

Kabir Vs. State

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Court : Delhi

Decided On : Apr-22-2014

Judge : S. Muralidhar

Appellant : Kabir

Respondent : State

Advocate for Def. : Ms. Isha Khanna

Advocate for Pet/Ap. : Mr. Ajit Sharma

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: April 16, 2014
Decision on: April 22, 2014 CRL.A. No.22 of 2014 & CRL.M. (BAIL) No.34 of 2014
KABIR Appellant Through: Mr. Ajit Sharma, Advocate with Appellant in JC.
versus STATE Respondent Through: Ms. Isha Khanna, APP for State with SI
Vijender Singh from PS: Ranhola. CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

2204.2014 1. This appeal is directed against the impugned dated 28 th September 2013 passed by the learned District & Sessions Judge (West), Delhi in Sessions Case No.38 of 2012 convicting the Appellant for the offence under Section 307 IPC and the order on sentence dated 30 th September 2013 sentencing him to simple imprisonment (SI) for a period of four years.

2. The case of the prosecution was that Mr. Govind Verma (PW-4), 24, Gali No.5, Deep Enclave, Vikas Nagar, Uttam Nagar, New Delhi. PW-4 plied a rickshaw. The Appellant Kabir was a friend of PW-4. The Appellant used to work in a hotel and also live with PW-4 and PW-3. Once when PW-3 fell ill, PW-4 spent money on his medical treatment. After two months of treatment, the Appellant resumed work and thereafter kept meeting PW-4 at his house.

3. According to PW-4 on 12th September 2012, the Appellant came to his house and PW-4 asked him for some money for the treatment of his children. When the Appellant refused to give him money, PW-4 reminded him of the money he had spent on the medical treatment of the Appellant. A quarrel appears to have taken place and according to PW-3 the Appellant stated that he had been giving PW-4 whatever money he had been earning till then. According to PW-3 the Appellant went away after threatening both PW-4 and her.

4. The Appellant next came to the house of PW-4 on 14th September 2012 at around 4 am and asked PW-4 to return his belongings. PW-4 is then stated to have told the Appellant to first reimburse the money spent on his medical treatment. Upon this the Appellant retorted:

Zyada Dada Banta Hai Mai Abhi Batata Hu and picked up a lori i.e. a kitchen implement with which the masalas are ground, and hit PW-4 on the right side of his lower jaw. The Appellant is also stated to have used a knife lying around and cut the right ear of PW-4 and also inflicted incised wounds on the neck and face of PW-4. When PW-3 raised an alarm, the landlady Mrs. Mallika (PW-2) came there. PW-3 told PW-2 that the Appellant had caused injuries to PW-4. PW-3 then took PW-4 to the hospital where she met the police and her statement (Ex.PW-3/1) was recorded. She returned to her house from the hospital with the police. The police then prepared the site plan (Ex.PW-3/2) on her pointing out.

5. The Appellant was thereafter arrested and is stated to have made a disclosure statement (Ex.PW-3/6). The knife used to inflict injuries on PW-4 was seized. The half pant worn by the Appellant at the time of the incident was also seized.

6. Charges were framed against the Appellant for the offence under Section 307 IPC on 27th November 2012.

7. The prosecution examined 13 witnesses. In his statement under Section 313 Cr PC, the Appellant prayed that he had been falsely implicated. He denied quarrelling with PW-4 or injuring him. He denied that PWs-3 and 4 had borne his medical expenses. He stated that he had visited them one month prior to September 2012 at the time of delivery of their child and that he had borne the expenses. He further denied having gone to the house of PWs-3 and 4 on 12th September 2012. He stated that he had gone there on 13 th September 2012 and had stated that he would be living separately and that his articles should be returned. He denied the incident of 14 th September 2012. He denied making any disclosure statement to the police. He admitted that he was arrested on 14th September 2012 and stated that he was detained in the police station for one day. He admitted that his lower (Ex.P-2) was seized by the police. He claimed that there were blood stains on his lower since PW-4 was seated on his lap when he had been injured and he was taken to the hospital in an auto. He also claimed that PW-4 was talking and had given the address of the hospital and that PW-3 had accompanied them to the hospital with her child.

8. On an analysis of the evidence, the trial Court came to the conclusion that the testimony of the injured eye-witness, the nature of injuries inflicted upon him and the medical opinion, proved beyond reasonable doubt that the Appellant had assaulted and injured PW-4 on 14th September 2012 at about 4 am on his face, neck and ear with such an intention and under such circumstances that if he, by that act caused the death of the injured he would be guilty of culpable homicide amounting to murder. By the order on sentence dated 30 th September 2012, the trial Court sentenced the Appellant four years SI.

