

(2010) 12 DEL CK 0109
In the Delhi High Court
Case No : Criminal Appeal No. 152 of 2001

Nanko Devi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304(1), 308, 323

Citation : (2011) 1 AD 252 : (2011) 1 JCC 151

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : C.B. Sewak, for the Appellant; Manoj Ohri, APP, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—By this appeal the Appellant challenges her conviction for offences u/s 304 (Part I) and 323 IPC and the order of sentence whereby she has been directed to undergo Rigorous Imprisonment for 5 years and a fine of Rs. 1,000/- in default of payment of fine to undergo simple imprisonment for two months and Rigorous Imprisonment for six months and a fine of Rs. 500/- in default of payment of fine to undergo simple imprisonment for 15 days respectively for the two offences.

2. On 17th March, 1997 at about 12.30 p.m. some construction work was going on in house No. K-23 Dakshinpuri of Hazari Lal, the complainant and his father RamGopal was supervising the said construction work. The Appellant Nanko Devi and her husband Kalyan Singh were residing in the adjoining house. Kalyan Singh husband of the Appellant complained that mortar of the construction work was falling into their house. Ram Gopal, father of the complainant denied the same and they started quarreling and grappling. In the meantime, the Appellant came armed with one basoola (used for cutting pieces of wood) and hit on the head of the Keli Devi wife of the complainant, as a result of which she sustained head injury. When HazariLal was looking after his wife, Smt. Nanko Devi gave a

blow to his father by the basoola. Thereafter, accused Kalyan Singh gave iron blow on the head of the father of the complainant. The injured were removed to the hospital where subsequently the father of the complainant, Ram Gopal died on 26th March, 1997 at about 8.30 p.m. On a charge sheet being filed charges under Sections 304/308/323/34 IPC were framed against both the accused persons i.e. the Appellant Nanko Devi and Kalyan Singh, her husband. During the trial the prosecution examined 11 witnesses including the complainant Hazari Lal as PW1 and his injured wife PW4 Keli Devi. The other relevant witnesses are - PW3 Const. Ms. Bimlesh who witnessed the arrest of accused Nanko Devi, on whose disclosure, basoola Ex. P-1 was recovered from beneath the cot in her house; PW5 Dr. Alexander who conducted the post mortem examination and PW6 Dr. S.V.R. Chandramurthy who has proved the MLC of the deceased. The statement of the accused was recorded u/s 313 Code of Criminal Procedure who denied their presence or any quarrel having taken place. They also denied having caused any injury on the person of eye witness Keli Devi or the deceased Ram Gopal. The accused Kalyan Singh in his statement took the plea that on the relevant date and time he was on his duty in his office and has examined two defence witnesses in this regard. In view of the plea of alibi of accused Kalyan Singh the learned Trial Court gave him the benefit of doubt and acquitted him, however, the Appellant was convicted of the offences mentioned above.

3. Learned Counsel for the Appellant contends that there are material contradictions in the testimony of PW1 Hazari Lal and PW4 Keli Devi. PW1 even as per his statement allegedly is a witness only to the injury to the deceased and not to his wife Keli Devi. PW1 in his examination in chief deposes about witnessing the injury to his father only and not to his wife. However, in his cross examination by the learned APP he affirms that accused Nanko Devi attacked his wife with basoola on her head. This witness in his cross examination on behalf of the accused again has changed his version as he states that he did not see the Appellant beating his wife who was lying at the spot. PW4 has stated that there were number of labourers and mistries present at the spot, however, none of them was examined as a witness. The date of incident is 17th March, 1997 at about 12.30p.m., whereas the deceased died on 26th March, 1997 and thus the cause of death was not the injury caused by the Appellant. The Appellant was arrested on 25th March, 1997 and allegedly on her disclosure the basoola was recovered lying under the cot in the house itself. It is highly improbable that the Appellant will keep the weapon of offence for nearly a week in her own house. Moreover there was no blood found on the basoola. The weapon of offence i.e. the basoola was not sealed after seizure. According to PW5 Dr. Alexander the cause of death was because of heavy blunt object/weapon whereas Exhibit PW11/DB death summary prepared at Safdarjung Hospital records that on 26.3.1997 at 8:30 a.m. the patient developed sudden cardio respiratory arrest and his pulse was not recordable. It is recorded therein that till 9:30 a.m. treatment was given to the patient and ultimately at 9:30 a.m. the patient was declared dead. No opinion of the doctor has been obtained for the weapon of offence has not been

shown to the doctor and hence the recovery is not connected with the injury caused. Even as per the prosecution case only one injury was given and that too by blunt object and thus the Appellant cannot be said to have the intention to cause culpable homicide not amounting to murder. In the alternative it is urged that the Appellant is aged 45 years and has six children. She has already undergone a sentence of 1 year and has paid the fine so the sentence be modified to already undergone.

