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Court : Delhi

Decided On : Nov-18-2015

Judge : Sanjiv Khanna &Amp; R.K. Gauba

Appeal No. : CRL.A. No. 191 of 2000

Appellant : Nasir

Respondent : State

Judgement :

R.K. Gauba, J.

1. The appellant stood trial in sessions case No.2/1998 on the charge that on 24.08.1997, fifteen minutes past midnight he had committed the murder of Rafiq by intentionally causing stab injuries. By judgment dated 05.11.1998 he was held guilty and convicted, as charged, primarily on the basis of eye-witness account of Munna (PW-1) and Mohd. Mumtaj (PW-2). By order dated 09.11.1998, the learned trial court sentenced him to imprisonment for life with fine of Rs. 500/-, in default further rigorous imprisonment for two months. He challenges the said judgment and order on sentence through the appeal at hand.

2. On 24.08.1997 at 01:55 hours Rafiq son of Chhote Khan (the victim), aged 32 years, resident of House no.79, G-Block, New Seelampur, Delhi was brought to the casualty of Swami Dayanand Hospital, Shahdara (the hospital ?) by a neighbour Mohd. Akhtar (PW-5), in poor general condition, restless, semi-

conscious and in a critical state, with a number of incised wounds. He was examined against medico legal report (MLC) (Ex.PW-7/A) by Dr. Usha Bagga (PW-17). He was declared dead, during treatment in the hospital, at 0230 hours. The First Information Report (Ex.PW-8/B) was recorded by head constable Prem Chand (PW-8) at 0330 hours on the same day, on the basis of rukka (Ex.PW-8/A) sent at 03:00 hours by ASI Mahmood Ali (PW-15), founded primarily on the statement (Ex.PW-1/A) of Munna (PW-1) claiming to be the eye-witness naming the appellant to be the assailant.

3. The case for the prosecution that Rafiq suffered a homicidal death has been proved by evidence which is beyond reproach. Even if the testimonies of the witnesses of the occurrence are kept aside, there is abundant material to bring home the said fact.

4. Mohd. Akhtar (PW-5) is a local resident, his house being 6 or 7 houses away from the chowk of G-block in the same locality. His testimony that he had found Rafiq lying in injured condition fifteen minutes past midnight of the night intervening 23rd and 24th August, 1997 has gone unchallenged. At the time of the incident, he was sleeping inside the house. His attention was drawn by the noise of commotion in the wake of the occurrence. He shifted the injured Rafiq in an auto rikshaw (TSR) to the hospital. This fact is confirmed by the MLC (PW-17/A) proved by its author (PW-17).

5. The testimony of PW-17, read with the MLC (Ex.PW-17/A) recorded contemporaneously, proves that the examination in the casualty of the hospital had revealed that the victim had suffered the following injuries:-

1. Clean incised wound on right lower chest longitudinal placed approximately 3 cm long. I noticed the presence of fresh bleedings.

2. Clean incised wound on left thigh at junction of upper one third and lower two third anterolateral surface-3 cm long, longitude placed.

3. Clean incised wound on left thigh 4 cm long, posterior surface at junction of upper two third and lower one third.

4. Semilunar shaped clean incised wound anteromedial surface of left arm, approximately 5 cm long. Fresh bleeding present.

6. On the basis of her examination, PW-17 opined that the injuries mentioned above had been caused by a sharp object.

7. The information about the incident was received by the police through police control room (PCR) and was recorded in the PS Seelampur (the police station ?) vide DD no.34A (Ex.PW-15/A) at 0050 hours of 24.08.1997. The matter was entrusted to PW-15 who, accompanied by Constable Anil Dutt (PW-12), went to the spot. They were joined by head constable Ranbir Singh (PW-7). After the victim had been brought to the hospital, another intimation was received in the police station about the said event from constable Umesh Kumar (PW-4) who was deputed (by the police station) as duty constable in the hospital. This input was logged by vide DD no.96B (Ex.PW-15/B) at 0130 hours of 24.08.1997. Since it concerned the previous intimation, this was also made over for enquiry to PW-15.

8. PW-15, assisted by PW-7 and PW-12, had first gone to the scene of incident and upon learning that the victim had been taken to the hospital, PW-15 left for the said place leaving PW-7 and another official (constable Jitender Kumar) at the spot for safeguarding the scene of crime. For completion of narration, we may mention that at the time of the said visit these police officials were met at the said place by Munna (PW-1), Mohd. Mumtaj (PW-2) and Latif (PW-3) and they had handed over the appellant who statedly had been apprehended on the spot immediately after the occurrence. We would refer in due course to the testimony of these witnesses as to the circumstances in which the appellant had been apprehended by them.

