

Dharambir Sharma and Anr Vs. State

Dharambir Sharma and Anr Vs. State

SooperKanoon Citation : sooperkanoon.com/4332

Court : Delhi

Decided On : Nov-17-2014

Judge : Mukta Gupta

Appellant : Dharambir Sharma and Anr

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: November 13, 2014 Judgment Delivered on: November 17, 2014 % + CRL.A. 1013/2014 DHARAMBIR SHARMA & ANR Represented by: Appellants Mr.S.K.Goyal, Advocate. versus STATE Represented by: Respondent Mr.Varun Goswami, APP for the State with Inspector Indraj Singh, PS Adarsh Nagar. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Appellants Dharambir Sharma and Rakesh Sharma who are father and son challenge the impugned judgment dated April 29, 2014 convicting them for offences punishable under Sections 302/34 IPC and 307/34 IPC and directing them to undergo imprisonment for life for offence punishable under Sections 302/34 IPC with a fine of `50,000/- and Rigorous Imprisonment for a period of seven years and a fine of `15,000/- for offence punishable under Sections 307/34 IPC vide the impugned order dated April 30, 2014.

2. Assailing the judgment learned counsel for the appellants contends that there are contradictions in the testimony of the alleged eye witnesses as to the number of injuries and the part of the body where the injuries were inflicted. The recovery of alleged weapon of offence cannot be believed. It is the case of the prosecution that the appellants were roaming in the area in the night with blood stained clothes and were apprehended in the morning. The defence evidence has not been considered and the appellants have been falsely implicated. The testimony of PW-18 Nilesh Singh proves the defence version. The presence of Satish Kumar Chand PW-8 at the spot at the time of alleged incident itself is highly doubtful which is demonstrated from the fact that he suffered no injury in the incident despite his brother being beaten. Even as per the post-mortem report the injuries were on the scalp and the neck region and thus no injuries were inflicted on the entire body as alleged. The matter was reported to the police belatedly and thus statements have been fabricated.

3. The explanation of the appellants in their statement under Section 313 Cr.P.C are that they have been falsely implicated because of the enmity of the victims family with Dharambir Sharma in relation to Shani Bazar matter wherein Dharambir Sharma was supporting the Shani Bazar Vendors Union. The vendors of Shani Bazar indulged in a fight with the deceased and his brother and later fled away from the spot. The actual offenders were not caught and Dharambir Sharma was implicated by taking Dharambir Sharma and his elder son to the Police Station. The appellant Rakesh Sharma was busy organising things for the next morning bhandara and when he learnt that his father Dharambir Sharma and elder brother have been illegally detained in the Police Station, he reached the Police Station where he was also detained. Three defence witnesses i.e. Sita Ram Sharma DW-1, Sushil Kumar Upadhyay DW-2 and Pritam Singh Batra DW-3 have been examined who have deposed that Dharambir Sharma and his elder son were made to sit in the Police Station and they were pressurised to call Rakesh. On Rakesh coming to the Police Station both Dharambir Sharma and Rakesh Sharma were falsely implicated. Sushil Kumar Upadhyay DW-2 further stated that he was Pujari of Hanuman Mandir at Shastri Market, Azad Pur and that on May 13, 2006 Rakesh was present with him from 7.30 PM onwards as Bhandara was for about 100 persons.

