

Rashid Vs. State

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Court : Delhi

Decided On : Jan-24-2014

Judge : S. P. Garg

Appellant : Rashid

Respondent : State

Advocate for Pet/Ap. : Mr. S.K.Bhalla

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

29. h NOVEMBER, 2013 DECIDED ON :

24. h JANUARY, 2014 + CRL.A. 583/2000 RASHID Through :Appellant Mr. S.K.Bhalla, Advocate. versus STATE Through : .Respondent Mr.Lovkesh Sawhney, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Rashid (the appellant) challenges the legality and correctness of a judgment dated 15.09.2000 of learned Addl. Sessions Judge in Sessions Case No.116/98 arising out of FIR No.431/98 PS Sultanpuri whereby he was convicted for committing offences punishable under Sections 304/324 IPC. By an order on sentence dated 19.09.2000, he was awarded RI for seven years with fine ` 1,000/- under Section 304 IPC and RI for one year with fine ` 500/- under Section 324 IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant were that on 03.07.1998 at about 08.00 A.M. opposite Hanuman Mandir, P-4 Block, Sultanpuri, he and his associate Harish Kumar inflicted injuries to Anil Kumar, Ghanshyam and Dhani Ram. Dhani Ram succumbed to the injuries and post-mortem examination on the body was conducted. During the course of investigation, statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellant and Harish Kumar for committing offences under Section 304/324/34 IPC. Vide order dated 01.02.1999, Harish was discharged. Charge under Section 304/324 IPC was framed against the appellant to which he pleaded not guilty and claimed trial. To bring home the charge, the prosecution examined seven witnesses. In 313 statement, the appellant pleaded false implication and claimed that he was assaulted and injured by the complainant party when the people present at the spot did not permit them to forcibly draw water from the water tank. DW-1 (Rahmit Ullaha), DW-2 (Suraj Pal) and DW-3 (Chaman Lal) appeared in his defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment held Rashid guilty for the offences mentioned previously. Being aggrieved, the appellant has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. Appellants counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell in grave error in relying upon the testimonies of interested witnesses without independent corroboration. The Trial Court did not notice that ocular testimony of the deceaseds relatives was at variance with medical evidence. It was highly improbable for PW-1 (Anil Kumar) and PW-2 (Ghanshyam) to observe as to how and by whom the injuries were inflicted to Dhani Ram when allegedly they were attacked simultaneously. Vital discrepancies and contradictions emerging in the statements of PW1 and PW-2 were ignored without valid reasons. Counsel adopted alternative argument to take lenient view as Rashid had already undergone 13 months in custody. Learned Addl. Public Prosecutor urged that the impugned judgment is based upon fair appraisal of the evidence and needs no interference.

4. It is admitted position that dispute arose on 03.07.1998 at about 08.00 A.M. at the spot when PW-1 (Anil Kumar) had gone to fetch 1 (Anil Kumar), PW-2 (Ghanshyam) and Dhani Ram sustained injuries. Appellants contention is that he was not the author of the injuries and these were inflicted by public persons present at the water tank who had not allowed the complainant party to draw water from the water-tank out of turn and they wanted to get water on priority due to marriage in their family. Further contention of the appellant is that he also received injuries at the hands of the complainant party and was medically examined.

5. The occurrence took place at around 08.00 A.M. in which PW-1 (Anil Kumar), his father PW-2 (Ghanshyam) and grandfather (Dhani Ram) sustained injuries. Daily Diary (DD) No.21 B (Ex.PW-5/A) was recorded at 08.25 A.M. at PS Sultanpuri on getting information about the quarrel. The investigation was assigned to SI Sri Kishan who with Const. Puran Mal went to the spot. The injured had already been taken to DDU Hospital. Dhani Rams MLC (Ex.PW-5/B) and Ghanshyams MLC (Ex.PW-5/C) recorded their arrival time at about 09.23 A.M. and 09.57 A.M., respectively. The Investigating Officer, after recording Anil Kumars statement (Ex.PW-1/A) lodged First Information Report without undue delay. In the statement, complainant - Anil Kumar disclosed that at about 08.00 A.M., he had gone to fetch water from a water tank near Hanuman Mandir, P-4 Block, Sultanpuri where a large crowd was present. Rashid and Harish who lived at P-4 Block were getting water from the water tank. He requested Rashid to allow him to take water due to marriage at their home. On that, Rashid started beating him with fist and blows. Harish also gave him beatings. When his father and grandfather came to know about the quarrel, they rushed to the spot to intervene. Harish fled the spot and Rashid went to the roof of his house and started throwing bricks at them as a result his father and grandfather sustained injuries on their heads. He also got injury in a scuffle with a sharp object on his right hand.

6. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding its true version. In the instant case, the First Information Report was lodged in promptitude and the complainant - Anil Kumar whose presence at the spot is undisputed gave detailed account of the occurrence and implicated Rashid for inflicting injuries to his father and grandfather while

pelting bricks from the roof of his house. Since the FIR was lodged without delay, there was least possibility of the complainant to concoct a false story in such a short interval. The complainant narrated the genesis of the occurrence minutely. While appearing as PW-1 in his Court statement Anil Kumar proved the version given to the police at the earliest available opportunity without any variation. He deposed that when he went to fetch water from the water tank, Rashid was also standing among others there. He asked them to allow him to take water first due to marriage in their family to which the accused objected. He and his associate started beating him. When his family members came to know, his father and grandfather arrived there. Rashid went to the roof of his house and started pelting stones which hit his father and grandfather and they sustained injuries on head. They were taken to hospital. Police recorded his statement (Ex.PW1/A). His grandfather expired at Safdarjung Hospital. In the cross-examination, he denied that statement made by him was tutored by the police outside the court. He denied that he had removed the utensils of Rashid and Harish and forcibly wanted to take water out of turn. He denied that when they forcibly tried to take water out of turn, they were beaten by other persons who had assembled there and not by the accused. He further denied that they had given beatings to the appellant and Harish. On scanning the testimony of the witness, it transpires that material facts deposed by him remained unchallenged and uncontroverted in the cross-examination. No material discrepancies could be elicited to discard his version. Presence of the appellant at the spot is not under challenge. The residents of the locality had gathered to take water from the water tank. Those persons living in the vicinity of the appellant must be known to him. However, he did not divulge the name of any such individual with whom the victims had confrontation; and was assaulted and injured. PW-2 (Ghanshyam), Anil Kumars father has corroborated his testimony in its entirety and has implicated Rashid for inflicting injuries to him and his father with bricks from the roof top of his house. Again, the cross-examination could not bring any material discrepancy to disbelieve him. He also denied the suggestion that they forcibly prevented Rashid from taking water on his turn, and assaulted and injured him. He further denied that they had quarrelled with those who were taking water from the tanker. Again, this injured witness had no ulterior motive to falsely implicate Rashid with whom he had no prior animosity.

The testimony of an injured witness has its own relevancy and efficacy. It is a settled preposition of law that the evidence of the stamp witness must be given due weightage as his presence at the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he would spare the actual assailant in order to falsely implicate someone else. The testimony of an injured witness is accorded a special status in law. Convincing evidence is required to discredit an injured witness. In the instant case, victim was the father and grandfather of PW-2 and PW-1, respectively and they were not expected to let the real culprit go scot free and to falsely rope in an innocent.

7. PW-2 (Ghanshyam) was taken to DDU Hospital by HC Raghubir of PCR and was admitted at 09.57 A.M. MLC (Ex.PW-5/C) was prepared and the nature of injuries were opined simple caused by blunt object. PW-6 (Dr.Narnaware, CMO, DDU Hospital) identified signatures of Dr.Alok on the MLC (Ex.PW-5/C). Dhani Ram was also taken to DDU Hospital and was admitted at 09.23 A.M. by HC Raghubir of PCR and MLC (Ex.PW-5/B) was prepared by Dr.Alok and proved by PW-6 (Dr.Narnaware, CMO, DDU Hospital). Dhani Ram remained under treatment and succumbed to the injuries on 18.07.1998 and DD No.14B (Ex.PW-5/J) was recorded. Post-mortem examination on the body was conducted by PW-3 (Dr.B.Swani, CMO Safdarjung Hospital) on 19.07.1998. Post-mortem report examination (Ex.PW-3/A) records the following external injuries on the body :

1. Abrasion 3x2 c.m. present over left temporo-parietal Region 6 c.m. above left ear.
2. Abrasion 2.5x 2 c.m. over left forehead 5.5 c.m. above middle of eye brow.
3. Sticked wound 10 c.m. in length extends from right frontal to right temporal region. Injuries were in U Shape.
- 4.
- 5.
- 6.
- 7.

8. Abrasion 4x2 c.m. present over right frontopital region 8 c.m. above right eye brow. Abrasion 1.5 x 1 c.m. over right temporal region 5 c.m. above right ear. Abrasion 3x2 c.m. over top of right thigh. Abrasion 4x3 c.m. on the top of left thigh margins showing infection. Bed sore wound 7x5 c.m. in interbrutial region.

