
(2005) 12 DEL CK 0003
In the Delhi High Court
Case No : CRLA 244 of 1997

Harihar

APPELLANT

Vs

Govt. of NCT of Delhi (STATE)

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Citation : (2006) 126 DLT 566 : (2006) 1 DMC 242 : (2006) 86 DRJ 438

Hon'ble Judges : Manmohan Sarin, J; Manju Goel, J

Bench : Division Bench

Advocate : V.K. Raina, for the Appellant; Ravinder Chadha and Jagdish Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—The appellant was convicted u/s 302 IPC for committing murder of one Urmila, a woman he lived with. Urmila was admitted to LNJP Hospital with 95% burns on 12.10.1994 at 4.45 a.m. She died in the wee hours of 14.10.1994. The FIR Ex.PW 1/A (bearing no.549/94 of P.S. Janakpuri) was registered on the basis of the MLC, Ex.PW6/A.

2. The appellant was arrested on the basis of the statements of Som Nath, the son of Urmila, the deceased and Geeta, the sister of the deceased. The appellant was challaned and eventually convicted vide the impugned judgment.

3. The conviction is based primarily on the testimony of Som Nath PW-2, Geeta PW-3 and the dying declarations made to the Dr. Rakesh Dogra PW-6 of the LNJP hospital. The presence of the accused is proved by the chappals he left behind while running away after committing the crime. The defense has tried to pick holes in the prosecution case by challenging the veracity of the MLC as the memo of brief facts prepared soon after the death of Urmila has not mentioned the dying declaration in the MLC. The possibility of the deceased being capable of making a statement at that time is also disputed as she came to the hospital with 95% burns and must have been in utter pain. The testimony of PW-2 is

assailed as a version of a tutored witness. Geeta's testimony is also challenged as she stated that the accused was arrested at that very time, even before the deceased was taken to the hospital, which is quite different from the prosecution story and the version of other witnesses. The trial court has taken note of all the above arguments of the defense. The trial court has further taken note of other lapses on the part of investigation and prosecution like failure to cite witnesses who were present near the hutment of the deceased and the failure of the investigating officer to seize the chappals of the accused on his earlier visit when he seized other articles like the plastic can with kerosene residue and certain other articles. Yet the trial Court found the evidence so sufficient as to complete the chain without break and to leave no doubt about the guilt of the accused. With this background we can proceed to examine the evidence in the case.

4. ASI Sadanand, the investigating officer received DD No. 41 to the effect that a woman had been burnt in the jhuggis of Sahyog Vihar and he visited the spot and then came to the DDU hospital and then to the JPN Hospital where the deceased had actually been taken before he collected the MLC. He deposes that the deceased was unfit for statement and there was no eye witness present in the hospital. He came back to the spot and seized a plastic can with half a litre of kerosene oil, a burnt bidi and a match box and some burnt clothes. On his second visit to the hospital he met Geeta and took her statement. The appellant was arrested thereafter. The chappals of the appellant were recovered on the disclosure of the appellant from the place of occurrence.

5. The appellant says that the chappals do not belong to him. PW-3 Geeta, however, proved that the chappals belonged to the appellant. The appellant was made to wear the chappals in court and they corresponded to the size of the appellant. Thus despite the denial of the appellant, the chappals have been proved to have belonged to the appellant. This also establishes the presence of the appellant at the spot at the time of the incident of fire.

6. In this light we can now look at the evidence of PW-2 and PW-3. PW-2 is Som Nath, the son of the deceased. He was in the same jhuggi almost minutes before the incident. He like PW-3 Geeta deposes that the appellant had been visiting his mother, the deceased, and had also started staying in the jhuggi with the deceased. He further deposes that on that day she had returned from Ramlila with the appellant. He woke up in the night hearing the two quarreling. As he objected to the quarrel, he was sent out of the jhuggi and soon thereafter he saw his mother coming out of the jhuggi in flames. He says that his mother was saying that the appellant had set her on fire after pouring kerosene oil on her. His testimony could not be shaken in any way in his cross-examination. His presence there was natural. No motive to falsely implicate the appellant in a case for murder or attempt to murder has been imputed to this witness. We do not see any reason to disbelieve the witness.

