

State Vs. Vikas @ Bhola and anr.

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Court : Delhi

Decided On : Aug-29-2013

Judge : G. S. Sistani

Appellant : State

Respondent : Vikas @ Bhola and anr.

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment dated 29th August, 2013 % + CrI. L.P. 282/2012 State Through : ...Petitioner Mr.Saleem Ahmed, ASC for the State. Versus Vikas @ Bhola & Anr. Through : ..Respondents Mr.Mohd. Nasir and Mr.Mohd.Saleem Tabrej, Advs. CORAM: HONBLE MR.JUSTICE G.S. SISTANI HONBLE MR.JUSTICE G.P. MITTAL G.S. SISTANI, J (ORAL) 1. Present petition for leave to appeal has been filed by the State under Section 378 (1) of the Code of Criminal Procedure, 1973 against the judgment passed by the learned Additional Sessions Judge on 22.12.2011 in case FIR No.458/04, under Section 302/34 of the Indian Penal Code (IPC), whereby the respondents have been acquitted of the charge.

2. The relevant facts, as noticed by the trial court are that the deceased (Hari Prakash Tyagi) was running a shop by the name of Tyagi Spare Parts at WZ-154, Ground Floor, Main Najafgarh Road, Uttam Nagar. He was last seen at the shop on 04.06.2004 at 3.00 pm by complainant Harkesh Sharma PW-3, who was running his shop on the first floor above the shop of the deceased. On 07.06.2004,

the complainant PW-3 felt a stink was coming from the shop of Hari Prakash Tyagi. He got suspicious and informed the brother of the deceased. At about 8.00 pm, brothers of the deceased, Nirajan Tyagi PW-5 and Laxman Tyagi PW-9 came at the shop along with Jai Kumar (nephew of deceased) and the lock of the shop was got broken. Upon checking, the body of the deceased was found from the box of Diwan lying in the shop. The body was in a decomposed condition and there were sharp injury marks on his stomach and neck. Blood was flowing on the floor. Thereafter, police was informed and on the basis of statement given by the complainant (Ex Pw-3/A), FIR was recorded under Section 302 IPC. During investigation, it was found that the relations between the deceased and his wife and children were not good and the deceased was residing in his shop while his wife and children were residing separately at Village Narsingh Pura. Since last about 1- 2 years, respondent No.1 Vikas (son of the deceased) started visiting the deceased Hari Prakash and used to take money from him for his expenses. A quarrel had also taken place between the deceased and his son Vikas, on the question of money but later on he sought an apology from the deceased. On 22.05.2004, respondent No.1 brought Chach (lassi) in a bottle for Hari Prakash but he did not consume the same as he had already taken food. One Mahesh Sharma PW-21, who was sitting with the deceased, found the lassi to be bitter and at the asking of Hari Prakash when he went to throw the lassi, a footpath tea vendor, Sher Singh PW-2 asked him to give chhach to him. On taking the chhach, Sher Singh became unconscious and was rushed to a doctor who administered him glucose and gave him an injection. The deceased told Mahesh Sharma that his son Vikas had mixed poison in the chhach with a view to kill him. Nilesh Kumar (PW-10), nephew of deceased, stated that about two months ago respondent No.1 had asked him to get the share of Hari Prakash in the plot at Village Jhatikra transferred in his name. When Nilesh (PW-10) asked about this to his father, he refused. Nilesh further stated that respondent No.1 Vikas had asked him about a medicine which could cause death. On the basis of this information, the I.O., Inspector R. Chandran PW-31, issued notice to respondent No.1 Vikas under section 160 Cr.P.C. During interrogation, Vikas confessed his guilt and was arrested. Subsequently, his disclosure statement was recorded wherein he named respondent No.2 Anil Kumar and stated that they had thrown their clothes and

gloves in a polythene bag near Neha Toka Factory at G.T. Road, Sonapat from the puliya and had thrown the knife in the bushes at a little distance away from the said place. Thereafter, respondent No.2 Anil Kumar was arrested and both the respondents got recovered their clothes soaked with blood. From the pocket of pajama of respondent No.1 Vikas, a key of the lock of shop was recovered. A dagger type knife (weapon of offence) was also recovered at the instance of respondent No.1. Exhibits were sent to FSL. On completion of investigation, charge sheet was prepared under Section 302/34 IPC.