Injuries were ante-mortem in nature and cause of death was cranio-cerebral injuries (head injuries) consequent upon blunt force impact. Injury No.1 to 5 were sufficient to cause death individually and collectively in the ordinary course of nature. In the cross-examination, the witness stated that injury No.1 could be caused by a blunt object such as a brick thrown from a distance. There was no sign of infection of injury No.1 or 2. Injury No.3 was a surgical interference. Injury No.8 was a bed sore. Injuries from 1 to 7 were almost of same age. Apparently, there was no major conflict between the ocular and medical evidence. It is trite law that minor variations between the medical evidence and oral evidence do not take away the primacy of the latter. Unless, medical evidence in its terms goes so far as to completely rule out possibilities whatsoever of injuries taking place in the manner stated by the eye-witnesses, their testimony cannot be rejected or discarded. Since, PW-1 and PW-2 had sustained injuries in the scuffle and brick bats were thrown simultaneously upon all of them, possibility of PW-1 and PW-2 not exactly noticing the number of injuries on the body of the deceased could not be ruled out. They were certain that serious head injuries were caused to Dhani Ram due to throwing of bricks by the accused. There was direct nexus between the injuries inflicted to the victim by bricks and his death. The victim remained admitted in the hospital for about fifteen days. Despite availability of medical treatment soon after the occurrence, he was unable to survive. It reflects the impact and force with which injuries were inflicted by bricks by the appellant. Minor contradictions and discrepancies highlighted by the appellants counsel are inconsequential as they do not affect the core of the prosecution case. Non-examination of independent public witness from the locality is not fatal. Non-recovery of the bricks / stones with which injuries were inflicted is a lapse on the part of the Investigating Officer for which the witnesses cannot be held responsible and their statements cannot be disbelieved or discredited.

8. The defence taken by the appellant is conflicting and contradictory. In 313 statement, the appellant did not deny his presence at the spot where he had gone to fetch water. He claimed that when he was taking water from the water tank the utensils were forcibly removed by the complainant side and he was assaulted and injured by them. Entirely contradictory version was narrated by defence witnesses. DW-1 (Rahmit Ullaha) appeared on 19.05.2000 and his further examination was deferred. However, he did not opt to appear again. DW-2 (Suraj Pal) and DW-3 (Chaman Lal) deposed that a quarrel had taken place at the spot when complainant had attempted to take water on priority and it was objected to by the individuals present at the tanker. This resulted in an altercation and both the parties started pelting stones. Rashid did not participate in the throwing of the stones. He came on a bicycle at the spot and sustained brick bat injury on his neck. He fell down after sustaining injuries and was taken for interrogation from the spot by the police. Apparently, the version given by the witnesses is in conflict with the defence taken by the appellant in his 313 statement as well as suggestions put to the prosecution witnesses in the cross-examination. There is nothing on record to show as to when the appellant was taken to hospital for medical examination. The doctor who medically examined him was not produced in defence. The defence version inspires no confidence and needs outright rejection.

9. The impugned judgment is based upon fair appraisal of the evidence and all the relevant contentions of the appellant have been considered. I find no sound reasons to interfere with the findings recorded by the Trial Court. Since, PW-2 (Ghanshyam) had sustained injuries simple in nature by blunt object, the offence committed by him fell under Section 323 IPC. Conviction under Section 324 IPC is altered to Section 323 IPC.

10. The appellant was awarded RI for seven years with total fine ` 1,500/-, Nominal roll dated 03.11.2000 reveals that he has suffered incarceration for eight months and fourteen days as on 30.10.2000. Nominal roll further reveals that he is not involved in any other criminal case and his overall jail conduct was satisfactory. He was aged about 18 / 19 years on the day of incident. The quarrel had taken place suddenly over a trivial issue of getting water. There was no pre-

planning and the crime weapon used was bricks available on the roof. The appellant has suffered the ordeal of trial / appeal for about fifteen years. He has clean antecedents. There was no previous history of enmity between the parties and they lived in neighbourhood in the locality. Considering the mitigating circumstances, sentence order is modified and the substantive sentence of the appellant is reduced to five years under Section 304 IPC and six months under Section 323 IPC. Other terms and conditions of the sentence order are left undisturbed.

11. The appeal stands disposed of in the above terms. The appellant is directed to surrender before the Trial Court on 31.01.2014 to serve out the remaining period of sentence. Trial Court record be sent back immediately. (S.P.GARG) JUDGE
JANUARY24 2014/tr

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