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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 31st October, 2018

+ CRL. APPEAL NO. 26/2018 and CrI.M.(B) 32/2018,
CrI.M.A.281/2018

KARTAR SINGH

..... Appellant

Through: Ms. Aishwarya Rao, Advocate/
DHCLSC

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. K.S. Ahuja, APP for the
State with Mr. Ramesh Kumar,
PS Sultan Puri.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Geeta, aged about 40 years, wife of the appellant suffered homicidal death sometime around 10:30 p.m. on 06.08.2016 at the first floor of the property described as E-7/445-446, Sultan Puri, it being the property where the deceased was living in a rented accommodation with her family that included the appellant (husband), her daughter Laxmi (PW-10) and a son Vikas (PW-2).

2. The first information report (FIR) No.465/2016 (Ex.PW-11/C) was registered in the Police Station Sultan Puri at 0215 hours on 07.08.2016 pursuant to the *rukka* (Ex.PW-19/A) of Sub-Inspector Rajender Singh (PW-19) it, in turn, being based on statement (Ex.PW-8/A) of Sunita (PW-8), an immediate neighbor. As per the FIR, the

appellant had stabbed Geeta to death in the presence, *inter alia*, of the first informant (PW-8) and her son Vikas (PW-2) after a quarrel. The investigation having been completed, report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was submitted seeking trial of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC), his daughter Laxmi (PW-10) also having been cited as an eye witness.

3. The appellant was brought to trial on the charge under Section 302 IPC which was framed on 24.11.2016, the gravamen being that he had committed the murder of Geeta on the said date and time at the aforementioned place. The prosecution led evidence, *inter alia*, by examining the aforementioned three witnesses, described as eye witnesses, also resting its case on recovery of knife (Ex.P1) which had been used in the crime, at the instance of the appellant. The appellant had pleaded innocence, his defence being that his daughter (PW-10) had lodged an FIR for offence under Section 376 IPC against certain persons who used to threaten her and the family and it is those persons who had given the fatal injuries to Geeta either on their own or through their hired associates. The appellant also accused one Praveen, resident of Meerut, to be habitual of giving threats to him and his wife, though pleading ignorance as to reasons for such threats. He did not lead any evidence in defence.

4. The trial court, by judgment dated 15.04.2017, held that the prosecution had proved its case that it was the appellant, who had inflicted the fatal knife injury in the abdomen of Geeta. It, however,

took the view that the injuries had been inflicted in the heat of the moment and under strong impulse and consequently attracting exceptions (1) and (4) of Section 300 IPC. As per the judgment of the trial court, the appellant was held guilty for the offence of culpable homicide not amounting to murder, it being punishable under Section 304 IPC rather than for the offence of murder under Section 302 IPC. By the order on sentence dated 26.04.2017, the trial Judge took note of the advanced age (more than 70 years) of the appellant and his frail physical health and consequently took the view that ends of justice would stand satisfied if he were to undergo rigorous imprisonment for a period of four years with fine of Rs.5,000/- only, in default further simple imprisonment for a period of two months. The trial court also directed that compensation in the sum of Rs.5 lacs to be paid to the four children of the deceased, the compliance to be made in this regard by District Legal Services Authority from out of victim compensation fund.

5. The present appeal was filed assailing the judgment and order on sentence passed by the trial court. The prime submission of the appellant being that the trial court has ignored the fact that Laxmi (PW-10), daughter of the deceased who would have been a natural witness has not supported the case for prosecution, it being the argument that PW-2 and PW-8 are witnesses who have been falsely planted by the police, their evidence being not credible. It is also the argument of the appellant that the evidence about the recovery of knife (Ex.P1) as the weapon of offence or about its use cannot be believed,

particularly in view of the court observations recorded during the testimony of investigating officer (PW-19) showing the handle to be virtually coming off the hinge, it being not possible to keep the blade straight without it being held along with handle. It is also pointed out that the knife (Ex.P1) did not bear any blood-stains.

