

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

RESERVED ON : JULY 01, 2014

DECIDED ON : JULY 17, 2014

+ CRL.A. 702/2013

VEER SINGH @ VEERU Appellant

Through : Mr.Ajit Sharma, Advocate.

versus

STATE OF THE NCT OF DELHI Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Veer Singh @ Veeru assails the legality and correctness of a judgment dated 03.10.2012 in Sessions Case No.13/12 arising out of FIR No.111/11 registered at Police Station Chanakya Puri by which he was held guilty for committing offence under Section 304 Part (1) IPC. By an order dated 10.10.2012, he was sentenced to undergo RI for ten years with fine ₹5,000/-.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 01.11.2011 at about 06.30 p.m. at Jhuggi No.409, Sanjay Camp, Chankaya Puri, the appellant inflicted injuries by a knife to

Deepak and caused his instant death. The incident was reported to Police Control Room in promptitude and Daily Dairy (DD) No.17A (Ex.PW-1/A) came into existence at 07.10 p.m. at Police Station Chankaya Puri. The investigation was assigned to ASI Sant Ram who with Ct.Naresh went to the spot. PCR had already taken the victim to RML hospital where he was pronounced 'brought dead' at 07.15 p.m. ASI Sant Ram lodged First Information Report after recording statement of victim's mother Asha Devi (Ex.PW-7/A). Statements of the witnesses conversant with the facts were recorded during investigation. Post-mortem examination of the body was conducted. The appellant was arrested and pursuant to his disclosure statement, crime weapon was recovered at his instance. After completion of investigation a charge-sheet was submitted in the court; the appellant was duly charged under Section 302 IPC and brought to trial. The prosecution examined 18 witnesses to bring home the appellant's guilt. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication without examining any witness in defence. The trial resulted in his conviction under Section 304 Part (1) IPC. It is pertinent to note that the State did not challenge the appellant's acquittal under Section 302 IPC. Being aggrieved and dissatisfied, the appellant has preferred the appeal.

3. Appellant's counsel urged that the trial court did not evaluate the evidence in its true and proper perspective and based its conviction on the sole testimony of PW-11 (Asha Devi) who resiled from her previous statement; did not claim her presence at the spot at the time of incident and exonerated the appellant completely. Referring to her court statement, he contended that Asha Devi repeatedly disclosed that at the relevant time, she had gone to the market to purchase vegetables. The prosecution was unable to establish the appellant's motive to inflict fatal injuries to his son. Asha Devi nurtured grudge against the appellant as he had joined the company of Rekha who lived nearby. The prosecution witnesses have given conflicting and divergent versions about the incident and their evidence in the court is based upon rumours being spread about the actual assailant. The recovery of the crime weapon is suspect as no blood stains were found on it. Learned Additional Public Prosecutor urged that PW-11 (Asha Devi) an illiterate woman was reluctant to give evidence against her husband initially. However, in certain terms, she implicated him during cross-examination by the Additional Public Prosecutor and without sound reasons, her version is not liable to be rejected.

4. Admitted position is that Asha Devi was earlier married to one Mahender at the age of 16/17 years and two sons Amit and Deepak

were born to her. After Mahender's disappearance, she married Veer Singh @ Veeru and gave birth to Tanu and Aman out of the said wedlock. Amit, Deepak (since dead) Tanu and Aman used to live with PW-11 (Asha Devi) in her Jhuggi. Veer Singh @ Veeru had started living with Rakhi in a Jhuggi at some distance.

At the outset, it may be mentioned that homicidal death of victim Deepak is not under challenge. In the post-mortem examination report (Ex.PW-15/A) proved by PW-15 (Dr.Rajiv Sharma), cause of death was hemorrhagic shock as a result of stab injury to the left thigh. All the injuries were ante-mortem in nature and fresh before death. External injuries No.1 and 2 were individually and collectively sufficient to cause death in ordinary course of nature. Apparently, it was a case of culpable homicide.

