

(2011) 08 DEL CK 0129
In the Delhi High Court
Case No : Criminal Appeal 172 of 1999

Kuttu	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2011) 08 DEL CK 0129

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Seema Rao, for the Appellant; Pawan Sharma, Standing Counsel (Crl.), Harsh Prabhakar and Ashutosh Srivastava, for the Respondent

Judgement

Pradeep Nandrajog, J.—It all happened like this. HC Virender Singh PW-14 and Ct. Suresh Kumar PW-13, as deposed to by them were on beat duty in the area of Chitra Vihar within jurisdiction of PS Preet Vihar. At around 9:30 PM on 5.9.1995 they heard shouts from the Jhuggi Cluster nearby and this led them to the Jhuggi Cluster and they heard cries of a lady that Kuttu i.e. the Appellant was fleeing after killing her husband. The two saw the W.P. (C) No. 172/1999Page 1 of 6 Appellant with a blood stained axe in hand and apprehended him. The lady who was crying was Kusum PW-4. As they went inside the Jhuggi they saw Gokul lying face down on the ground with injuries on the neck. Somebody informed the police control room and as deposed to by Lady Ct. Shashi PW-11 she noted said information and relayed the same to the police control room van as also to the local police station at around 10:10 PM. HC Revti Prasad PW-19 at PS Preet Vihar recorded DD No. 18-A, Ex.PW-11/A and handed over copy thereof to ASI Mamman Khan PW-21 who left for the spot accompanied by Ct. Kishan Dutt PW-5 and Ct. Suresh Kumar (not examined). In the meanwhile HC Gurdayal Singh PW-17, in-charge of the PCR van nearby on receiving information from the police control room rushed to the Jhuggi and removed Gokul to S.D.N. Hospital where Gokul was given medical treatment as recorded in the MLC Ex.PW-8/A showing his arrival at the hospital at 11:00 PM. By the time ASI Mamman Khan

and the two police constables with him reached the spot, Insp. Raj Kumar PW-22, the Additional SHO of the police station who was patrolling in the area with Ct. Kishan Kumar (not examined), as deposed to by him, on receiving information of a person being killed and the assailant being apprehended at the spot, reached the Jhuggi Cluster and recorded the statement Ex.PW-4/A of Kusum. Making an endorsement Ex.PW-5/A beneath the same he sent Ct. Kishan Dutt PW-5 for FIR to be registered.

2. We would highlight that in the endorsement Ex.PW-5/A it has been recorded that the Appellant had been apprehended at the spot as also a blood stained axe was recovered from him.

3. Since Gokul was alive, FIR for an offence punishable u/s 307 Indian Penal Code was registered. As deposed to by Insp. Raj Kumar PW-22 and Kusum PW-4 at the spot blood stained earth, blood on a gauze and earth control was lifted as entered in the memo Ex.PW-4/C. Blood stained articles within the Jhuggi were seized as per memo Ex.PW-4/D. The axe was seized vide memo Ex.PW-4/E. Further, as deposed to by Insp. Raj Kumar and HC Virender Singh PW-14 the blood stained dhoti worn by the Appellant was seized as per memo Ex.PW-14/A.

4. Gokul died at around 11:00 PM on 20.9.1995 and body was seized and sent to the mortuary where Dr. L.T. Ramani PW-9 conducted the post-mortem and prepared the report Ex.PW-9/A. He handed over a blood sample of the deceased.

5. The FSL report has opined that the blood group of the deceased was AB and that same blood group was detected on the dhoti of the Appellant as also on the axe in question.

6. The star witness of the prosecution is obviously Kusum and her testimony brings out that her husband had abandoned her and thereafter she was married to the deceased. After 2 years she started living with the Appellant as husband and wife. After some time Gokul also joined their company. She started living as the wife of the deceased Gokul as also of the Appellant. The two started fighting over her and each claim that she was his wife. At a Panchayat held, Appellant had to abandon claim over her, but he returned on the day of the incident and when her husband was sleeping struck him blows on the neck.

7. Vinod Yadav PW-3 who claims to be the Pradhan of the Jhuggi Complex has deposed that the Appellant and the deceased were claiming Kusum to be their wife and at a Panchayat held it was decided that Kusum would live with Gokul as his wife and Kuttu i.e. the Appellant would be paid Rs. 200/- by Gokul to return to his village.

8. We may note that Insp. Raj Kumar claims to have recorded Gokul's statement on 14.9.1995, but has not deposed as to what statement he had recorded and has not got exhibited the alleged statement made by Gokul which was filed along with the charge sheet and thus said statement, which if proved, would have become the dying declaration of the deceased has not to be taken into

consideration and the learned Trial Judge has rightly not relied upon the same.

9. With respect to Kusum's statement in Court learned Counsel seeks to point out the variations in her statement Ex.PW-4/A and her testimony in Court wherein there are some discrepancies with respect to the year of her earlier marriage and whether she was married to Gokul with the consent of her in-laws. It has to be kept in mind that Kusum is a rustic, illiterate village lady and thus these would be the natural variations in her testimony. No. motive has been ascribed to her to falsely implicate Appellant. That apart, learned Counsel for the Appellant has not been able to dent the unimpeachable evidence of the various police officers who have proved Appellant being apprehended at the spot with a blood stained axe in his hand and blood stains on his dhoti. The said blood is of the same group as that of the deceased.

10. That Gokul died as a result of injuries caused by an axe on his neck is proved through the post-mortem report and we highlight that as a result of two blows inflicted with an axe on Gokul's neck, the 4th and the 5th cervical vertebrae had injuries which were bone deep and the spinal cord had been lacerated.

11. A person who assaults somebody with an axe and inflicts two knife blows on the neck has to be attributed the intention to cause the death of the person when the assault is premeditated and the person assaulted is sleeping on the belly with the neck totally vulnerable to an assault. That Gokul died a few days after the assault would thus be irrelevant as the law is that merely because better medical treatment could be given would be No. ground to mitigate the offence from one of murder to one of culpable homicide.

12. However, there is a very disturbing feature of the case and this we find is the result of State apathy towards its poor citizens. Gokul who was severely injured was permitted to be taken home and in all probability by his wife. The post-mortem report shows that the muscle of the neck had been cut. The 4th and the 5th cervical vertebrae had injuries and the spinal cord had been lacerated. In our opinion, the stupidest doctor, even with rudimentary knowledge of the nervous system would have known that the injury was life threatening and we are shocked that Gokul was allowed to go home and die in the house. We hear tales that terminally sick or grievously injured persons are often left to their fate by doctors because the doctors feel it to be a burden or probably a worthless cause to give treatment to these unfortunate persons. Even if a doctor is convinced that an injured person stands No. chance to survive, he owes a duty to care for the injured person so that at least the death is not painful and is honorable.

13. Be that as it may, the folly of the doctor or the apathy of the doctor would not mitigate Kuttu's offence and thus we dismiss the appeal.

14. Vide separate order passed today, Kuttu who is present in Court has been taken into custody and sent to the Central Jail Tihar through the Naib Court attached to the learned Standing Counsel (Crl.) Sh. Pawan Sharma.

15. Copy of this order be sent to the Superintendent Central Jail Tihar to be made available to the Appellant Kuttu.

16. TCR be returned.