

(2015) 05 SC CK 0076

In the Supreme Court Of India

Case No : Criminal Appeal No. 793 of 2015 (Arising out of SLP(Criminal) No. 4525/2014) and Crl. A. No. 794 of 2015 (Arising out of SLP(Criminal) No. 3121/2015)

Sunita Sharma and Others

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 323, 324, 34

Citation : (2015) 3 RCR(Criminal) 161 : (2015) 7 SCALE 84

Hon'ble Judges : Ranjan Gogoi, J;N.V. Ramana, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted. The challenge in these appeals is against the judgment and order dated 28th January, 2014 passed by the High Court of Delhi at New Delhi passed in Criminal Appeal No. 458 of 1998 whereby the order of conviction of the accused Appellants Under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "Indian Penal Code") made by the learned trial Court has been upheld and they have been sentenced to undergo imprisonment for life with fine of Rs. 2,000/-. The accused Appellants have also been convicted for commission of offences punishable Under Section 324/34 and 323/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and one month respectively.

2. The incident took place on 14th February, 1993. The trial lasted five years and the appeal against the order of conviction was filed sometime in the year 1998. The appeal dragged on for 16 years and was concluded by the impugned order on 28th January, 2014. In the meantime, for most of the period, the accused had remained on bail. The above facts have been noticed by the Court only for the purpose of perceiving how the system has moved and the need to devise ways and means of expeditious hearing of such matters.

3. The prosecution case centres round the evidence of PW-1 - Jagdish Lal, who is the uncle of the deceased; PW-2 - Kuldeep Raj the father of the deceased; and PW-5 - Chanchal, the mother of the deceased. Another alleged witness PW-16 - Pawan Kumar, the cousin of the deceased has turned hostile. PW-2 - Kuldeep Raj and PW-5 - Chanchal had also been injured in the course of the incident. The defence insofar as the accused Sunita Sharma is based is based upon a plea of alibi. The said accused has set up the plea that on the relevant date i.e. 14th February, 1993 she was away in Jalandhar attending a marriage and it is only on 15th February, 1993, on getting the news of her husband's arrest in connection with the aforesaid incident, that she came back to Delhi. The defence has also examined DW-1 - Surinder Kumar, uncle of the accused Sunita Sharma. DW-2 ? Raghunath the father of accused Sunita Sharma and DW-3 Meenakshi Sharma, the daughter of accused Sunita Sharma, inter alia, to prove the plea of alibi set up by the accused Sunita Sharma.

4. We have considered the core of the evidence adduced by the prosecution, details of which have been mentioned above. We have heard the learned Counsels for the parties and have also read and considered the elaborate judgments prepared by the learned trial Court as well as by the High Court of Delhi.

5. The evidence of PW-1, PW-2 and PW-5 clinches the issues insofar as the accused Sudhir Sharma is concerned. All the witnesses have been categorical and consistent in implicating the said accused with the fatal injury caused by a sharp weapon. The description of the weapon though has varied with the witnesses, the said variance, in our considered view, does not make any difference to the culpability of the accused Sudhir Sharma. The opinion of the doctor that the said weapon is not capable of causing the fatal injury also does not commend to us for acceptance; firstly, because it is an opinion, and secondly, in view of the clear and categorical oral evidence on record that the said accused had used a sharp weapon in the commission of the offence which fact is borne out by the evidence of the doctor who had conducted the postmortem and had testified as regards the injuries found on the body of the deceased. In view of the aforesaid evidence which is overwhelming in nature we cannot find any fault with the conviction of the accused Sudhir Sharma including the conviction recorded Under Section 302 Indian Penal Code The punishment of imprisonment for life awarded appears to be just and proper and will not call for any interference.

6. Coming to the appeal filed by the accused Sunita Sharma we have considered the evidence of PW-1 - Jagdish Lal, PW-2 - Kuldeep Raj, and PW-5 - Chanchal with regard to the involvement of the said accused.