3. The respondents pleaded not guilty to the charge, upon which the prosecution examined 34 witnesses to bring home the guilt of the respondents. The prosecution has relied on four circumstances, which the trial court has recorded in Para 5 of the judgment which reads as under:

i) Motive - there were strained relations between the deceased and his wife and children due to which, the wife and children of the deceased were residing at the house of parents of the wife of deceased at Harsingh Pura and accused Vikas, who is the son of the deceased, was demanding Rs. 10,000/ from his father for maintenance and wanted to grab the property of his father. ii) Previous attempt by accused Vikas to kill his father by giving him lassi mixed with poison. iii) Recovery of blood stained clothes and the weapon of offence (dagger) having human blood at the instance of both the accused. iv) Recovery of key of the lock of shutter of the shop of deceased Hari Prakash from the clothes of accused Vikas.

4. Mr. Saleem Ahmed, learned counsel for the State, submits that the learned trial court has passed the impugned judgment on hypothecial presumptions, conjectures and surmises and the order is perverse and lacks legality. Counsel further submits that the Ld. Trial Court failed to appreciate the evidence led by the prosecution witnesses and wrongly applied the law on wrong assumptions.

5. Regarding motive, learned counsel for the State submits that the brothers of the deceased Niranjana Tyagi PW-4, Laxman Tyagi PW-9 and Suraj Bhan PW-8 and nephew of the deceased Nilesh PW-10 have consistently attributed the motive onto the respondent No.1 to kill his deceased father. The Counsel further submits that respondent No.1 Vikas wanted a share in the property situated at Village

Jatikra for which he pressurised the deceased to force the grandfather for such share and as his demand was not met by the grandfather, he was unhappy with the deceased and took revenge by murdering him which was the perfect motive to commit the crime.

6. With regard to the allegation of previous attempt by respondent No.1 to kill the deceased, learned counsel for the State submits that on an earlier occasion also Vikas had tried to commit mischief with the deceased by bringing poisonous chhach (lassi) which incidentally was not consumed by the deceased as he was already through with his food for that day but it was consumed by a tea vendor Sher Singh (PW-2). Learned counsel further submits that although Shera @ Sher Singh who consumed the poisonous lassi turned hostile yet the doctor who attended him, Dr. Rakesh Sharma (PW-6) stood his ground.

7. Regarding the third circumstance, the learned counsel for the State submits that the recovery of blood stained clothes and weapon of offence were recovered only at the instance of the respondents but the trial court did not believe the recovery and passed the impugned judgment.

8. The learned counsel for the petitioner submits that the learned trial court failed to appreciate the evidence of Banwari Lal, PW-18, who is the owner of the vehicle (Tata Sumo) wherein he did not deny the suggestion that on 04.06.2004 his driver Praveen Kumar PW-4 took some passengers to Uttam Nagar in the night and came about 4am in the morning of 05/06/2004. Counsel further submits that the Ld. Trial Court failed to appreciate that FSL made all efforts to identify the blood group on the clothes and weapon of offence and ignored the finding of the FSL that the clothes and weapon of offence were stained with human blood.

9. We have heard the counsel for the petitioner and perused the impugned judgment dated 22.12.2011. The case is based on circumstantial evidence and there is no eye witness to the incident. The law with regard to conviction on the basis of circumstantial evidence has been discussed in detail by the Supreme Court of India in the case of Harishchandra Ladaku Thange v. State of Maharashtra reported at AIR 200.SC 2957.

10. Considering property to be the motive, the trial court has observed that the Investigating Officer has not conducted proper investigation to find out whether the shop and plot of village Jhatikra were in the name of the deceased. As per the deposition of Nilesh Tyagi PW-10, the deceased was not having any plot in his name in the village and all the property was in the name of his father and there had been no partition of the property. Similarly PW-9 Laxman Tyagi also stated in his cross examination that the deceased was not having any ancestral or self acquired property at his native village at the time of the incident. PW-5 Niranjan Tyagi also deposed that there was no property in the name or in the possession of Hari Prakash in the village and no property was given during the lifetime of Hari Prakash by his father. Therefore, the trial court rightly observed that since the properties were not in the name of the deceased, respondent No.1 Vikas could not have have gained anything by committing the murder of Hari Prakash Tyagi.

