

Rohit Vs. State

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Court : Delhi

Decided On : Apr-03-2014

Judge : S. P. Garg

Appellant : Rohit

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : March 05, 2014 DECIDED ON : April 03, 2014 + CRL.A.843/2012 ROHIT Through : versus Appellant Mr.S.B.Dandapani, Advocate. STATE Through : Respondent M.N.Dudeja, APP for the State. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 02.05.2012 in Sessions Case No.33/11 arising out of FIR No.38/11 registered at PS Prasad Nagar by which the appellant-Rohit was held guilty for committing offence under Section 304 (II) IPC. By an order dated 07.05.2012, he was awarded RI for seven years.

2. Bihari Lal-appellants father was found dead inside his house No.16/1644 E, Bapa Nagar, Karol Bagh, Delhi on 14.02.2011. Daily Diary (DD) No.36A was recorded at 10.06 p.m. at Police Station Prasad Nagar on getting information from PCR that an individual who used to consume liquor had died inside his house. The investigation was assigned to SI Manish who with Ct.Bhur Singh went to the spot. He spotted the dead body of Bihari Lal with numerous injuries on left arm and legs

lying on the ground. Lot of blood had scattered at the spot. The crime team took the photographs of the crime scene and the dead body was sent for post-mortem examination to LNJP hospital. PW-2 (Dr.Jatin Bodwal) conducted post-mortem examination of the body and opined the cause of death as asphyxia as a result of manual strangulation. The dead body was handed over to the relatives of the deceased. During investigation, it revealed that a quarrel had taken place between the deceased and the appellant on 14.02.2011. The Investigating Officer lodged First Information Report under Section 302 IPC on 18.02.2011. Statements of witnesses conversant with the facts were recorded. On 19.02.2011, Rohit was arrested and some recoveries were effected at his instance. After completion of investigation, a charge-sheet was filed against him under Section 302 IPC; he was duly charged; and brought to trial. prosecution examined 12 witnesses to establish the guilt. The In 313 statement, the appellant denied his involvement in the crime and took the plea that at about 05-05.30 p.m. when he came along with his friend Rahul to take shoes in the house, his father who was under the influence of liquor started hurling abuses to him and his friend. He left the house along with his friend-Rahul. When he returned at about 0830-9.00 p.m., he saw a crowd in front of his house. His sister-Rekha was also present there. When the door was opened, he saw his father lying in injured condition near the main door and he was bleeding from his leg. He called Dr.Jafar Alam, who on examination pronounced him dead. When he lifted the dead body to take his father to the hospital, the clothes which he was wearing at the time got blood-stained. He, however, did not examine any witness in defence. The trial resulted in his conviction under Section 304 (II) IPC.

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. He submitted that the prosecution case was based on circumstantial evidence. However, the circumstances do not point unerringly to the guilt of the appellant. They may at the most raise some suspicion, but suspicion, however, strong cannot take the place of proof. The appellant had no motive to inflict injuries to his father and cause his death. He was not present at the spot at the relevant time. Post-mortem examination report (Ex.PW-2/A) reveals that the probable time of death of the deceased was 02.20 a.m. The appellant had

informed all the relatives and had summoned the doctor. He had performed last rites of the deceased and was not a suspect till his arrest on 19.02.2011. The trial court did not believe recovery of the crime weapon or the blood-stained clothes. Learned APP urged that the evidence adduced by the prosecution leaves no scope for doubt about the appellants involvement in the crime in question. Counsel submitted that the appeal be, therefore, dismissed.

4. There is no dispute that Bihari Lal met a homicidal death. Medical evidence is clear on this point. Crucial testimony in this regard is that of PW-2 (Dr.Jatin Bodwal) who conducted post-mortem examination on the body of the deceased vide report (Ex.PW-2/A). In his opinion, the cause of death was asphyxia as a result of manual strangulation via injuries on the neck i.e. injury No.1 to 6. These injuries were sufficient to cause death in the ordinary course of nature and the manner of death was homicidal. Opinion given by the expert witness was not challenged in the cross-examination. Post-mortem examination report reveals that the victim suffered 13 injuries on various body organs/parts. Some injuries were inflicted by a sharp weapon and others were caused with blunt object. The death was a result of manual strangulation. All injuries were ante-mortem in nature, fresh in duration and were sufficient to cause death in the ordinary course of nature. About 15 minutes prior to the death, PW-1 (Rakesh Kumar Singhania) had seen the victim hale and hearty. Apparently, it was a case of culpable homicide.

