

Naval Kishore @ Bobby vs.state

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SooperKanoon Citation : sooperkanoon.com/1212762

Court : Delhi

Decided On : Feb-13-2018

Appellant : Naval Kishore @ Bobby

Respondent : State

Advocate for Pet/Ap. : Mr. K. Parameshwar

Judgement :

\$~3 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 1162/2017 & CRL.M (B) 2231/2017 NAVAL KISHORE @ BOBBY Appellant Through: Mr. K. Parameshwar, Advocate with Mr.Yogesh Ahirao, Advocate. versus CORAM: JUSTICE S.MURALIDHAR STATE Through: Ms.Radhika Kolluru, APP for State. Respondent JUSTICE I.S. MEHTA %

ORDER

1302.2018 Dr. S. Muralidhar, J.:

1. This appeal is directed against judgment dated 12th September, 2017 passed by the learned Additional Sessions Judge, North District, Rohini Courts in Sessions Case No.23/2017 arising out FIR No.514/2016 registered at Police Station (PS) Bhalaswa Dairy under Section 302 IPC convicting the Appellant for the said offence and the order on sentence dated 19th September, 2017 sentencing the Appellant to rigorous imprisonment for life and fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment for a period of

six months. Case of the prosecution 2. The case began with a call being received at the Police Control Room CrI.A.1162/2017 Page 1 of 11 (PCR) from Abdul Qadir (PW-13) on 6th October, 2016 that near the Ram Rahim Chowk at Bhalaswa Dairy kisi ne ladke ko chaku mar diya hai. The police appeared to have reached there at around 7.30 pm to find out that the injured had already been taken to the hospital by Akash (PW-12).

3. Inspector Satish Kumar (PW-23) was posted at PS Bhalaswa Dairy. He reached the spot and met S.I. Rohit (PW-8) along with ASI Sumit (PW-14). The crime team also visited the spot. According to PW-23 while he was at the spot, the wife of the deceased Heena (PW-9) came there and he prepared a site plan (Ex.PW-23/A) at her instance. According to him PW-9 told him that she could point out the house of the Appellant who had stabbed her husband. They went to House No.10, Gali No.2, Guru Nanak Dev Colony but the house was found locked.

4. Thereafter, PW-23 along with PW-9, Head Constable Mahesh Singh (PW-19) and Constable Kuldeep (PW-15) were returning to the PS when a secret informer met PW-23 and told him that the person they were looking for is near Rao Mehar Chand School, near old toilet. PW-23 then went there with the two policemen and apprehended the Appellant who revealed his name. He was arrested, interrogated and subjected to a personal search. He gave a disclosure statement and then led the police to the bushes near the toilet and produced one knife which was purportedly used for the commission of the offence. The knife was seized.

5. After bringing the Appellant to the PS, PW-23 called his wife to bring the Appellant's clothes. The Appellant then changed into those clothes and the t-CrI.A.1162/2017 Page 2 of 11 shirt and dirty pants worn by him were wrapped in a pullanda and seized.

6. The post mortem of the deceased was performed by Dr. N.K. Gunjan (PW-21). Injury No.1 was a stab injury in the abdomen produced by sharp cutting instrument and was the cause of the death. The blood sample was preserved on gauge piece, clothes and viscera was taken and sealed. Subsequently, the weapon of offence was shown to PW-21 and he confirmed that the injury on the body of the deceased could have been caused by the said knife. He maintained that even after seeing

the chemical analysis report of the viscera his opinion remained unchanged.

7. The prosecution examined 23 witnesses. In his statement under Section 313 Cr PC, the Appellant stated as under: They are false and interested witnesses. Public persons Qadir, Aakash and Deepak were made to sit in the police station when I was taken to police station on 06.10.2016 from my home at 9:00/9:30 pm. They were beaten and forced to become witness in this case and i.e. they gave statement against me. They also told me that they had taken the injured to the hospital. Impugned judgment of the trial Court 8. In the impugned judgment, the trial Court has proceeded to convict the Appellant on the ground that PW-9 could be relied upon for the last seen evidence although her evidence as regards being an eye witness to the occurrence was not believed. Further PW-9 had identified the Appellant and knew him as he was a friend of the deceased.

9. The trial Court then noted that the blood stained knife recovered from the Appellant was sent to the Forensic Sciences Laboratory (FSL) for analysis. The DNA isolated from the blood stains found in the knife matched the CrI.A.1162/2017 Page 3 of 11 DNA isolated from the blood sample of the deceased. It also matched with the blood found on the t-shirt of the deceased. PW-21 who conducted the post mortem also opined that the injury could be caused by that knife. Therefore, it was held that the recovery of the knife had been proved by the prosecution and that it was linked to the evidence pointing to the guilt of the Appellant.