9. The evidence clearly shows that when PW-15 reached the hospital he learnt that Rafiq had already died. ASI Mahmood Ali (PW-15) having got the FIR registered for investigation into the offence under Section 302 IPC, the matter was taken over for further probe by Inspector Tejpal Nagar, the Station House Officer (SHO) of the police station. He took the requisite steps of getting the dead body of the victim subjected to post mortem examination. Since there was a strike by doctors at the hospital, the dead body was shifted to GTB hospital where the

autopsy was performed by Dr. S K Verma (PW-9) on 24.08.1997.

10. The autopsy doctor (PW-9) has proved his report (Ex.PW-9/A) to the correctness of which there is no challenge. The autopsy report noted the following ante mortem injuries:-

(i) Incised stab entry wound of size 5.5 x 1 cm over left thigh in the middle, posterior surface going anteriorly and upwards placed 14 cms above the poplitial fossa and going through the thigh and coming out from the anterior surface by making an exit wound of size 2.5 x 0.5 cm placed 20.5 cm below left anterior superior iliac spine and 19 cms above the superior border of patella. One angle of the wound was acute while other was blunt. Blood was present in and around the wound. The total depth of the track was around 13 cms.

(ii) Incised stab wound of size 4.6 x 1 cm on front of left upper arm in middle 1/3rd placed 7 cm above the cubital fossa going backwards medially and downwards producing and exist wound of size 2.5 x 0.5 cm on posterior surface. Total length of the track was 7 cms with presence of blood. One angle was acute while other was blunt.

(iii) Incised stab wound of size 3.0 x 0.5 cms x cavity deep over right side front of chest in anterior axillary line placed 5 cm above costal margin and 16 cms below the anterior axillary going backwards, medially and downwards cutting the anterior chest wall and lower lobe of right lung anteriorly, diaphragm, right lobe of liver, total depth approximately 9 cms with blood present all along the track and one angle of wound acute while other blunt. ?

11. Besides the above, the post mortem examination had also revealed that the victim had suffered fracture of left femur with swelling/deformity in the middle 1/3rd. The internal examination had shown the right side haemothorax contained about one litre of fluid and clotted blood. Peritonium also contained about 500 ml of fluid and clotted blood. In the opinion of the autopsy doctor, the death had occurred due to shock on account of haemorrhage produced by a sharp edged weapon and the third injury was sufficient, in ordinary course of nature, to cause death.

12. It is nobody's case that the injuries noted in the MLC, or in the post mortem examination report, could be self-inflicted or could have been suffered accidentally. Clearly, the injuries were inflicted intentionally. Given the nature, particularly of the third injury, there could be no two opinions about the fact that the assailant intended to inflict such bodily injury as was sufficient in the ordinary course of nature to cause death, if not intending thereby to cause death. Thus, the case falls squarely within the four corners of the third clause of Section 300 IPC and constitutes the offence of murder. The defence plea mainly is of denial. Though the appellant seeks invocation of the fourth exception to Section 300 IPC contending that the case falls back into the category of culpable homicide not amounting to murder. We shall refer to this plea later in due course.

13. The prime question, against the backdrop, is as to whether the evidence of Munna (PW-1) and Mond. Mumtaj (PW-2) about the appellant being the author of the fatal injuries has been rightly believed or not.

14. There is no contest raised against the evidence of PW1 and PW2 that they are residents of the same locality where the appellant and the victim Rafiq (the deceased) lived. The evidence also unmistakeably shows that all these persons earned their livelihood by plying on hire TSRs. Mumtaz (PW2) has testified, and Munna (PW1) corroborates his word, that he (PW2) owned a number of TSRs which he would give out for being plied on hire. The persons thus engaged by him included Rafiq (the deceased) and the appellant. According to PW1, PW2 had borrowed certain money from the appellant and owed to him a sum of Rs.450/- on such account. Though PW2, on his part, denied any such loan liability, there is no reason why the word of PW1 on this score should be disbelieved as he asserted even under cross-examination that he was aware about the said transaction and no effort was made thereafter to refute this part of his evidence.

15. At any rate, both the above witnesses (PW1 and PW2) corroborated each other by deposing that the victim was perturbed over the appellant having asked some of his associates, perceived by him (the victim) as persons of bad character ?, on his look out and with some ulterior objective had given particulars of his TSR to them. This evidence is meant to show that the appellant had engaged services

of some anti-social elements to exert pressure on Rafiq (the victim) so that PW2 could resultantly be persuaded to repay the amount loaned.

16. PW1 and PW2 have deposed that both of them, with the victim, were present at the chowk of G-Block, Seelampur around the time of midnight on the night intervening 23/24.08.1997, talking to each other when the appellant came there. It was at that stage that the victim started questioning the appellant as to why he had put his associates on the task of stalking him. This infuriated the appellant. Both PW1 and PW2 testified that the appellant had pounced upon Rafiq and taking out a chhuri (knife) from his pocket inflicting injuries on his chest, thigh and hands. Both witnesses deposed that they had raised alarm for help. PW1 has stated that, on hearing the noise, his elder brother Latif (PW3) had also come on the scene.