4. Process of law was set into motion on receipt of PCR call on May 13, 2006 at 8.15 PM informing that a quarrel was going on in front of A-2, Majlis Park, Delhi-33, Indra Nagar, Azad Pur Mandi. On reaching the spot SI Heera Lal and Constable Deepak found blood lying in front of Shop A-2 and learnt that injured have been shifted to BJRM Hospital by the relatives. Leaving behind Constable Deepak on the spot SI Heera Lal went to BJRM hospital. ASI Dharamvir also reached. MLC of Mahesh was taken wherein he was declared brought dead and MLC of Om Prakash declared him unfit for statement. Satish Chand who was present in the hospital and was the brother of the deceased Mahesh met SI Heera Lal and gave his statement which was recorded vide Ex.PW-8/A on the basis of which FIR was registered. The complainant stated that a day prior to the occurrence i.e. on May 12, 2006 at about 7.00 AM one boy was pasting posters of Adarsh Nagar Welfare Society on the wall of their house which posters contained the photograph of Dharambir Sharma. The deceased Mahesh removed those posters and instructed the boy not to paste any posters on their wall. Thereafter the boy left stating that the posters are of Dharambir Sharma. At about 8.30 AM Dharambir Sharma along with his son Rakesh Sharma came to the shop of the deceased Mahesh. The shop of the complainant and the shop of the deceased were adjoining each other. At that time the deceased was not present at the shop. Both the accused threatened to kill the deceased and left. Dharambir Sharma and Rakesh Sharma again came to the shop of the deceased at 11.30 AM on that very day and again threatened to kill them when the deceased was present at the shop. Again at 8.05 PM on May 13, 2006 Dharambir Sharma and Rakesh Sharma came to the shop of the deceased with iron rods in their hands. Dharambir exhorted to kill the deceased on which Rakesh inflicted one iron rod blow on the head and other parts of the body of the deceased. When Om Prakash brother of the complainant and the deceased intervened the two accused gave iron rod blows upon Om Prakash as well. Rakesh Sharma tried to attack the complainant also but he managed to save himself. After the incident he along with his nephew Kapil brought the injured to BJRM Hospital where Mahesh was declared brought dead.

5. The post-mortem of the dead body was conducted by Dr.Upender Kishore PW-5 who authored the post-mortem report Ex.PW-5/A and noticed the following external injuries:

1. Reddish abraded bruise in an area of 3 x 2 cm present over the right side outer aspect of forehead.
2. Abraded lacerated wound with contuse margin of size 7 cm x 1 cm x bone deep vertically present over the left temporal region placed 5 cm above the left ear. Depressed fracture of underneath bone was present.
3. Lacerated wound of size 10 cm x 2 cm x bone deep over the left occipital region vertically placed with depressed fracture of the underneath bone. Margins contused.
4. 6. Abraded bruise of size 10 x 2.5 cm present over the left side middle of neck, reddish in colour.

Dr.Upender Kishore opined the cause of death to be cranio-cerebral damage as a result of ante-mortem injuries to the head produced by heavy blunt object sufficient to cause death in the ordinary course of nature. After the recovery of the weapon of offence at the instance of the appellants subsequent opinion was sought from Dr.Upender Kishore who vide his subsequent report Ex.PW-5/B noted that the rod No.1 was slightly curved and also having mark Fit Me on the one side and two small holes in the opposite side. The length of the rod was 77 cm and diameter 1.5 cm. Rod No.2 (Sabbal) was flat tapered at one end and blunt rounded at opposite end. The length of the rod was 83 cm and diameter 3.75 cm at the blunt rounded end. On examination of both the rods he opined that the injuries over the body of the deceased Mahesh Chand could have been produced by rods examined by him or similar or of similar kind weapon.

7. Satish Chand appearing as PW-8 in the witness box deposed in sync with his statement on the basis of which FIR was registered. Om Prakash PW-11 the other brother of Satish Chand and Mahesh Chand who appeared in the witness box as PW-11 and was an injured witness deposed about the morning incident which he had witnessed when his brother Mahesh Chand objected to the posters being pasted and Dharambir Sharma coming to the shop of his brother and asking him where his brother Mahesh Chand was. At that time Mahesh Chand was away to distribute the milk in the area and Om Prakash told Dharambir Sharma that he