5. The occurrence in which Deepak sustained fatal injuries took place at around 06.30 p.m. on 01.11.2011. PW-12 (Hira Lal) made a call at 100 from his mobile and the information conveyed by him was recorded in PCR form (Ex.PW-10/A) at 19:04:33 hours. Name of the informant i.e. Hira Lal with mobile No.9990201270 finds mention therein. The information conveyed at the earliest to the Police Control Room was 'Ek Aadmi Ne Apne Ladke to Knife Mar Diya Hai Pl.Help' PW-10

(Ct.Baljeet Singh) recorded the information and transmitted it to the Communication Branch immediately which led to the recording of DD No.17A (Ex.PW-1/A) at 07.10 p.m at Police Station Chanakaya Puri by PW-1 (HC Gauri Shankar). After the investigation was handed over to ASI Sant Ram, he with Ct.Naresh proceeded from the police station at around 07.15 p.m. MLC (Ex.PW-8/A) records the arrival time of the victim at RML hospital at 07.15 p.m. Name of PCR official Ct.Satbir finds mention therein. The Investigating officer lodged the First Information Report after recording victim's mother Asha Devi's statement (Ex.PW-7/A). Rukka was sent at 09.30 p.m. from the hospital without wasting time. Asha Devi in her statement (Ex.PW-7/A) given to the police at the first available opportunity gave vivid description of the occurrence and disclosed as to how and under what circumstances, her husband-Veer Singh @ Veeru arrived at the Jhuggi at around 06.30 p.m. under the influence of liquor and demanded money from her son Deepak. She elaborated that on refusal to pay money by Deepak, the appellant got enraged and left the Jhuggi in anger hurling abuses. She further disclosed that after 5-10 minutes, he again came to the Jhuggi, armed with a vegetable knife and inflicted injuries to Deepak as a result of which he started bleeding profusely. On her raising noise, the appellant fled the

spot. Apparently, Veer Singh @ Veeru was named in the First Information Report with all the details. Since the FIR was lodged without delay, there was least possibility of the complainant to fabricate a false story in such a short interval to falsely implicate her husband and to spare the real offender.

6. In her Court statement, she initially opted not to implicate the appellant and denied her presence inside the Jhuggi at the time of stabbing incident. She claimed that at around 06.30 p.m. she had gone to fetch vegetables from the market and on return, she found Deepak smeared in blood on the folding cot. Learned Additional Public Prosecutor cross-examined her after seeking Court's permission as she resiled from her previous statement (Ex.PW-7/A). In the cross-examination, she divulged the correct version and disclosed that at around 06.30 p.m. her husband came in the Jhuggi in drunken condition and demanded money from Deepak for household expenses. When Deepak declined to part with the money because of his stay with another lady and their own meager income, the appellant became furious and went away abusing Deepak. She admitted the suggestion that after 5/10 minutes, the appellant returned to the Jhuggi with a knife, meant to cut vegetables and attacked Deepak uttering "aaj tera kam tamam kar deta hoon." He (the appellant) gave a

knife blow on the left thigh and Deepak started bleeding. She further admitted that on her raising alarm, the appellant fled the spot. On specifically asked as to why she had not given the correct version earlier, she gave a plausible and acceptable reason that the appellant was the only bread-earner of the family and nobody could return her son Deepak.

In the cross-examination, again, she was reluctant to depose against the appellant and admitted the suggestion given by the defence counsel that she did not know as to who hit her son-Deepak by a knife. She further admitted the suggestion that she had informed the police officials that at the time of incident she had gone to purchase vegetables and was not present at the spot.

7. Scrutinizing the testimony of this illiterate witness, who was in a dilemma to depose against the appellant due to her close relation, reveals that she had witnessed the occurrence and had seen the appellant inflicting injuries to her son-Deepak inside the Jhuggi. She had no ulterior motive to falsely rope him in the FIR lodged soon after the incident when she was not under anyone's influence. Again, in the cross-examination by the learned Additional Public Prosecutor, she specifically implicated the appellant and assigned a specific and definite role to him. Being a mother, the witness was not expected to spare the killer of her

son. Obviously, the witness also intended to exonerate the appellant being her husband as she did not want to lose him after having lost her son. Since the complainant gave wavering statements, other evidence on record would be looked into for corroboration.

