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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 30.03.2009

Judgment delivered on: 02.04.2009

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CRL.A. No.577/2006

SAJJAN KUMAR

...Appellant

Through : Ms.Rakhi Dubey, Advocate.

versus

STATE

...Respondent

Through : Mr.Pawan Sharma, 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? Yes
3. Whether judgment should be reported in Digest? Yes

: PRADEEP NANDRAJOG, J.

1. Case of the prosecution is as per the statement Ex.PW-3/A made at 9:05 PM on 2.4.2001 by Kartar Singh to SI Suresh Chand PW-5, on basis whereof the FIR Ex.PW-1/A was registered at the local police station at 9.25 PM. The statement of Kartar Singh reads as under:-

“Statement of Kartar Singh S/o Late Shri Risal Singh R/o Village & PO Bijwasan New Delhi aged about 62 years :-

I reside at the abovementioned address with my family and am a retired Air Force employee. That today at about 4:45 PM, I was present at my house

when Naraini Devi the wife of my neighbour Naresh Kumar, whose roof is adjacent to the roof of my house, informed me that some noises of a quarrel were emanating from the tenanted portion of my house. At that I went to the house of Sajjan Kumar who resides along with his wife as my tenant towards the rear side of my house. The door of his house was closed from inside and the sound of a tape recorder playing in a high volume and the cries of the wife of Sajjan Kumar were emanating from the house. After I knocked at the door several times, Sajjan Kumar finally opened the door and I saw that Sajjan Kumar had blood on his hands and his wife Raj Bala aged about 42/43 years was lying on the floor smeared in blood. That on seeing me, Sajjan Kumar started washing his hands, in a bucket of water lying in the room. That a lot of blood was lying on the floor of the room and a blood stained darat was also lying there. That on seeing all this, I asked Sajjan Kumar as to what on earth had he done and I told him that I shall call the police right away, upon which Sajjan Kumar told me that there was no need for me to call the police as he would himself tell the police that he had murdered his wife because he was sick of their daily fights. That thereafter, I asked my son Surrender to call the police. That after sometime the police arrived and took Raj Bala and Sajjan Kumar to the hospital. I have heard my statement, it has been recorded correctly.”

2. Needless to state, at the trial, Kartar Singh PW-3 reiterated the facts which stand recorded in Ex.PW-3/A and SI Suresh Chand PW-5 who had reached the spot when information of the incident was recorded at the police station vide DD No.15A, Ex.PW-2/A corroborated Kartar Singh with respect to the arrest of the appellant in his house; the recovery of a blood stained darati Ex.P-1 in the house and blood stained clothes of the appellant being seized when he was arrested.

3. We need not note the testimony of the witnesses for the reason when the incriminating circumstances were put to the appellant when he was examined under Section 313 Cr.P.C., the first six questions and question No.9 were answered in the affirmative by the appellant. The question and answer read as under:-

“1. It is in evidence against you that on 2.4.2001 you were tenant in respect of a room of a house owned by Kartar Singh in village and PS Brijwasan where you used to reside along with your wife Smt. Raja Bala. What have you to say?

A. It is correct.

2. It is further in evidence against you that on 2.4.2001 at about 4:30 PM Naraini Devi informed PW-2 Kartar Singh that a quarrel was going on in your house. What have you to say.

A. It is correct.

3. It is further in evidence against you that Kartar Singh (PW-3) came to your house, gave a call and you responded by opening the door of your room. What have you to say.

A. It is correct.

4. It is further in evidence against you that you were having blood on your hands and you were washing your hands in the bucket of water whereas your wife Smt. Raj Bala was lying in a pool of blood on the floor of your house. What have you to say?

A. It is correct.

5. It is further in evidence against you that Kartar Singh informed the police and PCR van came at the spot. What have you to say?

A. It is correct.

6. It is further in evidence against you that you told Kartar Singh that there was no need to call the police

because the quarrel had taken place between you and your wife. What have you to say?

A. It is correct.

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9. It is further in evidence against you that police recovered the blood stained Darat Ex.P-1 from the place of incident where Smt.Raj Bala was lying. What have you to say?