5. At the outset, it may be mentioned that the prosecution case is based upon circumstantial evidence. PW-1 (Rakesh Kumar Singhania) deposed that on 14.02.2011, in the evening, when he was going in the gali, he saw Rohit and friend Rahul consuming liquor in Rohits house. In the meantime, Bihari Lal who was under the influence of liquor arrived there. He started hurling filthy abuses to the accused and asked Rahul to leave the house. On that, Rahul left the house and the accused Rohit caught hold of his collar (of his father) and dragged him inside the room. Thereafter, he heard the noises of quarrel between both of them. After about 15 minutes, saw the accused coming along with his sister there. They opened the door in his presence and saw Bhagwat @ Bihari lying dead on the floor. statement. The police arrived at the spot and recorded his In the cross-examination by learned APP, after Courts permission, he admitted that after some

time of the quarrel, the noises of quarrel coming from the house of the accused had stopped and the accused left the house after closing the door. He admitted that after some time, Rohit returned with his sister-Rekha. In the cross-examination, he disclosed that he was a plumber by profession and used to perform work on daily bases till 05.00 p.m. Bihar Lal was known to him being his neighbour and he treated him like his brother. On 14.02.2011, he was strolling in the gali between 8-9 p.m. after dinner when the deceased started abusing the accused. He came to know about Bihari Lals death when the accused along with his sister came there. He explained that he did not intervene in the quarrel because it was a daily routine for the victim and the appellant to quarrel frequently and this fact was known to everyone. The deceased even used to quarrel with him on many occasions.

6. Presence of this witness at the spot, being neighbour residing at a very short distance from the residence of the victim was quite natural and probable. He did not nurture any grudge or animosity either with the appellant or the victim to make a false statement. He was fair enough to admit that he did not see the accused giving beatings to the victim. His testimony is in consonance with the appellants plea/defence in 313 statement that on the day of incident, a quarrel had taken place with the victim when he had come in a drunken condition and hurled abuses to him and his friend Rahul. There are no sound reasons to discard the cogent and natural testimony of the independent witness. PW-4 (Rahul) also deposed that on 14.02.2011, he met Rohit in the street and went along with him to his house. At about 05.30 p.m. his father arrived there under the influence of liquor and started throwing his beddings inside the house. He also hurled abuses to both of them. He immediately left the house of the accused due to the said quarrel. From the testimonies of PW-1 and PW-4, it stands established that on the day of incident, a quarrel had taken place between the appellant and the victim and the deceased had hurled abuses to him and his friend Rahul. It further stands established from the testimony of PW-1 that the occurrence took place at about 09.00 p.m. when the victim was dragged after the quarrel inside the house and thereafter he heard noises of quarrel from there. After about 15 minutes of the said occurrence, the appellant along with his sister-Rekha returned to the house and Bihari Lal was found dead inside the house. Apparently, the appellant was the only individual who

was last seen with the victim inside the house. Only for fifteen minutes, the appellant was not inside the house and had gone to his sister-Rekha residing at 16/882 E, Bapa Nagar, Padam Singh Road, Karol Bagh. There is nothing on record to show if during these fifteen minutes any other individual had entered inside the house. The offence had taken place inside the privacy of a house where the appellant had all the opportunity to commit it. It is on record that after the quarrel, the appellant had gone after closing the door of the house and it was opened by him when he returned to the house with his sister-Rekha and the dead body was found. Apparently, nobody else had access to the house during the time the appellant had left the house and had returned thereafter within fifteen minutes. The appellant did not explain as to why he had gone outside the house after closing its door leaving his father in an injured condition. He did not elaborate as to where Rekha met him and what was the reason to bring her to the house. Rekha was not examined in defence to show as to when the appellant had gone to her. All these circumstances were within the special knowledge of the appellant and he under Section 106 Evidence Act was under legal obligation to explain. However, he did not give plausible explanation and failed to divulge his whereabouts during these fifteen minutes. Initially, his plea was that he was not present at the spot. He did not put any suggestion to PW-1 that he had left along with Rahul at about 05.30 p.m. PW-4 (Rahul) in his deposition merely stated that after appellants father had started hurling abuses, he left the house of the accused at around 05.30 p.m. He did not state that at that time, Rohit had also left the house along with him. Only in 313 statement, the appellant made the plea that he had left at about 05.00-5.30 p.m. along with his friend Rahul and returned at about 08.30-09.00 p.m. He did not explain as to where and for what purpose, he remained outside the house during this period. The appellant did not discharge the burden which had shifted to him under Section 106 Evidence Act. This silence forms an additional link in the chain of circumstances. For the absence of an explanation from the side of the appellant, there was every justification for drawing an inference that the appellant was the author of injuries including strangulation.

