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Court : Delhi

Decided On : May-13-2016

Judge : Pradeep Nandrajog &Amp; The Honourable Ms. Justice Mukta Gupta

Appeal No. : CRL.A. No. 431 of 2002

Appellant : Abhey Singh

Respondent : State

Judgement :

Pradeep Nandrajog, J.

1. At the outset we may note that the appeal preferred by the co-convict : Ramesh Lal viz. Criminal Appeal No.857/2001 has abated in view of the fact that he expired on April 29, 2013. The said fact was recorded by us in the Order dated May 09, 2016 passed in Criminal Appeal No.857/2001.

2. Thus, the present appeal decides the fate of Abhey Singh who seeks to assail the judgment dated October 12, 2001 passed by the learned Additional Sessions Judge - Karkardooma Courts, Delhi in S.C.No.2/2001 whereby he has been held guilty for the offence punishable under Section 302/34 IPC and consequently in terms of a separate order on sentence passed on the same date he has been sentenced to undergo imprisonment for life and pay fine in sum of Rs. 2,000/-; in default of which he has been directed to undergo rigorous imprisonment for a

period of two months.

3. The finding of guilt has been returned by the learned Trial Judge by accepting the testimony of Ram Babu Shah PW-7 who claimed to have witnessed the incident. Qua Abhey Singh, no other incriminatory circumstance has emerged in the evidence led by the prosecution at the trial.

4. We commence our journey by proceeding to capture the facts germane to adjudicate the present appeal.

5. As per the prosecution, Abhey Singh @ Munna and Ram Babu Shah PW-7 were working in the same factory (B.T.S. Factory) located at Gandhi Nagar, Delhi. On February 24, 1992 at around 1:00 PM Ram Babu Shah left his machine and went to speak to a co-worker Sanjay Kumar Shah PW-3. When the two were talking, Abhey Singh came and asked Ram Babu Shah to return to his machine at which Sanjay Kumar Shah made a caustic remark that Abhey Singh indulges in chamchagiri (sycophancy) of the owner. Ram Babu Shah laughed at the remark. At this Abhey Singh slapped Ram Babu Shah which resulted in a spate of heated arguments, however, ultimately quietus was given to the issue. Ram Babu Shah left the factory in the evening and Abhey Singh followed him and told him to repay the money owed to the co-accused - Ramesh Lal @ Lala on the same day itself otherwise dire consequences would follow. Ram Babu Shah replied that he would repay the amount and left for his 'jhuggi'. Abhey Singh intended to escalate the issue, however, Ram Babu Shah did not want to pick up any quarrel. Around 8:30 PM in the company of his cousin brother - Ram Sagar Shah (deceased), Ram Babu Shah passed by Laxmi Cinema. As they reached in front of the 'Dhaba' in Prem Gali of the co-accused - Ramesh Lal @ Lala, Ramesh Lal @ Lala indicated to Abhey Singh that Ram Babu Shah had come. Thereafter, Abhey Singh started beating Ram Babu Shah and while saving his cousin brother, Ram Sagar Shah (deceased) remarked that they should feel ashamed as they were beating a young boy. Feeling irked owing to such intervention, Ramesh Lal @ Lala declared that they would now tackle the elder one. He caught hold of Ram Sagar Shah (deceased) and after strangulating him he pushed him in a drain. Thereupon, Abhey Singh delivered a stab blow upon the right side chest of Ram Sagar Shah

(deceased) with a knife like object. Ram Babu Shah raised an alarm, but due to fear he fled from the spot and Abhey Singh chased him.

6. At 9:00 PM D.D.No.16A, Ex.PW-5/B, was recorded at P.S. Gandhi Nagar that one Laxman Sharma had telephonically informed that an unknown person having received knife injury was lying near the gate opening towards Prem Gali of Laxmi Cinema. Investigation entrusted to SI Udaivir Singh PW-12, he left along with Ct.Uday Chandra (not examined during Trial) and reached the spot.

7. In the meanwhile Ct.Baljit Singh PW-13 who was on patrolling duty around Laxmi Cinema reached the scene of the crime and he took the injured to Jai Prakash Narayan Hospital.

