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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 20.03.2009

Judgment delivered on: 06.04.2009

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CRL.A. No.726/2005

AHMED ALI SARDAR ...Appellant
Through : Ms.Purnima Sethi, Advocate

versus

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

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE J.R. MIDHA

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

: PRADEEP NANDRAJOG, J.

1. The police swung into action on 15.05.2002 at 2104 hours when an unknown person informed SI Charat Singh PW-14, that a person named Vicky has been stabbed at old Chandrawal; that public persons had apprehended the offender and had left him at Police Post Majnu Ka Tila and that the injured has been removed to the hospital. Const. Chanderpal PW-2, recorded DD No.33A Ex.PW-2/A, noting the said information.

2. ASI Rajeshwar PW-12, accompanied with SI Charat Singh PW-14 and Const. Prem PW-8, reached the spot. Simultaneously, another police officer named SI Sanjeev Kumar PW-17, also reached the spot. What happened thereafter is recorded in the endorsement (tehrir) made by SI Saneev Kumar PW-17, which reads as under:-

“Respected Duty Officer Police Station Civil Lines it is humbly submitted that today at about 9.05 P.M. on receipt of a wireless information about a incident of stabbing I reached the place of occurrence i.e. Kale Khan Chowk, Majnu Ka Tila, where one Sugreev Yadav s/o Late Sh. Raja Ram Yadav was present who produced the accused Ahmed Ali Sardar s/o Surat Ali Sardar and handed over a spring actuated blood-stained knife in an open condition to me. The aforesaid spring actuated blood stained knife, in that very condition, was taken into police possession by means of a memo and aforesaid Sugreev got recorded his statement which was read over and explained to him and who having admitted the same to be correct put his signatures in Hindi which I attest. Th contents of the aforesaid statement, circumstances prevailing at the spot and the recovered knife reveal the commission of an offence punishable under Section 307 IPC and Sections 27/54/59 IPC of the Arms Act. Hence, this writing is being sent through Const. Prem Ram No.2251/N to the Police Station for registration of a case.

Date and hour of occurrence : 15.05.02 at about 8.30 P.M.

Place of occurrence : Kale Khan Chowk near truck parking Majnu ka Tilla

Date and hour of despatch of writing : 15.05.02 at 9.50 P.M.” (Translated Version)

3. The endorsement afore-noted on basis whereof the FIR was registered was preceded by SI Sanjeev Kumar PW-17,

recording the statement Ex.PW-3/A of Sugreev Kumar Yadav, the gist whereof is that he earns his livelihood by working as a rickshaw puller in Majnu Ka Tilla area. That on 15.05.2002 at around 8.30 P.M. when he was drinking tea at the tea shop of Shashi Yadav situated at Kale Khan Chowk he saw that an altercation had ensued between the deceased and the accused. That thereafter the accused had inflicted a knife blow in the middle of the chest of the deceased. That he had apprehended the accused with the help of some persons who had gathered and had brought the accused to the spot. That the deceased had been removed to the hospital in the TSR of Sudeshwar. That Shashi Yadav had also witnessed the said incident. That he and Shashi Yadav had handed over possession of the blood stained knife possessed by the accused to the police. That the deceased was known to him prior to the incident as he also used to ply rickshaw in Majnu Ka Tilla area.

4. That the statement Ex.PW-3/A on which the endorsement was made by SI Sanjiv Kumar PW-17, was forwarded at 9.50 P.M. through Const. Prem Ram PW-8, for registration of an FIR. Const. Prem Ram handed over the endorsement to HC Kashi Ram PW-5, who registered the FIR bearing No.182/02 Ex.PW-5/A, at 10.05 P.M. on 10.11.97.

5. As recorded in the endorsement, the appellant was apprehended at the spot. In fact, if the endorsement is correct,

the appellant was caught red-handed. As recorded in the endorsement, a blood stained knife was recovered from the appellant which was seized vide seizure memo Ex.PW-3/B. Blood stained earth and sample control earth were seized vide memos Ex.PW-3/D and Ex.PW-3/E respectively. SI Sanjeev Kumar prepared the sketch Ex.PW-3/C of the knife.

6. In the meantime, the deceased was removed to Trauma Centre where he was declared brought dead as noted in the MLC Ex.PW-1/A. SI Sanjiv Kumar PW-17, proceeded to the hospital where he collected the MLC Ex.PW-1/A and clothes of the deceased and seized the clothes vide memo Ex.PW-17/B.

