

Deepak Sharma Vs. State

Deepak Sharma Vs. State

SooperKanoon Citation : sooperkanoon.com/1135418

Court : Delhi

Decided On : Mar-27-2014

Judge : Sanjiv Khanna

Appellant : Deepak Sharma

Respondent : State

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI CrI. Appeal 553/1998
Reserved on:

13. h March, 2014 Date of Decision:

27. h March, 2014 % DEEPAK SHARMAAppellant Through Ms. Inderjeet Sidhu, Amicus Curiae. Versus STATE Respondent Through Ms. Rajdipa Behura, APP. CORAM: HONBLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE DEEPA SHARMA SANJIV KHANNA, J.

The appellant Deepak Sharma is absconding and proceedings under Section 82/83 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short) have been initiated against him. The appellant was released on interim bail for 45 days vide order dated 28th July, 1999 which was extended till 29th September, 1999 by order dated 14th September, 1999. On 29th September, 1999 request for further extension of bail was rejected. Order sheet dated 16th November, 2006 reveals that the appellant did not surrender on or after 29th September, 1999 and had

remained absconding.

2. In the meanwhile, the appeal has come up for hearing in normal course and we have heard Ms. Inderjeet Sidhu, Advocate as amicus curiae for the appellant. The appellant has been convicted for murder of Shyam Lal Verma, in the intervening night between 9th and 10th September, 1996 at about 11.45 PM outside his residence at 1337/8 Govind Puri, New Delhi. Conviction arises out of Sessions Case No.16/1997 relating to FIR No.569/1996 P.S. Kalkaji.

3. Homicidal death suffered by Shyam Lal Verma has been proved and established beyond doubt in view of testimony of Dr. O.P. Murthy (PW7) who had conducted post mortem on the body of Shyam Lal Verma on 10th September, 1996. He has deposed that the deceased was wearing white kurta pyjama which was soaked with blood and showed one crenated hole of 1.7 x 1.00 cm on medial end hand with small punched out hole of .2 x .1cm in an area of 30X20 cms. The hole in the kurta was corresponding to the entry wound in the chest and corresponding part of the right arm. The vest worn by the deceased had corresponding holes. As per the post mortem, deceased had suffered fire arm entry wound of 2 x 1.2 cms obliquely placed on the front of right side of the chest. The bullet measuring 3.3 cm in length with base 0.7 cm, was found lodged in the spinal column which was sealed and handed over to the Investigating Officer. It had round nose and cupro nickel jacket. The cause of death as opined in the post mortem was haemorrhagic shock consequent upon fire arm injury caused by a discharged bullet from a distance of about one and a half feet. The post mortem report was marked Ex. PW7/A.

4. The main issue or controversy relates to the involvement of the appellant as a perpetrator who had fired and killed the deceased.

5. Learned amicus curiae has submitted that the involvement of the appellant is debatable as there was delay in making the FIR in which the appellant was named and the FIR when read with Police Control Room form Ex. P1, indicates that none of the so-called eyewitnesses had actually seen the appellant Deepak Sharma firing. It was pointed out that Ram Pal (PW3), neighbour of the deceased, has not supported the prosecution version. Ashok Kumar Taneja (PW4) another neighbour

had accepted in his cross-examination that perhaps the appellant had killed the deceased Shyam Lal Verma due to enmity. It was argued that this was a case of suspicion and doubt.

6. We have considered the said contentions but do not find any merit in the same. There are good and cogent reasons why we should accept and affirm the findings of the trial court on the involvement of the appellant as perpetrator of the crime.

7. Ex. P1, PCR Form shows that a report was made at 00.04 Hrs on 10th September, 1996 recording that one person had suffered fire arm injury. The second noting is at 00.17 Hrs, after the PCR van had reached the spot at 00.11 Hrs. The second noting records that Shyam Lal Verma aged about 50 years had suffered a fire arm injury due to firing while he was sleeping, caused by an unknown person and was being taken to the hospital. Police Post Govind Puri and SHO Kalkaji had been informed. The PCR form records that on 10th September, 1996 at 00.56 Hrs, Shyam Lal Verma was declared as brought dead at AIIMS hospital. Initial proceedings were conducted by SI Anil Kumar (PW17). He along with Const. Mahavir, Const. Kartar and Const. Virender reached the place of occurrence to attend DD No.27 (Ex. 15/A). PW17 has stated that some ladies were crying and there was some blood on the floor at the door of the house of the deceased. On enquiry he was told that Shyam Lal Verma had been shot at and had been taken in the PCR Van to the hospital. PW17 left Ct. Mahavir at the spot and reached AIIMS hospital and moved an application (Ex. PW17/A) on which Doctor made an endorsement that the patient had been brought dead. PW17 left Ct. Kartar and Ct. Virender to guard the dead body and came back to the place of occurrence. Photographs (Ex. PW10/A1 to A3) were taken by Ct. Chanderpal. Constable Mahavir was handed over the rukka and the copy of the FIR No.569/96 (Ex. PX) was received. Ct. Mahavir (PW13) had stated that he along with SI Anil Kumar (PW17) had reached the spot i.e. 1337/8 Govind Puri to attend DD No.27 (Ex. PW15A) and came to know that the injured Shyam Lal Verma has been shifted to the hospital in PCR Van. He was left at the spot and at about 1.30 AM, SI Anil Kumar returned and recorded statement of Shanti Verma wife of the deceased and he prepared rukka and handed over to him for registration of the case.