8. At 9:10 PM MLC Ex.PW-17/A of Ram Sagar Shah was prepared by Dr.Sushil Ranga (not examined during Trial), wherein, it was recorded that he was brought dead.

9. It is pertinent to highlight at this stage itself that contrary to the deposition of the prosecution witnesses including Ct.Baljit Singh, the said MLC records that Ram Sagar Shah was found unconscious near the gate of Laxmi Cinema and someone took him to P.S. Gandhi Nagar in a three wheeler and thereupon, a constable brought the deceased to the hospital from P.S. Gandhi Nagar in a three wheeler.

10. At 9:35 PM D.D.No.17A Ex.PW-5/C was recorded at P.S. Gandhi Nagar to the effect that Ct.Sudhir Kumar PW-11 from Jai Prakash Narain Hospital had telephonically informed that one Ram Sagar Shah was declared brought dead. Therefore, SI Niranjan Singh PW-4 along with Ct.Satbir Singh PW-14 reached the spot of occurrence. Upon reaching the spot of occurrence, SI Niranjan Singh met SI Udaivir Singh who informed him that Ram Sagar Shah had already been taken to the hospital. At that point of time Ram Babu Shah returned to the spot of occurrence as he learnt that the police has arrived. SI Niranjan Singh and Ct.Satbir Singh along with Ram Babu Shah left for the hospital. Thereafter, SI Niranjan Singh left for the hospital along with Ct.Satbir Singh. SI Udaivir Singh was left to guard the spot of occurrence.

11. At the hospital Ram Babu Shah identified the body of the deceased. SI Niranjan Singh collected the MLC of the deceased. Statement/fardbayan Ex.PW-7/A of Ram Babu Shah was recorded by SI Niranjan Singh. Thereafter SI Niranjan Singh made the endorsement/tehrir Ex.PW-4/A beneath the statement of the informant and recommended registration of case under Section 302/34 IPC against the accused persons. Rukka was sent to P.S. Gandhi Nagar through Ct.Satbir Singh at 11:10 PM. In furtherance thereof, FIR No.61/92 Ex.PW-5/A was registered at P.S. Gandhi Nagar under Section 302/34 I.P.C. at 11:40 PM. D.D.No.18A Ex.PW-5/D was recorded at P.S. Gandhi Nagar to the effect that FIR No.61/92 under Section 302/34 IPC had been registered and the copies of the said FIR had been handed over to the Special Messenger to forward the same to the higher officials as well as the concerned Illaka Magistrate. In the meanwhile, SI Niranjan Singh and Ram Babu Shah returned to the spot of occurrence. Ct.Satbir Singh also reached the spot and handed over a copy of the FIR and rukka to SI Niranjan Kumar.

12. On February 25, 1992 at around mid-night Insp.Harish Chander Joshi PW-18, S.H.O. P.S Gandhi Nagar, reached the spot. He took over the investigation from SI Niranjan Singh. In the meanwhile the Crime Team and the photographer reached the spot. Ct.Sunder Singh PW-8 took photographs Ex.PW-8/1 to Ex.PW-8/3, negatives whereof are Ex.PW-8/4 to Ex.PW-8/6. Insp.Harish Chander Joshi inspected the spot of occurrence and prepared a Visual Site Plan without scale Ex.PW-18/A. He also took into possession blood, blood smeared soil, sample soil and a 'lungi' Ex.P-2 lying at the spot and seized the same in the presence of Ram Babu Shah, SI Udaivir Singh, Ct.Satbir Singh and SI Niranjan Singh vide seizure memos Ex.PW-4/B, Ex.PW-4/E, Ex.PW-4/C and Ex.PW-4/D. Upon affixing the seal on the sealed pullandas, the seal was handed over to Ram Babu Shah.