11. Nilesh PW-10 further deposed that respondent No.1 Vikas had asked him about some poison which can cause the death of a person. Suraj Bhan PW-8 also deposed that his son Nilesh told him 2-3 days prior to the incident that respondent No.1 Vikas had asked him if there was any such poison. However, neither of them informed the police about the alleged evil intention of respondent No.1 when their statements were recorded on 08.06.2004. It was on 09.06.2004 when they first put nail of suspicion on respondent No.1 Vikas. Their conduct in remaining silent for two days is not natural. The possibility of these witnesses trying to frame respondent No.1 in order to grab the property themselves cannot be ruled out. As far as respondent No.2 Anil is concerned, the prosecution has not attributed any motive to him except for the fact that he is a friend of respondent No.1 Vikas. Hence, in our opinion, the trial court has rightly rejected the case of prosecution on the point of motive.

12. In our view, the trial court has given detailed reasons for disbelieving the prosecution case with respect to the incident of poisonous lassi and we are not inclined to take a different view. PW-5, PW-8 and PW-9 deposed that this incident was informed to them by the deceased and they have no personal knowledge of the fact. Their testimony is hearsay and therefore inadmissible in evidence. Even PW-21 Mahesh Chand, who was an eye witness to the alleged incident and in

whose presence respondent No.1 Vikas brought lassi for the deceased which the tea vendor Sher Singh had consumed, turned hostile. He denied that deceased told him that his son had brought chhach mixed with poison to kill him. It is pertinent to mention that PW-2 Sher Singh, victim of the poisonous lassi, also turned hostile. He denied the fact that PW-21 or the deceased gave him anything for eating. PW-6 Dr Rakesh Sharma, who had examined Sher Singh, deposed that he was told by Sher Singh that he had started vomiting after eating something during the morning hours. In the light of the fact that none of the material prosecution witnesses have supported the case of the prosecution on this aspect nor the doctor has testified that he was told by Sher Singh that he consumed lassi, we believe that the trial court has rightly adjudicated that the second circumstance also stands disproved.

13. In the present case, as per the prosecution, the respondents got their blood stained clothes recovered from a polythene bag lying under the puliya near Neha Toka Private Limited Factory at G.T. Road, Rai, Sonapat. A blood stained knife was also recovered from bushes near Dev Rishi Vidya Niketan, G.T. Road. The trial court has observed that no attempt was made by the police to join any independent person at the time of recovery or even at the time of recording their disclosure statements. The investigating officer PW-31 has stated that no public person was called from the factory and none of the vehicles which were passing from the road were stopped to join in the investigation. SI Khemender Pal PW-30 and SI Neeraj Kumar PW-19 have also deposed on similar lines. They stated in their cross examination that although traffic was passing from the road but no one was stopped to join the investigation. From the evidence of PW-31, PW-30 & PW-19, it does not appear that they made any effort whatsoever to call any public witness at the time of alleged recovery. It is not mandatory but only a rule of prudence that a public witness should be associated at the time of recovery. However, in the facts and circumstances of this case wherein the recoveries are effected from a public place, we find that the police officials should have made serious efforts to join an independent witness. In the case of Mohan Singh v. State of Haryana (1995) 3 SCC 19, it was observed by the Apex Court that:

From the evidence of PW 6 and PW 7 it does not appear that they made any effort whatsoever to call any public witness or railway officials working in the booking office while taking the search of the appellant and recovery of pistol in that process. No explanation is forthcoming for not joining any independent witness. Baljit Singh, PW 7, however, preferred to pick up Hira Lal, PW 5 who is nobody but a mobile sweet vendor. According to the prosecution Hira Lal happened to be there when the appellant was apprehended at that particular time when search of his person was made and the country-made pistol is said to have been recovered. In these facts and circumstances when the police officials deliberately avoided to join any public witness or railway officials though available at the time when the appellant was apprehended the evidence of Hira Lal who is nobody but a chance witness and the evidence of police officials PW 6 and PW 7 has to be closely scrutinised with certain amount of care and caution.

