Chetan and anr Vs. State

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Court : Delhi

Decided On : Sep-29-2014

Judge : Mukta Gupta

Appellant : Chetan and anr

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: September 24, 2014 Judgment Delivered on: September 29, 2014 % + CRL.A. 2/2000 CHETAN & ANR Represented by: ..... Appellant Mrs.Meena Chaudhary Sharma, Adv. with Mr.Hiren Sharma, Adv. versus STATE Represented by: .... Respondent Mr.Lovkesh Sawhney, APP for State. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. The appellants Chetan and Rohtas, the two brothers are convicted for the murder of Bhopal Singh punishable under Section 302/34 IPC and Chetan for Section 25 Arms Act as well by the impugned judgment dated September 18, 1999 and vide order dated September 28, 1999 they have been directed to undergo imprisonment for life and to pay a fine of `1000/each for offence punishable under Section 302/34 IPC. Chetan has also been directed to undergo rigorous imprisonment for two years and to pay a fine of `5000/- for offence punishable under Section 25 Arms Act.

2. Learned counsel for Chetan and Rohtas assail the judgment on the ground that Bijender and Mamchand are planted witnesses. They know nothing about the incident. As per the testimony of Bijender the place of occurrence has been shifted to the house of Harpal whereas actually it was an open plot. Admittedly, there are variations in the rough site plan and scale site plan. Even as per the PCR call Bijender reached at the spot at 8.30 PM whereas incident took place at 7.40 PM and thus he could not be an eyewitness. Mamchand is a Police informer and has deposed in number of cases. Though the MLC notes that the history was given by the patient himself, however Bhopal Singh did not give the name of the assailants in the history. The first call to Police was given after 9.00 PM as stated by Abhay Singh PW-7. The two material witnesses to the incident were Pappu and Barjore. Pappu has turned hostile and Barjore was not examined. Though it is the case of the eye-witnesses that the injury was caused while the deceased was sitting, however as per the post-mortem Doctor the injury was when the deceased was in a lying position. There is no recovery at the instance of Rohtas. Even the recovery at the instance of Chetan cannot be relied upon as no independent witness has been associated to the recovery. The alleged katta was recovered after more than one month and thus cannot be said to be the one used for the offence without noting the similarity in the residues of the gun. The defence of Chetan and Rohtas are that they are innocent and falsely implicated and Chetan had not fired on Bhopal Singh nor any gun was recovered from the field nor had they gone to the village of Bhopal Singh on January 04, 1998 which facts have not been considered.

3. The process of law was set into motion when a PCR call was sent at 20.57 on January 04, 1998 by one Abhay Singh from Libaspur, Rajiv Nagar near Dharamkanta that firing has taken place inside the gali and a person has died. Immediately at 21.01 PM another message is sent that a person named Bhopal has received injuries and his son Bijender has come who has informed that firing has been done, however they could not exactly say whether firing has been done or not. At that time they found that injured had already been taken to the hospital. This information was recorded vide DD No.21A Ex.PW-14/A at 9.05 PM at PS Samay Pur Badli. In the meantime another information was received vide DD No.23A at 10.02 PM that Bhopal Singh son of Sanda, resident of Ambey Garden

Libaspur has been admitted in the hospital with gunshot injury by Chaudhary Rajender Singh and Police be sent at Hindu Rao Hospital. The same was exhibited as Ex.PW-14/B. The next DD entry was received at 1.15 AM in the night vide DD No.3A on January 05, 1998 informing about the death of Bhopal Singh at Hindu Rao Hospital.

4. Statement of Rakesh Kumar was recorded vide Ex.PW-8/A who stated that he was residing at Rana Park Samay Pur Badli and was doing the work of white-washing of the houses with his brothers. His uncle Bhopal with his family was residing at Ambey Garden. On that night at around 8.00 Oclock he along with his uncle Harpal who hails from their village had gone to his house at Rajeev Nagar. The buffalo of his uncle Harpal was unwell, so outside the house Harpal, Bhopal, Mamchand and the two brothers Chetan and Rohtas were talking. Rohtas was the son-in-law of his uncle Inderpal. His uncle Bhopal stated that it was too cold and some fire should be burnt. Rakesh brought cow dung, lit the fire and they all sat around the open fire. Chetan stated to his uncle Bhopal that his sister was kidnapped, that should not have been done and they should make his relations from his village Dhinsala understand. Harpal stated that 5-7 of them would go together. On this his uncle Bhopal raised the grievance that around 2 months ago UP Police was searching them, nobody came forward to help them. On this both Chetan and Rohtas got infuriated. Both had wrapped blankets around them. Rohtas asked Chetan to fire and Chetan took out his hand with gun from the blanket and fired at his uncle Bhopal. His uncle fell down and Chetan and Rohtas ran away. In the meantime their neighbour Rajender took Bhopal to the hospital.