13. At around 1:30/02:00 AM., Insp.Harish Chander Joshi reached House No. 757, Prem Gali, Gandhi Nagar, Delhi. Co-accused - Ramesh Lal @ Lala was arrested from this house. Personal Search Memo Ex.PW-4/F was prepared by Insp.Harish Chander Joshi in the presence of Ram Babu Shah, SI Udaivir Singh, Ct.Satbir Singh and SI Niranjan Singh. Thereafter, Insp.Harish Chander Joshi seized a blood stained 'kurta' Ex.P-1 which was worn by the co-accused - Ramesh Lal @

Lala vide Seizure Memo Ex.PW-4/H in the presence of Vipin Kumar, Ram Babu Shah, SI Udaivir Singh, Ct.Satbir Singh and SI Niranjan Singh.

14. A confessional statement of the co-accused - Ramesh Lal @ Lala Ex.PW-12/A was recorded by Insp.Harish Chander Joshi in the presence of SI Udaivir Singh and SI Niranjan Singh.

15. Insp.Harish Chander Joshi deposited the sealed pullandas containing the articles recovered from the spot of occurrence in the malkhana and an entry Ex.PW-10/A was made to this effect at Serial No.87 of the malkhana register.

16. In the morning at around 7:00 AM the body of the deceased was received in the Mortuary from the Hospital. Ram Kishore Shah PW-1 (brother-in-law of the deceased) and Ram Babu Shah identified the body of the deceased vide statements Ex.PW-18/F and Ex.PW-18/E respectively. To complete the inquest proceedings, annexing the Death Report Ex.PW-18/B, Insp.Harish Chander Joshi wrote the brief facts Ex.PW-18/C and submitted an application Ex.PW-18/D for autopsy to be conducted. Relevant would it be to note that in the said application an opinion was sought on the aspect : whether the cut marks found on the clothes of the deceased correspond with the wounds on the body of the deceased.

17. Autopsy was conducted at 2:50 PM at Maulana Azad Medical College Mortuary and Post-Mortem Report Ex.PW-17/A was prepared by Dr.George Paul (not examined during Trial), wherein, the cause of death was opined to be haemorrhage and shock from the stab injury to aorta and left atrium of heart vide inner penetrating stab injury i.e. Injury No.11 which injury was opined to be sufficient to cause death in the ordinary course of nature. It was further opined that time since death was around 18-19 hours. Post-Mortem Report further revealed that Injuries No.1 to 10 were caused due to impact with blunt object or surface and could have been caused in the course of struggle, whereas, Injury No.11 was caused by a single edged sharp stabbing weapon.

18. It would be pertinent to note here itself that Injury No.11 was found to comprise of two stab wounds. The inner stab wound, after entering the right chest cavity through the second intercostal space in its inner part traversed the right lung. The

depth of the said wound was observed to be around 14 cm. It was further revealed that the second stab wound i.e. outer upper stab went outwards upwards and backwards in the outer upper chest wall and was caused by a similar weapon. The depth of the injury was observed to be 8 cm. It is thus apparent that the weapon of offence pierced the outer skin once and after the object was partially withdrawn it was re-thrusted into the body of the deceased.

19. An opinion Ex.PW-17/C regarding the aspect whether the cut marks found on the clothes of the deceased correspond to the wounds found on his body was also tendered by Dr.George Paul (not examined during Trial). It was opined by him that cut corresponding to Injury No.11 on the body of the deceased was present on the 'kurta'. Pertinently, it was also observed that there were additional cuts found present on the right arm-pit and right adjacent sleeve part of the 'kurta' for which no corresponding injury was present on the body of the deceased.

20. On February 27, 1992 on receiving secret information Insp.Harish Chander Joshi apprehended Abhey Singh and recorded his disclosure statement Ex.PW-15/A in the presence of ASI Todar Singh (not examined during Trial) and Ct.Harpal Singh PW-15 and pursuant thereto recovered an iron rod of 74 cm length which was deposited in the malkhana vide entry Ex.PW-10/A.

21. Curiously, a statement of Ct.Harpal Singh was recorded in terms of Section 161 Cr.P.C. on February 29, 1992 wherein it was recorded that Abhey Singh made another disclosure statement on February 30, 1992 and in which it was revealed that the earlier disclosure statement was false. It is pertinent to highlight that the signatures of Insp.Harish Chander Joshi do not appear on the said statement of Ct.Harpal Singh even though his designation is scribed on the said statement and we find that the statement has been exhibited at the trial as Ex.PW-18/DB.