10. The trial Court held that the recovery of the clothes of the accused was believable. The FSL report on the blood stain on the clothes, that is, t-shirt and pant of the accused matched with the DNA of the deceased and this also pointed to the guilt of the accused. The non-joining of public persons for the recovery of clothes was held not to be fatal to the case of the prosecution. Therefore, it was held that the circumstance of last seen, the recovery of weapon of the offence and blood stained clothes formed a complete chain and pointed to the guilt of the accused.

11. This Court has heard the submissions of Mr. K. Parameshwar, learned counsel for the Appellant and Ms. Radhika Kolluru, the learned APP for the State.

12. The witnesses whose evidence is required to be analyzed are Heena (PW-9), the wife of the deceased, Akash (PW-12) and Abdul Quadir (PW- 13). Evidence of PW-9 13. As far as PW-9 is concerned, both in her statement under Section 161 Cr PC to the police and in her deposition in Court, she stated that the Crl.A.1162/2017 Page 4 of 11 deceased and the Appellant were friends as they used to work together as plumbers. According to PW-9, on 5th October, 2016 at around 1.30 to 2 pm, the Appellant came to her house and called her husband (the deceased) who then accompanied the Appellant to his house to consume liquor. When the deceased returned home between 4 and 4.30 pm he is supposed to have told PW-9 that he had had a quarrel with the Appellant.

14. According to PW-9, on the following day, 6th October 2016, the deceased had not gone to work. At around 11 to 11.30 am, the Appellant came to their house and took the deceased along with him. The deceased returned home at about 3 to 3.30 pm and told PW-9 that he had a quarrel with the Appellant; that the deceased had been beaten by the Appellant and that the deceased had sustained internal injury.

15. Again that evening at around 6 to 6.15 pm, when the deceased was taking rest at home, the Appellant is supposed to have come there and said chal sonu bhai aaj ke baad aisi baat nahi hogi aapas mai hota rehta hai chhota mota jhagra, aage aisa nahi hoga chalo bahar ghumne chalte hain. According to PW-9, she tried to dissuade the deceased not to go with the Appellant but despite that the deceased accompanied the Appellant. According to PW-9, she became suspicious and followed them. When the deceased and the Appellant reached the ground of A-2 Block of Swami Shardanand Colony, Bhalaswa Dairy, the Appellant took out the knife from the pocket of his pants, stabbed the deceased in the abdomen and fled away from the spot. PW-9 claimed to have become unconscious on seeing this and when she regained consciousness, the deceased had already been removed to Crl.A.1162/2017 Page 5 of 11 BJRM Hospital. She then reached the hospital and, therefore, came to know that her husband had died.

16. The trial Court has rightly disbelieved the above evidence because it has come in the deposition of Akash (PW-12) that after noticing that the deceased was lying

injured, he had sent some boys to the house of PW-9 for bringing her to the hospital. He was categorical that I informed to Heena that her husband had expired. Heena was aware that her husband had expired. Added to this is the fact that Raghubir Singh (PW-11), the brother-in-law of the deceased stated that he received a phone call from PW-9 who told him that a quarrel had taken place and asked him to reach their house. If indeed PW-9 had followed the Appellant and the deceased and been an eye witness to the Appellant stabbing the deceased, she could not have told PW-11 that there simply was a quarrel. The evidence of PWs-11 and 12, therefore, make it highly doubtful that PW-9 was present and witnessed the crime as spoken to by her.

17. The trial Court has, therefore, rightly disbelieved PW-9 as far as her eye witness testimony is concerned. Strangely, however, the trial Court has relied upon her evidence as far as the last seen is concerned. The trial Court has referred to the decisions in Major Singh v. State of Punjab (2006) 10 SCC499 and Israr v. State of U.P. AIR 2005 SC249 to conclude that her entire testimony could not be discarded only because at some point she had deposed falsely. The trial Court has termed her as a natural witness and, therefore, can be believed for the last seen evidence.

18. The Court is unable to agree with the above analysis of the evidence of CrI.A.1162/2017 Page 6 of 11 PW-9. She has already been disbelieved by the trial court on the main part of her evidence, viz., that she was an eye-witness to the occurrence. Once she is disbelieved on this major aspect, the question of treating her as a trustworthy witness only as far as the last seen evidence is concerned, does not arise. This is a major flaw in the impugned judgment of the trial Court.

