

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 02.07.2013*

+ CRL. A. No. 702/2010

NANKU YADAV Appellant

Through: Mr. Ajay Verma, Adv.

versus

STATE Respondent

Through: Mr. Sunil Sharma, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 On 12.08.2007, an information was received in Police Station Desh Bandhu Gupta Road vide DD No. 19-A by Additional SHO Sanjay Kumar Singh (PW-16) about an incident of stabbing at Ajmal Khan Road. Accordingly PW-16 directed SI Krishan Kumar (PW-10) along with HC Samdev (PW-6) and Constable Ashish Kumar to reach the place of occurrence. The injured Biltu Yadav had already been removed to the Lady Harding Hospital by ASI Satbir Singh (PW-15). PW-10 on reaching there learnt that the injured was already dead.

2 PW-10 returned to the spot where blood sample, earth control and blood stained earth was lifted and taken into possession vide memo Ex. PW-10/B. The photographer was summoned to take photographs of the spot. The positives were proved as Ex.PW-7/1 to Ex.PW-7/20 and
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negatives were proved as Ex.PW-7/A1 to Ex. PW-7/A20. Chance prints were sought to be lifted by SI Ashok Kumar (PW-8) but since it was a rainy day, no chance print could be found; report to the said effect is Ex.PW-8/A. Scaled site plan was prepared by SI Mahesh Kumar (PW-18) and proved as Ex.PW-18/A.

3 Doctor Sanjeev Kumar (PW-17) prepared the MLC of the deceased; Ex.PW-17/A had noted that the injured had been brought dead to the hospital. The deceased was shifted to the mortuary vide memo Ex. PW-17/C. On 14.08.2007, Dr. Avnish Kumar (PW-11) had conducted the post-mortem on the dead body of Biltu Yadav. The following injuries on the body of the deceased were noted; they were 12 in number and read as follow:-

1. Incised wound (Curt throat wound), Size 9.3 cm x 6 cm x bone deep horizontally placed measuring 5 cm on the right side from the mid line and 4.3 cm on the left side of the mid line present in the front of the neck, 8 cm below chin. All the neck muscles in the front of the neck, trachea, esophagus and nerve and vessels are completely severed. Two cuts, horizontally placed are present over the anterior surface of the body of the c6 vertebra.

2. Incised wound 4.7 cm x 2.3 cm x muscles deep present over the dorsal aspect of left arm 7 cm above left elbow joint.

3. Incised wound 5 cm x 1.5 cm x none deep present over the posterior aspect of left elbow joint.

4. Incised wound 2.5 cm x 1 cm x muscle deep present over the lateral aspect of left forearm, 12.5 cm above left wrist joint.

5. Incised wound 3.8 cm x 0.9 cm x muscle deep present over the dorsal aspect of left forearm, 11 cm above left wrist joint.

6. Incised wound 3.5 cm x 0.7 cm x muscle deep present over ventromedial aspect of left forearm 4.5 cm above left wrist joint.

7. Incised wound 4.5 cm x 1 cm x subcutaneous deep present over mid palmar space and hypothenar eminence of right hand 5 cm below metacarpophalangeal joint of right ring finger.

8. Incised wound 1.5 cm x 0.3 cm x bone deep present over dorsum of the left hand 4.6 cm below left wrist joint.

9. Stab wound 9.3 cm x 4 cm x abdominal cavity deep a triangle like shape with all angles acute present in the mid line of abdomen 15 cm below xiphisternum and 1 cm above umbilicus. Direction of the wound in the abdominal cavity is backwards, medially and upwards producing multiple incised wounds in the mesentery, small intestine and mesenteric vessels associated with 500 ml of blood present in the peritoneal cavity.

10. Incised wound 1 cm x 0.3 cm into subcutaneous deep present over left side of abdomen 21 cm below left nipple.

11. Incised wound 1.4 cm x 0.7 cm x muscle deep present in the left side of abdomen 25 cm below and 2 cm lateral to the left nipple.