4. Learned APP, on the other hand, contends that the prosecution has proved the motive as there was an occurrence even on the day prior to the incident. There is no contradiction in the testimony of PW1 and PW4 as far as injury to the deceased is concerned. There is no cross examination of PW5 Dr. Alexander who conducted the Post Mortem on 26th March, 1997 and hence his testimony has gone unchallenged. No suggestion has been given to the eye witnesses questioning their presence at the spot. Though the Appellant has also taken the plea of alibi when her statement was recorded u/s 313 Code of Criminal Procedure, however neither this plea has been proved nor any suggestion has been put to the prosecution witnesses in this regard. The defence witnesses were examined only to prove the plea of alibi of accused KalyanSingh who has been acquitted of the charges by the learned Trial Court, giving him the benefit of doubt. PW4 the injured eye witness Keli Devi has identified the basoola i.e. the weapon of offence which has been recovered at the instance of the Appellant from her house lying under the cot. Thus it proves the exclusive knowledge of the Appellant as to its concealment. PW3 Constable Bimlesh is an independent witness who was present when the weapon of offence was recovered from the house of the Appellant. Reliance was placed on Arun Nivalaji More Vs. State of Maharashtra, contending that the intention has to be gathered from a host of circumstances like the seat of injury viz. the place or the portion of the body where the injury has been caused, the nature of weapon of offence used, its size, dimension or other attributes and the force applied in inflicting the injury .

5. I have heard learned Counsel for the parties and perused the records. PW4 Keli Devi is an injured eye witness. Though there are minor discrepancies in the testimony of PW1 the complainant, husband of Smt. Keli Devi, however, on material particulars he has corroborated her testimony. Discrepancy if any is as regards the injury caused to his wife, PW4 by the Appellant. As regards the injury caused to his father by the Appellant the testimony of PW1 is consistent that she gave a Basoola blow on his head. Moreover, the testimony of PW4 is consistent and reliable. She has stated that the construction work was going on in their house due to which concrete was falling in house K-23 Dakshinpuri. Smt. Nanko Devi came to their house and started quarreling with her. Nanko Devi hit her with a basoola on her head. She deposed that her husband at that time was not present at home. He came after she was hit by the Basoola but during the incident. Her father in law i.e. Ram Gopal who was sleeping outside the house told Nanko Devi that she was not doing the right thing. Thereupon, she inflicted basoola blow on the head of her father in law. She has further deposed that the

Appellant inflicted blows with a pipe (iron) to her father-in-law. In the meantime her husband reached and called a PCR van and they were taken to the hospital. The accused persons ran away from the spot and were arrested by the police after 8 days of the incident. This witness has identified the basoola from which the injury was inflicted on her and her father-in-law though not the iron pipe. Even in her cross examination she has stated that her husband was not present when she received the injury. However, he was present when her father in law received the injury. Conviction can be based solely on the testimony of injured witness, if found reliable, is well settled. The Hon''ble Supreme Court in Akhtar and Others Vs. State of Uttaranchal, noting its earlier decisions, held that credence to the testimony of injured eye witnesses is given since their presence at the scene of crime is seldom doubtful .In the report it was observed:

18. In Krishan v. State of Haryana, this Court has taken the view that if the prosecution case supported by two injured eyewitnesses and if their (injured eyewitnesses) testimony is consistent before the police and the court and corroborated by the medical evidence, their testimony cannot be discarded. Similarly, in Surender Singh v. State of Haryana, this Court has opined that: (SCC p. 251, para 9)

9. The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence, lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes." This Court has taken the view in State of M.P. v. Mansingh that: (SCC p. 419, para9)

9. The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

6. This testimony of the injured witness duly corroborated by the testimony of PW1 is also corroborated by the medical evidence of PW5 wherein it has been opined that the cause of death in this case was craniocerebral injury by blunt force impact resulting from heavy blunt object/weapon and the said injury was sufficient in the ordinary course of nature to cause death. The internal injury corresponding to the external injury in this case was a depressed compound fracture of the right frontal bone base of skull.