8. SI Anil Kumar (PW17) in his cross-examination has specifically stated that when he had come to the house of the deceased, the ladies were crying, and that first he had to go to the hospital to save Shyam Lal Verma and that ladies were not in a position to make statements as they were in shock. Therefore, he had not immediately registered the case and had first gone to the hospital and when returned to the spot at 2.00 AM recorded the statement of Shanti Verma and thereupon FIR was registered at 3.30 AM on 10th September, 1996.

9. In view of the statement made by SI Anil Kumar (PW17) which we notice is fully corroborated by deposition of Shanti Verma (PW2) and Rajni Verma (PW6), we do not think that it can be held that there was deliberate or intentional delay in recording of the FIR, which creates doubt on the involvement of the appellant though his name is mentioned therein as the perpetrator of the crime. Presence of Shanti Verma (PW2) wife of the deceased and Rajni Verma (PW6) daughter of the deceased at the residence at 11.45 on 9th September, 1996 is natural and normal. The firing, in which the deceased was shot at, it is apparent had shaken up the family members. The photographs show that considerable amount of blood was lying on the steps next to the main entrance door. We do not think that there is any substantial or unexplained delay which creates doubt or gives an impression that the name of the appellant as the perpetrator was a matter of second thought or deliberation and creates doubt about the authenticity of the version mentioned in the FIR. The deceased was declared brought dead at 12.45 AM on 10th September, 1996 and the FIR was registered at 3.30 AM within a short time of 3.30 hours from the time of occurrence. The time gap is not substantial so as to create doubt and needs debate that the complainant on due reflection and tutoring had named the appellant as the perpetrator, though he had not been seen. This brings us to the statement of PW2 and PW6, namely Shanti Verma and Rajni Verma respectively.

10. Shanti Verma (PW2) has deposed that on 9th September, 1996 at 11.45 PM her husband Shyam Lal Verma, their daughter (Rajni Verma) and she were watching T.V. after taking meals, when there was a knock on the door. Shyam Lal Verma went to open the door, she and her daughter followed him. Shyam Lal Verma peeped from the ventilator to ascertain the person who had knocked.

Shyam Lal Verma opened the door and immediately thereupon was fired at. She identified the appellant as the person who had fired at her husband. She deposed that the appellant was known to her family and treated her like a mother. Appellant fled away from the spot, while her husband Shyam Lal Verma collapsed and died there and then. She raised alarm and many persons gathered there and her husband was taken to the AIIMS in an ambulance. She could not state why the appellant had fired at her husband. In cross-examination, she has testified that their house consisted of one drawing room, study room and a bed room, though it was constructed on 250 sq. yds. They used to sleep in the bed room. She has stated that they were on visiting terms with the family of the appellant prior to the incident. She has accepted as correct that prior to the incident, no one knocked at the door at odd hours in the night, and during the day time her husband used to do the work of moulding. Usually during the day, when her husband used to go out to attend the bell, she would not follow him. The distance between bedroom and the entrance room was about 12-13 feet. Her husband climbed two steps to peep through the ventilator on the door. We have examined the photographs (Ex. PW10/A1 to A3). The photographs of the door show that the door had a ventilator to enable a person standing inside, to know and ascertain the person who was standing outside.

11. Learned amicus curiae had submitted that clothes of Rajni Verma (PW6) did not get blood stained and were not made case property. She also drew our attention to statement of Rajni Verma (PW6) wherein she has stated that one chunni of her mother got blood stained which was not taken up by the police. Shanti Verma (PW2) had denied that her clothes got blood stained and has stated that she could not lift her husband and similarly Rajni Verma (PW6) could not lift the deceased. Their neighbour Ram Pal Singh had made a call to the police. She herself was not in a condition to tell their neighbour to inform the police. She had also stated that she was not in her senses at that time and did not recollect that her statement was recorded 2-3 hours after the incident. She could not recollect whether any photographer had come. We do not think failure of the police to collect the clothes worn by Shanti Verma (PW2) or Rajni (PW6) is sufficient and good ground to hold that they were not present in the house. The presence of Shanti Verma (PW2) and Rajni Verma (PW6) at about midnight in their house was

normal and natural. The way and manner in which they have described the occurrence and the facts stated by them regarding their presence in the house should be accepted as credible and truthful.