9. Mr. Ajit Sharma, learned counsel for the Appellant first submitted that there was no evidence to link the Appellant with the knife allegedly used to commit the offence. Relying on the decisions in *Deva v. State of Rajasthan* AIR 1999 SC214 *Ashish v. State* (judgment dated 16th February 2010 in CrI. A. No.15 of 2006) and *Imran v. State* (judgment dated 6th November 2009 in CrI. A. No.698 of 2001) it is

submitted that the recovery of a kitchen knife which is a commonly available article is a weak piece of evidence. It is further submitted that according to the Investigating Officer (IO) (PW-12) when he reached the spot he noticed the knife lying on the table of the house and it had no blood stains. Further, the knife was not sent to the Forensic Science Laboratory (FSL) to verify whether it had blood stains of the victim or the finger prints of the Appellant. It is submitted that the trial Court ought to have drawn an adverse inference under Section 114 (f) of the Evidence Act 1872 to the effect that had the knife been sent to the FSL, it would have established the innocence of the Appellant. It is submitted that to make up for their failure to send the knife for examination to the FSL, the prosecution obtained a convenient opinion of Dr. B.N. Mishra (PW-13), Criminologist, who stated that the knife recovered could have been used to inflict injuries on PW-4.

10. In reply it was submitted by Ms. Isha Khanna, learned APP for the State that PW-3 claimed to have cleaned the room where the incident took place. She also referred to the evidence of PW-13 who stated that there could have been traces of blood stains on the knife which could have been ascertained by microscopic examination or chemical method by the FSL. She pointed out that the evidence of PW-13 otherwise adequately proved that the injuries inflicted on PW-4 could have been caused by the knife recovered.

11. Having considered the above submissions, the Court is of the view that the prosecution has been able to adequately prove that the knife that was recovered could have caused the injuries inflicted on PW-4. While it is true that PW-12 did not send the knife to the FSL, in his cross-examination he stated that at the time when I inspected the spot though the knife Ex.P-3 was there as it was a domestic knife, I did not know that it was the weapon of offence and it was recovered on the accused having pointed out that it was weapon of offence. The evidence of PW-13 confirms that the injuries on PW-4 could have been caused by the knife recovered at the instance of the Appellant. The decisions relied upon by the learned counsel for the Appellant were in the context of recoveries under Section 27 of the Act. The recovery of a knife from a public place was disbelieved in the facts and circumstances of those cases. In the present case, however, the incident took place inside the house and the knife was available in the kitchen of the house. At

the time when the incident occurred, the Appellant was present and so were the injured eye witness PW-4 and PW-3. Both PWs-3 and 4 have corroborated each other on the essential fact that it was the Appellant who picked up the knife and caused injuries to PW-4. In these circumstances the connection between the knife and the Appellant has been fully established by the evidence of PWs-3 and 4.

12. Learned counsel for the Appellant next submitted that there were no blood stains on the floor of the room. He submitted that there were material discrepancies in the depositions of the prosecution witnesses. According to him on the aspect of PW-4 being taken to the hospital, there were different versions. While PW-4 stated that he was taken in a police van, PW-3 stated that she took him in a three-wheeler scooter and PW-4 stated that she had taken him to the hospital in a taxi.

13. In the considered view of the Court, the discrepancy in the description of the vehicle in which injured/eye-witness was carried to the hospital cannot be said to be material. The crucial fact was that these witnesses have consistently spoken of the Appellant being present at the scene of occurrence. Further, PWs-3 and 4 have consistently spoken of the Appellant causing injuries with knife and about PW-4 being taken to the hospital.

14. It is next submitted that as regards the presence of children of PWs-3 and 4 while PW-2 speaks to that effect neither PW-3 nor PW-4 mentions it. It was further submitted that PW-12 did not enquire from the children as to what had happened. Here again, the Court is of the view that when no question was put to the IO as to why he did not enquire about the children, it cannot be stated that the failure by PWs3 and 4 to mention about the presence of their children discredits their evidence.

15. It is next submitted that according to PW-3, the injuries were caused to PW-4 only with the knife whereas PW-4 stated that he was hit by the lori and attacked with the kitchen knife. It is submitted that PW-12 did not recover any lori from the spot and this was, therefore, a material discrepancy.

16. The evidence of Dr. Ritu Khaturia (PW-10) clearly established that the four injuries mentioned in the MLC (Ex.PW-10/A) on the person of PW-4 were caused by a sharp object. She confirmed that PW-4 had told her that he had been physically assaulted and had sustained the injuries. There were five injuries mentioned in Ex.PW10/A and these were:

(1) Incised wound approx 10x5x3 Cm over right jaw with tailing outwards. (2) Incised wound approx 2x0.5x0.5 over right side of neck, just below angle of jaw. (3) Loss of lateral part of left pinna. (4) Avulsion injury, approx 4x4x1 cm behind left ear. (5) Bony continuity not felt over right side of jaw.