would be coming back in an hour. At 11.30 AM Dharambir Sharma and his son Rakesh Sharma came to the shop of Mahesh Chand and started hurling abuses on them. Dharambir Sharma caught hold of Mahesh Chand from the collar of his shirt and said that he would kill him for tearing away his posters. At that time Rakesh was pushing Mahesh Chand and said that he would kill Mahesh Chand. Om Prakash intervened in the matter and said that had the posters not been pasted the same would not have been torn away. Both the accused persons left the shop saying that they will kill. On May 13, 2006 at about 8.00 PM Om Prakash was present at his shop when Saturday market was being held on the road. He heard abuses being hurled and he came out of his Shop. He found Dharambir Sharma and Rakesh Sharma present at the shop of his brother Mahesh Chand and each of them was carrying iron rod. Rakesh Sharma dealt a rod blow on the head of Mahesh Chand. Om Prakash inquired from Rakesh Sharma as to why he had given blow on the head of his brother. Prior thereto both the accused persons were seen hurling abuses at Mahesh Chand and saying that they would kill him. After inflicting injury on the head of his brother Rakesh Sharma turned towards him and inflicted iron rod blow on his right shoulder. Om Prakash stepped back. Thereafter another iron blow was given on his head but he could not say as to who inflicted that iron blow. He became unconscious and Mahesh Chand started bleeding. He regained consciousness and found himself at Jaipur Golden Hospital. The version of this witness is corroborated by the MLC and his discharge summary sheet. The MLC of Om Prakash Ex.PW-1/A shows two CLW injuries present over the left side of shoulder and left side of the eye. As per the discharge summary Ex.PW-7/A he remained admitted for 18 days. There is no reason to disbelieve the version of this witness as he was an injured witness and was thus present at the spot when the incident took place.

8. Satish Chand and Om Prakash have explained the injuries on the deceased which are duly supported by the MLC and the post-mortem report. The witnesses have not stated that the appellants inflicted injuries on the body of the deceased but at the head which is corroborated by the postmortem report. The presence of Satish at the spot cannot be disputed. His shop was adjoining to the shop of Mahesh Chand and Om Prakash and thus he would have been naturally at his shop at the relevant time and would have witness the incident.

9. As per SI Heera Lal PW-17 after lifting the blood and blood stained concrete from the spot, search was made for the accused. Dharambir Sharma was arrested from Adarsh Nagar bus stand at the instance of complainant Satish vide memo Ex.PW-8/G. Pursuant to disclosure statement of Dharambir Sharma, the police party was led to SBI Road and from the corner of the park , blood stained iron rod measuring 2 ft. was recovered. As per the CFSL report Ex.20/y, the iron rod was stained with blood of human origin of group B which was that of the deceased. Further the clothes of Dharambir Sharma i.e. cream colour payjama and one checkdar shirt were also seized as they were blood stained and as per the CFSL report the two clothes were found stained with blood of human origin of group B. Search for Rakesh Sharma was made, who was apprehended from out gate of New Sabzi Mandi vide memo Ex.PW-8/J.

Pursuant to his disclosure, one blood stained iron rod measuring 2.7 ft. was recovered and seized. The clothes of Rakesh Sharma i.e. one dharidar shirt, one brown pant and one baniyan were also seized. The pant and shirt were also having blood stained. As per the CFSL report Ex.20/Y, the iron rod gives positive of human blood however blood grouping could not be determined due to disintegration. However, the clothes i.e. shirt and pant of Rakesh gave positive result of presence of human blood of B group.

10. Learned counsel for the appellants assailing the recovery states that it is highly improbable that the whole night the appellants continued to wear the blood stained clothes. There is nothing improbable in this conduct as their circumstances compelled them to continue wearing the same clothes. After the incident the appellants had run away and the incident having been witnessed by a number of people it was natural that they could not have gone to their residences for the fear of being caught and thus there was no way that they could have changed the clothes during night hours. Thus, they were roaming around with blood stained clothes and were questioned as such.

