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Deepak Sharma and anr. Vs. State

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Court : Delhi

Decided On : Apr-30-2014

Judge : S. Muralidhar

Appellant : Deepak Sharma and anr.

Respondent : State

Advocate for Pet/Ap. : Mr. Dinesh Garg, Ms. Isha Khanna, Mr. Mohd. Saleem, Mr. Krishan Kumar

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: April 23, 2014 Decision on: April 30, 2014 CRL.A. No.57 of 2014 DEEPAK SHARMA & ANR. ..... Appellants Through: Mr. Dinesh Garg, Advocate. versus STATE Through: ..... Respondent Ms. Isha Khanna, APP Mr. Mohd. Saleem and Mr. Krishan Kumar, Advocates for the Complainant WITH CRL.A. No.29 of 2014 INDERJEET SHARMA Through: ..... Appellant Mr. Dinesh Garg, Advocate versus STATE Through: ..... Respondent Ms. Isha Khanna, APP Mr. Mohd. Saleem and Mr. Krishan Kumar, Advocates for the Complainant CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
3004.2014 1. Criminal Appeal No.57 of 2013 is filed by Deepak Sharma and Sanjay Sharma, while Criminal Appeal No.29 of 2014 is filed by Mr. Inderjeet

Sharma, the father of Deepak Sharma and Sanjay Sharma.

2. These appeals are directed against the judgment dated 17 th December 2013 passed by the learned Additional Sessions Judge in SC No.68/10 convicting the Appellants for the offence under Section 307 read with Section 34 of the Indian Penal Code, 1860 and the order on sentence dated 20th December 2013 by which Appellants Deepak Sharma and Sanjay were sentenced to five years rigorous imprisonment (RI) with fine of Rs. 10,000 each, and in default, to undergo RI for six months and Appellant Inderjeet Sharma was sentenced to RI for three years with fine of Rs. 10,000, and in default, to undergo RI for six months.

3. The case of the prosecution is that on 14th September 2009, Raj Kumar (PW2) was sitting at the counter in his shop at Indira Colony, Mandawali, Delhi when at around 9:15 pm his brother, Anokhe Lal (PW1) came there. PW2 asked Mithilesh (PW4), his daughter-in-law to prepare tea. In the meanwhile, the three Appellants, i.e., Inderjeet Sharma and his sons, Deepak Sharma and Sanjay Sharma, who were the neighbours of PW2, came there. According to PW2, Sanjay Sharma and Inderjeet Sharma exhorted to Deepak saying Maar Saaley Ko Jaan Se, Goli Maar, Hum Dekh Lenge.

Deepak was holding a country made pistol and he fired a shot. The bullet hit the centre of the neck of PW2 on the front side. PW2 fell down and became unconscious.

4. PW2 was taken to the Metro Hospital. He was thereafter removed to the Lok Nayak Jai Prakash (LNJP) Hospital. PW2s vocal cord was removed. Dr. Yatin Sethi (PW5 of the E&T Department of LNJP hospital stated that the emergency tracheostomy was done on PW2 and that he remained in the hospital till 4th November 2009.

5. It may be mentioned that, admittedly, PW2 also suffered an injury on the palm of his right hand but was unable to recollect how he suffered the said injury.

6. In his evidence, PW1 stated that the Appellant had come to the shop at 9-10 pm on 14th September 2009, and upon exhortation by Inderjeet Sharma and Sanjay

Sharma, Deepak fired a country made pistol and that the bullet hit the neck of PW2. PW1 stated that he and PW4 tried to catch hold of the accused persons. The accused threatened to kill them and thereafter they ran away. PW1 stated that he took PW2 to the Metro hospital, Preet Vihar, Delhi, where PW2 was given the first aid and, thereafter, he was referred to the LNJP hospital.

7. In the cross-examination of PW1, he stated that before 14th September 2009, a quarrel had taken place between the accused and PW2 on the issue of payment of Rs. 1,200 which was being demanded by Pramod, son of PW2 from Pintu @ Ajay, the son of Inderjeet. He further stated that Ajay had been murdered in Indra Puram, Ghaziabad and that Pramod and Pushpender, the two sons of PW2, were arrested in that case and remained in jail for about 2 months. However, he stated that by the time of the incident, i.e. 14th September 2009, the statements of the witnesses in the case of Ajays murder had not been recorded. He denied the suggestion that PW1 and the family members of PW2 used to approach the accused for settlement in the murder case of Ajay.

