita was residing in Kapashera with Zahir Alam and that Anita was the wife of appellant Om Prakash but had left him to live with Zahir Alam.

12. Zahir Alam PW-13 deposed that in the year 1997 he was residing in a room in village Kapashera and Anita used to live with him along with her mother Ramwati PW-1. That on 23.9.1997 appellants came to his residence and inquired as to in what capacity he had kept Anita with him. He informed them that he had married Anita. That the appellants told him to show papers, in proof of his marriage with Anita. He informed them that the papers were with his brother. Thereafter, appellant Vijender picked up a thapki and hit him on his head. Om Prakash took out a knife. Crying, Anita went outside and reached near a water tank. Vijender started hitting Anita with the thapki and Om Prakash inflicted knife injuries on her stomach and thereafter ran away. He summoned the police and removed Anita to Safdarjung Hospital where the police recorded his statement Ex.PW-13/A. He deposed that Ramwati PW-1 was present in the house when the appellants came there.

13. On being cross-examined he deposed; since an argument was advanced in relation to the said part of the

deposition of Zahir Alam, we propose to reproduce the same verbatim. It reads as under:-

“On the day of incident the accused persons remained in my room hardly for five minutes. Firstly the accused asked politely but thereafter they raised their voices and there was noise. No neighbour came in the verandah or to my room on hearing noises. I was not knowing the names of any of the accused when they came to my room nor I was knowing them otherwise or their relation with Anita. The mother of Anita told me the names of both the accused persons after they left the room. Their relation with Anita was also told by mother of Anita. Mother of Anita told me the names of accused and their relationship with Anita after they left the room. After my mother-in-law told me the names of the accused and their relationship with Anita, I along with my mother-in-law went after the accused persons Injuries had been caused to me in the room itself and blood had oozed out of my wounds and had fallen on the floor of room also. Anita had not received any injury when she left the room..... The place where Anita was caused injuries was at a distance of thirty or forty steps from the main gate of the building. One side there was a building and on other side there was a vacant plot, where Anita was caused injuries. The water tank was inside the ground and no water tank was outside the ground..... The accused persons stayed near water tank for about two minutes. I saw the incident while I was on way.”

14. Dr.Geetanjali Dey PW-15, proved the MLCs of Anita and Zahir Alam respectively being Ex.PW-15/A and Ex.PW-15/C. Dr.Alexander PW-12, who conducted the post-mortem of Anita proved his report Ex.PW-12/A and deposed facts regarding his opinion given with respect to the thapki and the knife as the possible weapons with which the injuries could be inflicted on Anita.

15. The various police officers associated with the investigation deposed the relevant facts pertaining to the investigation conducted or the investigation with which they were associated as also the registration of the FIR. We do not note their deposition for the reason, no arguments were advanced at the hearing of the appeal pertaining thereto; save and except to note that SI Madan Pal PW-10 proved the site plan Ex.PW-10/A and Inspector Mahesh Kumar PW-16 deposed the facts pertaining to the investigation conducted by him and proved the rough site plan Ex.PW-16/B.

16. Notwithstanding PW-1, PW-2 and PW-3 turning hostile; believing Zahir Alam PW-13 as a truthful witness and finding corroboration to his ocular testimony with reference to his MLC and the post-mortem report of Anita; linking further incriminating evidence in the form of the thapki Ex.P-2 and the knife Ex.P-1 (which were duly identified by Zahir Alam as the weapons of offence seen by him) recovered pursuant to the disclosure statements of the appellants and at their instance; the learned Trial Judge has convicted the appellants of having murdered Anita. Pertaining to the injury inflicted on Zahir Alam, both appellants have been convicted for the offence punishable under Section 323/34 IPC. Vide order of sentence dated 21.3.2001, for the offence of murder, the appellants have been directed to undergo imprisonment for life and for the offence

punishable under Section 323/34 IPC, they have been sentenced to undergo imprisonment for three months. Both sentences have been directed to run concurrently.