7. Since the deceased was declared brought dead, his body was sent to the mortuary, where Dr.Sarvesh Tandon PW-10, conducted the post-mortem at 3.00 P.M. on 20.05.2002 and gave his report Ex.PW-10/A which records that an incised penetrating wound of size 3 cm X 1.3 cm was found in the middle front of the chest, just by the right side of midline, transversely placed before 4th and 5th ribs, in the line joining the two nipples; that the depth of the wound was 14.7 cm; that the said injury was ante-mortem in nature and was caused by a sharp edged weapon which was having sharp edges at both sides; that the said injury was sufficient to cause death in the ordinary course of nature.

8. After conducting the post-mortem, the doctor handed over the blood sample of the deceased on a gauze which was seized vide memo Ex.PW-13/B.

9. The clothes and blood sample of the deceased; the knife recovered from the possession of the appellant and the blood stained earth and sample earth control seized from the spot were sent to a serologist for a serological test. Vide FSL reports dated 19.08.02 it was opined that the blood group of the deceased was 'A'; that human blood of group 'A' was found on the clothes of the deceased; that human blood was detected on the knife recovered from the possession of the appellant and blood stained earth seized from the spot, group whereof could not be determined.

10. Armed with the aforesaid material, a challan was filed accusing the appellant of having murdered the deceased Manhaiya @ Vicky. Charges were framed against the appellant for having committed offences punishable under Section 302 IPC and Sections 27/54/59 of the Arms Act.

11. At the trial, apart from examining the police officers who were associated with the investigation and the doctors who had conducted post-mortem and prepared MLC of the deceased, Sugreev Kumar Yadav, Shashi Yadav and one Sudeshwar Dass were examined as PW-3, PW-4 and PW-15 respectively.

12. Sugreev Kumar Yadav PW-3, deposed in harmony with his earlier statement Ex.PW-3/A recorded by the police.

13. Shashi Yadav PW-4, deposed that on 15.05.2002 at about 8.30 P.M. he was present in his tea shop situated at Kale Khan Chowk when he saw that the appellant started quarreling with the deceased who was standing near his tea shop. That thereafter the appellant gave a knife blow on the chest of the deceased and ran away. That he along with Sugreev who was drinking tea at his shop at that time and some other persons from the public apprehended the appellant and brought him to the spot. That the deceased was removed to the hospital in a TSR.

14. Sudeshwar Dass PW-15, deposed that he had removed the deceased to the hospital in his TSR and had got him admitted therein on the date of the incident.

15. The appellant in his examination under Section 313 denied everything and pleaded false implication.

16. The appellant did not lead any evidence in his defence.

17. Holding that the evidence of Sugreev Kumar PW-3 and Shashi Yadav PW-4, is fully corroborated by the other evidence led by the prosecution, vide judgment 21.08.2004 the learned Trial Judge has convicted the appellant for committing offence

punishable under Section 302 IPC and Sections 27/54/59 of the Arms Act.

18. In support of the appeal, the counsel for the appellant advanced under-noted 7 submissions:-

A. The first submission advanced by the counsel was predicated upon the contents of the DD Entry Ex.PW-2/A. The counsel argued that the said DD Entry records that the appellant was brought to Police Post Majnu Ka Tilla by public persons after apprehending him which recording is contrary to the case of the prosecution that the appellant was apprehended by the police at the spot.

B. The second submission advanced was that the recording contained in the MLC Ex.PW-1/A of the deceased that an unidentified person has been brought to the hospital and the testimony of Sudeshwar Dass PW-15, who had removed the deceased to the hospital that he did not know the name of the deceased is contrary to the testimony of Sugreev Yadav PW-3, who had deposed that the deceased was removed to the hospital by the persons who knew the deceased.

C. The third submission advanced by the counsel was that there are infirmities in the evidence of Shashi Yadav PW-4, which makes his presence at the spot doubtful. The first infirmity pointed out was that Shashi Yadav PW-4, had deposed that he along with Sugreev and other persons from the public

had apprehended the appellant whereas Sugreev Kumar PW-3, had not deposed a word about the role of Shashi Yadav in apprehending the appellant. The second infirmity pointed out was that there are contradictions in the testimony of Shashi Yadav PW-4, pertaining to the time period of his running the tea shop at the spot inasmuch as he firstly deposed that he is running the tea shop at the spot since last 2-3 years; thereafter he said that he was running the shop for the last 3-4 years and lastly said that he was running the shop for the last 15-20 days. The third infirmity pointed was that no other shop is shown in the site plan to scale Ex.PW-9/A whereas Shashi Yadav PW-4, had deposed that some other shops were also situated in the vicinity of his shop.