A. It is correct.”

4. When he was arrested, the appellant was having incised wounds on his left hand and hence he was sent to Safdarjung Hospital where Dr.Alexzender PW-13, examined the appellant and on the MLC Ex.PW-13/A recorded the following injuries:-

“1. Eight linear incised superficial wounds (cut marks) on the palmar aspect of the hand of different sizes.

2. Incised wound on the left middle finger dietil phalanx palmar aspect of size 0.5 ms x .1 xms. X .1 cms.

3. Cut mark (superficial incised wound) on the left middle finger, middle phalx, palmer aspect of size 0.4 cms x .1 cms. x .1 cms.

4. Cut mark (superficial incised wound) on the left ring finger second phalings of size 0.3 cms. x .1 cm x .1 cms.”

5. Raj Bala wife of the appellant had died by the time she was removed to the hospital. Her body was sent to the mortuary where Dr.L.K.Barua conducted the post-mortem on

4.4.2001 and on the postmortem report Ex.PW-17/A recorded the following injuries on the person of the deceased:-

- “1. One semelunar incised wound on lateral aspect of the left eye. Size 4 x 1.5 inch;
2. One deep choppe wound on the left side breedge of the nose size 4 x 1 cms.
3. Incised wound on the left cheek extending to the left ear pinna. Size 3.5 x 1 cms.
4. Chopping involving upper and lower lips size 6 inches (right lower and left upper).
5. One cut lacerated wound on the upper part of lip size left eye 3 inches.
6. Again incised wound on pinna of left ear size 3 inches.
7. One cut lacerated wound on the left osipital area size 3 inches.
8. Cut lacerated wound on the left side back of neck size 3.5 inches.
9. Chopping on middle of the chin to left angle of the mouth length 6 inches.
10. Incised wound on the back of the neck placed/layed 2 cms below injury No.8. This injury was only muscle deep with abrasions at margins.
11. Diffused bruises were observed on the back of shoulders.
12. One deep chopping on the top of the right shoulder of size 4 x 14 inches. On exploration it was found to be cut the right shoulder joint.
13. Incised wound with abrasions at margins on left ulna region. It was partly curved and length of the injury 9 inches. It had cut the ulnar bone of the left forehand and forearm was found to be deformed.
14. 2 small CLWs on the back of left elbow size 2 inch and one injury of 1.5 inches. Both the injuries were of bone deep (bone were found to be cut).

15. Right ulna was found to be cut on its posterior aspect along with muscles tendinous and blood vessels with deformity.

16. On examination of the abdomen (left and right side) showed 6 number of incised wound (scratches) and were skull to muscle deep only and have not entered the abdominal cavity."

6. In the post-mortem the result of the internal examination was recorded as under:-

"Head : Injury no.7 had cut the occipital bone about 1cm deep and 4cm long. The brain was contused, smeared with blood. Left eye ball and orbital bone was cut corresponding to injury no.1. Injury no.4 had cut both upper and lower lips, jaws and maxilla and fracture of the teeth. Oral cavity contained blood. The chest cavity on examination contained blood in the wind pipe as well as in the food pipe. Both lungs were pale and the heart was pale and otherwise normal. On examination of the abdominal cavity breathing was normal but pale. Stomach contained small amount of digested food material with no abnormal smell. The uterus was found to be empty. There was no injury to the genetical organs. On examination of the spinal column, injury no.8 was seems to have cut the cervical vertebrae from the back side."

7. He recorded the opinion that all the injuries were ante mortem in nature and caused by sharp/heavy cutting weapon/object. That the injuries were sufficient to cause death in the ordinary course of nature.

8. That vide impugned judgment and order dated 6.4.2002 the learned Trial Judge has convicted the appellant for the offence of having murdered his wife.

9. Indeed, in view of the deposition of Kartar Singh PW-3 and the recoveries effected from the house of the appellant and the answers to questions No.1 to 6 and 9 when the appellant was examined under Section 313 Cr.P.C. the learned counsel for the appellant did not even attempt to argue that the appellant was not the offender. To be fair to the appellant we may note that in response to the last question put to him when he was examined under Section 313 Cr.P.C. he responded that the case against him is because he has given blows to Raj Bala. It is unclear as to whom the appellant has meant by the word 'he'. Did he intend to say that 'he' meant 'Kartar Singh'. We do not know. But, the fact that the appellant admitted that he was in the room with his wife and that he opened the door when Kartar Singh knocked at the door, the appellant has to explain how his wife received the injuries which caused her death. The appellant has not done so. We note that when Kartar Singh was cross-examined, no suggestion was given to him that Kartar Singh had murdered his wife.