17. At the hearing of the appeals, learned counsel for the appellants urged that the testimony of Zahir Alam showed that appellant Vijender had accompanied Om Prakash to the room where Zahir Alam was residing and that Vijender was not armed with any object. The thapki was picked up at the spot and only a single blow was inflicted on Zahir Alam and there was no participative act of Om Prakash in the said assault. That from the testimony of Zahir Alam it is apparent that the appellants simply went to enquire as to how Anita was living with Zahir Alam and that the testimony of Zahir Alam to the effect that initially both the appellants spoke politely but flared up later on evidences a sudden rush of blood in the head of Vijender and therefore Om Prakash cannot be made vicariously liable for the act of Vijender pertaining to the injury caused to Zahir Alam.

18. The second submission urged was that Zahir Alam could not have witnessed the appellants inflicting injuries on Anita. Counsel urged that Zahir Alam admitted during cross-examination that when Anita went out of the room, she was followed by the appellants and that Zahir Alam stayed back in the room and inquired from Anita's mother as to who were the appellants. She told him that Om Prakash was the husband of

Anita and Vijender was her brother. Counsel urged that this interactive dialogue between Zahir Alam and Anita's mother would take at least 10 – 12 seconds, by which time, Anita would have at least run a distance of 30 – 35 meters. With reference to the site plan Ex.PW-10/A, learned counsel pointed out that the spot where Anita was stabbed, i.e. the place where blood stained soil was lifted, is at a distance of about 50 meters from the room where Zahir Alam and Anita were living. Learned counsel further pointed out that the site plan charts the route taken by Anita to reach the spot where she was stabbed. It was pointed out that to reach said spot, Anita had to run a distance of 7 meters towards the South after coming out of the room and thereafter, taking a turn towards the right she had to run in the Western direction for about 15 meters and again taking a turn towards the right, had to run a distance of 13 meters. Thereafter, taking a turn towards the left she had to run in the Western direction for another about 16 meters. Counsel urged that under no circumstances could Zahir Alam see Anita being chased, much less stabbed and hit by the assailants.

19. With respect to the post-mortem report of Anita, learned counsel for the appellant did not dispute that two weapons of offence were used and hence there were two persons who had attacked Anita.

20. We propose to deal with the second contention urged before dealing with the first.

21. Let us recreate the scene in the room immediately after Anita went out and was followed by the appellants; as per the testimony of Zahir Alam:-

“Scene: Anita has left the room followed by the appellants, one of whom, namely Vijender is holding a thapki and the other, Om Prakash is holding a knife.

Zahir Alam to Ramwati: Who were these men?

Ramwati to Zahir Alam: One of them is the ex-husband of Anita and the other is her brother.

Zahir Alam to Ramwati: Who is who?

Ramwati to Zahir Alam: The one who hit you with the thapki is Anita’s brother and the other who had the knife in his hand is her ex-husband.”

22. We have timed the conversation. It takes precisely 14 seconds to conclude the dialogue while speaking with the ordinary speed.

23. It is apparent that by the time Zahir Alam left the room, Anita would have run across the first 7 meters of the street as also the next 14 meters and probably even the third segment spanning 13 meters and would have taken at least 2 turns, each at right angle, and under no circumstances could Zahir Alam have seen Anita being chased. By the time even he ran the said 3 segments covering a distance of 7 meters, 14 meters and 13 meters respectively and had reached the last

segment, Anita would have already reached the spot where she was attacked. From the site plan it is apparent that he who reached the last segment of the route chartered by Anita could see the spot where Anita was stabbed; thus, the time covered to run the last segment covering 16 meters is irrelevant.

24. But, that does not mean that Zahir Alam could not have seen the appellants attacked Anita. The reason is obvious. There are 10 stab injuries on the person of Anita. Some of the injuries are fairly deep. In fact the two injuries which have turned out to be fatal are fairly deep. Re-enacting the injuries being inflicted by the assailant, we note that at least 20 to 25 seconds would be needed if the assailant were to inflict the 10 stab wounds, even giving the benefit that the blows were inflicted very rapidly. Thus, the 14 second time lag after which Zahir Alam left the room after Anita, under the facts and circumstances of the instant case, loses all significance.

