

Ravi Kumar @ Mangoo Vs. State

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Court : Delhi

Decided On : Feb-27-2015

Judge : Sunita Gupta

Appellant : Ravi Kumar @ Mangoo

Respondent : State

Judgement :

§~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

27. h February, 2015 + CRL.A. 683/2012 & Crl. MB99772014, Crl. MA183002014,Crl.MA76132014, Crl. MA55262014 and Crl. MB1542014 RAVI KUMAR @ MANGOO Through: Appellant Mr Saurabh Kansal and Ms Pallavi S. Kansal, Advs. versus STATE Respondent Through: Ms. Ritu Gauba, Additional Public Prosecutor for the State alongwith SI Vivek Malik Police Station Vasant Kunj, North % CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. The challenge in this appeal is to the impugned judgement and order on sentence dated 3rd April 2012 and 19th April 2012 whereby the appellant was convicted for offence under Section 304(I) Indian Penal Code 1860((hereinafter referred to as IPC) and was sentenced to rigorous imprisonment for 10 years with fine of Rs 25,000 and in default of payment of fine to undergo simple imprisonment

for 6 months. The fine so recovered was directed to be paid to the victim PW7 as compensation. Benefit of section 428 Cr.P.C was given to the accused.

2. The gravamen of the prosecution case is as follows: On 4-1-2009 DD No.38-A was recorded at P.S Vasant Kunj, New Delhi regarding a stabbing incident near Balmiki Mandir, House No.A-270, Kusumpur Pahari, New Delhi. PW-25 SI Sukhram Pal with PW-6 Ct. Dharam Singh, reached the spot where it was revealed that the injured has been shifted to hospital in a private vehicle. Accused Ravi Kumar @ Mangoo was found at the spot and was apprehended by public. He was having injuries on his head. SI Sukrampal along with Ct. Dharam Singh, after leaving the beat staff at the spot took Ravi @ Mangoo to Safdarjung Hospital for examination. SI Sukhram then obtained the MLC of Amit, who had expired in casualty at 8:10 p.m. PW22 Shri Ram Babu S/o Shri Chattar Singh R/o Jhuggi No.A-355, Kusumpur Pahari, New Delhi was present in the hospital and his statement EX.PW22/A was recorded wherein he stated that one Munni, sister of accused Ravi @ Mangoo who used to reside near his jhuggi always objected to the parking of his motorcycle in the gali and used to quarrel with him in this regard. Her brother accused Ravi Kumar @ Mangoo also quarrelled with him. On 04.01.2009, around 6:15 p.m, he was present in his house when his son Nitin shouted from the Gali that accused Ravi Kumar @ Mangoo was beating and abusing him. On hearing this, the complainant went to the gali and saw that accused Ravi Kumar @ Mangoo had caught hold of his son Nitin from his neck and was abusing him. Accused Ravi Kumar @ Mangoo was then taken away by his family members inside his jhuggi. Amit, his nephew had also intervened in the quarrel. After some time, accused Ravi Kumar @ Mangoo came back in the Gali with a knife in his hand. Amit was standing outside the house of Satbir. Amit asked accused Ravi Kumar @ Mangoo to return to his house as he was drunk but accused Ravi Kumar @ Mangoo replied Tu kaun hai, tere hi ko maja chakhata hoon. He then gave a knife blow on the chest of Amit, as a result of which he fell down. Nand Ram, father of Amit, who was standing nearby caught hold of accused Ravi Kumar @ Mangoo with the help of a person standing nearby and then accused Ravi Kumar @ Mangoo was beaten. Amit was taken in the car of Shri Dharamvir to Safdarjung Hospital, where he died. On the basis of this complaint, rukka Ex.PW25A prepared by SI Sukram Pal. Ct. Dharam Singh was

sent to police station to get the FIR registered. FIR bearing no.4/2009 u/s 302 IPC was registered by PW19 ASI Suresh Kumar. Investigation, thereafter, was transferred to Inspector T.R. Punia. The accused was arrested. After completion of investigation, the charge sheet was submitted.

