

Naresh Kumar Vs. State

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Court : Delhi

Decided On : Apr-16-2014

Judge : S. P. Garg

Appellant : Naresh Kumar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : January 21, 2014 DECIDED ON : April 16, 2014 + CRL.A. 1047/2012 NARESH KUMAR Through : Appellant Mr.Harish Khanna, Advocate. versus STATE Through : Respondent Mr.Lovkesh Sawhney, APP. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 18.08.12 in Sessions Case No.159/11 arising out of FIR No.516/07 registered at Police Station Prashant Vihar by which the appellant-Naresh Kumar was held guilty under Section 304(1)/34 IPC. By an order dated 30.08.2012, he was sentenced to undergo RI for ten years with fine `5,000/-.

2. The prosecution case, as projected in the charge-sheet, was that on 24.07.2007, Daily Diary (DD) No.23B (Ex.PW-14/A) was recorded at 9.37 a.m. at police station, Prashant Vihar on getting information from mobile number 9958386072 about an individual being mercilessly beaten near Metro Station,

Sector-9, Rohini. The investigation was assigned to HC Bharat Lal who with Ct.Mahabir Singh went to the spot. They came to know that the victim had already been taken to BSA hospital. Since the spot of occurrence was within the jurisdiction of Police Post, Rohini, necessary intimation was given to the concerned police officers there. ASI Prem Singh, on receipt of call vide DD No.13 at 11.45 a.m. went to the spot along with Ct.Virender from that police post. After reaching at BSA hospital, he collected the MLC of injured Nand Lal Thakur and met HC Bharat Lal and Ct.Mahabir Singh. The injured was unfit to make statement. At 12.30 p.m. when Nand Lal Thakur regained consciousness, ASI Prem Singh recorded his statement (Ex.PW-22/A) and lodged First Information Report by making endorsement over it under Sections 308/341/506/34 IPC. In the statement, Nand Lal Thakur disclosed that at about 9.25 a.m. when he was going to Rohini courts on foot after getting down from a bus and reached in District Park, Sector 14, Rohini, he was stopped by four/five individuals; two of them were armed with baseball bat and wooden danda; and they inflicted injuries to him. They asked him to withdraw the case filed against them or else they would kill him. He identified Naresh Kumar r/o Budh Vihar, as one of the assailants and claimed to identify the others also. Further investigation was taken over by SI K.P.Tomar. On the basis of secret information, Naresh was apprehended near gate No.2, Japanese Park, Rohini in the evening same day and at his instance Parveen his associate in the crime, was arrested who recovered a baseball bat from the bushes. On the night intervening 28/29.07.07, Nand Lal Thakur succumbed to the injuries in the hospital and DD No.9A (Ex.PW-28/B) was recorded. Post-mortem examination on the body was conducted and Section 302 IPC was added. During investigation, statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was submitted against Naresh and Praveen. Ram Niwas and Rakesh were kept in column No.2 in the charge-sheet. Without taking cognizance against Ram Niwas and Rakesh, the learned Metropolitan Magistrate committed the case to the Court of Sessions. Naresh Kumar and Praveen were duly charged and brought to trial. The prosecution examined 28 witnesses to establish their guilt. In 313 statements, they denied their complicity in the crime and claimed false implication. They did not examine any witness in defence. On appreciation of the evidence and after considering the rival

contentions of the parties, the trial court by the impugned judgment held the appellant Naresh Kumar guilty for committing the offence mentioned previously. It is pertinent to note that the Praveen was acquitted of the charges. The State did not prefer any appeal to challenge his acquittal and conviction of the appellant Naresh Kumar under Section 304 (1)/34 IPC instead of 302 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. PW-1 (Sunil Kumar), the informant, did not support the prosecution regarding identity of the appellant and was not declared hostile by the prosecution. Dying declaration recorded by the Investigating Officer is highly suspect and doubtful. The victim was unfit to make statement as he never regained consciousness after the occurrence. No permission from the concerned doctor before recording the dying declaration was obtained and it is mystery who had declared the victim fit for statement at 12.30 p.m. that day in the absence of any certificate/endorsement of the examining doctor. Since the condition of the patient was critical, his family members got him discharged against medical advice and shifted him to Jaipur Golden hospital. The family members of the victim accused the Investigating Officer for not recording his statement correctly and lodged a complaint in that regard. Inordinate delay in recording PW-8 (Durga Devi)s statement under Section 161 Cr.P.C. remained unexplained. The appellant, who is a resident of Rithala Village never resided or carried out any business at Budh Vihar and it was a case of mistaken identity. Co-accused (Praveen) was acquitted on the same set of evidence though crime weapon was alleged to have been recovered at his instance. The appellant had no motive to inflict injuries to the victim. Learned Additional Public urged that the judgment is based upon fair appraisal of the evidence. The Investigating Officer had no ulterior motive to fabricate or manipulate the statement (Ex.PW-22/A) of the deceased-Nand Lal Thakur.

4. Undisputedly, victim-Nand Lal Thakur suffered a homicidal death. Medical evidence is clear on this point. PW-3 (Dr.Bhawna Jain) medically examined the patient on 24.07.2007 by MLC (Ex.PW-3/A). Various injuries on different body parts of the patient were described therein. PW-4 (Dr.K.Goel) conducted post-

mortem examination on 29.07.2007. Following external injuries were found on the body:(i) Diffuse coalesced bruises all over right arm, right elbow and upper two third of right forearm with ill define rail-road patterns over outer aspect of arm and at places over forearm, blueishgreenish in colour. (ii) Diffuse bruises all over medial aspect of left arm in area 8 X3

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