17. Latif (PW3) deposed that at the time of the incident he was in his bed, though not asleep. He had rushed out on hearing the alarm being raised outside and when he came on the scene, he had seen the appellant giving stab injuries to his brother (Rafiq). Having regard to the fact that the evidence indicates the incident to be over in a matter of 2-3 minutes, we are inclined to accept the argument of the appellant that Latif (PW3) may not actually have been an eye witness, as is claimed by him. He was in bed on the first floor of his house. The alarm was raised outside upon stabbing taking place. Since it would have taken sometime for PW3 to react, and come downstairs, and reach the place of occurrence, admittedly, 20-30 feet away from his house, it is likely and possible that he would have seen the actual stabbing. Noticeably, however, his presence at the scene at the time of the assault is not indicated in the FIR, based on the version (Ex.PW1/A) of Munna (PW1).

18. But, there is no reason why the word of Latif (PW3), and of Munna (PW1) with Mohd. Mumtaz (PW2) both already present at the scene, should be disbelieved as to the fact that the appellant was apprehended immediately after the stabbing, as he was running away from the scene. These witnesses deposed about the appellant colliding against a vehicle (make-Tata-407) parked on the road side and falling down to be overpowered by them with the help of other public persons, who had collected in the meantime. Thus, when PW15 reached the place of

occurrence, the custody of appellant was handed over to him and in the wake of registration of the FIR. The appellant was arrested after personal search (vide Ex.PW15/C), in the presence of PW1, PW3 and PW7.

19. The appellant questioned the veracity of the evidence of PW1 and PW2 primarily on the ground that they were not present at the scene, when the fatal assault on the person of Rafiq took place. While claiming to be innocent and falsely implicated, he suggested to the material witnesses for the prosecution that the case has been set up on account of inimical relations. He also took the plea that it is a case of ante-timed FIR, based on a concocted and fabricated version.

20. The defence pleas to above effect were not accepted by the trial court and, in our opinion, rightly so. Save for bald suggestions about past enmity and some altercation in which the two parties had been engaged two days prior to the stabbing incident - the suggestions rejected outright by the prosecution witnesses - there is no material adduced to substantiate, even remotely, such theory. Interestingly, during his cross-examination on 25.03.1998, it was suggested to PW2 that it was he who had committed the offence. PW2 was later recalled, on the request of the appellant, for further cross-examination. During this part of the exercise, on 24.07.1998, the appellant suggested to the witness that he was not aware as to who had stabbed Rafiq. Clearly, by this subsequent suggestion, the appellant had withdrawn his defence plea that the murder had been committed by PW2, rather than by him.

21. During cross-examination of PW2, the appellant raised the question of his own injuries. Indeed, the MLC of the appellant recorded at 10:00 AM on 24.08.1997 in the hospital, noting certain abrasions and multiple contusions was part of the material that had been submitted with the chargesheet. The said document was not formally proved at the trial. PW2, when questioned, showed ignorance about the injuries suffered by the appellant. It was against this backdrop that it was suggested to the witness that he had not seen the incident. The suggestion was suitably refuted.

22. We find no substance in the above-noted defence pleas for the reason, the circumstances leading to the injuries that may have been suffered by the

appellant, were duly explained even in the FIR, and confirmed at the trial by PW1 and PW2 in their respective deposition about the appellant (in his endeavour to flee away) having fallen down after hitting against a stationary vehicle.

23. As noted earlier, the first intimation vide DD no.34-A (Ex.PW15/A) was received at 00:50 hours on 24.08.1997. The evidence of PW15, corroborated by PW7 and PW12, proves that the said police officials had reached the place of occurrence, where initial enquiries were made. The appellant, having been apprehended, was then in the custody and control of PW1, PW2 and PW3. PW15 inspected the place, recorded the statement of Munna (PW1) and then proceeded to the hospital. It is there that he learnt about the death and, thus, made the endorsement (Ex.PW8/A), which was dispatched finally at 03:00 hours on 24.08.1997 for FIR to be registered. Going by the evidence of the duty officer (PW8), the FIR (Ex.PW8/B) was recorded at 03:30 AM. This is further confirmed by DD no.39-A (Ex.DW2/A). The copy of the FIR, special report under Section 157 of the Code of Criminal Procedure, 1973 (Cr.P.C) was sent to various authorities, including the Metropolitan Magistrate through Ct. Ved Prakash (PW11).

