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HIGH COURT OF DELHI

% Date of decision: May/7// 2005.

+ Criminal Appeal No.110/2003.

Nathu Ram

Appellant

through

!

Mr.Rajesh Mahajan, amicus curiae.

Versus

\$ The State of NCT
Of Delhi.

Respondents.

through

^

Mr.Ravinder Chadha, Additional
Public Prosecutor.

Coram :

* Hon'ble Mr.Justice Manmohan Sarin.
Hon'ble Mr.Justice R.S.Sodhi.

(1) Whether reporters of local paper may be
allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported
in the Digest ?

* Manmohan Sarin, J

1. This is an appeal under Section 374 Cr.P.C. against the
judgment and order of sentence dated 3rd December, 2002 and
4th December, 2002, passed by the Additional Sessions Judge,

CrI.A.110/2003

Page 1 of 7

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sentencing the appellant to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default in payment of fine, to further undergo S.I., for five months.

2. The facts are in a narrow compass. Appellant along with Smt.Kashi Bai were prosecuted under Section 302 read with Section 34 IPC for the murder of Hallu, husband of Smt.Kashi Bai on 12th March, 2000. Appellant and the deceased Hallu were both working as labourers in Khel Parisar, Jasola.

The prosecution case is that there was an altercation between the deceased Hallu and appellant Nathu Ram over Smt.Kashi Bai, wife of Hallu. In a sudden fit of anger, appellant Nathu Ram picked up a 'Kassi' and hit Hallu on the head. The allegation further is that Kashi Bai standing nearby exhorted the appellant to finish Hallu, as he was coming in between their relationship. Upon this, appellant is alleged to have further given 4-5 blows with Kassi on the head, neck and shoulder of Hallu, who had fallen down and collapsed. The 'Kassi' was collected from near the head of the deceased and

also a stone. Apart from that one cricket bat, a shirt, worn by the deceased were also taken into possession by the police. Upon completion of investigation, appellant/Nathu Ram and Kashi Bai were charged for offences punishable under Section 302 read with Section 34 IPC.

3. The learned Additional Sessions Judge after appraisal of the evidence came to the conclusion that the allegations against Kashi Bai was of merely standing nearby the dead body. Further Kashi Bai was the wife of deceased Hallu, who had subsequently started living with appellant/Nathu Ram. Appellant and Hallu were stated to be not on good terms. As per the challan, Kashi Bai instigated Nathu Ram to kill Hallu, after he fell down on receiving blow from butt of the Kassi, but there was not even an iota of evidence in this regard. The Additional Sessions Judge found that the witnesses even differ on the question as to whether "Kashi Bai" was seen nearby the dead body immediately after the incident. It was held that no offence of any kind has been proved against Kashi Bai. She

was accordingly acquitted.

4. As far as Nathu Ram is concerned, the trial Court relied upon the testimony of PW-4/Smt.Kranti w/o Sh.Dhoo Ram and PW-5/Smt.Nirmala w/o Kanhaya lal, who both deposed that they were together taking meals, when the offence was committed. Both of them corroborated each other. PW-4 had deposed that Nathu Ram was involved in the offence. Rather, in this case, in response to a suggestion made by the defence counsel, the answer came in a categorical form against the appellant in the following words, "It is wrong to suggest that accused Nathu Ram did not give Kassi blows in my presence." She further clarified that the distance between the place where she was sitting and taking meals and the place of occurrence was not even one foot. In cross-examination by the public prosecutor after being treated as hostile, she stated, "It is, however, correct that accused Nathu Ram, present in Court, gave 4-5 blows with Kassi at head, neck and shoulder of the fallen man."

5. PW-5/Nirmala had deposed that she was working as a labour cutting grass and taking meals with Kranti/PW-4. She further deposed that appellant Nathu Ram had murdered the deceased with Kassi, hitting on his neck, head and he gave 3 blows. She stated that she had seen appellant Nathu Ram, giving blows, while they were taking food, as they were facing towards them. PW-3/Kanhaya Lal, on whose statement FIR had been registered, while giving his depositions in Court, merely said that at about 1.30 p.m. a quarrel had taken place and as they came out one labourer was lying in a injured condition. He denied having seen anybody causing injuries. He also denied that Kashi Bai was working as a labourer and was present at the spot. He even did not identify Kashi Bai.

6. Based on the appreciation of evidence, as noted above, the learned Additional Sessions Judge convicted and sentenced the appellant to life imprisonment while acquitting Kashi Bai.

7. Mr.Rajesh Mahajan, amicus curiae for the appellant,

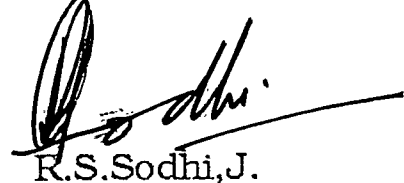
assailed the judgment states that the person who had lodged the FIR had resiled and not supported the prosecution version. Kashi Bai had, accordingly, been acquitted. He submits that there are contradictions in the testimonies of PW-4 and PW-5, as compared to their statements under Section 161 Cr.P.C. He submits that on a proper appreciation of evidence, it would be seen that PW-4 and PW-5 are not actual witnesses to the occurrence. He seeks to support this by submitting that had they been actual witnesses to the occurrence, their presence would have been found and recorded in the documents prepared during investigation, such as, the site plan drawn to scale or in the brief facts as recorded. He submits that their testimonies were not trustworthy and reliable and ought to be discarded.

8. We are unable to appreciate this submission. It is not essential that the name of every witness to a crime ought to figure or be shown in the site plan or it should appear in the brief facts. Both PW-4 and PW-5 have given graphic account of

the occurrence. Their testimonies have remained unshaken by cross-examination. They have deposed that they were working at the site on the day of occurrence. They were having their meals and have witnessed the appellant, giving blows to the deceased. Moreover, in this case, the prosecution has established its case beyond any reasonable doubt. A motive, namely, the relationship between the appellant and the Kashi Bai, leading to the altercation, the weapon of offence 'Kassi' has been recovered, presence of the appellant has been proved. Witnesses have deposed having seen appellant giving blows by Kassi, leading to the death of the deceased. Medical evidence corroborates the injuries to the deceased as capable of being caused by the seized Kassi.

Appeal has no merit and is, accordingly, dismissed.


Mahimohan Sarin, J.


R.S. Sodhi, J.

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