8. As far as PW4 was concerned, she too stated that the three accused had come to the shop. When she came with the tea to the spot, the incident took place in her presence with Deepak firing one shot which hit the neck of PW2 and the other hitting the palm of his right hand. She stated that she and PW1 had taken PW2 to the hospital.

9. Therefore, apart from the injured witness PW2, there were two eye witnesses to the incident, i.e., PWs 1 and 4.

10. The Investigating Officer (IO) of this case was Assistant SubInspector (ASI) Mr. M.A. Khan (PW11). He stated that he was posted at Police Station (PS): Mandawali, Delhi and at around 9:18 pm on 14th September 2009, a daily diary entry was assigned to him regarding the shooting of a person. When he reached the spot, he learnt that the injured had already been removed to the Metro Hospital. On reaching there, he was told that the injured had been shifted to LNJP hospital. According to PW11, when he reached LNJP hospital, he did not find any eye witness and the injured was unfit for statement. On the spot, he found two empty shells of bullet. Blood was also found at the spot. The blood stained

concrete piece of the floor and earth control piece of the floor was taken. All these were put in seven separate pulandas and sealed. PW11 stated that on 25th September 2009, the two accused, Deepak Sharma and Sanjay Sharma surrendered in the Court with the permission of the Court and were formally arrested. Their police remand custody was taken for one day. The police searched for the weapon of offence but could not find it. After three days, the accused, Inderjeet Sharma was arrested from a park in Mandawali, Delhi.

11. There is inconsistency in the deposition of PW11on the one hand, and those of PWs 1 and 4 on the other as regards the inquiries made by PW11when he reached the spot. According to PW11, when he reached the spot, he found PW4 and some ladies present. However, he did not make any inquiry from PW4 as she was weeping. According to him, PW4 herself did not report anything to the police at that time and no other person claimed to be an eye witness to the incident. According to PW11, PW1 was not present in the hospital. He further stated that neither PW1 nor PW4 told him at that time that they were eye witnesses. However, PW1 states that on 15th September 2009, he had given the police his entire statement, which was noted down but was not read over or shown to him. He stated that he had visited the police 2-3 times thereafter but no one listened to me.

He further stated that after 15th September 2009, the police did not record his statement. He then stated that on 8th October 2009, he had given a written statement and the statement of PW4 to the IO in the PS and that PW4 had written her statement in her own hand. He claimed that PW4 had not gone with him to the PS on 8th October 2009. As regards PW4, she stated that the police met her on 14th September 2009 and that she had told the police that Deepak had fired a shot at PW2. She stated that the Police had made inquiries from her and asked her about the incident and noted down her name and the address. When the Police had come again after two days, she again told them about the incident. She clearly identified ASI M.A. Khan as the person who recorded her statement. She stated that on 8th October 2009, neither did she go to the PS nor did ASI M.A. Khan come to her house. She had visited the PS only once regarding the incident 10-15 days after the incident. When she visited the PS, the police officials got her signatures on a few papers.

12. The fact of the matter is that the prosecution produced two statements dated 8th October 2009, purportedly recorded by PWs 1 and 4 under Section 161 Cr PC. The learned trial Court disbelieved both PWs 1 and 4 on the ground that for 22 days after the incident, they did not make any statement to the police. The learned trial Court observed Strong doubt is created that they were not the eye witnesses of the occurrence and due to this reason, they gave no statement immediately after the incident and were planted as witnesses after 22 days to strengthen the prosecution case.

13. That left only the injured witness, PW2. The learned trial Court noted that he was not in a position to speak on 19th September 2009, on which date he is supposed to have given a statement in writing on the basis of which a statement under Section 161 Cr PC was recorded by PW11. Although the said written statement was not available on the trial Court record, the trial Court was of the opinion that the entire testimony of PW2 tendered in Court could not be discarded on that basis. He had spoken cogently and truthfully and, therefore, there was no reason to discard his testimony.