12. Incised wound 1 cm x 0.4 cm x subcutaneous deep present 1 cm above left anterior superior iliac spine.

4 The cause of death was noted as shock and hemorrhage as a result of multiple incised wounds caused by a sharp cutting weapon. Injuries were ante mortem and fresh in duration. All injuries together and external injury No. 1 and 9 were individually sufficient in the ordinary course of nature to cause death. Time since death was noted as one and a half days.

5 The accused was arrested on 14.08.2007 vide memo Ex.PW-10/D. His personal search was effected vide Ex. PW-10/E. His disclosure statement Ex.PW-10/C was recorded wherein he disclosed that he could get recovered the knife (weapon of offence) used in the incident. On the next day, the knife was recovered from Ajmal Khan Park at the pointing out of the accused; it was hidden and when retrieved it was noted to be smudged with blood. It was seized vide memo Ex. PW-10/F. The subsequent opinion of PW-11 was obtained upon the knife vide Ex.PW-11/B; the doctor opined that the injuries as noted in the post-mortem report could have been caused by the said weapon.

6 On 06.09.2007, the clothes of the deceased were taken into possession vide memo Ex. PW-16/C. The exhibits were deposited in the malkhana through HC Murari Lal (PW-13) and were sent to the CFSL through Constable Suresh Kumar (PW-14). The FSL reports were proved as Ex. PX-1 and Ex. PX-2 wherein human blood was opined to be present on the knife Ex. P-1 as also on the blood stained earth material which had been lifted from the spot; blood group 'B' was also detected on the clothes worn by the deceased which was also his blood group.

7 Statement of the accused was recorded under Section 313 Cr.PC wherein his defence was that it was a false case and even the family members of the deceased were not against him.

8 In defence two witnesses had been produced; DW-1 SI Maninder Singh and DW-2 Ram Karan were examined. They are not relevant to the incident in question and as such no reliance was placed upon the testimony of the aforementioned witnesses by the learned counsel for the appellant.

9 On behalf of the appellant, the line of argument addressed before us was that the testimony of the eye witness coupled with the injuries on the deceased show that it was an incident which had occurred on the spur of moment. It was an impulsive act; it was not premeditated; the fact that the parties are closely related i.e. the deceased being the brother of the accused also substantiating this line of argument that it could not have been the intention of the appellant to have killed his brother; more so this is evident from the fact that the family of the deceased has now been settled by the other family members of the appellant i.e. their father; she is well being looked after and in fact none of the said family members also have any complaint against the appellant. Attention has also been drawn to the post-mortem report Ex. PW-11/A; submission being that the injuries on the victim were by and large on the stomach and abdominal area and had the intent of the appellant been to kill the deceased he would have inflicted injuries on his heart or some other vital part of the body. At best a case under Section 304-II IPC is made out and the appellant has been wrongly convicted for the offence under Section 302 IPC. To substantiate the same argument, attention has also been drawn to the testimony of PW-1, the eye-witness; submission

being that the so called eye-witness has not been able to explain as to how and in what context the incident had started. In fact there was no witness to the said effect. This also corroborates the version of the appellant that the incident had occurred on the spur of the moment and it was not premeditated.

10 Learned APP for the State has refuted these submissions. It is pointed out that the record is clear and straight; the testimony of the eye-witness coupled with the number and nature of injuries inflicted upon the victim have made out a case of the offence for which the appellant has been convicted. No interference is called for.

