Pankaj Vs. State

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Court : Delhi

Decided On : Sep-20-2013

Judge : Sunita Gupta

Appellant : Pankaj

Respondent : State

Judgement :

$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Crl. A. 374/2003 Date of Decision:

20. h September, 2013 PANKAJ Through ..... Petitioner Mr.V.K. Ohri, Advocate. versus STATE Through ..... Respondent Ms. Fizani Hussain, APP for the State. CORAM: HONBLE MS. JUSTICE SUNITA GUPTA

JUDGMENT
: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment and order on sentence dated 5th May, 2003 vide which the appellant was convicted under Section 326 of Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for six months.

2. The case of prosecution, in brief, is that on 21st May, 2000, information was received at PS Kotla Mubarakpur that one person had been stabbed and a quarrel was taking place at J43Seva Nagar. The information was recorded vide DD No.51B and was given to ASI Rajbir Singh for investigation. He went to the spot and came to know that the injured Rakesh had been taken to some unknown hospital. His wife Saraswati met him on the spot. The Investigating officer recorded her statement wherein she alleged that about two years ago, her husband has taken shop of the uncle of Pankaj on rent in Defence Colony Market where he did business of flowers for three months and thereafter vacated the shop. On 19th May, 2000 Pankaj came to their house and placed order for flowers and stated that he would come again on the next day. On 20th May, 2000, Pankaj came to their house along with one more person at about 10:15 p.m. After about 10 minutes, she heard the alarm raised by her husband. She went inside the room and saw that Pankaj stabbed her husband in the stomach and the other person caught her neck. She fell down and both of them ran away. While fleeing away, Pankaj was saying that he had taught a lesson for vacating the shop taken on rent.

3. During the course of investigation, initially, the accused could not be arrested, as such, vide order dated 1st November, 2000, he was declared proclaimed offender. Charge sheet was submitted under Section 299 Cr.P.C for offence u/s 307/34 Indian Penal Code (hereinafter referred as I.P.C). Subsequently, the accused surrendered in the Court on 4th October, 2001. Charge for offence under Section 307 IPC was framed against him to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, prosecution examined ten witnesses. All the incriminating evidence was put to the accused while recording his statement under Section 313 Cr. P.C. wherein he admitted that injured Rakesh had taken a shop on rent from his uncle about three years prior to 20th May, 2000 and had vacated that shop after about three months. However, he has denied the rest of the case of prosecution. According to him, Rakesh did not want to vacate the shop taken on rent from his uncle and when he vacated the shop, he threatened to teach him a lesson. He examined DW-1 Shankar Dubey in support of his defence, who has deposed that in the year 2000, he used to supply flowers to accused as well as to

the injured. There was quarrel between Pankaj and Rakesh as Rakesh was not paying rent of the shop. Pankaj got the shop vacated from Rakesh. While leaving the shop, Rakesh threatened Pankaj to see him later. In the year 2002, he came to know that Pankaj had been implicated in a false case.

5. Accused examined himself in support of his case and deposed that Rakesh is a floweriest. He was also dealing in flowers. In the year 1999, his uncle got vacated the shop which he had let out to Rakesh because he was not paying rent regularly. On his asking, Rakesh paid the arrears of rent and vacated the shop. There was no quarrel between them. However, he had told him that he would see him. In February, 2000 he left for his village and came to Delhi in July, 2000. His father had suffered from paralysis, and, therefore, he had gone to his village to look after him. He was not in Delhi on 19-20th May, 2000.

6. Vide impugned order, the appellant was convicted for offence under Section 326 IPC and sentenced as stated above. Feeling aggrieved by the same, the present appeal has been preferred by the appellant.

7. I have heard Sh. V.K. Ohri, Advocate for the appellant and Ms. Fizani Hussain, Additional Public Prosecutor for the State and have perused the record.