12. Rajni Verma (PW6) had deposed on identical lines that they were watching TV when at about 11.45 PM the door bell rang. Her father Shyam Lal Verma went to the door and saw the person standing outside from the upper portion of the door. He had even asked who was there. Rajni Verma (PW6) was more categorical that she heard her father stating Deepak come inside. She and her mother were standing near the door of the room from where they saw her father opening the door and the appellant who had fired at her father. Alarm was raised and Ram Pal Singh and three other persons from neighbourhood came. Her father was taken to the hospital. The appellant had fled after firing at her father. Her father was acting as a mediator in the marriage of the appellant with one Rekha Sharma. She was aware that summons had been received in a divorce case filed by the appellant. It was alleged that the appellants life had been destroyed because of her father Shyam Lal Verma. In cross-examination Rajni Verma (PW6) had testified that she was standing behind her mother and was able to see her father at the entrance door. The incident of firing lasted for a second or so and the appellant ran away. She could not see the clothes which the appellant was wearing at that time and whether he had a cap or not. She deposed that she and her mother did not come out of the house even after her father was taken to the hospital. She and her mother tried to ascertain whether her father was alive and in this process, chunni of her mother had got blood stained but they did not give the said chunni to the police.

13. Ram Pal Singh (PW3) did not fully support the prosecution case and was declared hostile. He had, however, accepted that at about 12 AM, on hearing a noise he came out and saw his neighbour Vermaji was lying outside the gate of his house and blood was oozing from his right side chest. He along with 3-4 persons lifted Vermaji and then took him to the hospital in a police gypsy. At the hospital, the doctor had declared him as brought dead. PW3 claims that he did not make any enquiry how Vermaji was injured, which is clearly doubtful. However, Vermaji had sustained injuries by a gunshot. He denied that he knew who had killed

Vermaji. He was confronted with his statement under Section 161 Cr. P.C. but did not agree with the contents thereof. He however, accepted that 3-4 persons were present at that time.

14. Ashok Kumar Taneja (PW4) was more forthright and had stated that on 9th September, 1996 at 12.00 midnight he was returning from the house of his sister-in-law when he saw one person running away and some ladies were crying in the house situated 3-4 houses away from the house of his sister-in-law. He enquired and was told by the ladies who were crying that Deepak had killed the said person. Police came and he had disclosed the facts to the police. In cross-examination, Ashok Kumar Taneja (PW4) had stated that the person running was about 510 and was wearing white kurta pyjama. He accepted that ladies had stated to the police that perhaps Deepak had killed the person in their house because Deepak was having enmity with him. We do not think that the last portion quoted above creates doubt about the prosecution version or shows that Shanti Verma (PW2) or Rajni Verma (PW6) had not seen the occurrence or Deepak as the perpetrator. Ashok Kumar Taneja (PW4), as noticed above, was not the eye witness to the occurrence but had reached the spot immediately thereafter. At that time i.e. immediately after the occurrence, Deepak had been named as the perpetrator who had committed the offence.

15. Statement of Ashok Kumar Taneja (PW4), therefore, shows and indicates that PCR form Ex. P1 was recorded on the basis of information available with SI Bishan Singh (PW19). SI Bishan Singh (PW19) had stated that at 12.09 AM when he reached the spot and found one person lying unconscious, who had a gunshot injury on the right side of his chest. He came to know that his name was Shyam Verma, aged about 50 years and accordingly entry was made at 12.14 AM in the call book at point B, Ex. PW19/A. They reached the hospital at 12.25 AM where doctor declared Shyam Lal Verma as brought dead. In his cross-examination, SI Bishan Singh (PW19) accepted that he did not make any enquiry at the spot except the name of the injured and had also stated that driver of the PCR used to convey messages on wireless to the control room. In these circumstances, we are not inclined to give credence and attach importance to Ex. P1 in which it was recorded that an unknown person had caused the fire arm injury. Statements of

Shanti Verma (PW2) and Rajni Verma (PW6) stand fully corroborated by the statement of Ashok Kumar Taneja (PW4) that ladies were naming the appellant as the perpetrator. This stands affirmed from the statement of Ct. Kartar Singh (PW11), Ct. Mahavir Singh (PW13) and SI Anil Kumar (PW17).