22. Purportedly, on February 30, 1992, a day which cannot occur because the month of February has 28 days for 3 years and in the leap year it has 29 days. There cannot therefore be a 30th day in the month of February, another disclosure statement Ex.PW-15/B of Abhey Singh was recorded by Insp.Harish Chander Joshi in the presence of Ct.Harpal Singh and ASI Todar Singh wherein, it was recorded that the rod recovered earlier was not the weapon of offence and that the

weapon of offence had actually been thrown into river Yamuna at the old bridge.

23. Thereafter, on March 15, 1992 SI Niranjan Singh took the rod from the malkhana of P.S. Gandhi Nagar to seek medical opinion Ex.PW-10/A from the concerned doctor at Maulana Azad Medical College and the opinion Ex.PW-18/K given by Dr.George Paul was that the injury could not be caused by the rod, which we find became 30.45 cm long as against 74 cm when it was allegedly recovered.

24. CFSL Report Ex.PW-18/G, Ex.PW-18/H and Ex.PW-18/J were received as per which human blood of group O was detected from the clothes of the deceased and the control earth lifted from the spot.

25. Armed with the said material, Final Report was submitted before the competent Court and on May 04, 1995 the learned Trial Judge was pleased to frame charges against both the accused persons for having committed offence punishable under Section 302/34 IPC.

26. Eighteen witnesses were examined by the prosecution in support of charges.

27. As highlighted earlier, upon conclusion of the trial the learned Trial Judge held the accused guilty of the offence punishable under Sections 302/34 IPC and consequently sentenced them to suffer imprisonment for life.

28. We have endowed careful consideration to the rival submissions advanced at the bar by the learned Amicus - Shri Harsh Prabhakar and the learned APP - Shri Varun Goswami. The 'Synopsis of Submissions' submitted by the learned Amicus during course of hearing has been taken on record.

29. Upon microscopic analysis of the testimony of Ram Babu Shah in conjunction with the contours of other evidence led by the prosecution at trial, we are of the opinion that it would not be safe to conclude that Ram Babu Shah is an eye witness to the occurrence, and would hold that the weight of the evidence makes his presence suspect, and for which the reasons are in the undernoted paragraphs.

30. While deposing before the Court and in his earliest statement as comprised in the fardbayan Ex.PW-7/A Ram Babu Shah does not state that the deceased was subjected to multiple stabbing, but the clothes of the deceased had many cut marks and in respect of which a specific opinion was sought from Dr.George Paul whether these cut marks could be caused by the weapon of offence recovered. Further, though the fatal entry stab wound i.e. injury No.11 is one, but the inner injury shows that the sharp edged weapon of offence was pulled back and re-thrust. It is apparent that the deceased was targeted repeatedly and to his good fortune the initial stab blows did not pierce the muscle for the reason a struggle was on and the assailant could only manage to cut the clothes worn by the deceased. The good luck of the deceased did not last much and injury No.11 proved fatal. As noted above injuries 1 to 10 are on account of a fall. As noted above, in the inquest papers a specific opinion had been asked for with respect to the cut marks seen by Insp.Harish Chander Joshi on the clothes of the deceased and the specific question was whether they correspond with the wounds on the body of the deceased. This explains Ram Babu Shah deposing that the deceased was stabbed only once because by the time his fardbayan Ex.PW-7/A was recorded. The body had already been seized by Insp.Harish Chander Joshi for being sent to the mortuary.

31. Furthermore, Ram Babu Shah exhibits unnatural conduct inasmuch as he did not bother calling/informing the police after escaping from the spot of occurrence as claimed by him. Furthermore, it is startling to observe that he merely informed the wife of the deceased that her husband had a quarrel and significantly did not reveal that he had been stabbed. He also claims to have informed two-three persons about the incident but he could not recollect their names when cross-examined. He also did not disclose who informed him that the police had arrived at the spot which gave him courage to come out of hiding.