3. Charge under section 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, prosecution in all examined as many as 28 witnesses. All the incriminating evidence was put to the appellant while recording his statement under Section 313 of Code of Criminal Procedure wherein he denied the case of prosecution. According to him, he was falsely implicated in this case by the police at the instance of the complainant and other interested witnesses. He claimed that he never caused any injuries to deceased Amit and there was no enmity between them. He further stated that he was beaten up by the complainant party mercilessly and sustained head injury in the incident. Police had removed him to Safdarjung Hospital but no case was registered against the opposite party regarding his injury. He further stated that the knife allegedly handed over by Nand Ram, father of the deceased was never snatched from his possession, rather the knife was planted upon him in the Police Station. He also stated that the opposite party had beaten him on the issue of parking the motorcycle and that issue never concerned deceased Amit. Deceased Amit came in between with a view to intervene and during the scuffle, he fell down on the motorcycle and sustained injuries and that no injury was caused by him to Amit as alleged. He also stated that he was passing near the place of incident. Some public persons had gathered there and all of a sudden the opposite party attacked him and broke his household articles. Furthermore, not a single independent witness from the locality had been examined by the prosecution and that he was removed to the hospital in an unconscious state and that he regained his conscious next morning. He also stated that all the witnesses deposing against him are related to the complainant and are totally false. However he did not wish to lead any evidence in his defence.

5. After meticulously examining the evidence led by the prosecution, the learned Trial Court observed that prosecution has succeeded in establishing that the stab

wound on the chest of Amit was given by accused and deceased died due to stab wound given by accused; he was apprehended at the spot with knife which was snatched by PW17 Nand Ram and handed over to the police. Accused was beaten by the public. However, keeping in view the fact that accused had no previous enmity with the deceased and was not known to him prior to the date of incident; the act committed by the accused was without any pre-meditation and was the result of a sudden fight in a heat of passion, upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner, therefore, the case is squarely covered under exception no.4 of Section 300 IPC. The accused was therefore convicted for the offence under Section 304(1) IPC and was sentenced as mentioned above.

6. Feeling dissatisfied, the present appeal has been preferred by the appellant.

7. It was submitted by learned counsel for the appellant that Learned Trial Court failed to appreciate that the accused also sustained injuries which is evident from the MLC of the accused Ex PW3/A and hence the incident was an act of self defence. Further, as per the case there were many public persons present at the place of incident, however, no independent witness has been examined. The alleged eye witnesses examined by the prosecution are relatives of the deceased, hence their testimonies cannot be taken into consideration. Furthermore, it is on record that there was no previous enmity between the accused and the deceased and therefore there would be no reason for the accused to have inflicted knife blow on the person of the deceased. It was further submitted that prosecution has failed to bring home the guilt of the appellant/accused beyond reasonable doubt as such he is entitled to be acquitted. Alternatively, it was submitted that the appellant has already undergone sentence of more than 6 years including remission and has 3 minor children and a wife who are having difficulty in making both ends meet and hence he be released on the period already undergone.

8. Rebutting the submissions made by learned Counsel for the appellant, it was submitted by Ms. Ritu Gauba, learned Additional Public Prosecutor for the State that charge sheet in the present case was filed u/s 302 IPC but the appellant was convicted and sentenced for offence u/s 304(1)IPC and therefore leniency was

already shown by the Learned Trial Court and hence there is no reason for the accused to be released on the period undergone. Furthermore, seven prosecution witnesses have substantiated the case of the prosecution and the medical evidence also corroborates their version that the deceased died due to the knife injury caused by the appellant. Moreover, the severity of the injury was such that the deceased was declared brought dead on arrival at the hospital. Also the recovery of the knife and the apprehension of the accused at the spot proves the prosecution story beyond reasonable doubt. As such, no fault can be found with the findings of the learned Trial Court and the appeal is therefore liable to be dismissed.

9. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

10. PW1 Nitin has deposed that on 4-1-2009 at about 6:15 p.m he was coming from market towards his house when accused Ravi Kumar @ Mangoo gave him a kick blow. He called his father, but in the meanwhile accused also gave kick blow to his motorcycle parked outside his house. His father came down stairs and accused started abusing and scuffling with them. However, the family members of the accused took him away to his house. After some time accused returned at the spot, armed with a knife. Amit, his cousin, was standing on a Chabutra built in the street and asked accused to leave the spot as was drunk. Accused started abusing his cousin brother saying that Tu kaun hai, tere hi ko maja chakhata hoon. Thereafter, accused gave a knife blow on the chest of Amit. Father of Amit standing nearby overpowered accused Ravi @ Mangoo and snatched the knife from him. One Anita, wife of Satbir tried to stop the bleeding with a cloth and then injured was taken by his father to the hospital in the vehicle of Shri Dharmveer. Police reached the spot and the accused was handed over to the police.

11. PW17 Nand Ram, father of deceased Amit has corroborated the testimony of PW1 Nitin. He further stated that he snatched the knife from the hands of accused. His brother in-law Rambabu arranged for a car and removed Amit to the hospital. Several public persons from neighbourhood collected there and he handed over accused to them. He handed over the knife to the police which was seized vide

memo Ex.PW17/D.

