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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 305/2002

ASHOK KUMAR @ JHABRU

...Appellant

Through: Mr. K. Singhal with Mr. Nishant
Bhardwaj Advocates.

versus

STATE

...Respondent

Through: Mr. Amit Chadha, APP for State

**CORAM:
JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER
02.04.2018

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Dr. S. Muralidhar, J:

1. This appeal is directed against the judgment dated 2nd January 2002 passed by the learned Additional Sessions Judge, New Delhi in Sessions Case No. 24/1998 arising out of FIR No. 298/1997 registered at Police Station ('PS') Chanakya Puri, convicting the Appellant under Section 302 of the Indian Penal Code ('IPC') and the order on sentence of the same date sentencing him to imprisonment for life and a fine of Rs.2,000/- and in default of payment of fine to undergo rigorous imprisonment for six months.

2. The charge against the Appellant was that at around 12.45 pm on 28th September 1997, near Service Road, Bapu Dham Telephone Depot, Jhuggi, Indira Camp, the Appellant murdered the deceased Om Prakash by

stabbing him with a knife and thereby committing the offence punishable under Section 302 IPC.

3. There were two eye witnesses to the occurrence. One was Kalli Devi (PW5) in front of whose house the incident occurred. The other eye witness was Puran Singh (PW7), an uncle of the deceased who, at the time of the incident, was present at the barber's shop on the very road where the incident occurred.

4. It has come in the evidence of PW7 that around 5-6 months prior to the incident, the deceased had given an iron rod blow to the accused since the accused had purchased goods from the grocery shop of the deceased and failed to pay the money for the same. According to PW5, in front of whose house the incident occurred, when she came out from her house at around 1 pm on 28th September 1997, she saw the accused stabbing the deceased with a knife on the *chabutra* in front of her house. She noticed the deceased being removed to the hospital in a car.

5. This car happened to be of Dev Raj (PW4), who noticed the deceased lying in an injured condition in a pool of blood on the *chabutra* in front of the house of PW5.

6. PW5 was subjected to extensive cross-examination, but nothing useful could emerge therefrom for the accused. She was firm and consistent that it was the accused who gave the knife blows to the deceased. She also noticed the accused running away after causing injuries to the deceased. She knew

the accused from before. She stated that the accused used to harass the entire village. She also added that the accused was present at the time of the incident. She was given the suggestion that the accused was not in the village on the date of the incident. She specifically denied that suggestion.

7. Although PW5 did say that the accused, under the influence of liquor, had quarrelled with her on a couple of occasions, she was fair enough to add that, “When accused used to harass me after taking liquor, he did not demand anything from me”. Consequently, there was no occasion to infer from the above reply that PW5 on account of any previous enmity would falsely implicate the accused.

8. Then we have the evidence of PW7, who was at the time working in the Delhi Home Guard (‘DHG’) services and also doing some vegetable business. He was at a barber shop for a shave when he heard the noise of a scooter falling down. When he came out he saw that the accused was giving knife blows on the chest of the deceased. The accused thereafter fled away. PW7 took the deceased to the hospital in a car belonging to PW4.

9. PW-7 was also present when the police recovered the weapon of the offence, i.e. the knife with a broken tip, from the NDMC quarters near the spot at around 5 pm on the same day. After the arrest of the accused from Aligarh, this witness was called to the PS on 1st October 1997 for identifying the accused.

10. In his cross-examination, PW-7 was asked, “Ashok Kumar was saying

‘tera kaam khatam kar denge’, what was the story?” Clearly this question was premised on the fact that the accused was very much present at the scene of crime and in fact gave an exhortation before committing the offence. In reply to this question, PW7 confirmed that there had been a quarrel between the accused and the deceased over the money that had to be paid by the accused for the goods taken by him from the shop of the deceased and “due to the said enmity Ashok Kumar the accused uttered the said words”.

11. PW7 also confirmed in his cross-examination that the deceased was stabbed by the accused thrice – once on the left chest and the other two times on the arms. He further stated: “It is correct that Ashok was in a drunken state at that time. He was fully drunk”.

12. The above ocular evidence of PWs- 5 and 7 has been fully corroborated by the medical evidence. The post-mortem on the body of the deceased was performed by Dr. Yashoda Rani (PW15) who noticed, upon conducting an external examination, the following injuries:

- “1. stab wound 6.3x1.5 cms over right side chest (cavity deep) horizontally placed 2.5cm lower, and inner to right nipple and 2 cms right to midline, 121 cms above the right heel, both the margins clean cut one angle acute and one angle blunt.
2. Incised wound 2.3x1x.5 cms over the back of right forearm vertically placed 9 cms above the wrist joint.
3. Incised wound 3.5x 5 x.3 cms vertically placed over middle back of left hand.
4. Stitched cut opened drip wound lower inner of left arm.
5. Stitched cut open drip wound 1.5 cms lower inner of

- right arm.
6. Operative wound with 2 stitched 4 drainage tube 4.4x1 cms over lower and lateral part of the right side chest.”