11. The appellants have heavily relied upon the testimony of Nilesh Singh PW-18, who though deposed about the incident but stated that one person had injured Mahesh Chand and he did not identify the person who had given beatings to

Mahesh Chand and Om Prakash because of stampede. Nilesh Singh has partly supported the prosecution case and since he was resiling from his previous statement he was cross-examined by learned APP. In his cross-examination, he has stated Satish Chands presence, the incident wherein Mahesh Chand was beaten to death and that Satish Chand rushed both Mahesh Chand and Om Prakash to BJRM Hospital. He stated that he made no efforts to save the two of them due to fear. Though according to Nilesh Singh only one person was involved in the incident, however this is belied as the deceased had as many as 4 injuries on the head and when Om Prakash tried to save his brother Mahesh Chand, he was also injured thus, showing the presence of at least two persons in the incident. Even Nilesh Singh admitted the presence of Satish Chand and Om Prakash besides deceased Mahesh Chand at the spot and thus we find no reason to disbelieve Satish Chand and Om Prakash.

12. The appellants have taken the plea of alibi and have stated that they were not present at the time of incident. Though defence evidence has been led by the appellants to show that they were not present at the spot, however both Sita Ram Sharma DW-1 and Pritam Singh Batra DW-3 are not the witnesses of the incident. Both have not deposed that Dharambir Sharma was with them at the relevant time. On cross-examination by learned APP, Sita Ram Sharma clearly stated that he did not know about the incident and was called by the SHO through phone at about 12.00 in the night and thereafter he went to the police station. Even Pritam Singh Batra DW-3 stated that on May 13, 2006 he was at his house whereas Dharambir Sharma was convening a meeting with Shani Bazar Vendors Association. He could not attend the meeting. He received a call from the police station Adarsh Nagar and was asked to see the SHO. When he reached the police station, he found Dharambir Sharma sitting on the first floor of the police station and Dharambir Sharma told him that his younger son is being called which evidence has been objected to as hearsay. Since both Sita Ram Sharma DW1 and Pritam Singh Batra DW-3 were not present at the time of incident with Dharambir Sharma they could not depose as to whether he was present at the time of incident or not and their testimonies are of no benefit to the appellants.

13. Further Sunil Kumar Upadhyay DW-2 has deposed that he was Pujari of Hanuman Mandir at Shastri Market and that they organized bhandara on puranmasi and on the eve of Puranmasi Bhajan Kirtan takes place. On May 13, 2006 from 7.30 pm onwards Rakesh Kumar who used to participate in such religious activities was present with him. He stated that he and Rakesh Kumar both went to arrange cylinder from MCD Colony near Model Town and came back at about 9.00 pm after taking the cylinder. Thereafter also Rakesh Kumar remained with him till about 11-12 in the night when somebody came from his house to call him. In the cross-examination, this witness admitted that bhandara used to be organized at the road itself and no permission was sought from the authorities to hold the bhandara. He further stated that he did not remember since when Rakesh Kumar used to visit Hanuman Mandir. Further no evidence has been produced by this witness to show that bhandara actually took place and arrangements thereof were done by the appellant Rakesh Kumar with Sushil Kumar Upadhyay DW-2. Further no such suggestion has been given to the complainant Satish Chand and Om Prakash that at the relevant time Rakesh Kumar was in the Mandir and taking part in organization of bhandara. Thus this plea is clearly an afterthought.

14. As noted above, the weapon of offence used by the appellants were iron rods and the post-mortem report shows that there were two lacerated wounds which had caused depressed fracture in the left temporal region and the left occipital region resulting in cranio-cerebral damage and the death.

15. In view of the weapon of offence used and the impact with which the same were used, we are of the considered opinion that the appellants have been rightly convicted for the offence punishable under Section 302/34 IPC and in view of the injuries on the Om Prakash, conviction for offence under Section 307/34 IPC is also upheld. The appeal is dismissed.

16. T.C.R. be returned.

17. Three copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the two others to be handed over to the appellants.
(MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE NOVEMBER17,

2014 vn

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com