PW-1 - Jagdish Lal in his deposition had stated as follows:

"I saw that assessed Sunita had caught hold of hairs of Raman and accused Sudhir Sharma was hitting him with something, like a churi, and Sunita was

having an iron Musli."

PW-2 - Kuldeep Raj had deposed in the following manner insofar as the involvement of accused Sunita Sharma is concerned:

"I say that accused Sudhir Sharma was holding a Gupti in his right hand and Sunita accused had caught hold of him by his hair. Sunita was holding an iron musli in her hand and my son fell down and Sudhir inflicted Chhuri blow on his person. My wife fell down on my son and she caught hold the Chhuri which Sudhir was holding (Gupti)."

PW-5-Chanchal"s evidence with regard to the involvement of the accused is to the following effect:

"And saw that Sunita accused present in Court had caught hold of hairs of my son Raman and she was hitting him on his head with an iron musli and Sudhir accused present in Court had inflicted a Chhuri blow on the front portion of body of Raman i.e. the blow was given either on the chest or stomach."

7. We have noticed a difference, however, subtle it may be, with regard to the precise role of the accused Sunita in the offence in the evidence of the prosecution witnesses quoted above. The age of the accused Sunita Sharma on the date of commission of the offence was 34 years. The tenability of the prosecution story that she could hold back the 25 years old deceased by clinging to his hair with one arm and holding a musli (a sharp edged blunt iron weapon) and using the same on the deceased with the other hand leaves room for some doubt. That apart, common intention as required Under Section 34 Indian Penal Code to commit the offence of murder with her husband does not appear to have been established beyond reasonable doubt.

8. The motive of the crime though not relevant, the immediate circumstances antecedent to the incident is, by itself, trivial in nature, namely, an act of eve-teasing of the daughter of the accused by the brother of the deceased. The act of stabbing by the accused Sudhir Sharma leading to death, while the accused Sunita Sharma was holding the deceased does not appear to be premeditated or to have been committed in concert; that she had any inkling or knowledge of the intention of her husband so as to share such an intention. Rather it appears to us that her husband Sudhir Sharma acted on the spur of the moment leaving no occasion for the accused Sunita Sharma to develop or share any such intention.

9. The plea of alibi set up by the accused Sunita Sharma has been considered by the learned courts below and we have relooked into the circumstances surrounding the claim. First of all, it was a belated plea set up at the stage of examination of the accused Sunita Sharma Under Section 313 of the Code of Criminal Procedure, 1973 and that too about five years after the incident. She had not taken the said stand at any earlier point of time though she was consistently present in Court in connection with her trial. That apart, the evidence of DW-1, DW-2, DW-3 contain self-contradictory statements with regard

to the occasion (marriage) in connection with which she had claimed to have visited Jalandhar. We, therefore, reject the plea of alibi set up by the accused Sunita Sharma.

10. The discussion above leads us to the conclusion that the accused Sunita Sharma cannot be convicted Under Section 302 Indian Penal Code with the aid of Section 34 Indian Penal Code. She, however, would be liable for the individual acts leading to the injury. From the postmortem report, what we find is that the injury No. 2 which is not fatal could have been caused by a blunt weapon i.e. musli. Considering the said injury suffered by the deceased we are of the view that the offence Under Section 324 Indian Penal Code has been committed by the accused Sunita Sharma. A sentence of one year for commission of the offence Under Section 324 Indian Penal Code, in our considered view, would meet the ends of justice. Admittedly, the accused Sunita Sharma is in jail for over one and half years i.e. after the conviction and sentence awarded has already been suffered by her. We, accordingly, direct that she be released from prison forthwith.

11. Consequently and in the light of the foregoing discussions while dismissing the appeal filed by the accused Sudhir Sharma we partly allow the appeal filed by the accused Sunita Sharma in the above terms. The appeals are accordingly disposed of in the light of the above.