5. Rakesh Kumar in the witness box as PW-8 did not support his version in the rukka and stated that he was not present at the time of incident.

6. Mamchand appeared as PW-3 and deposed that on January 04, 1998 while he was going to his house from main road he met Bhopal who was sitting outside his house and smoking hukka. He asked him to join in smoking. On his insistence he sat down. After some time son of Harpal came to Bhopal and asked Bhopal to help in looking after the buffalos. Three of them went to the house of Harpal to look after the buffalo. Bhopal after seeing the buffalo suspected that the buffalo had

received internal injuries. In the meantime Rohtas and Chetan who were related to Bhopal also came there. Bhopals niece was married to Rohtas. Chetan asked Bhopal to get his name struck off from a kidnapping case registered against him at PS Kandhla because son of Bhopal was married at village Kandhla. Bhopal expressed his inability, however Chetan insisted. Thereafter Rohtas exhorted Chetan Mar De Goli and Chetan took out a revolver from below his wrap around and fired at Bhopal. Bhopal fell after receiving the injuries.

7. Even Bijender PW-5 son of the deceased appeared in the witness box and stated that on January 04, 1998 Harpal and his son Pappu came to his house to call his father for some work. At that time Mamchand was with his father. In the meantime he went to the field to collect fodder for animals. He heard noise coming from house of Harpal and found his father was lying.

8. The testimony of Bijender is assailed by learned counsel for the appellant on the ground that Bijender was not present at the spot and as per the PCR call he reached the spot only after the PCR officials came. The entry at 8.58 PM notes that Bijender had come. The PCR call does not indicate that Bijender was not present when he saw Chetan and Rohtas running away. Even as per Mamchand there were heated discussion between Bhopal on the one side and Chetan and Rohtas on the other side where after on the instigation of Rohtas, Chetan fired. Bijender being nearby came to the spot of occurrence and saw both of them running. Bijender does not claim himself to be an eye-witness but a witness who saw Chetan and Rohtas running soon after the incident. His version corroborates the version of Mamchand and establishes the presence of Chetan and Rohtas and their running away from the spot soon after the incidence.

9. Though Rakesh the maker of the FIR has turned hostile and obviously so because of his relations with the appellants, however he stated about the presence of Mamchand. In the rukka the presence of Mamchand is noted. Mamchand has deposed about the entire incident. The presence of Mamchand is attacked on the ground that he is a Police informer, however no material has been placed on record nor was Mamchand given any suggestion on that count so that he could have explained the same. The version of Mamchand is corroborated by

the post-mortem report, the CFSL report and the Ballistic expert report as per which the gunshot injury to Bhopal was caused from the katta recovered at the instance of Rohtas.

10. Dr.C.B.Dabbas PW-6 conducted the post-mortem of Bhopal Singh on January 05, 1998 and noted the following injuries. EXTERNAL INJURIES One firearm entry wound 2.5 x 0.8 cm. Irregular in shape situated on left side of chest in upper part. 1.5 cm outer to midline. 21 cm below and inner to left shoulder and a height of 128.5 cm above left heel. The wound was surrounded by a collar of abrasion in area of 2.7x1 cm and edges were inverted. The wound was surrounded by a zone of tattooing in area of 5.5 x 5.5 cm. There was no signing and blacking around the wound. NECK STRUCTURES There were lacerations of lower part of Trachea near Bifurcation with collection of blood in the lower part. One copper coated bullet was found lodged there. It is preserved. Other neck structure was intact. CHEST Injury no.1 had entered the chest wall from back in fourth intercostals space and fractured through and through the fourth dorsal. Spine vertebral body, & exited through it on right side in plural in plural cavity and getting lodged in trachea in lower part near bifurcation. There was effusion of blood in surrounding tissues and right lung. One copper coated bullet was found lodged in lower part of trachea which were removed and preserved. The plural cavity was full of blood. Left lung was intact. There was fracture of 3rd, 4th and 5th rib of left side. Heart and pericardium were intact and there was fracture of body of 4th dorsal spine vertebral body with transaction of spinal card at this level.