17. While injuries 1 to 4 were caused by a sharp object, injury 5 could have been caused by the lori. The non-recovery of the lori does not cast any doubt on the fact that the fifth injury was caused to PW-4. Consequently, the failure by PW-3 to mention about PW-4 being hit with the lori is not a material discrepancy.

18. It is then submitted that according to PW-3 she cleaned the room after returning from the hospital but there was no statement by any of the prosecution witnesses about finding blood on the floor. The Court fails to understand why the failure to find any blood stains on the floor should persuade the Court to disbelieve the two eye-witnesses, one of whom was the injured eye-witness. PW-12, in fact, did not mention about finding any blood on the floor or on the knife. It is possible that on account of PW-3 having cleaned the house there were no blood stains on it. There was no question put to PW-3 whether she had cleaned the knife. When the question was put to her that the Appellant had come to the house with nothing in his hand, she maintained that it is the Appellant who had attacked her husband (PW-4). In her examination-in-chief she clearly stated that the Appellant took a knife which was lying in the house and caused injuries to my husband on his neck and face. This part of her testimony has remained unshaken.

19. It was next pointed out that according to PW-3 she reached the crime scene from the hospital in the morning and returned to the hospital at 11 am whereas PW-12 stated that he reached the house with PW-3 from the hospital on 11.30 am. The Court does not consider this discrepancy also to be material in view of the consistent version of the incident as spoken to by both PWs-3 and 4.

20. It was submitted that while PW-12 stated that the Appellant was arrested in the morning, the seizure memo showed the time of arrest as 8 pm. Here again, the Court does not find any specific question being put to the IO on this discrepancy. Importantly, in his statement under Section 313 Cr PC, the Appellant himself does not deny that he was arrested by the police on 14th September 2012.

21. What the Court also finds significant is the fact that the Appellant in his statement under Section 313 Cr PC claims to have taken the injured (PW-4) to the hospital accompanied by PW-3. Since this confirms his presence, he has sought to explain that he arrived there 15 or 20 minutes later on learning that PW-4 was injured. This version does not inspire confidence considering that it was 4 am in the morning when the incident took place and he does not mention who gave him the information at that hour. It must be noticed at this stage that the Appellant was unable to establish that he was at the hospital. Even if the CCTV footage was not available, he could have established his presence by the call data record of his mobile phone. However, that was not produced. Therefore, the version of the Appellant that he took PW-4 to the hospital has not been substantiated.

22. The last submission of learned counsel for the Appellant was that the crime at best be said to answer the fourth exception to Section 300 Cr PC that it was caused by a sudden provocation as a result of the quarrel that took place between the Appellant and the PW-4 at the time of occurrence.

23. The above submission overlooks the fact that even in his statement under Section 313 Cr PC the Appellant admits to having visited PWs-3 and 4 on the previous day i.e. 13th September 2012 and having stated them that he wished to live separately and that his articles should be returned. His coming back on 14th September 2012 at 4 am could not be said to be a sudden occurrence. If it is true that they already had a quarrel on 13th September 2012 then it cannot be said that there was a sudden provocation at 4 am on 14th September 2012 which caused the Appellant to attack PW-4 with a knife.

24. The nature of the injuries caused on PW-4 also showed that they could have resulted in his death. PW-10 has pointed out to the incised wounds of 10x5x3 cms over the right jaw which could have caused the tearing of the arteries and could

have been fatal. She has also pointed out that the injury no.4 on the neck may have been fatal. The two ingredients of Section 307 IPC as pointed out in Parsuram Pandey v. State of Bihar AIR 2004 SC5068 have been fully established in the present case. Here the victim was known previously to the Appellant and there was also a history of a quarrel preceding the incident.

25. Consequently, the Court is satisfied that in the present case the offence under Section 307 IPC is made out against the Appellant and further that the prosecution has proved beyond reasonable doubt that it is the Appellant who had caused the injuries of a grievous nature, which could have been fatal, to PW-4.

26. Finally, it was submitted by learned counsel for the Appellant that the Appellant has already served one year and seven months in jail. He did not attempt to run away from the scene of crime and was arrested without any difficulty. He had no previous criminal record and, therefore, should be treated leniently 27. Considering that the Appellant was 21 years at the time of the incident and is not known to have had any previous criminal record, the Court considers it appropriate to reduce the sentence from SI for a period of four years to SI for a period of three years. The order on sentence is modified accordingly.

28. Consequently, the appeal is disposed of by upholding the conviction the Appellant under Section 307 IPC and modifying the sentence awarded to him by the learned trial Court to three years SI. The bail application is dismissed. The trial Court record be sent back forthwith. S. MURALIDHAR, J.

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