16. We have already referred to testimony of Rajni Verma (PW6) on the question of motive. Rajni Verma (PW6), as noticed above, had deposed that her father deceased Shyam Lal Verma was acting as a mediator in the marriage of the appellant. Shanti Verma (PW2), wife of the deceased has been somewhat silent on this aspect and had stated that she did not know why the appellant had fired at her husband but accepted that she knew the appellant and his family and the appellant regarded her as his mother. Rekha Sharma (PW5) was forthright in her statement. She was wife of the appellant and had stated that the deceased was acting as a mediator in their marriage. She deposed that appellant used to harass and beat her and was asking her for more dowry. Divorce petition was filed by the appellant on the ground that she [Rekha Sharma (PW5)]. had illicit relations with Shyam Lal Verma. Even if we ignore the exaggerations made by Rekha Sharma (PW5) in her testimony, it does prove that the appellant had enmity and ill will towards the deceased Sham Lal Verma who was named in the divorce proceedings.

17. The appellant was arrested after he surrendered before SHO, P.S. Kalkaji on 28th September, 1996 i.e. nearly 18 days after the occurrence. In his two disclosure statements (Ex. PW13/C & PW13/D), he mentioned that he had gone to Kathmandu. This fact has been deposed to by SI Anil Kumar (PW17) in his examination- in chief as well. Police has, however, not collected the necessary evidence in this regard nor have they explained what steps were taken to detain and interrogate the appellant after registration of FIR on 10th September, 1996 till 28th September, 1996. At this stage, we also notice that the country made pistol used in the crime was neither recovered nor produced in Court. Police had examined Lakhbir Singh (PW12) who had turned hostile and did not support the prosecution case. Lakhbir Singh (PW12), however, accepted that he knew the appellant as he had seen the accused visiting his sister in law, who used to live on the ground floor of the same building in which he used to reside. He denied that

the appellant had handed over pistol or cartridges to him. However, in his disclosure statement (Ex. PW13/D) as per police version, the appellant had stated that he threw the fire arm in river Hindon while going to Kathmandu. The disclosure statement cannot be relied upon as the weapon of offence i.e. country made pistol or any physical object was not recovered pursuant to the disclosure statement. However, it is proved and established that the appellant had surrendered before SHO on 28th September, 1996 nearly 17/18 days after the date of occurrence and was not available until then.

18. We have also examined the statement of the appellant recorded under Section 313 Cr.P.C. The appellant has primarily denied all allegations on the ground that they were incorrect and he did not know anything but accepted that he was married to Rekha Sharma (PW5) and had filed for divorce. He claimed that his wife Rekha Sharma has made several complaints and at her instance, he had been prosecuted under Section 398A/406 IPC and she was inimical to him and that wife and daughter of the deceased had deposed against him at the instance of his wife as they were friendly with each other.

19. In the light of the aforesaid discussion, we have reached the following observations/findings: (i) Shyam Lal Verma died by a homicidal death as a result of a gunshot injury in the intervening night between 9th and 10th September, 1996 at about 11.45 PM outside his residence at 1337/8 Govind Puri, New Delhi. (ii) His wife and daughter namely, Shanti Verma (PW2) and Rajni Verma (PW6) were present at the residence and have deposed that the appellant Deepak Sharma had come and knocked at the door whereupon Shyam Lal Verma had after checking from the ventilator opened the door. On opening of the door he was shot at and he died. (iii) There is no unexplained or unreasonable delay in recording of the FIR and the name of the appellant is mentioned as the culprit who has committed the said offence. (iv) Ashok Kumar Taneja (PW4) who was in the neighbourhood deposed that he had seen a person of 510 wearing a white kurta pyjama running and some ladies were crying and naming Deepak as the perpetrator/culprit who had fired a gun shot. (v) The appellant was traceable and had surrendered after nearly 18 days before the SHO, P.S. Kalkaji on 28th September, 1996. The weapon of offence could not be recovered but this does not

dent the prosecution case as there was considerable delay before the appellant could be arrested. (vi) The testimonies of Shanti Verma (PW2) and Rajni Verma (PW6) can be considered to be credible and truthful. They were natural witness to the occurrence which had taken place right outside the main door of their house. Their statements are further corroborated by the medical evidence i.e. post mortem report (Ex. PW7/A), testimony of Ashok Kumar Taneja (PW4) and police witnesses. Their testimony is also corroborated in view of motive and the ill will which the appellant had towards Shyam Lal Verma.

20. In view of the aforesaid discussion, we do not find any reason or ground to set aside the conviction of the appellant under Section 302 for the murder of Shyam Lal Verma. We also do not find any reason to interfere with the order of sentence by which the appellant was sentenced to imprisonment for life and a fine of Rs.15,000/- in default of which he has to undergo SI for six months. Out of the fine realized, as directed by the trial court, Rs.10,000/should be paid to the widow of the deceased as compensation. The appeal is disposed of.-.sd(SANJIV KHANNA) JUDGE -sd(DEEPA SHARMA) JUDGE March 27, 2014 kkb

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com