32. As noted above this eye witness claims to have fled in fear and returned when he learnt that the police had reached the spot and the presence of the police gave him courage.

33. The aspect of availability of the eye-witness shortly after/upon the arrival of the police is shrouded in suspicion. Testimony of SI Udaivir Singh clearly establishes that in pursuance of D.D.No.16A he was the first to reach the spot along with Ct.Uday Chander and he found no eye witness including Ram Babu Shah. According to the said witness, Ram Babu Shah surfaced for the first time at around 11:40 PM along with SI Niranjan Singh. The said version strikes a discordant note with the stand adopted by other prosecution witnesses who claim that Ram Babu Shah was found present at the spot with SI Udaivir Singh and thereafter accompanied SI Niranjan Singh to Jai Prakash Narayan Hospital. The said contradiction casts death knell to the claim of the prosecution that is found to be self-riddle.

34. The prosecution has also failed to establish whether a copy of the F.I.R was dispatched to the concerned Magistrate in compliance with Section 157 Cr.P.C. and if the said compliance was made, then at what time? Under circumstances such as the present case, wherein the testimony of the eye-witness/informant is not of sterling quality and does not seem to inspire confidence, evidence in relation to the time when copy of the FIR was received by the illaka magistrate assumes special significance while appreciating the credibility of such a witness as the possibility of ante-timing of FIR to introduce a witness cannot be ruled out.

35. A keen perusal of the evidence on record also brings to fore numerous circumstances that depict clear lack of probity in the investigation and substantially detract credibility of the prosecution version. In wake of such circumstances it is the duty of the Court to be circumspect and analyse the evidence with greater caution.

36. The MLC Ex.PW-17/A reveals that some person took the injured to P.S. Gandhi Nagar in a three-wheeler and thereafter a constable from the said police station brought the injured to the casualty of Jai Prakash Narayan Hospital in a three-wheeler. However, to the contrary, prosecution witnesses including Ct.Baljit Singh have deposed that the injured was carried to Jai Prakash Narayan Hospital directly from the spot of occurrence. Furthermore, the supplementary disclosure statement Ex.PW-15/B of Abhey Singh has been recorded on February 30, 1992:

a non-existent date. Even the statement Ex.PW-18/DB of Ct.Harpal Singh recorded in terms of Section 161 Cr.P.C. indicates that the said disclosure was recorded on February 30, 1992, though curiously the said statement was itself ostensibly recorded on February 29, 1992.

37. The testimonies of Insp.Harish Chander Joshi and Ct.Harpal Singh coupled with the entry No.94 Ex.PW-10/A in the malkhana register reveal that the total length of the iron rod recovered at the instance of Abhey Singh was 74 cm, but the subsequent opinion of the doctor reveals that the rod sent for examination to him was only 30.45 cm in length Ex.PW-18/K. Further, there is no entry in the malkhana register with regard to its return and even the entry dated March 15, 1992 depicting that it was being taken to Jai Prakash Narayan Hospital is inaccurate.

38. It may also be highlighted that the blood stained 'kurta' Ex.P-1 alleged to have been seized from the co-accused - Ramesh Lal @ Lala has not been deposited in the malkhana. Furthermore, even with regard to the 'kurta' of the deceased there are no entries to evidence when the same was taken out of the malkhana to be sent for opinion of the Post Mortem Doctor and when the same was received back. No entry in the malkhana register has been proved with regard to the 'baniyan'/vest and underwear of the deceased.

39. Sans the eye witness account of Ram Babu Shah upon which we do not propose to rely in view of the compelling reasons expressed by us in detail in the preceding paragraphs, there exists no shred of evidence to connect Abhey Singh with the murder of Ram Sagar Shah.

40. The appeal is allowed. The impugned judgment of conviction dated October 12, 2001 and Order on Sentence passed on the same date by the learned Additional Sessions Judge in S.C.No.2/2001 is set aside. The appellant is acquitted. The appellant is on bail. Bail bonds and Surety bonds are discharged.

41. TCR be returned.

42. Copy of this decision be sent to the Superintendent Central Jail Tihar for updating of the jail record.

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