6. The above submissions have been carefully examined, but this court finds no substance in the pleas raised.

7. It may be that PW-10, daughter of the deceased was present at the scene of occurrence and may have accompanied her to the hospital immediately after the incident wherein Geeta indisputably suffered injury in her abdomen, such stabbing having brought her intestine out. From this, it does appear that PW-10 would have been present at the scene or around the relevant point of time. It does appear further that PW-10 had disowned her statement (Ex.PW-10/A) as recorded by the police under Section 161 Cr.P.C. wherein she would attribute the assault on the person of her mother by her father. But then, it must be noted that PW-10 does not say that it was some person other than her father who had stabbed her mother. She has taken the plea that she was having stomach ache and not feeling well had gone downstairs to arrange for soft drink and while she was downstairs she heard some commotion, in the course of which her mother fell down. She confirmed that her father was present at the scene at that point of time. She does not refer to presence of any intruder or other assailant having been noticed by her either entering or going out of the place.

8. PW-2 and PW-8, being the immediate neighbours, are consistent in their evidence confirming that they had heard commotion and had come out noticing that the appellant was quarreling with Geeta. They would confirm that such quarrels were quite frequent. They have testified that the appellant had got infuriated and had uttered words to the effect that he wanted to finish Geeta and in that process stabbed her with the knife, causing the injuries that proved fatal.

9. A lot of argument was raised as to it being not probable for PW-8 to be present at the scene at the time of occurrence. It appears PW-8 would work in some footwear factory. She conceded that she would ordinarily return home by 9:30 or 10:00 p.m. It is the argument of the appellant that unless attendance register maintained at the place of her employer were to be proved, it could not be said with certainty that PW-8 had returned home by the time the incident took place so as to be a witness thereof. The argument is far-fetched. The incident occurred at 10:30 p.m. Even going by the version of PW-8, she would normally be at home by 10:00 pm. There is no reason why her presence would require her employer's records respecting her attendance at work place to be insisted upon.

10. It was then the argument of the appellant that PW-8 has spoken about the noise created by utensils falling and this attracting her attention, thereby fact of her attendance as a witness to the occurrence being brought out. It is pointed out that in her statement (Ex.PW-8/A) there was no reference to any utensils falling. This, in the opinion of

this court, is not such a contradiction as can go to the root of the matter. The witnesses – PW-2 and PW-8 – are consistent in their testimony that the husband (the appellant) and the wife (the deceased) were quarreling with each other. A commotion had ensued which had attracted their attention, bringing them out. It is in their presence that Geeta snatched the phone from the hands of the appellant, this making him angry and pursuant to such anger, he proceeded to pick up a knife and stabbed Geeta in her abdomen.

11. There is no reason why the evidence of PW-2 or PW-8 should be disbelieved. They were immediate neighbours and natural witness to the scene of occurrence. There is nothing to show that they had any personal agenda to serve by falsely implicating the appellant.

12. There may be some doubts as to whether the knife recovered (Ex.P1) could have been used in the crime. The autopsy opinion (Ex.PW-1/B) is only about the possibility of such weapon having been used. But then, no evidence showing any bloodstains on the knife has been brought out. Given the virtually dislocated handle, the argument that this knife may not have been used in the crime may be accepted. It is, however, trite that non recovery of the weapon of offence by itself is no reason why the eye witness testimony of PW-2 and PW-8 should be discarded or the prosecution case disbelieved.

13. Having gone through the evidence in entirety, this court finds the finding returned by the trial court to be borne out from the evidence on record. The impugned judgment does not suffer from any error or infirmity. It calls for no interference.

14. The State has not come up with any appeal challenging the order on sentence. Given the facts and circumstances, in the considered opinion of this court, the trial court has already been very lenient in meting out the punishment. There is no scope for any further reduction in the sentence.

15. For the above reasons, the appeal and the applications filed therewith are dismissed.

16. A copy of this judgment shall be made available to the appellant through the Superintendent of the jail.

R.K.GAUBA, J.

OCTOBER 31, 2018

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