

Ram Avtar vs.state

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Court : Delhi

Decided On : Jan-06-2017

Appellant : Ram Avtar

Respondent : State

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on : January 06th, 2017 CRL.A. No.645/1999 RAM AVTAR Appellant Through: Mr.Abinash K. Mishra, with Mr.N.H. Gupta, & Mr.N.K. Rathi, Advocates. versus STATE Through: Mr.Sudershan Joon, Additional Public Prosecutor for the State. Respondent CORAM: HON'BLE MR. JUSTICE P.S.TEJI P.S.TEJI, J.

JUDGMENT1 Aggrieved by the judgment of conviction dated 12.10.1999 passed by the learned Additional Sessions Judge, Delhi convicting the appellant for the offence punishable under Section 304 of Indian Penal Code (hereinafter referred to as I.P.C.), and order on sentence dated 14.10.1999, whereby the appellant has been sentenced to undergo rigorous imprisonment for a period of seven years and fine of Rs.2,000/- and in default of payment of fine the appellant was directed to undergo simple imprisonment for a period of six months, the present appeal has been filed by the appellant. Crl. A. No.645/1999 Page 1 of 13 2. The facts of this case are that the present case was registered on 19.09.1990, on the basis of the statement made by one Ram Singh (PW-12), who had stated that the victim Raju (now deceased) was sitting with him in the factory at Vijay Park. In the meanwhile, the appellant - Ram Avtar came and Raju demanded his money back but the

appellant uttered that he will give the money from his house. Thereafter, Raju went to his house at Chhajupur, Shahdara. It was further stated by the complainant that he was standing near Shiv Mandir and Raju went to the house of the appellant. After

minutes at about 8.30 PM Raju and Ram Avtar came over 100road, Near Shiv Mandir, where Raju gave abuses to Ram Avtar, on which the appellant Ram Avtar became angry and picked up a stone from nearby and gave a blow with that stone on the forehead of Raju due to which blood oozed out from his forehead. Thereafter, Ram Singh and Ram Avtar took Raju to the house of his brother Amar Singh at Bihari Colony in a rickshaw, from where Raju was taken to the Nursing Home near Swarn Cinema. The doctor at the Nursing Home advised them to take Raju to a Government Hospital. Thereafter, the victim was taken to GTB Hospital, where he was declared dead by the doctors. The case was registered under Section 304 IPC and tried in the 3. court of Sessions. Charge was framed under Section 304 IPC to which the appellant pleaded not guilty.

4. In support of its case, prosecution examined fourteen witnesses i.e. Head Constable Saheed Ahmad (PW-1); Shiv Murat (PW-2); CrI. A. No.645/1999 Page 2 of 13 Constable Satpal (PW-3); Dr. L.T. Ramani, LNJP Hospital (PW-4); Constable Thakur Prasad Singh (PW-5), Head Constable Dilbagh Singh (PW-6); Head Constable Suresh Chand (PW-7); Head Constable Vedvir (PW-8), Sub-Inspector Molar Singh (PW-9); Head Constable Sri Ram (PW-10); Dr.Raj Mohan Trivedi (PW-11), Mr.Ram Singh (PW-12); Amar Singh (PW-13) and Sub-Inspector Jagdish Prasad (PW-14).

5. After conclusion of prosecution evidence, statement of the appellant was recorded under Section 313 Cr.P.C. in which he denied the entire case of prosecution and claimed innocence. After considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellant guilty for an offence punishable under Section 304 IPC vide judgment of conviction dated 12.10.1999 and order on sentence passed on 14.10.1999. The appellant has filed the instant appeal challenging the 6. aforesaid judgment on conviction as well as order on sentence. During pendency of the present appeal, the sentence imposed upon the appellant was suspended vide order dated 13.07.2000.

7. GROUNDS OF CHALLENGE There are material contradictions and inconsistencies in the statements of the witnesses. The story given in the FIR as well as in the statement of Ram Singh (PW-12) recorded under Section 161 of Cr. P.C., is false and it is made as an after-thought at the instance of CrI. A. No.645/1999 Page 3 of 13 the police in order to falsely implicate the appellant. Public witness Amar Singh (PW-13) was introduced later on as an after thought to falsely implicate the appellant to complete this prosecution case. Both the public witnesses i.e. Ram Singh (PW-12) and Amar Singh (PW-

13) are close relatives of the deceased and in connivance with each other they have falsely implicated the appellant. There is no cogent evidence to establish that witnesses PW12 and PW13 were present at the spot at the time of the alleged offence. The investigating officer did not care to call any public witness on the spot. No blood stained stone piece or the weapon of offence was produced in evidence. There is no cogent and logical evidence against the appellant to convict him in this case. The appellant had every opportunity to flee at any time as he along with others had taken the injured to the hospital. In case the appellant would have had a guilty mind, he would not have accompanied the victim or PW-12 and PW-13.