12. PW22 Sh. Rambabu, father of PW1 Nitin substantially corroborated the testimony of PW1 Nitin.

13. He also proved the statement Ex PW22/A made to the police at the earliest available opportunity. He further deposed that he removed Amit in the car of Dharamveer to Safdarjung hospital.

14. PW23 Premchand also witnessed accused inflicting knife blow on the chest of Amit.

15. PW4 Sh. Dharamveer, did not support the case of prosecution in all material particulars as such he was cross examined by learned Public Prosecutor. However, it is settled law that testimony of a hostile witness is not to be disregarded altogether. So much part of the testimony which supports the case of prosecution can be considered as held in Sathya Narayanan v. State rep. by Inspector of Police, (2012) 12 SCC627 Mrinal Das & Others. v. State of Tripura,(2011) 9 SCC479; State of Gujarat vs. Anirudh Singh and Anr., (1997) 6 SCC514 Radha Mohan Singh @ Lal Sahib and Ors. Vs. State of U.P., (2006) 2 SCC450 Mahesh vs. State of Maharashtra, (2008) 13 SCC271 Rajender and Anr. Vs. State of U.P., (2009) 13 SCC480 Govindapa and Anr. Vs. State of Karnatka, (2010) 6 SCC533 Paramjit Singh @ Pamma vs. State of Uttrakhand, AIR 2011 SC200 Rameshbhai Moahanbhai Koli and Ors. Vs. State of Gujarat, (2011) 3 SCC (Cri) 102; Koli Lakhmanbhai Chanabhai Vs. State of Gujarat, (1999) 8 SCC624 Prithi vs. State of Haryana, (2010) 8 SCC536 Ramesh Harijan Vs. State of Uttar Pradesh, (2012) 5 SCC777 Although this witness deposed that he did not come to know who was the assailant and whether he was apprehended or not but admits that one relative of Rambabu sustained injuries and on the request of Rambabu, he removed injured to Safdarjung hospital.

18. PW11 Rajender, on hearing the noise, came out of his jhuggi and saw Amit lying in the courtyard. He came to know that Ravi @ Mangoo had caused knife blow to Amit.

19. PW12 Sunder Singh corroborated the testimony of PW1, PW17, PW22 and further deposed that he informed police from his STD booth.

20. PW13 Nitin Singh although a hostile witness but deposed that he made a call to police from his mobile no.9958460752.

21. PW16 Neha is the cousin sister of deceased Amit and her statement is on the same lines as that of other prosecution witnesses.

22. It is submitted by learned counsel for the appellant that the eye witnesses in this case are the relatives of the deceased, therefore, their testimonies cannot be relied upon. There are catena of decisions to the effect that the testimony of related witnesses cannot be discarded solely on the basis of their connection with the victim.

23. Honble Supreme Court in Dalip Singh vs. The State of Punjab AIR 1953 SC364 clearly laid down the law relating to appreciation of evidence by relations with such lucidity that it deserves to be quoted:

26. ...Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is

personal cause for enmity, that here is a tendency to drag in an innocent person against whom a witness has a grudge alongwith the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses required corroboration,. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this court endeavoured to dispel in Rameshwar vs. State of Rajasthan, 1952 Crl.L.J.

547. We find, however, that it unfortunately still persists, if not in the judgements of the courts, at any rate in the arguments of counsel.

24. The above decision has since been followed in Guli Chand and others v. State of Rajasthan, 1974 (3) SCC698in which Vadivelu Thevar v. State of Madras, AIR 1957 SC614was also relied upon.

13. In Ashok Kumar Chaudhary vs. State of Bihar, 2008 Crl.L.J.

3030, Hon'ble Supreme Court while dealing with the question of creditworthiness of the evidence of relatives of the victim, after review of several decisions on the issue, including Dalip Singh vs. State of Bihar, 1954 SCR145 Masalti vs. State of U.P., (1964) 8 SCR133and Rizan & Anr. vs. State of Chhatisgarh, 2003 I AD (S.C.) 637 = 2003 Crl. LJ1226 held that relationship per se does not affect the credibility of a witness. Merely because a witness happens to be a relative of the victim of the crime, he/she cannot be characterized as an 'interested witness. It was further observed that the term interested postulates that the person

concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive.

25. In *Jayabalan vs. U.T of Pondicherry*, (2010) 1 SCC199 Hon'ble Apex Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under :

23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court, while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

26. What can be culled out from the aforesaid decisions is that merely because the eye witnesses are somehow related to the deceased, their testimony cannot be discarded on that ground alone if their testimony are cogent and reliable. Obviously their testimony needs to be scrutinized carefully but that is a caution that the Courts should be taking.