25. That apart, it is settled law that facts which are not themselves in issue may affect the probability of the existence of facts in issue, and thus can be used as the foundation of inferences respecting the facts in issue; such facts are relevant facts. The only requirement is that such facts have to be relevant to the facts under enquiry and have to be sufficiently connecting with the later to afford good ground for an inference as to the existence or non-existence of the facts under enquiry.

Facts which are so closely or inseparably connected with the facts in issue are often said to be forming part of the same transaction. A transaction may constitute a single incident occupying a few moments and encompassing a variety of acts occurring at the same or different places. All these acts are constituents of the same incident and are relevant because they accompany and tend to explain the fact in issue. They form a chain as it were encircling the fact in issue.

26. Section 6 of the Evidence Act makes relevant, facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, whether they occur at the same time and place or at different times and places. It is important to bear in mind that what is admissible under Section 6 are facts which are connected with the facts in issue as part of the transaction under investigation. In order that different acts constitute the same transaction they must be connected by proximity of time, unity or proximity of place, continuity of action and community of purpose or design.

27. Where a fact has occurred with a series of acts preceding or accompanying it, it can safely be presumed that the fact was possible as a direct cause of the preceding or accompanying acts unless there exists a fact which breaks the chain upon which the inference depends.

28. The evidence of last seen is based on the reasoning above. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. To put it differently, as held in the decision reported as AIR 2003 SC 3131 Mohibur Rahman Vs. State of Assam there may be cases, where on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind is persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the deceased suffered death or should own the responsibility for homicide.

29. Thus, the fact that the appellants chased Anita and appellant Vijender was armed with a thapki and appellant Om Prakash was armed with a button operated knife, and within less than two minutes of Anita and the appellants leaving the room, Anita is found stabbed with a knife and hit by a blunt object, are facts by themselves sufficient to draw an adverse inference against the appellants unless they explain as to how Anita was stabbed and hit with a blunt object.

30. There is a clear motive for the crime. The motive is revealed from the testimony of Zahir Alam. It is clear that the

appellants were not sure whether Anita was living in adultery or whether she was married to Zahir Alam. Their queries were not satisfactorily answered because Zahir Alam could not produce the marriage papers. That, Om Prakash came armed with a button operated knife shows his intention. It is true that Vijender did not come armed but it is settled law that an intention to commit a crime can spring up at the spur of the moment and can be shared by the accused who otherwise may not have had any meeting of the mind prior thereto. This intention can be gathered by the contemporaneous acts of the accused.

31. From the testimony of Zahir Alam it is apparent that Om Prakash had taken out the knife in the room itself. He followed Anita. Vijender who had the thapki in his hand also followed Anita. Both of them used the respective weapon in their hands. Om Prakash inflicted 10 stab wounds on Anita. Vijender gave her 5 blows with the thapki. The acts of the two show participation in the commission of the crime and each would thus be tainted with the acts of the other.

32. Pertaining to the conviction of the appellants for the offence punishable under Section 323/34 IPC, suffice would it be to state that the conviction pertains to the injury caused by Vijender on Zahir Alam. There is no participative act of Om Prakash. From the testimony of Zahir Alam it is apparent that the accused persons were speaking politely and suddenly a

heated argument ensued and at that Vijender struck a blow with a thapki on Zahir Alam. There is qualitative difference in the evidence of Zahir Alam till the stage Anita walked out. The difference is that, by the time Anita had walked out, passions had already roused and a common intention formed at the spur can be deciphered from the acts of the appellants. But before Anita left the room, events prior thereto are qualitatively different and do not evidence a common intention to attack Zahir Alam. Thus, on said account, we give benefit of doubt to appellant Om Prakash vis-à-vis the injury inflicted on Zahir Alam.

33. The appeal filed by Vijender is dismissed. The appeal filed by Om Prakash is partially allowed, in that his conviction for the offence punishable under Section 323/34 IPC is set aside. His conviction for the offence of murder is sustained.

34. The appellants are on bail. Their bail bonds and surety bonds are cancelled. The appellants shall surrender and suffer the remaining sentence.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

March 18, 2009
dk/mm