D. The fourth submission advanced by the counsel was that Shashi Yadav PW-4, had deposed that he has no knowledge whether the other shop owners were present around the spot at the time of the incident as he was busy in making tea at his shop. The counsel argued that the aforesaid testimony of Shashi Yadav brings out that Shashi Yadav was absorbed in his work and was oblivious of his surroundings at the time of the incident. The counsel further argued that this selectiveness on the part of Shashi Yadav of having witnessed the incident but being completely unmindful of the other surroundings at the same time due to his being absorbed in work raises a serious

doubt on the truthfulness of his version that he had witnessed the incident.

E. The fifth submission advanced by the counsel was that the alleged recovery of the knife from the possession of the appellant is tainted. The counsel pointed out that Shashi Yadav PW-4, had deposed that the knife recovered from the possession of the appellant was not stained with blood at the time when the sketch of said knife was drawn by the police whereas seizure memo Ex.PW-3/B of the said knife records that the knife was stained with blood at that time. The counsel further pointed out that SI Sanjiv Kumar PW-17, had deposed that he had snatched the knife from the hands of the appellant at the time of his arrest whereas Sugreev Kumar PW-3 and Shashi Yadav PW-4, had deposed that they had handed over the knife possessed by the appellant to the police.

F. The sixth submission advanced was that there was a delay of two months in sending the case property to the FSL which is fatal to the case of the prosecution.

G. The last submission advanced was that evidence on record establishes that an altercation had ensued between the appellant and the deceased and during the same the appellant had inflicted only one injury on the person of the deceased and hence the appellant can only be attributed with an intention to cause an injury which was likely to cause death and not with an

intention to cause the death of the deceased or an injury sufficient in the ordinary course of nature to cause death. Hence, counsel urged that at best it was a case of culpable homicide not amounting to murder. Alternatively, counsel urged that from the testimony of PW-3 and even his statement Ex.PW-3/A it was apparent that the act of stabbing was preceded by an altercation between the appellant and the deceased and hence it was a case of causing an injury upon a sudden quarrel.

19. Before dealing with the submissions advanced by the learned counsel, the salient features of the case set up by the prosecution against the appellant may be briefly noted. The two eye-witnesses namely, Sugreev Kumar PW-3 and Shashi Yadav PW-4, have supported each other in material particulars. The statement Ex.PW-3/A of Sugreev Kumar wherein it was stated that the appellant had inflicted a knife blow on the chest of the deceased which statement was recorded prior in time to the conduct of post-mortem of the deceased stands fully corroborated by the post-mortem report Ex.PW-10/A which records that an incised wound was noted on the chest of the deceased. The evidence of Sugreev Kumar PW-3 and Shashi Yadav PW-4, that the appellant had inflicted a knife blow on the person of the deceased is corroborated by the FSL reports which records that human blood was detected on the knife which was recovered from the possession of the appellant.

20. With regard to the first submission advanced by the counsel, it is relevant to note that the DD Entry Ex.PW-2/A was recorded on the basis of the information provided by a public person. It is quite possible that the said person assumed that the appellant would be taken to police post Majnu Ka Tila as the said police post was very near to the spot or that he might have heard somebody saying that the appellant would be taken to the said police post. Be that as it may, nothing much turns on the said recording contained in the DD Entry Ex.PW-2/A in view of categorical evidence of Sugreev Kumar PW-3, Shashi Yadav PW-4 and the police officers who were associated with the investigation at the spot on the date of the incident that the appellant was apprehended by the public at the spot and handed over to the police at the spot.

21. Pertaining to the second contention urged, as noted above, it relates to the MLC Ex.PW-1/A of the deceased wherein it is recorded that an unidentified has been brought to the hospital. Submission made is that Sudeshwar Dass PW-15 got the deceased admitted at the hospital and Sugreev Kumar PW-3 had deposed that a person known to the deceased had removed him to the hospital. The submission made is worthy of hardly any consideration. Sugreev Kumar PW-3, who was preoccupied with holding the appellant till the police arrived may not have paid attention to as to who removed the injured to the hospital and presumed that somebody known took him

to the hospital. Now, Sudeshwar Dass PW-15 never claimed to have known the deceased.