24. It has come in the evidence of Dinesh Kumar (DW1), Reader in the concerned court, that the special report (Ex.DW1/A) was received by Shri Atul Kumar Garg, the then Metropolitan Magistrate at his residence at 04:00 PM on 24.08.1997. Indeed, this is the purport of the endorsement (Ex.DW1/B) on the said copy of the FIR. We cannot, however, ignore the fact that on 24.08.1997 was a Sunday and, thus, the special report might have not come in the hands of the Metropolitan Magistrate immediately and he would have recorded his endorsement about its delivery to him later in the evening.

25. It was argued on behalf of the appellant that the conduct of PW1 and PW2 was not natural as they did not accompany the victim to the hospital. It was submitted that there is no explanation as to why these witnesses and PW3 met the IO near Gurudwara, Seelampur, which is one kilometre away from the place of occurrence. Learned Counsel submitted that there is no plausible reason as to why these witnesses, having apprehended the assailant (the appellant) would have moved towards the Gurudwara, rather than stay at the scene of crime awaiting the police.

The defence also argues that no independent witness has been examined in spite of the fact that evidence of witnesses of the scene reveals that a large number of public persons were present and had assisted PW1, PW2 and PW3 in capturing the appellant. Further, learned counsel submitted that non-recovery of the weapon of offence in the factual matrix of this case should result in the eye witness account to be disbelieved particularly as the appellant had been apprehended immediately after the occurrence.

26. We have considered the above arguments but find no merit therein. The criminal jurisprudence that we follow does not require plurality of evidence. The testimony of a single witness, if it inspires confidence, can be acted upon. It is not correct to criticize the three witnesses referred to above, with regard to their conduct in having remained at the scene of incident and not accompanying the victim to the hospital. The victim had been transported in a TSR to the hospital by PW5. This was required and necessary. Nothing adverse and sinister should be inferred from the fact that PW-1, PW-2 and PW-3 did not take the victim to the hospital. The appellant having been apprehended was required to be detained for being handed over to the police. The fact that these three persons had moved towards Gurudwara Seelampur is to be seen in this light. The witnesses were anxious to contact the police and make over the custody of the appellant without any loss of time.

27. The non recovery of weapon of offence cannot render the eye witness account incredible. The evidence clearly shows that soon after stabbing, the appellant had started running away. He could be overpowered only after some pursuit. The case for the prosecution that it was during this effort to flee away that the appellant had thrown the weapon of offence has to be believed. The failure to locate or recover the knife is that of the investigating officer and cannot adversely impact the veracity of the eye witnesses.

28. In the overall facts and circumstances, where there is nothing to doubt the presence of the two eye witnesses PW1 and PW2 at the scene at the time of incident, some delay in the copy of the FIR coming to the notice of the concerned Metropolitan Magistrate cannot result in the inference that the FIR was ante-timed

or incorporates a concocted version.

29. The testimony of PW1 and PW2, in the above facts and circumstances, inspires confidence and deserves to be believed. There is no reason as to why they would depose falsely. It is not that every discrepancy, variation, or contradiction should result in doubts being raised. The contradictions, if they have to result in the prosecution version to be suspected, must be such as go to the root of the matter. Small contradictions occurring in their respective testimony are the result of normal wear and tear of human memory and are inconsequential. We, thus, unhesitatingly accept their evidence and uphold the finding that the fatal injuries on the person of Rafiq were inflicted by the appellant and no one else.

30. The appellant places reliance on Surender Kumar vs. Union Territory, Chandigarh (1989) 2 SCC 217, to urge that his case falls within the fourth exception to Section 300 IPC and, thus, the conviction should have been recorded for the offence of culpable homicide not amounting to murder, punishable under Section 304 IPC. It is pointed out that the appellant had not accosted the deceased with some premeditated design to settle scores. Instead, the evidence shows that it was the deceased who had confronted him. This had resulted in the appellant losing self control and assaulting the deceased with knife. It is submitted that the fact that the incident had occurred in the course of a sudden fight, the offender not having acted in a cruel manner, the case attracts the fourth exception to Section 300 IPC.

31. Each case has to be examined in the light of its peculiar facts and circumstances. Each injury was inflicted with extensive force causing deep cuts and damaging the insides. Multiple stab blows that were given show that the offender was taking undue advantage. The second element to take benefit of Explanation 4 is missing and not satisfied. In this case the appellant had used a deadly weapon to cause injuries on an unarmed victim and not one but three stab wounds were inflicted. The appellant has acted cruelly. We, thus, reject the plea for benefit of the fourth exception.

32. In the forgoing facts and circumstances, we find that the impugned judgment does not suffer from any error or illegality. The appeal is, thus, devoid of

substance. It is dismissed.

33. The appellant was released on bail by order dated 25.02.2003, the sentence having been suspended, pending adjudication on the appeal. He is directed to surrender to custody within fifteen days of this judgment and undergo the sentence awarded against him in the impugned judgment and order on sentence. The learned trial judge (successor judge) and the Station House Officer of Police Station Seelampur are directed to take necessary steps to ensure due compliance.