8. Per contra, learned Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that the judgment of conviction and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegalities and is passed with a reasoned order, therefore, the same is not liable to be interfered with. The public witnesses have duly supported the case of prosecution. PW12 Ram Singh who is the eye witness has stated that he had seen the appellant giving stone blow on the head of deceased Raju. His testimony is natural and the same is corroborated by other evidence. CrI. A. No.645/1999 Page 4 of 13 There is no doubt about the testimony of public witnesses and their presence at the spot. Arguments advanced by the learned counsel for the appellant as 9. well as learned APP for the State were heard. Perusal of the impugned judgment reveals that the learned 10. Additional Sessions Judge has relied mainly upon the deposition of Sub-Inspector Jagdish Prasad (PW-14), Ram Singh (PW-12) and

Amar Singh (PW-13) for reaching the conclusion of guilt of the appellant. For proper appreciation of the deposition, let the same be separately scrutinized. The eye witness of the incident is Ram Singh (PW-12). In his 11. testimony he had deposed that on 18.09.1990 at about 9 or 10 p.m., he along with Raju and Amar Singh (PW13) went to the house of the appellant-Ram Avtar to take back money which was given to Ram Avtar by Raju near Shiv Mandir, Maujpur, 100 feet road. On the demand of money by Raju from Ram Avtar, a quarrel started between them. In the quarrel, appellant-Ram Avtar gave stone blow on the head of Raju due to which Raju fell down. PW13 along with Amar Singh took Raju to Nursing Home near Swaran Cinema, but doctor refused to admit Raju there and asked them to take Raju to GTB Hospital. Then they took Raju to GTB Hospital. At that time, they apprehended appellant-Ram Avtar and he also accompanied them to nursing home and GTB Hospital. In GTB Hospital, they came to know that Raju had expired so they came to police station along with Crl. A. No.645/1999 Page 5 of 13 appellant-Ram Avtar. He made statement Ex.PW12/A before the police. He further deposed that occurrence took place on 100 feet road. Appellant-Ram Avtar was arrested by the police. During cross- examination, this witness (PW13) stated that the money was not given by Raju to Ram Avtar in his presence, but there used to be quarrels between them regarding money. He stated that he himself went to the police station. He denied that appellant-Ram Avtar made telephone call to police at number 100. He admitted that the appellant was arrested by the police in GTB hospital. He further stated that when they took injured Raju to nursing home, he was accompanied by Amar Singh and appellant-Ram Avtar. He denied that Ram Avtar took injured to GTB hospital or that PW13 along with his brother was not with Ram Avtar or that they were called later on by Ram Avtar. He stated that deceased Raju was cousin devar of his sister. He also stated that the time of occurrence was about 9 or 10 p.m.

12. Testimony of PW12 Ram Singh has been corroborated by another public witness Amar Singh (PW13). PW13 had testified that on 18.09.1990 at about 9 or 9.30 p.m., appellant-Ram Avtar brought Raju in an injured condition to him. Then, he along with Ram Singh (PW12) and appellant-Ram Avtar took Raju to nursing home Holychild near Swaran Cinema where doctor advised them to take him to GTB Hospital. Then they took Raju to GTB Hospital but Raju was declared dead