22. The third submission pertaining to the infirmities in the deposition of Shashi Yadav PW-4, it is relevant to note the following observations made by Supreme Court in the decision reported as Bharwada Bhoginbai Hirjibhai v State of Gujarat AIR 1983 SC 753:-

“Over much importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen:

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable

estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person,

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses." (Emphasis supplied)

23. That Sugreev Kumar PW-3, did not depose a word about role of Shashi Yadav PW-4, in apprehending the appellant is not of much relevance as it does not go to the root of the matter. We find no infirmity at all the possibility of Sugreev Kumar PW-3, who was busy chasing the appellant, of not seeing Shashi Yadav who was also chasing the appellant due to his preoccupation with chase of the appellant or because of the presence of lot of people at that time cannot be ruled out. In

any case, it is a trivial fact. Similarly, the second infirmity pertaining to the duration for which Shashi Yadav was running the shop is irrelevant. The third alleged infirmity in the evidence of Shashi Yadav PW-4, vis-a-vis the site plan Ex.PW-9/A is not an infirmity at all. The site plan only indicates the broad contours of the place of the occurrence. The fact that no other shop is shown in the site plan Ex.PW-9/A does not lead to a conclusion that Shashi Yadav PW-4 had deposed falsely that some other shops were situated in the vicinity of his shop. Relevant would it be to note that neither the presence of an eye-witness or the doing of an act at or outside any other shop has been alleged by the prosecution.

24. Nothing much turns on the fourth submission advanced by the counsel that Shashi Yadav PW-4, could not have witnessed the incident as he was absorbed in his work at the time of the incident. The case of the prosecution cannot be disbelieved by the courts on the mere theories put forward by the defence. Shashi Yadav PW-4, was cross-examined at length but nothing tangible could be extracted there from to discredit his testimony. Even otherwise, it is entirely possible that Shashi Yadav PW-4, while making tea caught a glimpse of the quarrel which had ensued between the deceased and the appellant due to which his attention got riveted to them and he witnessed the incident.

25. With regard to the submission pertaining to recovery of the knife and the dispute that whereas Shashi Yadav PW-4 deposed that the knife recovered from the appellant was not stained with blood when the sketch thereof was drawn and the fact that the seizure memo records that the knife was stained with blood, is again of no consequence. It is relevant to note that Shashi Yadav deposed on 9.10.2003 i.e. after about one year and five months of the incident and suffered from a memory lapse. The controversy pertaining to the fact that Sanjeev Kumar PW-17 deposed that he snatched the knife from the hand of the appellant whereas Sugreev Kumar PW-3 and Shashi Yadav PW-4 deposed that they had disarmed the appellant and had handed over the knife to the police, is again of no consequence. It is not unknown that witnesses tend to overstate facts and assign a larger role to them than what they actually played. Unless the exaggerated fact deposed is a lie of a serious nature, it has to be ignored as a mere embellishment.

26. That the case property was sent to the FSL very late, is not always fatal to a case. In a given case it may be fatal and in a given case it may not be fatal. It is settled law that when the direct testimony of the eye-witnesses inspires confidence and fully establishes the prosecution version, failure or omission or negligence on part of the Investigating Officer cannot affect the credibility of the prosecution version. (See the

decision of Supreme Court reported as Ram Bihari Yadav v State of Bihar & Ors AIR 1988 SC 1850).

27. The last submission made that, at best the offence made out is of culpable homicide not amounting to murder needs to be dealt with before penning off.

28. The testimony of PW-3 establishes the fact that the appellant did not act with pre-meditation and no doubt was armed with a knife, used the same when a quarrel ensued between him and the deceased. There is no evidence as to who commenced the quarrel. There is no evidence as to what the quarrel was. There is no evidence of any past enmity. In the absence of the evidence as to any past enmity, who commenced the quarrel and what the quarrel was, the benefit has to go in favour of the accused and it must be held that the appellant acted upon a sudden quarrel. Exception IV to Section 300 IPC is clearly attracted. Relevant would it be to note that the appellant has not acted in a cruel or an unusual manner.

29. The appeal is partially allowed. The conviction of the appellant for the offence of murder is set aside. The appellant is convicted for the offence punishable under Section 304 Part I. The appellant is sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/-; in default of payment of fine to undergo simple imprisonment for two months.

30. Copy of this order be sent to Superintendent,
Central Jail, Tihar for compliance.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

April 06, 2009
Dharmender