14. In addition to that, the trial court has observed that there are serious inconsistencies in the testimonies of police officials who have been examined by the prosecution as recovery witnesses. The trial court has recorded this finding in Para 23 of the judgment which reads as under:

23. The first contradiction in the testimonies of the police witnesses is with regard to the distance at which the vehicle was stopped from the place of recovery. PW-19 stated that the vehicle was stopped 100 meters away from the place of recovery, PW-30 stated that the vehicle was stopped at a distance of 100 feet while PW-31 deposed that the vehicle was stopped 50 yards away from the factory. With regard to the depth of the Nala from where the recovery was affected, PW-26 stated that the depth of the Nala was 1.5 feet to 2 feet but PW-30 stated that the depth was 5 to 6 feet from the main road. PW-19 stated that the writing work was done at the place of the recovery while sitting in Tata 407, PW-26 stated that the writing work was done while sitting on the pulia, PW30 deposed that writing work was done while sitting on the road while PW-31 stated that writing work was done with the support of the vehicle as there was no place for writing at the place of recovery of weapon. PW-30 deposed that the place of recovery of weapon was 3 to 4 kilometers towards Sonapat from the place of recovery of polythene but PW-31 stated that after the recovery of the clothes, he along with his

team and accused went in search of the weapon of offence and that the weapon of offence was traced out after 100150 yards. PW-19 stated that polythene was not visible from the main road but PW-26 stated that the polythene which contained cloth was visible from the pulia. PW-30 stated that the knife was not visible from the main road but according to PW-26, knife was visible from a distance of 23 feet from the road. PW-30 stated that the bushes from where the knife was recovered was 15-20 feet from Metallic Road but PW-31 stated that the weapon of offence was recovered within the limit of 50 yards from Metallic Road. PW-26 stated that he does not remember whether the seizure memos bear his signatures. He stated that the seizure memos were in the handwriting of IO Sukhwinder Pal. Prosecution has not cited any witness by the name Sukhwinder Pal. Thus, it is apparent that the testimonies of recovery witnesses are full of inconsistencies and contradictions and therefore they do not inspire confidence and hence it shall be unsafe to rely on their testimonies without corroboration from independent public witnesses. The recovery at the instance of accused appears to be doubtful.

15. After careful examination of the contradictions in the testimonies of recovery witnesses and the fact that no efforts were made by the police officials to join any independent witness, we are of the opinion that the learned trial court has rightly disbelieved the recoveries effected upon the disclosure statement of the respondents.

16. As per the testimony of PW-18 Banwari Lal, owner of Tata Sumo, his driver Praveen Kumar PW-4 took the vehicle on 04.06.2004 at 8:30am but did not bring the same in the night. He admitted that PW-4 told him that he had taken a passenger to Uttam Nagar in the night and came back at 04:00am in the morning. However, PW-4 turned hostile before the trial court. He did not identify the recovered clothes of the respondents. As per the FSL report, human blood was found on the clothes and knife but the report has not conclusively proved the blood group on the articles. Therefore, the trial court, in our opinion, has rightly observed that the mere presence of blood on the recovered clothes and knife are not sufficient to prove that respondents committed the murder of deceased.

17. The next circumstance on which the prosecution has relied is the recovery of key to the lock of shutter of the shop of deceased from the pocket of respondent No.1 Vikas. The trial court has observed that the lock was broken in the presence of Niranjana Tyagi PW-5 and Laxman Tyagi PW-9. The broken lock was seized by the I.O. Inspector R. Chandran PW-31. As per the seizure memo Ex PW-19/K, the lock was not sealed. However, in the FSL report it has been stated that the lock was in a sealed pullanda bearing the seal of AKS. Moreover, FSL report does not observe whether the lock was received in broken condition. There is nothing on record to show that the lock was subsequently sealed by the I.O. The lock was not shown to the brothers of the deceased for identification purposes. Thus, in our opinion, the trial court has rightly observed that there appears to be serious possibility that some other lock was sent to FSL in a sealed condition.

18. It is well settled that leave to appeal is to be granted in exceptional cases where the judgment under appeal is found to be perverse. The Court must take into account the presumption of innocence of the accused and the trial court's acquittal adds to the presumption of his innocence. We have no reason to disagree from the view taken by the trial court. There is no perversity in the appreciation of evidence.

19. Accordingly, no grounds are made out and the petition for leave to appeal stands dismissed. G.S.SISTANI, J G.P.MITTAL, J AUGUST 29 2013 ssn

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