27. Reverting to the case in hand, PW1 Nitin, PW17 Nand Ram, PW22 Rambabu and PW18 Neha are related to the deceased. However, a perusal of their statements reveal that the same are cogent, reliable and trustworthy. Despite cross examination, nothing material could be elicited to discredit their testimony. Except for the fact that parking of vehicle by Rambabu and his son Nitin used to be objected by accused and his sister Munni, there was no enmity or ill-will against the accused for which reason he would be falsely implicated in this case. In fact, accused in his statement recorded u/s 313 Cr.P.C had admitted that there was an issue of parking of vehicle and Amit intervened and sustained injuries.

28. The submission of learned counsel for appellant that no independent person of the locality has been examined has absolutely no substance as PW18 Anita, PW23 Prem Chand, PW4 Dharamveer, PW11 Rajender, PW12 Surinder, PW13Nitin Singh were residents of the same locality and all these witnesses have supported the case of prosecution in one way or other. They were not having any strained relation with accused so as to falsely implicate him in this case. In fact voluminous evidence has come on record to prove that it was the accused who inflicted knife blow on the chest of Amit which proved fatal.

29. Even PW8 ASI Sudershan Ram posted at PCR on receipt of information, reached the spot and came to know that Amit was stabbed by knife by a boy named Mangoo. Mangoo was present at the spot and was slightly injured and was under the influence of liquor.

30. Moreover, ocular testimony of the prosecution witnesses find substantial corroboration from medical evidence. Post mortem on the dead body of Amit was conducted by Dr. D.Nath. As per post mortem report Ex.PW26A, cause of death was haemorrhage and shock consequent upon ante mortem injuries caused by a pointed sharp edged weapon which is sufficient to cause death in ordinary course of nature.

31. The weapon of offence was produced before Dr. D. Nath for obtaining opinion. As per the subsequent opinion Ex.PW24/J, injury No.1 as mentioned in post mortem report is possible with the kind of weapon examined. During the course of investigation, weapon of offence was sent to FSL and as per reports of FSL Ex.PW24K and Ex.PW24/K-2 blood of human origin was detected on the knife which is another corroborative piece of evidence.

32. According to accused, during the scuffle, Amit fell down on motor cycle and sustained injuries. This plea is absolutely devoid of merit in view of the voluminous evidence which has come on record to prove that Amit sustained injuries due to knife blow given by accused. Moreover, PW16Dr. Mohit Gupta ruled out the possibility of sustaining such injuries due to fall from a height on or towards the handle of motorcycle.

33. Much stress was laid by learned counsel for the accused for submitting that accused had also sustained injuries because of which he had to be taken to hospital and his MLC was also prepared but no action was taken by police against complainant party. There is no force in this submission as well because it has come on record that after the incident, accused was given beating by the persons of the locality in which he may have sustained injuries.

34. Upon consideration of entire material on record, learned Additional Sessions Judge rightly came to the conclusion that it was the accused who inflicted knife blow on the chest of Amit which proved fatal. However, keeping in view the fact that there was no premeditation and the entire incident took place on the spur of moment; there was no previous enmity, a single knife blow was given hence instead of offence u/s 302 IPC, offence u/s 304(1) IPC was made out. This finding does not suffer from any infirmity and, therefore, does not call for interference and are accordingly upheld.

35. Coming to the quantum of sentence, it was submitted by learned counsel for the appellant that the appellant had already undergone a period of 6 years in jail; he has the responsibility of maintaining his old and aged mother, wife and 3 children; his conduct in jail has remained exemplary and a certificate to this effect was filed, as such the appellant be released on the period already undergone. Leniency in sentence was opposed by learned Additional Public Prosecutor for the State on the ground that a precious life was lost due to unwarranted actions of the appellant. The learned Trial Court has already shown leniency by convicting him u/s 304(1) IPC, therefore, no further leniency is warranted.

36. Keeping in view the totality of the facts and circumstances of the case and the mitigating circumstances set up by the learned counsel for the appellant, coupled with the fact that he is not involved in any other case, the substantive sentence is reduced to 7 years while maintaining the quantum of fine as awarded by the learned Trial Court. The learned Trial Court had directed to pay the fine amount, if deposited, to the victim PW7. It seems that there is a clerical mistake regarding payment of fine to PW7 who is Ct. Sanjay Kumar. PW17 Nandram is the father of deceased, as such in case of realisation of fine, the amount be paid to PW17

Nand Ram. With this modification, the appeal stands disposed of. Pending applications, if any, stand disposed of. Copy of the order along with Trial Court record be sent back. The appellant be also informed through Superintendent Jail. (SUNITA GUPTA) JUDGE FEBRUARY27 2014 as

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