14. Mr. Dinesh Garg, learned counsel for the Appellants, urged that the learned trial Court seriously erred in relying on the sole testimony of PW2 who was identifying the three accused for the first time in Court when his examination-in-chief was recorded, i.e., 15th November 2010, i.e., more than a year and two months after the incident. He pointed out that on account of the injury on the right palm of PW2, his entire hand was plastered even on 19th September 2009 when he is supposed to have given a hand written statement, which in any event was not found on the record of the trial court. In his cross-examination, PW2 admitted that only tips of four fingers were naked and thumb was also without plaster. I was unable to speak at that time.

Accordingly, it was submitted by Mr. Garg that there was no possibility of PW2 giving any statement in writing to PW11. It was, therefore, not surprising that the said hand written statement of PW2 was not on record.

15. On the other hand, Ms. Isha Khanna, learned APP and Mr. Saleem Ahmed, learned counsel for the Complainant, expressed serious reservations about the

conduct of the IO in the matter. The attention of the Court was drawn to the fact that an application was filed before the learned Magistrate for police remand of the accused in which a specific reference was to made to the effect that on 19.9.2009, the injured Raj Kumar Gupta gave his written statement who told that on 14.9.2009, he was sitting in his shop and Inderjeet Sharma came along with his two sons, Sanjay Sharma and Deepak Sharma and on the instigation of Inderjeet Sharma and Sanjay Sharma, Deepak Sharma shot a gun fire and all three ran away.

It is submitted that the IO had no valid explanation as to why such an important document was not found on the file. In fact, even the MLC was stated to have been misplaced and an application had to be filed to take on record a photocopy thereof.

16. There is merit in the above submissions of the learned APP and Mr. Ahmed. It is surprising that the IO (PW11 was unable to give straight answers during his cross-examination. Strangely, on behalf of the accused no questions were put to PW11 as to his recording the statement of PW2 under Section 161 Cr PC. That document was shown to PW2 in his cross examination and marked as Exhibit PW2/DX1. The relevant portion of his deposition reads thus:

It is correct that on 19.9.09 I was unable to speak and I had not given any oral statement to the police. I had written in my statement given to the police that both Anokhe Lal and Mithilesh were present in the shop at the time of the incident. I do not remember if I had written in my statement that Mithilesh had brought tea for me and Anokhe Lal. Confronted with Ex.PW2/DX1 which is the only statement of this witness on record and there it is not so recorded.

17. However, PW11who is stated to have written the said statement was not confronted with the above exhibit. He ought to have been asked if he prepared it on the basis of a hand written statement of PW2or on the oral statement of PW2and if it was the former, why he was unable to produce it in Court. Consequently, it remains a mystery as to how that statement under Section 161 Cr PC of PW2came to be recorded by PW11 It may be incidentally noted that in the trial Court record the said statement of PW2under Section 161 Cr PC does not

bear the endorsement of it being exhibited as Ex PW2/DX1.

18. What was, however, asked of PW11 was how he proceeded with the line of investigation. In his cross-examination, he stated as under:

Statement of Mithilesh was recorded at the spot at about 2:00 am. Statement of Anokhe Lal was recorded after two days. Anokhe Lal told me about two days that he was the eye witness of the occurrence. Again said, the statement of Mithilesh was not recorded at 2:00 am but only enquiry was made from her. Even at that time, she did not tell that she was the eye witness of the occurrence. However, she informed that there was rivalry with Inderjeet Sharma and he was involved in the occurrence. I cannot tell the reason why I did not record the statement of Mithilesh on that day. It is correct that I almost daily visited the spot. Mithilesh met me sometimes during my said visits. Mithilesh did not tell me at any stage that she was the eye witness of the occurrence. I did not record the statement of Mithilesh under Section 161 Cr.PC.

(emphasis supplied) 19. It does appear from the above response that PW11 could not offer any convincing explanation as to why he did not record the statements of PWs 1 and 4 who were, in fact, the eye witnesses, immediately and in any event not later than two or three days after the incident. Further, his answers as to the enquiries made by him at the spot contradicted the answers of PWs 1 and 4. Also, there is no explanation as to why PW1s or PW4s blood-stained clothes were not seized, if indeed one or both of them accompanied PW2 to the hospital. Most importantly, PW11offered no explanation as to his misplacing the hand written statement of PW2.