8. PW-12 (Hira Lal) set the police machinery into motion and PCR Form (Ex.PW-10/A) came into existence. It specifically records 'Ek Aadmi Ne Apne Ladke to Knife Mar Diya Hai'. Apparently, the perpetrator of the crime was victim's father and none else. It further records that the victim's mother had accompanied him to RML hospital where he was declared 'brought dead'. It goes on record that as per victim's mother his father had picked up a quarrel under the influence of liquor and had inflicted injuries by a knife. PW-12 (Hira Lal) deposing Asha Devi's presence inside the Jhuggi at the relevant time recalled that she was crying that her husband had stabbed her son and thereafter he dialed 100 from his mobile. In the cross-examination, nothing was suggested if Asha Devi was not present inside the Jhuggi or she had not uttered the words that her son was stabbed by her husband. Her statement made contemporaneously was relevant and material on account of its spontaneity. Nothing was suggested if she had gone to the market to purchase vegetables or at what time, she returned to the spot.

9. Another material circumstance to connect the appellant with the crime is the recovery of crime weapon i.e. knife (Ex.P-4) pursuant to his disclosure statement. PW-18 (Insp.Babbar Bhan), who took over the investigation proved the recovery of knife at the appellant's instance from Jhuggi No.409, Block A, Sanjay Camp, Chankaya Puri. The appellant led the police team pursuant to his disclosure statement (Ex.PW-7/K) to Jhuggi and recovered the knife lying under a slab built on its left side. The knife had blood-stains and was seized vide seizure memo (Ex.PW-7/M) after preparing its sketch (Ex.PW-7/L). Similar are the testimonies of PW-7 (ASI Santram Bhardwaj) and PW-4 (Amit). The crime weapon was shown to PW-15 (Dr.Rajiv Sharma), autopsy surgeon who after examining it on 23.11.2011, was of the opinion that the injuries and cut marks on the left sleeve on the jeans pant mentioned in the post-mortem examination report were possible with the seized weapon. The opinion (Ex.PW-15/B) remained unchallenged. The knife was sent to Forensic Science Laboratory and report (Ex.P-X) shows that blood of human origin was detected on it. Asha's ocular version is in consonance with medical/scientific evidence.

10. The motive to inflict injuries has emerged in the statement of PW-11 (Asha Devi). PW-4 (Amit) corroborated her and categorically

deposed that Veer Singh @ Veeru's was quarrelsome and used to consume liquor daily. He highlighted that the appellant used to demand money from him and Deepak for liquor and household expenses. On their refusal to give money, he nurtured grudge against them. The version given by the witness has remained unchallenged. Deepak's refusal to give money to the appellant was the impelling factor to inflict injuries to the victim.

11. The appellant did not give plausible explanation to the incriminating circumstances proved against him. His presence at the spot was asserted in categorical terms. He did not set up plea of alibi and avoided to examine Rekha to disclose as to where else he was present at the relevant time. Only for the first time in 313 statement, he came up with the plea that he was totally drunk after return from duty at about 06.30 p.m. and was lying in front of a public toilet. No such suggestion was put to the prosecution witnesses in the cross-examination. The appellant did not examine any witness from the neighbourhood to substantiate his defence. It is unclear as to when and at what time he returned from his duty and consumed liquor.

Minor discrepancies, exaggerations and improvements highlighted by the appellant's counsel do not affect the basic structure of

the prosecution case and are not sufficient to throw away the statements of prosecution witnesses in their entirety. The Trial Court has already given benefit to the appellant in not convicting him under Section 302 IPC as he had no intention to murder Deepak. The findings of the Trial Court based upon proper and fair appreciation of the evidence warrant no interference.

12. Alternative plea adopted by appellant's counsel is to modify the sentence order and to reduce the sentence to the custody period already undergone by him. Nominal roll dated 24.03.2014 shows that the appellant has undergone custody for about two years, four months and twenty three days besides remission for five months and five days. He is not involved in any criminal activity and is not a previous convict. At the same time, the Court is not oblivious of the fact that the victim was aged about 16/17 years at the time of occurrence and suffered death for no fault of his. The appellant's conduct was unfair when he demanded money from the victim under the influence of liquor. The appellant had no reason to approach Deepak for money after consuming liquor when he did not live with them and used to squander money in consuming liquor. A young life was lost due to injuries inflicted by a sharp weapon at the hands of the appellant. He deserves no leniency.

13. In the light of the above discussion, the appeal is dismissed as unmerited. Trial Court record along with a copy of this order be sent back forthwith.

(S.P.GARG)
JUDGE

JULY 17, 2014
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