11 On the perusal of the record we note that this is a case where an eye-witness is involved. The eye-witness Ram Vilas Chaudhary has been examined as PW-1. He was a security guard working in the vicinity where the incident has occurred. He is an independent witness. In fact no suggestion has been given to this witness that he was deposing falsely for any ulterior purpose or motive. His testimony is largely to the effect that on the fateful day of the incident i.e. on 12.08.2007 at 08:20 PM when he reached in front of Tibbia College near the musical fountain gate, he saw the accused Nanku Yadav coming from inside the park; he was running; he started beating Biltu Yadav (his brother) and threw him on the ground. After abusing him and threatening to kill him, he took out a knife from the pocket of his pant and gave him 5-6 blows on the stomach as also on the neck of the victim; blood started oozing out from the injuries. The accused, thereafter, ran away. This is by and

large the testimony of the eye-witness. It has remained unassailed. In the lengthy cross-examination conducted upon him, the witness has stuck to his stand. He has reiterated the version given by him in his examination-in-chief. He had denied the suggestion that it was dark and he could not identify the accused. In fact it is his clear and categorical version that the accused was known to him. The testimony of this witness is credible and inspires confidence.

12 Bishan Dev Yadav PW-5 was the brother-in-law of the deceased; he is the brother-in-law of the appellant as well. In his testimony, the motive of the crime has been spelt out. He has on oath deposed that prior to the incident, the deceased had told him about a dispute with the appellant Nanku which has arisen because the deceased was the owner of some rickshaws and in his absence when he had gone to his village, the appellant had taken possession of his rickshaws; the appellant had in fact threatened the deceased that if he asked for the return of his rickshaws or money, he would be killed. This version of PW-5 who is again an independent witness and related to both the appellant and the victim has remained unassailed.

13 Dukhiya Yadav PW-2 was the brother of both the appellant and the deceased. He had identified the dead body of his brother. He was however hostile on the motive of the crime.

14 The victim had been brought to the hospital in a 'dead condition'. This was noted in the MLC Ex.PW-17/A. The post-mortem report

Ex.PW-11/A also reveals the intent of the accused. Apart from the fact that 12 injuries have been noted on the corpus of the victim; injuries No. 1 & 9 were individually by themselves sufficient to cause the death of the person. This is evident from the report. Depth of each of these injuries again throws light on the intention of the appellant. The first injury which is a cut throat wound sized 9.3 cm x 6 cm x bone deep horizontally placed measuring 5 cm on the right side from the mid line and 4.3 cm on the left side of the mid line present in front of the neck of the victim; neck muscles in front of the neck, trachea, esophagus and nerve and vessels were completely severed. Injury No. 9 is also a stab wound measuring 9.3 cm x 4 cm x abdominal cavity deep a triangle like shape with all angles acute present in the mid line of abdomen 15 cm below xiphi sternum and 1 cm above umbilicus. Direction of the wound in the abdomen cavity is backwards, medially and upwards producing multiple incised wound in the mesentry, small intestine and mesenteric vessels surrounding it. The total injuries inflicted upon the victim are 12. Had there been no intention of the appellant to kill the victim or had it been an impulsive act only as has been argued by the learned counsel for the appellant there would not have been so many number of injuries as has been noted in the post-mortem report. That apart at the cost of repetition, injuries No. 1 and 9 were deep and serious.

15 The appellant was arrested two days later. He had also produced the weapon of offence. This weapon was in his pant pocket at the time of the incident. The opinion of the Doctor Ex. PW-11/B on this weapon

again substantiates the theory of the prosecution that the appellant had come armed with this weapon to kill his brother. Human blood was also detected on this knife. The motive for the crime has also been explained. Relevant would it be to also state that the defence sought to be set up by the appellant in his statement under Section 313 Cr.PC does not stand substantiated as no witness from the immediate family of the deceased has come into the witness box; the wife of the deceased has not been examined.

16 The aforementioned cumulative factors thus clearly establish that it was the appellant who has committed the crime i.e. murder of his deceased brother Biltu Yadav. The ocular testimony of PW-1 and the motive of the crime having been depicted in the testimony of PW-5 coupled with the post mortem report and the recovery of the weapon of offence, all point to the guilt of the appellant. The conviction of the appellant calls for no interference.

17 In our view, the appeal is without any merit. Dismissed.

18 A copy of this order be sent to the Jail Superintendent for necessary action.

INDERMEET KAUR, J

JULY 02, 2013/A

KAILASH GAMBHIR, J