13. Further, she noted as under:

“Injury No.1 pierced the right side chest wall through fourth I/C (Intercostals) space lower part (6x1 cms) than through the right plural cavity pierced the diaphragm (4.5x5 cms). Then pierced the liver (4.5 x 5x7 cms). Right plural cavity contains about 300 cc blood, right lung collapsed and shows fibrotic changes and lungs pale, abdominal wall contains about 500 cc blood. Stomach contains about 200 cc semi digested food material. Liver shows wound 4.5x.5x7 cms on cut section liver pale.”

14. The cause of death was shock and haemorrhage as a result of the injury to the internal organs. It was clear, therefore, that the stab wound on the chest was so deep and severe that it pierced the liver.

15. It is sought to be submitted by learned counsel for the Appellant that many of the prosecution witnesses were not subjected to any serious cross-examination by the counsel for the accused. Therefore, there was a denial of a fair procedure by the trial Court.

16. The Court finds that the two crucial witnesses for the prosecution were PWs 5 and 7. Both these witnesses had in fact been extensively cross-examined by counsel for the accused. Neither of them has been able to be shaken on the key element of their respective depositions, viz., that they witnessed the accused stabbing the deceased on his chest with the knife, which turned out to be the fatal injury.

17. There was also an argument about recovery of the knife being from an open place and the vest worn by the accused not containing any bloodstains to connect him with the crime. There was also a submission made about the rough site plan not indicating the place from where PW5 witnessed the occurrence whereas the scaled site plan did and the scaled site plan not indicating the location of the barber shop where PW7 was having a shave whereas the rough site plan did.

18. As regards the appreciation of the ocular evidence, the settled legal position may be recapitulated. In *State v. Saravanan AIR 2009 SC 152*, the Supreme Court held that the trial Court could overlook “minor discrepancies on trivial matters” which do not affect “the core of the prosecution case”. In *State of U.P. v. Krishna Master AIR 2010 SC 3071* the Supreme Court reminded that “it is the duty of the Court to separate falsehood from the truth, in sifting the evidence”.

19. The law relating to appreciation of the evidence of interested witnesses was explained in *Dalip Singh v. The State of Punjab AIR 1953 SC 364* as under:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure

guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

20. Again, in *Ashok Kumar Choudhary v. State of Bihar AIR 2008 SC 2436*, it was explained as under:

“The relationship per se does not affect the credibility of a witness. Merely because a witness happens to be a relative of the victim of the crime, he/she cannot be characterized as an "interested" witness. It is trite that the term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive.” 30. It further explained in *Jayabalan v. Union Territory of Pondicherry (2010) 1 SCC 199* as under: “We are of the considered view that in cases where the Court is called upon to deal with the, evidence of the interested witnesses, the approach of the Court, while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

21. In *State of U.P. v. M.K. Anthony AIR 1985 SC 48*, it was explained by the Supreme Court as under:

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed

out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

22. Again, in *State of Rajasthan v. Kishore AIR 1996 SC 3035*, the Supreme Court observed:

"Be it noted that the High Court is within its jurisdiction being the first appellate court to re-appraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eye witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence."

23. In *Rammi alias Rameshwar v. State of Madhya Pradesh* AIR 1999 SC 256, it was observed :

"When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny".

24. When examined in light of the above legal position, this Court is of the considered view that the above discrepancies pointed out by the learned counsel for the Appellant are not material enough to shake the eye witness testimonies of PWs 5 and 7 which are trustworthy and truthful. Even if PW7 is considered to be an interested witness, as he is related to the deceased, PW5 was a totally independent witness and her presence at the time and place of the incident is natural and convincing.

25. With the medical evidence fully corroborating the ocular evidence as far as the number of injuries and the place of injuries on the body of the deceased, the Court has no difficulty in concurring with the trial Court that the ocular evidence in the present case conclusively proves beyond reasonable doubt the guilt of the Appellant for the offence under Section 302 IPC.

26. It was finally submitted that since the fatal injury was a single knife injury, with the non-fatal injuries being on the arms, the Court might consider modifying the conviction to one punishable under Section 304 Part I IPC.

27. The Court is unable to agree with the above submissions. The key ingredient of the offence punishable under Section 304-I IPC is grave and sudden provocation arising out of a sudden quarrel on the spur of moment without premeditation. In the present case, the motive for the offence traced back to an incident which was 5-6 months earlier from the date of the occurrence. The manner in which the occurrence took place, as described by the eye witnesses, leaves no room for doubt that it was a premeditated offence. There is no occasion, therefore, for the Court to consider converting the conviction for the offence of murder punishable under Section 302 IPC to the offence of culpable homicide punishable under Section 304-I IPC.

28. For all of the aforementioned reasons, the Court finds that no error has been committed by the trial Court in convicting the Appellant for the offence punishable under Section 302 IPC and sentencing him accordingly. The appeal is dismissed. The bail bonds and surety bonds furnished by the Appellant stand cancelled. The Appellant shall surrender forthwith and, in any event, not later than 9th April 2018, failing which the SHO concerned will take immediate steps to take the Appellant into custody so that he serves out the remainder of his sentence. The trial Court record be returned

forthwith along with a certified copy of this order.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 02, 2018/rd