by the doctors at GTB Hospital. Then he came to the police station to lodge the FIR. Police apprehended appellant-Ram Avtar. He further testified that appellant-Ram Avtar told him that he CrI. A. No.645/1999 Page 6 of 13 had some money transaction with Raju. Appellant-Ram Avtar also told him that when Raju demanded his money back from him then some quarrel took place between them and Raju sustained injury in that quarrel on his head. During cross-examination, PW13 stated that appellant-Ram Avtar remained with them. Due to lapse of time he could not tell the exact place of injury of Raju but injury was on his head. He denied that there was no dispute regarding transaction of money between Raju and appellant-Ram Avtar. He further denied that nothing was narrated to him about the incident by the appellant. Testimony of Ram Singh (PW12) has further been corroborated 13. by Shiv Murat (PW2) who had deposed that in the year 1990 when he came from his office at about 08.30 p.m., he saw that Ram Singh was demanding money from his children. Accused/appellant was tenant in the house of PW2. Ram Singh was his brother as told to him by the accused/appellant. On hearing the noise, he came out of his room and saw that there was exchange of hot words between the accused/ appellant and his brother. This witness asked them not to quarrel there and to go outside. Thereafter police came to his house at 12 night. Police told him that Ram Singh had died. Witness clarified the names by saying that Raju and Ram Singh used to visit him and he was informed that they were brothers. He further deposed that on the day of incident, the person who was demanding money from his children and to whom he turned out of his house was learnt to have died. In his cross-examination, witness stated that he enquired from Raju and came to know from the deceased that he was demanding money from CrI. A. No.645/1999 Page 7 of 13 the accused/appellant. Sub-Inspector Jagdish Prasad (PW-14), who was 14. the investigating officer of the case has deposed that on the date of incident, i.e. 18.09.1990 DD No.92-B was given to him. He collected the MLC of deceased Raju. The patient was declared brought dead by the doctor. As per this witness, he interrogated the appellant, sent the rukka at 12.20 AM on 19.09.1990. He conducted the personal search of the appellant. Banian of accused Ram Avtar was blood stained. The same was taken into possession vide memo Ex. PW-9/A. he visited the place of occurrence, prepared the site plan Ex. PW-14/B with correct

marginal notes on the pointing out of Ram Singh. It is further recorded that many stones were lying near the spot but no blood stained stone was found there. After completion of investigation challan was submitted. CFSL report (Ex. PW-14/H) and Ex. PW-14/J) were filed.

15. PW-1 is Head Constable Shahid Ahmed, who had recorded the DD No.92-B, at Police Station Shahdara which is exhibited as Ex.PW- 1/A. On receipt of rukka, he had recorded the formal FIR No.308/1990 (Ex.PW-1/B) vide DD No.22-A. PW-3 is Constable Satpal, who deposed that on 18.09.1990 he went to GTB Hospital alongwith Jagdish Prasad, Sub-Inspector Molar Singh and Constable Mahinder. He further deposed that Investigating Officer had recorded the statement of the complainant Ram Singh and took the rukka to the Police Station for registration of FIR. Constable Thakur Prasad Singh (PW-5) had deposed that on 20.09.1990 he took the dead body of Raju at Mortuary Subzi Mandi, Civil Hospital for post mortem. He took the Crl. A. No.645/1999 Page 8 of 13 sealed pulanda duly sealed with the seal of doctor and envelope which contained blood gauge pieces and one sample seal and handed over the same to the Duty officer vide seizure memo Ex. PW-5/A. Head Constable Dilbag Singh (PW-6) deposed that on 20.09.1990, Constable Thakur Prasad had handed over to him one sealed pulanda.

16. Head Constable Suresh Chand (PW-7) deposed that on 25.09.1990 MHCM handed over to him one sealed pulanda for depositing the same at CFSL Lodhi Complex vide R.C. No.109/21. Head Constable Vedvir (PW-8) had deposed in his testimony that on 18.09.1990 he informed the Police Station Shahdara vide DD No.92-B about admission of injured in the hospital, who was declared brought dead. Sub-Inspector Molar Singh (PW-9) had deposed that on 18.09.1990, Sub-Inspector Jagdish Prasad received DD No.92-B regarding admission of Raju in the GTB Hospital being brought dead. Thereafter, they reached there. Investigating Officer collected the MLC of deceased Raju and recorded the statement of Amar Singh. The appellant was arrested from the hospital. The baniyan of the appellant was taken into possession, which had blood stains. The same was sealed with the seal of JPB vide seizure memo Ex. PW-9/A.