8. It was submitted by the learned counsel for the appellant that there is no independent witness to the incident and the case of prosecution rests on the testimony of Rakesh Kumar and his wife only. Both these witnesses have not identified the accused. Moreover, their testimony suffers from discrepancies. The knife was broken and it was not possible to inflict injury with such a knife. Moreover, the oral testimony of the witnesses does not find corroboration from medical evidence, inasmuch as, according to the injured, there were two injuries, one on the back and another on abdomen. However, as per the MLC, there was only one injury on the person of Rakesh. The knife has been planted upon the accused and in fact there is no witness to the seizure of the knife and Investigating Officer has also deposed that the knife is not connected with the crime. Moreover, no finger print was taken from the knife nor the same was sent to FSL. If any injury had been caused by the appellant, some blood would have come on his clothes, but clothes of the accused were not seized. Under the circumstances, the

prosecution has failed to bring home the guilt of accused beyond reasonable doubt. As such, accused is entitled to be acquitted. Alternatively, it was submitted that the appellant has remained in jail for about 16 months and has also paid fine. As such, in case, the Court comes to the conclusion that the prosecution has been able to establish guilt of the accused, then he be released on the period already undergone.

9. Rebutting the submission of learned counsel for the appellant, it was submitted by learned Public Prosecutor for the State that the discrepancy in the oral and medical evidence as referred by the learned counsel for the appellant is of no avail, inasmuch as, in the statement recorded under Section 161 Cr.P.C., the injured had clearly stated that initially the accused had given the knife blow on his back but it was not deep and thereafter he stabbed on his abdomen. That being so, in the medical report only one injury has been shown. If the knife or the blood stained clothes were not sent to FSL by the Investigating Officer that, at most, is a lapse on the part of Investigating Officer which does not caste any doubt on prosecution version. As regards identification of the accused is concerned, it was submitted that parties were well known to each other and the mere fact that when the witnesses came to be examined, it was not specifically written present in the court, does not mean that there was any doubt regarding the identity of the accused. While appearing as a witness, the accused had tried to take the plea of alibi that he was in village at that time but the same is not proved and, in fact, reference was made to the statement of the village persons when proceedings under Section 82 & 83 Cr. P.C. were initiated against the accused wherein they stated that accused had not come to the village for the last three years. Under the circumstances, it was submitted that there is no infirmity in the impugned order which calls for interference. Keeping in view the fact that injury caused by the accused was opined to be dangerous, as such, he does not deserve any leniency even in regard to quantum of sentence. As such, the appeal is liable to be dismissed.

10. I have given my considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record.

11. The most material witnesses are PW-1 Rakesh Kumar, the injured and PW-2 Saraswati, wife of injured. PW-1 Rakesh Kumar has unfolded that about three years prior to the incident, he had taken a shop on rent from the uncle of the accused. He vacated the shop after about three months. On 19th May, 2000, accused Pankaj came alone to his house and offered to do business jointly in his office. He again came on 20th May, 2000 along with one boy at about 8:30 p.m. As someone was sitting in the house at that time, he left saying that he would come back thereafter. He again came at about 10:15 p.m. with that very boy and sat in the room. Pankaj asked him to take out his diary for writing address. He took out a copy to write on it and as soon as he sat on the small table, his companion gagged his mouth. Pankaj gave knife blow on his back. He got himself freed from other boy by biting him and got up and raised alarm. Then accused gave a knife blow in his stomach. His wife, who was cooking food at that time, came in the room when he raised alarm. Pankaj caught the neck of his wife. Thereafter, the accused persons left after pushing his wife. Before leaving the house, Pankaj told him that he had taught a lesson to him for vacating the shop which he had taken. Thereafter, the neighbours Satish and Sunder came and took him to hospital. His blood stained shirt Ex.P1 was taken into possession by the police. In cross-examination, he has deposed that when he went to the hospital, he was not in a position to tell anything about his injuries. He was quite scared at that time and, therefore, does not recollect what he had told the Doctor in the hospital. He admitted that he did not give the name of Pankaj to Doctor by deposing that Doctor did not ask him the name of the assailant. In fact, since his condition was bad, he did not tell the Doctor in what manner he sustained injuries. Till 23rd May, 2000, he was not in a position to talk to anyone. He denied the suggestion that he asked his wife to report against Pankaj. He also denied that on the night of 20th May, 2000 his wife told the police that two persons had come to their house with a view to commit robbery. He could not say why Pankaj caused injury to him after about two years of his vacating the shop of his uncle. There was no altercation or quarrel between him and Pankaj on that date. He denied the suggestion that he owed money to Pankaj and, therefore, falsely implicated him in this case.