10. Learned counsel for the appellant argued that on being cross-examined Kartar Singh admitted that the appellant was a very good person and that he was a tenant under him for the last 1½ years and that prior thereto the appellant and

his wife had never quarreled. Counsel pointed out that Kartar Singh stated during cross-examination that the deceased was always seen by him in a brooding mood and it was possible that Raj Bala was suffering from some mental disorder. Thus, counsel urged that two things could be possible. Firstly that Raj Bala picked up a sudden quarrel with the appellant and he attacked her upon a sudden quarrel. In that view of the matter, counsel urged that Exception-IV to Section 300 IPC would be attracted. Secondly, counsel urged that evidenced by the fact that the left palm of the appellant had cuts and bruises it was apparent or at least possible that the wife of the appellant attacked him with a sharp-edged object and on being provoked, the appellant lost self-control and retaliated. In such eventuality, counsel urged that Exception-I to Section 300 IPC would be attracted. Hence, counsel urged that the appellant cannot be held guilty for the offence of murdering Raj Bala; at best the offence would be of culpable homicide not amounting to murder. Alternatively, counsel urged that all injuries on the person of Raj Bala were directed towards the face. It was evident that the intention was to deface Raj Bala i.e. cause injuries to her and not murder her.

11. Neither submission made by the counsel has impressed us. Firstly, no other weapon of offence has been

recovered from the house other than the darati Ex.P-1. Thus, the projected theory that Raj Bala provoked the appellant by assaulting him has no basis to stand. We have noted the injuries on the left hand of the appellant. All of them are simple injuries. On the MLC itself it has been recorded that the injuries are simple. Common sense guides us that the injuries can be self-inflicted. Though to be fair to the appellant as well as to the prosecution we must note that Dr.Alexzender PW-13 who had examined the appellant was not questioned and hence we do not have the opinion of the doctor whether the injuries could be self-inflicted. Be that as it may, it is settled law that while evaluating even medical evidence, common sense should guide the Court. In this connection it would be relevant to note that PW-18 Inspector Hans Raj has deposed that the appellant used to sign with his right hand, meaning thereby that the appellant was a right-handed person and thus could easily inflict simple cut wounds on his left palm. Lastly, the opportunity for the appellant to put forward said version was that when he was examined under Section 313 Cr.P.C., the appellant did not do so.

12. We note that the appellant has not stated when examined under Section 313 Cr.P.C. that the deceased had provoked him.

13. No witness has deposed to a quarrel between the appellant and his wife on the day of the incident. In his testimony Kartar Singh has not stated that he heard sounds of a quarrel from the house of the appellant. He has stated that he heard the cries of the wife of the appellant which attracted him to the house of the appellant. That apart, assuming the appellant attacked his wife upon a sudden quarrel but to take the benefit of Exception-IV to Section 300 IPC it is important that the offender should not have taken undue advantage or acted in a cruel or an unusual manner. The MLC of Raj Bala shows not only wickedness and meanness in the assault, it shows the cruel and the unusual manner of the attack. The eye, the nose, the cheek, the lips, the left ear, the neck, the chin, the scalp, the shoulder, the arms were the target of the Darati Ex.P-1. Injury No.16 shows six incised (scratches) on the abdomen evidencing that Raj Bala was demobilized with a strong force directed towards the abdomen when the assault was being committed.

14. Learned counsel for the appellant cited the decision reported as 1997 Cri.L.J. 831 Mavila Thamban Nambiar vs. State of Kerala to urge that in view of the said decision the offence made out is of culpable homicide not amounting to murder. We wonder at the applicability of the said decision.

Only one blow was inflicted by the appellant upon the deceased in said case. The assault in the instant case is with 15 blows and not one.

15. It is no doubt true that individually neither blow was fatal but the cumulative effect of all is fatal evidenced by the fact that the deceased probably died in the house itself; in any case soon after before she reached the hospital. In the least, the acts of the appellant are attracting Section 300 fourthly i.e. are so imminently dangerous that in all probability death would occur.

16. We find no merit in the appeal. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

April 02, 2009

Dharmender