17. Head Constable Sri Ram (PW-10) had deposed in his testimony that on 19.09.1990, Sub-Inspector Jagdish Prasad handed over to him one sealed pulanda containing banian of the appellant Ram Avtar. He made an entry in Register No.19. Sub-Inspector Jagdish Prasad (PW- 14), who is the Investigating Officer of this case, deposed that on 18.09.1990, he was given DD No.92-B. He collected the MLC of CrI. A. No.645/1999 Page 9 of 13 Raju. Ram Singh met him in the hospital, statement of whom (PW-12) was recorded as Ex.PW12/1. He had also recorded the statement of Amar Singh (PW-13) and the appellant herein. He sent the rukka for registration of FIR. Banian of the appellant was found to be with blood stains. Thereafter, alongwith witnesses and accused, PW14 went to the place of occurrence, prepared site plan Ex.PW-14/B. He further deposed that many stones were lying near the spot but no blood stained stone was found there. Inquest proceedings were conducted by him. Indisputably, the quarrel had taken place between the appellant 18. and the victim Raju on account of demand of money by the deceased from the appellant. In the said quarrel, the appellant picked up a stone from the spot and hit on the forehead of the injured Raju, due to which he fell down. It is also a fact that the appellant remained with the injured at the hospital. Doctor of GTB Hospital declared the injured being brought dead. Ram Singh (PW-12) is an eye-witness, who had deposed in his deposition that the appellant was accompanying him and took the injured first to Nursing Home and then to GTB hospital. Amar Singh (PW-13), who is also the brother of the deceased has also deposed in his deposition that he was also accompanying appellant Ram Singh, when the injured was taken first to Nursing Home and then to GTB Hospital.

19. From the testimony of eye witness PW12 Ram Singh, it has been duly established that on the day of the incident, he had seen that there was a quarrel between the deceased and appellant with regard to CrI. A. No.645/1999 Page 10 of 13 some money and during that quarrel, the appellant-Ram Avtar gave a stone blow on the head of deceased Raju due to which he fell down. This witness in simple language has narrated the entire incident of causing injury on the head of the deceased by the appellant-herein. Witness (PW12) was cross-examined at length but the defence had failed to put any dent on his testimony. Witness Amar Singh (PW13) duly corroborated the testimony of eye witness Ram Singh (PW12).

PW13 had stated that he along with Ram Singh (PW12) and appellant- Ram Avtar took injured Raju to nursing home and then to GTB Hospital where he was declared dead by the doctor. He categorically stated that it was the appellant-Ram Avtar who informed him that when Raju demanded his money back from the appellant, some quarrel took place between them and Raju sustained injury in that quarrel on his head. PW2 Shiv Murat had also corroborated that he saw the dispute over money on the day of incident between the deceased and appellant-Ram Avtar. Testimony of PW2 further corroborates that on the day of incident, there was a quarrel between the deceased and appellant on the pretext of money and from the testimony of eye witness (PW12), the said quarrel turned into the incident of causing fatal injury on the head of the deceased by the appellant-herein. the testimony of the eye witness Ram Singh (PW12) is reliable and trustworthy. Even otherwise, his testimony has duly been corroborated by public witnesses Amar Singh (PW13) and Shiv Murat (PW2) whose testimony was also found to be credible. In the considered opinion of this Court, CrI. A. No.645/1999 Page 11 of 13 20. It is apparent from the testimony of prosecution witnesses that there are discrepancies with regard to date and time of incident and the manner of investigation conducted by the police. But the fact remains that the said contradictions or discrepancies are not material enough, which could have gone to the root of the matter. Such discrepancies are bound to occur in normal course. It is a fact that the incident had taken place in the year 1990 and witness PW2 was examined in 1996 i.e. after six years of incident whereas witnesses PW12 and PW13 were examined in the year 1999 i.e. after about nine years of the incident. Such contradictions and discrepancies are bound to occur due to such a lapse of time and after a careful reading of their testimony, this Court does not find the same to be material which could discard the case of prosecution in toto.

21. A cumulative effect of the above discussion leaves no room of doubt that on the day of incident, the appellant committed culpable homicide not amounting to murder of the deceased Raju and the same has duly been established from the evidence produced on record by the prosecution.

22. Consequently, the judgment of conviction and order on sentence passed by the Court below are upheld.

23. The personal bond and surety bond of the appellant stands cancelled. Appellant, on bail, is directed to surrender within a period of 15 days before the trial court concerned to serve the remainder of the sentence. Crl. A. No.645/1999 Page 12 of 13 24. With the above observations, the present appeal stands disposed of. Pending application, if any, is also disposed of. JANUARY06 2017 dd (P.S.TEJI) JUDGE Crl. A. No.645/1999 Page 13 of 13

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