7. Appellants conduct in leaving his father in a critical condition is unreasonable and unnatural. He had dragged the victim inside the house and noises of quarrel were heard thereafter. None else was there inside the house at that time.

Obviously, the injuries found on the body of the victim were inflicted by him. The appellant did not take the victim for medical assistance from the spot. He even did not lodge report with the police. After infliction of injuries, he went to his sister Rekha and brought her to the house after about fifteen minutes. Even thereafter, neither he nor Rekha informed the police and took the victim to hospital. It is unclear as to at what time PW-5 (Dr. Jafar Alam) running a private clinic in the name and style of Bihar Clinic at 16/1575 E Bapa Nagar, Arya Samaj road, Delhi was called. When he arrived at the spot, he found the victim dead. He did not elaborate as to at what time, the appellant had visited him and at what time he had arrived at the spot. PCR form (Ex.PW-12/E) vide which the information regarding the incident was received was recorded at 22:03:18. The informant-Prem Raj residing at House No.16/1661 E, Bapa Nagar, Arya Samaj Road, Karol Bagh, New Delhi, was not examined as a witness. DD No.36A records that the victim had died a natural death inside the house as he was a habitual drunkard. Apparently, the police was misled. It was not a case of natural death as in post-mortem examination report, the cause of death was ascertained as asphyxia as a result of manual strangulation. Even after recording PCR form (Ex.PW-12/E) and DD No.36-A, the appellant was not considered as a suspect and no FIR was lodged on 14.02.2011. It shows lapses on the part of the investigating agency. When apparently the victim had sustained multiple injuries on various organs, there was no question to consider it a case of natural death even on 14.02.2011. Only after getting post-mortem report on 18.02.2011, the FIR under Section 302 IPC was lodged.

8. It is true that in the post-mortem examination report (Ex.PW- 2/A), the probable time of death has been given as 02.20 a.m. on the night intervening 14/15.02.2011. PW-1 (Rakesh Kumar Singhania) clearly deposed that when the accused returned after fifteen minutes with his sister-Rekha, Bihari Lal was found lying dead at about 09.00 p.m. The factum of death of the victim in DD No.36A was recorded around 10.06 p.m. The trial court has dealt with the mismatch in the probable time of death given in the post-mortem examination and for good reasons preference was given to ocular evidence over medical evidence which was advisory in nature.

9. The appellant had clear motive to inflict injuries to the victim as he had hurled abuses to him and his friend for consuming liquor inside the house. Rahul had left the house due to abuses hurled by the victim. The appellant did not like it and it prompted him to drag the victim, who was under the influence of liquor, and to inflict multiple injuries to him.

10. Certain discrepancies and contradictions highlighted by the appellants counsel are inconsequential. Non-recovery of crime weapon i.e. leg of wooden stool, and recovery of blood-stained cloths which the appellant was wearing at the time of occurrence are not material. In the instance case, the prosecution relies on the last seen theory. Here, there is practically no time lag between the time when PW-1 saw the deceased and the accused/appellant together and the time the death was discovered. The time lag was about fifteen minutes only. Unnatural conduct; motive of the appellant to inflict injuries to the victim; and false explanation given in 313 statement to the incriminating circumstances are other strong circumstances taken cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the appellant and none else. The impugned judgment is based upon fair appraisal of evidence and the findings that the appellant alone was the author of the crime needs no interference.

11. Turning to the alternative plea to modify the sentence order as the appellant has undergone substantial period of substantive sentence awarded to him, it reveals that the sentence awarded to the appellant is RI for seven years, which cannot be termed unreasonable or excessive. The appellant who was expected to take care of his aged father, brutally inflicted multiple injuries by blunt/sharp object and also caused his death by manual strangulation. The only fault of the victim was that he had objected to the consumption of liquor by him and his friend-Rahul inside the house. The appellant deserves no leniency.

12. In the light of the above discussion, the appeal is dismissed as unmerited. Conviction and sentence awarded by the trial court are sustained. Trial court record be sent back along with a copy of this order. (S.P.GARG) JUDGE April 03, 2014/sa