19. The decisions referred to have not been correctly appreciated by the trial Court. They were not in the context of facts similar to the one in the present case. Having examined the evidence of PW-9 carefully, the Court is of the view that she cannot be relied upon to return a finding of guilty against the Appellant under Section 302 IPC. Circumstances not proved 20. From the point of the prosecution there appears to be two alternate strategies involved. One is to treat it as a case of direct evidence case by producing PW-9 as the star witness. The other was to

show it to be a circumstantial evidence case. In such event the chain of evidence includes the last seen evidence, the recovery of the knife and the recovery of the blood stained clothes. Each of these circumstances would have to be proved beyond reasonable doubt.

21. Even if the case was to be treated as circumstantial evidence case, the last seen evidence of PW-9 has to be disbelieved as she is not a trustworthy witness. As regards the arrest of the Appellant, while PW-9 is supposed to have witnessed it for some inexplicable reason she did not. The arrest of the Appellant in the manner described by the prosecution, appears to be highly Crl.A.1162/2017 Page 7 of 11 doubtful. In his cross-examination PW-23 states that the accused was sitting in front of Rao Mehar Chand School and when they reached there he attempted to run away. This school is not very far away from where the Appellant lives. It is in the same locality where the deceased lived. If he had committed such a heinous crime, there is no way that the Appellant would have been around and that too in a open place waiting for the police to come and fetch him.

22. PW-9 states that she took the police to the house of the Appellant and upon some boy informing her she took them to the school where they found the Appellant. However, the IO (PW-23) states that they got the information from a secret informer about the presence of the Appellant outside the school. This evidence of the arrest is, therefore, shaky. The recovery of the knife, therefore, is equally shredded in doubt. Why PW-9 was not associated with this recovery is a mystery. Recovery of clothes 23. It was contended by the learned APP that the blood group of the blood stains on the clothes of the Appellant matched that of the deceased and, therefore, this was a clinching piece of evidence against the Appellant. However, the Court notes that PW-12 who reached the spot and noticed the deceased in an injured condition has repeatedly stated in his examination in chief itself that he found no blood either on the clothes or the body of the deceased. Even in his cross examination, he stated that I informed the police that no blood was oozing out of the injury. If that was the position then it is unlikely that any blood would have come on to the clothes of the Crl.A.1162/2017 Page 8 of 11 Appellant. Even the post mortem examination only shows that blood stains were present at certain places in the yellow t-shirt of the deceased and his

underwear. It does not appear that his t-shirt was soaked in blood. It seems highly unlikely in these circumstances that the clothes of the Appellant would be blood stained.

24. In fact, if PW-12 was carrying the injured in an electric rickshaw and if there was blood stains on the deceased, surely the clothes of PW-12 would also be blood stained. However, the clothes of PW-12 were not seized. Dying declaration 25. Extensive reliance has been placed by the prosecution on the so-called dying declaration made by the deceased to Abdul Qadir (PW-13) who incidentally was the person who called up the PCR in the first place. According to PW-13, when he reached the spot he found the deceased in the injured condition but still conscious. According to him, the deceased told him that it was the Appellant who had stabbed him. However, PW-13 does not say that he saw PW-12 there although the time of their reaching the spot was the same. It is strange that PW-12, who took the deceased to the hospital does not say that the deceased told him anything at all. Incidentally, the deceased died in the hospital only at 7.50 p.m. after the attempts to revive him failed.

26. Somehow, therefore, it is not possible to believe PW-13 when he says that the deceased was able to talk to him and convey to him who his assailants were. What is even more strange about PW-13 was that despite his CrI.A.1162/2017 Page 9 of 11 mobile number being prominently displayed in the PCR form, he was not examined by the police till 2 months later, that is, on 5th December, 2016. This inordinate delay in PW-23 taking the statement of PW-13 throw serious doubts on the truth of his version. A dying declaration of this sort requires to be corroborated by other evidence. The Court is not satisfied that the prosecution has discharged that burden. Circumstances not proved 27. Therefore, of the circumstances put forth by the prosecution, that is, the last seen evidence, the arrest of the accused, the recovery of the knife, the recovery of the clothes and the FSL report on such clothes as well as the dying declaration cannot be said to have been proved by the prosecution beyond reasonable doubt.

28. Suspicion can never take the place of proof. The manner in which the prosecution has gone about trying to project the case as one based on direct

evidence but failed on that attempt raises serious doubts about the veracity of the case of the prosecution. Conclusion 29. The benefit of doubt, in the circumstances, ought to be given to the Appellant. The Appellant is, therefore, acquitted of the offence under Section 302 IPC. The impugned judgment of the trial Court and the order on sentence is hereby set aside. The Appellant shall be released forthwith unless wanted in some other case. He will fulfil the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Crl.A.1162/2017 Page 10 of 11 Court record be returned together with a certified copy of this order.

30. The appeal and the pending application are disposed of. S. MURALIDHAR, J.

I.S. MEHTA, J.

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