7. PW-3 Geeta was living in another jhuggi close by. She corroborates PW- 2 in that the deceased was saying that the appellant had burnt her. Her presence was

also equally natural. She had come out of her jhuggi on hearing the noise. Her version differs with that of the prosecution in that she says that the appellant was apprehended and arrested even before the deceased was taken to the hospital, but since she is a natural witness, the contradiction between her version and that of the investigating officer, regarding the arrest of the appellant, has to be explained as loss of memory or confusion.

8. But even if we ignore the testimony of Geeta, we find corroboration of the version of PW-2 in the MLC. As per the MLC Ex. PW6/A, proved by the PW- 6, the doctor who recorded the MLC, the deceased herself gave the history of having been set on fire by one Hariya, a man known to her son. The MLC also mentions that the patient was conscious and oriented. In the witness box the doctor has reiterated that she was fit to make a statement at that time.

9. The veracity of the MLC is fully established by the examination of the doctor. The mere fact that in the brief facts the investigating officer has made a default in recording such a dying declaration given to the doctor or to people present outside her jhuggi cannot destroy the evidentiary value of the MLC. Mr. Raina, counsel for the appellant submitted that the MLC is a fabricated document. But during trial no such point had been raised. Nor was the doctor at all cross examined on this aspect. The doctor has categorically stated that the patient at that time was fully oriented. So the plea that the deceased could not have been in a fit state to make the declaration cannot be accepted.

10. The Counsel for the appellant even disputes the presence of PW-2 by pointing out that he did not accompany the deceased to hospital. PW-2 was merely a boy of twelve at that time. It was only natural that he was left behind. His statement was recorded on that very day without any occasion of tutoring him. As pointed out earlier his version is natural and has no symptom of falsehood. We find no force in the submissions that the PW-2 was not present at that time outside the jhuggi in which the offence took place.

11. A faint attempt was made to argue that the case falls only u/s 304 and not u/s 302 IPC. We cannot agree. The defense version is not one of an attack in a fit of passion. It is one of complete denial. The appellant has even denied any acquaintance with the deceased. There is no evidence of the nature of the quarrel.

12. A faint attempt was made by the defense to bring the offence within Exception 4 of Section 300 of the IPC. Exception 4 reads as under:

Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

13. The evidence in the present case shows that there was a quarrel. PW-2 son of the victim has stated that he woke up on account of a quarrel and when he

wanted to intervene he was beaten by his mother and was turned out of the jhuggi. Apart from this there is no evidence as to what the quarrel was over. Nor is there evidence that the quarrel became a fight. There is no evidence about the nature of insinuation if any. Nor is there any evidence that the deceased had said something so provocative as to give rise to a heat of passion. It is to be noted that this Exception has used both the words fight and quarrel. A sudden quarrel is not the same thing as sudden fight. Fight would normally mean a combat, that is, exchange of blows. Reference can be made to the judgment of the Supreme court in the case of Ravinder Kumar v. State 1980 Rajdhani Law Reporter 120, Thannoo Vs. State, , Jaswant Singh v. State of U.P. 1998 SCC (Cri.) 1344 as well as in the case of Jhabbar Singh v. The State 1981 A L J 54. It is further to be seen that in this case it cannot be said that the accused had not taken undue advantage of his situation. The deceased was unarmed and was alone in the jhuggi. She was of the weaker sex. The accused poured kerosene oil on her and set her ablaze. It is clear that the accused took advantage of his superior physical position and availability of kerosene in the jhuggi. His act was also cruel. In the case decided by this Court in Rawel Singh Vs. The State, it was held that when the accused had poured kerosene on his wife and set her ablaze he had acted in a cruel manner.

14. At the cost of repetition, we are constrained to say that the accused himself has not made out any such defense as none of the witnesses has been questioned about the nature of quarrel or about there being any fight. His simple case is of denial. He is satisfied only by merely saying that he never knew the deceased and so had not committed any offence. The prosecution, however, has proved the case to the hilt.

15. In view of the above analysis, we find that the trial court has not erred in convicting the appellant u/s 302 of the IPC. The order of sentence being of life, that is, minimum for the offence, calls for no interference. The appeal is accordingly dismissed.