20. Mr. Dinesh Garg argued that the Appellants should not suffer for the lapses of PW11. He submitted that at best this would create further reasonable doubt which should enure to the benefit of the Appellants.

21. On a careful consideration of the entire record, including the depositions of the abovementioned witnesses, the Court is of the view that although serious lapses were committed by PW11 in the course of investigation, the entire evidence of PWs1 and 4 cannot be discarded as has been done by the learned trial Court.

Here was an IO who obviously did not perform his duties diligently. He misplaced the handwritten statement of PW2, which is the most crucial document. However, even if this means that PW2should be taken to have identified and spoken of the involvement of the accused for the first time in Court, there is nothing to discredit his evidence. As rightly noted by the learned trial Court, PW2, the injured eye witness, who was in the best position to describe what happened, has spoken cogently and truthfully. Nothing has been put to him in his cross-examination which impinged on the credibility of his version.

22. In State of Karnataka v. K. Yarappa Reddy 2000 SCC (Cri.) 61, the Supreme Court observed that Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officers suspicious role in the case.

In Hema v. State (decision dated 7th January 2013 in Crl. A. No.31 of 2013), the Supreme Court observed that even if the investigation is illegal, the evidence must be scrutinised independently.

23. Learned counsel for the Appellants referred to the angle of previous enmity which made it possible that PW2 would falsely implicate the Appellants. While there is no doubt that the sons of PW2 were sought to be implicated in the killing of the son of Appellant Inderjeet Sharma, it appears to the Court that the narration of the entire incident by PW2, which is corroborated by PWs 1 and 4, cannot be disbelieved. His evidence proves beyond reasonable doubt that he suffered the grievous injury on his neck as a result of the firing by Deepak on the exhortation of the other two Appellants. Consequently, PW2 had to undergo tracheostomy and was unable to speak for two whole months. The Court, therefore, is unable to accept the submission of the Appellants that on account of previous enmity between PW2 and the family of Inderjeet Sharma, he and sons were falsely implicated in the present case.

24. An additional factor is that the Appellants surrendered on their own after their applications for anticipatory bail were rejected. Clearly, therefore, PW11 had credible information and leads about the involvement of the Appellants. His

sources could only have been either PW2 himself or PWs 1 and 4.

25. As regards the submission that it would be unsafe to rely on the sole testimony of the injured victim PW2, it may be recalled that the Supreme Court has held, time and again, that there could be various reasons why independent witnesses would be unwilling to come forward to depose since their safety is not guaranteed. In State of U.P. v. Anil Singh, AIR 1988 SC1998 the Supreme Court observed:

.In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable.

26. In the present case, as already noticed, the deposition of the injured eye witness PW2 is cogent and truthful and has not been shaken in his cross-examination.

27. For the aforementioned reasons, this Court is of the view that there are no grounds made out to interfere with the impugned judgment dated 17th December 2013 of the learned trial Court convicting the Appellants for the offences under Sections 307/34 IPC.

28. On the question of sentence, it was submitted by learned counsel for the Appellants that Inderjeet Sharma is undergoing dialysis and his health is in a poor condition. Therefore, it was pleaded that a lenient view may be taken in his case. The Court finds that the learned trial Court has already taken a lenient view of the matter and sentenced Inderjeet Sharma to undergo RI for three years while the other two accused, his sons Deepak Sharma and Sanjay Sharma have been sentenced to undergo RI for five years.

29. The bullet injury suffered by PW2 on the centre of his throat is undoubtedly of a grievous nature. He has had to undergo tracheostomy. It has resulted in a

severe disability, as he is unable to speak normally and requires the aid of a device. Consequently, this Court is also not inclined to interfere with the sentence awarded by the trial Court.

30. The appeals are accordingly dismissed. The Appellants will be taken into custody forthwith to serve out the remaining sentence. As far as Appellant Inderjeet Sharma is concerned, the Superintendent, Tihar Jail will ensure that he gets the best possible medical treatment for any of his ailments.

31. A certified copy of this order along with the trial Court record be delivered by Special Messenger to the trial Court concerned forthwith. S. MURALIDHAR, J.

April 30, 2014 tp

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