11. Dr.C.B.Dabbas exhibited the report vide Ex.PW-6/A and opined that the cause of death was haemorrhage and shock consequent to the injury No.1 which was caused by ammunition discharge of rifle firearm fire from within range of powder blast and was anti-mortem in the nature. He clarified that the direction of bullet was from the back side downward to upwards upto trachea and it was possible if the injured was sitting in the living position and the bullet enter from the back side it will reach to the trachea on upward side. The contention of the learned counsel for the appellants that the version of the eye-witnesses that Bhopal was sitting when fired at is incorrect is explained by this opinion of the post-mortem doctor.

12. A country made pistol was recovered at the instance of Chetan and as per the CFSL report Ex.PW-23/E the rifle bullet mark B recovered from the body of Bhopal Singh was fired from the country made pistol mark A recovered from Chetan.

13. Learned counsel for the appellant assails the recovery of the country made pistol at the instance of Chetan on the ground that no independent witness has been associated with the recovery. A recovery pursuant to the disclosure statement admissible under Section 27 Indian Evidence Act is unlike recoveries made pursuant to search under Section 100 Cr.PC.

14. The contention of learned counsel for the appellant that the spot of occurrence has been shifted from the open plot to house of Harpal is misconceived as the house of Harpal is just opposite the open plot.

15. Merely because the injured did not name the assailant while giving the history would not belie the version of eye-witnesses particularly when the MLC of Bhopal Singh though noted that the patient himself gave the history however it also noted that the patient was disoriented and was not following verbal commands. Immediately thereafter he was declared unfit for statement at 10.30 PM. MLC is Ex.PW-9/A.

16. Admittedly at 8.30 PM the PCR had reached the spot. Thus to say that the first information to the Police was made at 9.00 Oclock is fallacious. In (2001) 1 SCC652State, Govt. of NCT of Delhi Vs. Sunil & Anr., the Supreme Court held :-

18. Recovery of the knicker is evidenced by the seizure memo Ext. PW10G. It was signed by PW10Sharda besides its author PW17Investigating Officer. The Division Bench of the High Court declined to place any weight on the said circumstance purely on the ground that no other independent witness had signed the memo but it was signed only by highly interested persons. The observation of the Division Bench in that regard is extracted below:

It need hardly be said that in order to lend assurance that the investigation has been proceeding in a fair and honest manner, it would be necessary for the investigating officer to take independent witnesses to the discovery under Section

27 of the Indian Evidence Act; and without taking independent witnesses and taking highly interested persons and the police officers as the witnesses to the discovery would render the discovery, at least, not free from doubt.

19. In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person and signed by such witnesses. It must be remembered that a search is made to find out a thing or document about which the searching officer has no prior idea as to where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts the search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. This Court has indicated the difference between the two processes in the Transport Commr., A.P., Hyderabad v.S. Sardar Ali [(1983) 4 SCC245:

1983. SCC (Cri) 827 : AIR 1983 SC1225 . Following observations of Chinnappa Reddy, J.

can be used to support the said legal proposition: (SCC p. 254, para

8) Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizures. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-sections (4) and (5) of Section 100 of the Criminal Procedure Code. In the case of a seizure under the Motor Vehicles Act, there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself.

20. Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is

for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

22. In this case, the mere absence of independent witness when PW17recorded the statement of A-2 Ramesh and the knickers were recovered pursuant to the said statement, is not a sufficient ground to discard the evidence under Section 27 of the Evidence Act.

17. Consequently, we find no merit in the appeal. Appeal is dismissed. The bail bond and surety bond of the appellants are cancelled. Appellants will surrender and suffer the remaining sentence.

18. T.C.R. be returned.

19. Copy of the judgment be sent to the Superintendent Central Jail Tihar for his record and compliance. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE SEPTEMBER29 2014 ga