12. As regards the submission of learned counsel for the appellant that the accused was not identified by the injured in the Court, although it is true that there

is no specific mention in the testimony of this witness or his wife that the accused Pankaj was present in the Court when they came to depose before the Court. However, the entire sequence of events goes to show that there was no dispute regarding the identity of the accused. The parties were well known to each other from before, inasmuch as, it is undisputed case of the parties that the accused as well as Rakesh were dealing in the business of selling flowers. Rakesh had taken a shop on rent belonging to uncle of accused Pankaj. The shop was vacated by Rakesh after three months. Thereafter, it is the case of the prosecution that on 19th May, 2000, accused Pankaj came to the house of injured and offered to deal in the business of flowers jointly with Rakesh. Thereafter, again he came on 20th May, 2000 along with another boy and then the incident in question had taken place. As such, the mere omission to mention specifically in the Court that accused Pankaj was present in the Court is not of any consequence keeping in view the fact that identity of the accused is not in doubt.

13. It is settled law that testimony of an injured witness stands on a higher pedestal than any other witness, inasmuch as, he sustain injuries in the incident. As such, there is an inbuilt assurance regarding his presence at the scene of the crime and it is unlikely that he will allow the real culprit to go scot free and would falsely implicate any other persons. In Abdul Sayeed v. State of Madhya Pradesh [(2010) 10 SCC259, the Supreme Court held as under:

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness.

[Vide Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P., Dinesh Kumar v. State of

Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.].

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab, 2009(9) SCC719where the Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

28. Darshan Singh (PW4 was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana). Thus, we are of the considered opinion that evidence of Darshan Singh (PW4 has rightly been relied upon by the courts below.

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

14. To the similar effect is the judgment reported in Mano Dutt and Anr. Vs. State of UP, (2012) 2 SCC (Cri) 226.

15. PW-1 Rakesh had given a graphic description of the entire incident. His presence at the spot cannot be doubted as he was injured in the incident. Despite lengthy cross-examination, nothing material could be elicited to discredit his testimony. The mere fact that three years prior to the incident, the witness had vacated the shop belonging to the uncle of the accused does not prove that he was nurturing any ill will or grudge against the accused for which reason, he would falsely implicate him in this case and will allow the real culprit to go scot free. In fact, if he was having any ill will against the accused for vacating the shop, he would not have waited for three years and would have taken the revenge immediately thereafter. In fact, the real motive to commit the offence has not surfaced but it is settled law that in case of direct evidence, motive pales into insignificance. As rightly observed by the then learned Additional Sessions Judge, it seems that when the accused came to the house of Rakesh in order to have discussion regarding business, some altercation might have taken place and during the course of altercation, the accused got enraged and gave knife blow to Rakesh.

16. Furthermore, although, the testimony of injured Rakesh himself is sufficient to convict the accused, however, in the instant case, it finds substantial corroboration from other material available on record. His deposition finds full corroboration from the testimony of his wife Smt. Saraswati in whose presence the accused came to the house and went inside along with his companion. She has deposed that one day prior to the incident, accused came and offered to do a joint business of flowers with her husband in an office which he claimed to possess. On 20th May, 2000 at about 8:30 p.m., accused Pankaj accompanied by one more boy came to the house but someone was sitting in their house at that time, therefore, they left saying that they would come later on. Again they came at about 10:00 a.m. and sat with her husband to talk to him. She was cooking food and heard an alarm. She went to the room and saw that Pankaj gave a blow on the stomach of his husband and associate of Pankaj caught her neck. She fell down. When they heard the noise of neighbours, they ran away. While running away, Pankaj was