7. In a case of circumstantial evidence if the opinion of the post mortem doctor is not sought whether the injury was possible by the weapon of offence recovered from the accused, the recovery of the weapon is not connected to the injury and thus to the offence. In the present case the incident has been witnessed by eyewitnesses, one of whom is injured. This witness has identified the weapon of offence used by the Appellant for the commission of offence. Thus, in view of this testimony of the eye witness the weapon of offence is connected to the injury caused ad the crime committed.

8. In the present case the weapon of offence cannot be said to be an ordinary blunt object. A basoola is a heavy blunt object used for cutting wooden logs. One

side of it is sharp and the other is blunt like a hammer. When an injury is caused by such a weapon of offence and at a vital part it is caused with an intention of causing a bodily injury which is likely to cause death and as opined by the doctor the same is sufficient in the ordinary course of nature of to cause death. At this stage it would be appropriate to reproduce the observations of the post mortem doctor PW5:

On external examination there was a lacerated wound on the right side front of head of size 2 cm. into 1 cm. into 0.5 cm. Internal examination of the head revealed extra vacation of blood under the scalp corresponding to the external injury. Skull vault shows a depressed compound fracture of the right frontal bone. Base of skull and meninges were normal and intact. There was large intracerebral haematoma on the right front-parietal lobe. Brain was grossly oedematous. Ventricle contained CSF tinged with blood. All the structure of the neck, spine chest, abdomen and pelvis were normal and intact. In my opinion death in this case was due to craniocerebral injuries caused by blunt force impact resulting from heavy blunt object/weapon and the above mentioned injury was sufficient in the ordinary course of nature to cause death.

9. In Arun Nivalaji More (supra) the Hon"ble Supreme Court held as under:

25. In order to ascertain that "there was an intention to inflict that particular bodily injury" the enquiry should not be directed to find out whether the offender had intention to cause those very injuries to the internal organs of the body which were actually found to be there in the medical examination. The intention has to be gathered from a host of circumstances like the seat of injury viz. the place or portion of the body where the injury has been caused, the nature of the weapon, its size and dimension or other attributes and the force applied in inflicting the injury .Being a question of fact it is difficult to lay down exhaustive tests to ascertain as to whether the offender intended to inflict that particular injury which is found on the body of the deceased but the features enumerated above will certainly play a vital role in arriving at a correct conclusion on the said issue.

26. The mere fact that a dangerous or deadly weapon was not used or the injuries were not caused on vital parts of the body may not necessarily take out the offence from the clutches of clause Thirdly of Section 300 IPC. Death may take place on account of large number of blows given by a blunt weapon like lathi on hands and legs causing fractures. Though the injuries may not be on a vital part of the body as the said term is generally understood, but if the medical evidence shows that they were sufficient in the ordinary course of nature to cause death, the offence would fall in clause Thirdly of Section 300 IPC. In *Anda v. State of Rajasthan* where there were large number of injuries which had resulted in fractures of ulna, third metacarpal bone, tibia and fibula, Justice Hidayatullah (as His Lordship then was) cause Thirdly speaking for a four-Judge Bench held that the offence will be under cause Thirdly of Section 300 IPC having regard to the fact that the doctor had opined that all these injuries collectively

were sufficient to cause death in the ordinary course of nature though individually no injury was sufficient in the ordinary course of nature to cause death. It was observed: (AIR p.148)

The third clause of Section 300 IPC views the matter from a general standpoint. It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. Here the emphasis is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature. When this sufficiency exists and death follows and the causing of such injury is intended, the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The intentional injury which must be sufficient to cause death in the ordinary course of nature, is the determinant factor.

10. The present case falls within the ambit of Section 300 thirdly and thus punishable for an offence u/s 302 IPC. However, the Appellant was not charged for an offence u/s 302 IPC. The charge framed against the Appellant was one u/s 304/308/323/34 IPC. Thus the conviction of the Appellant u/s 304(1) IPC is maintained. The Appellant has also caused injury to Keli Devi which has been opined to be simple in nature. Thus, the conviction of the Appellant for offence u/s 323 IPC is also maintained. The Appellant has already been dealt with leniently as she has been directed to undergo Rigorous Imprisonment for 5 years plus fine and 2 years plus fine respectively. The same does not call for further reduction in view of the findings recorded above.

11. Accordingly, the appeal is dismissed. The Appellant be taken into custody to undergo the remaining portion of the sentence. The bail bond and the surety bond be discharged.