saying to her husband that he had taught a lesson for the shop. Satish and some of his friends came on hearing the alarm raised by her. They took her husband to the hospital. Her statement Ex. PW5/1 was recorded by the police, which bears her signatures. This witness was cross-examined by learned defence counsel, however, nothing material could be elicited to discredit her testimony. She also reiterated that there was no previous dispute between the accused Pankaj and her husband. She denied the suggestion that there was previous dispute between Pankaj and her husband on money matters. Rather she deposed that Pankaj told her on that date when he came to her house that he would take food with them. She also denied the suggestion that she made a statement in the night of 20th May, 2000 to the Police that two unknown persons had come to their house and had given knife blow to her husband with the intention of committing robbery. She also denied the suggestion that she has falsely implicated the accused at the instance of her husband as he has some dispute with the accused on money matters. As such, testimony of Rakesh finds substantial corroboration from his wife Saraswati.

17. The submission that there was no independent witness, is devoid of merit, inasmuch as, since the incident had taken place in the house itself, therefore, there was no possibility of any independent witness of having witnessed the occurrence. However, on hearing the alarm of Saraswati, PW-1 Sunder Lal reached the spot. He has deposed that on 20th May, 2000 at about 10/11 p.m. he was present in his house. He heard the noise that Pankaj ne hamare aadmi ko maar diya. He went to the House No.J-347 where Rakesh used to reside. Rakesh was found lying on the ground in a pool of blood. He took him to AIIMS in auto rickshaw. Wife of Rakesh was saying that Pankaj had stabbed her husband. She was also saying that one more person, unknown to her, had accompanied Pankaj. Nothing material could be elicited to discredit the testimony of witness. The fact that immediately after the incident, Saraswati, wife of injured had raised the alarm that Pankaj had stabbed her husband is another piece of corroborative evidence as provided under Section 157 of the Evidence Act and it falsifies the plea taken by the accused that some other person came to the house of Rakesh for the purpose of committing robbery and who had injured him.

18. As regards, the contradictions and inconsistencies in the evidence of the prosecution witnesses, as pointed out by the counsel for the appellant, is concerned, a perusal of entire evidence goes to show that the evidence of the witnesses cannot be brushed aside merely because of some minor contradictions, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy. Not only that, the witnesses have consistently deposed with regard to the offence committed by the appellant and their evidence remain unshaken during their cross-examination. Mere marginal variation and contradiction in the statements of the witnesses cannot be a ground to discard the testimony of the witness who is none else but the injured himself and his wife. Further, relationship cannot be a factor to affect credibility of a witness.

19. In the case of State of Uttar Pradesh v. Naresh and Ors.: (2011) 4 SCC324 it was observed:30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. 9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide State v. Saravanan, (2008) 17 SCC587 Arumugam v. State, (2008) 15 SCC590 Mahendra Pratap Singh v. State of U.P., (2009) 11 SCC334 and Sunil

Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra, (2010) 13 SCC657].

20. Further, the ocular testimony of the prosecution witnesses found corroboration from the medical evidence. PW-9 Dr. Sudhir Kumar proved the MLC Ex.PW9/2 prepared by Dr. Roopa who has left the hospital. As per the MLC, Dr. Roopa examined Rakesh on 20 th May, 2000 and found that he was bleeding from the site of injury in the abdomen and intestinal duodenum. Two intestinal perforation with active bleeding was found. The injury was opined to be dangerous. He further deposed that according to him also, the injuries were dangerous to the life of patient.

21. As regards the submission that there was discrepancy between the oral testimony of Rakesh and the medical evidence, inasmuch as, as per MLC only one injury was found, learned Public Prosecutor had referred to the statement of injured recorded under Section 161 Cr. P.C. wherein he had stated that Pankaj inflicted knife on his back which could not be inflicted properly. When he tried to save himself then, Pankaj gave knife blow on his abdomen. Due to this reason, Rakesh might not have sustained injuries on his back and, therefore, the same does not find mention in the MLC. Therefore, it cannot be said that there is any discrepancy between the oral and medical evidence.

22. As regards the weapon of offence, according to SI Rajbir Singh, one broken knife was found lying on the spot and was seized vide memo Ex. PW-7/1. In his cross-examination, it has come that this knife could not be connected with the crime and that the complainant had expressed ignorance about ownership of knife. In fact, the knife was not even exhibited either in his statement nor shown to the injured and his wife during their statement. The result of the same, at best be, that the broken knife which was alleged to be found lying on the spot was not the weapon of offence with which injury were inflicted upon Rakesh and it can be said that the weapon of offence was not recovered. But that itself is not sufficient to caste any dent on the prosecution version because as held in the case of Mohinder Vs. State, 2010 VII AD (Delhi) 645 non-recovery of weapon of offence is not fatal to the case of prosecution.

23. Omission to send blood stained clothes of injured or weapon of offence, can at best be, said to be a lapse on the part of Investigating Officer of the case. Honble Supreme Court held in Ram Bihari Yadav Vs. State of Bihar, AIR 1998 SC1850and in C. Muniappan and Ors. Vs. State of Tamilnadu, 2010 IX AD (SC) 317 that defects in investigation by itself cannot be a ground for acquittal.

24. Coming to the plea taken by the accused that while vacating the shop of his uncle, Rakesh had threatened to teach him a lesson and, therefore, he falsely implicated him in this case, the same does not inspire confidence, inasmuch as, accused while appearing as DW-2 has admitted that there was no quarrel between them as Rakesh vacated the shop and paid arrears of rent. The very fact that shop was vacated and arrears of rent were paid without any dispute leaves no doubt that Rakesh was not having any animus against Pankaj or against his uncle after vacating the shop.

25. As regards, the plea of alibi taken by the accused, burden of proving this plea was upon the accused. No such suggestion was given to the injured or any other prosecution witness except PW-2 Saraswati who has denied the same. In fact, the accused did not take this plea when his statement was recorded under Section 313 Cr. P.C. For the first time, this plea was taken by him when he examined himself as DW-2 that he had gone to his village in February, 2000 and returned back in July, 2000 as his father had suffered from paralysis and he had gone there to look after him. He could have examined his father in order to substantiate this plea. The least which he could have done was to place on record the medical documents to show that his father really suffered from paralysis and he had gone to the village to look after him but the same was not done. In fact the proceedings executed against the appellant u/s 82/83 Cr.P.C belies his plea in asmuch as when police officials had gone to execute proceedings under Section 82/83 Cr. P.C. Statement of his father Harender Singh was recorded wherein it is stated that his son Pankaj had gone to Delhi along with his brother about 5 years ago and was residing with his brother Gautam in Delhi. For the last two years, his son had not visited the village and he does not know his whereabouts. The Mukhia of the village also gave a statement to the same effect. Under the circumstances, the plea of alibi taken by the accused is not proved and in fact, in view of statement of

father of the appellant, same is proved to be false. Moreover, there is no reason to disbelieve the testimony of injured Rakesh which finds substantial corroboration from his wife Saraswati, neighbour Sunder who removed him to hospital and the medical evidence. As such, prosecution succeeded in establishing that it was accused Pankaj who had inflicted injuries on the person of Rakesh.

26. Although, the appellant was charged for offence under Section 307 IPC but after detailed discussion, it was observed that the charge proved against the accused is of Section 326 IPC. As per the statement of the witnesses the accused had given stab injury to Rakesh by a knife. As per opinion given by Dr. Sudhir Kumar, the injury sustained by Rakesh was dangerous. As such, he was convicted for offence under Section 326 IPC. No fault can be found with this finding of the then learned Additional Sessions Judge which calls for interference.

27. The accused was sentenced to undergo rigorous imprisonment for three years and fine. The mere fact that the appellant remained in custody for about 16 months in jail is not sufficient to take a lenient view in the matter, inasmuch as, the maximum punishment prescribed under Section 326 IPC is imprisonment for life or imprisonment for 10 years and injury was opined to be dangerous.

28. As such, the appeal is devoid of merit and the same is accordingly dismissed.

29. The appellant is on bail. He is directed to surrender within seven days and to undergo the balance of his sentence, failing which the learned Trial Court to get him arrested in order to serve the remainder of sentence.

30. Copy of the order along with Trial Court Record be sent back. SUNITA GUPTA (JUDGE) SEPTEMBER20 2013 rs