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Abdul Hamid Vs. State

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Court : Delhi

Decided On : Mar-15-1995

Reported in : 1995CriLJ2594

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302, 304 and 307; Code of Criminal Procedure (CrPC) , 1973 - Sections 161 and 313; Evidence Act, 1872 - Sections 114

Appeal No. : Cri. Appeal No. 152 of 1989

Appellant : Abdul Hamid

Respondent : State

Advocate for Def. : Mr. R. Jolly, Adv.

Advocate for Pet/Ap. : Mr. Sushil Bajaj, Adv. (amices Curiae

Judgement :

S.D. Pandit, J.

1. Abdul Hamid son of Abdul Wahid resident of 44/93, Lambi Gali, Hauz Qazi, Delhi, stands convicted of an offence under S. 302 of the Indian Penal Code by an Additional Sessions Judge, Delhi in Sessions Case No. 56/87 and sentenced to

suffer imprisonment for life and to pay a fine of Rs. 1,000/- and in default to suffer S.I. for three months.

2. It is the case of the prosecution that on 26-1-1987 PW 1 Zamir Ahmed was playing gulli-danda with PW 11 Bobby son of Pyare Lal in Lambi Gali, Hauz Qazi. At the time they were so playing the appellant came there along with one boy and he assaulted both PW. 1 Zamir Ahmed and PW 11 Bobby. Thereupon, Zamir Ahmed ran towards his house and on the way he met his uncle Hafeez Ahmed and Zafar Ahmed. He told them about the appellant having assaulted him. The appellant had also reached there and he assaulted PW 1 Zamir Ahmed in the presence of his uncles. At that time deceased Hafeez Ahmed had abused and scolded the appellant. Thereupon the appellant went away threatening that he would teach him a lesson and within five to ten minutes the appellant came back to the spot, armed with a big dagger-cum-chhuri and gave a blow of the same on the chest of deceased Hafeez Ahmed on the left side near nipple. When PW 1 Zamir Ahmed and PW 2 Zafar Ahmed tried to stop the appellant he brandished his dagger towards them and managed to run away. They had followed the appellant to some distance, meanwhile PW4 Farooq came there and gave support to injured Hafeez Ahmed. Thereafter two rickshaws were called and in one of them Hafeez Ahmed was put and PW 4 Farooq took him to Jai Prakash Narain Hospital. Zamir Ahmed PW 1 and Zafar Ahmed PW 2 also went to the said hospital in the other rickshaw. When Hafeez Ahmed was admitted in the hospital PW 4, Farooq had given the information regarding the injuries sustained by him. PW/4 Farooq had asked the deceased on the way as to how he had sustained injury and deceased had told him that he was stabbed by the present appellant.

3. The constable on duty at the JPN Hospital gave intimation to the police station at Hauz Qazi about Hafeez Ahmed being admitted in the hospital with stab injury. P.W. 6 ASI Kishan Lal and PW 14 S.I. Mahinder Singh came to the hospital and they recorded the statement of PW 1 Zamir Ahmed. The doctor on duty had certified that injured Hafeez Ahmed was not in a position to make any statement. On the strength of the statement given by PW 1 Zamir Ahmed the First Information Report was registered at FIR No. 28/87. Thereafter spot memorandum was prepared. Statements of PW 2 Zafar Ahmed, PW 4 Farooq, PW 11 Bobby and

others were recorded. The appellant was arrested on the night between 26-1-1987 and 27-1-1987. At his instance the weapon of offence, viz. dagger-cum-chhuri, which was cut into six pieces was also recovered and on completion of necessary investigation the appellant was charge-sheeted for the offence under S. 302 of the IPC.

4. Charge was framed against the appellant for the offence punishable under S. 302 of the IPC. On 14-7-1987 appellant pleaded not guilty to the charge. His defense is of total denial and false implication.

5. In order to prove its case against the appellant prosecution had examined 16 witnesses. Out of these 16 witnesses PW 1 Zamir Ahmed, PW 2 Zafar Ahmed and PW 4 Farooq are direct witnesses to connect the accused with the offence alleged against him. The trial Court accepted the evidence of these three witnesses and found that the same was also corroborated by the circumstantial evidence on record. The appellant was held guilty of offence punishable under S. 302 of the Indian Penal Code and was sentenced, as stated earlier.

6. Feeling aggrieved by the said decision appellant has come in appeal before us. It is submitted before us by Mr. Sushil Bajaj, learned counsel for the appellant, that the prosecution had not examined any independent witness to support and corroborate the claim of the prosecution. PW 1 Zamir Ahmed and PW 2 Zafar Ahmed are close relations of the deceased and they are interested witnesses. thereforee, their evidence ought not to have been accepted by the trial Court. It is further contended that while making the entry in the daily diary the name of the present appellant as well as the names of the witnesses were not entered and the copy of the First Information Report was not sent immediately to the Magistrate. thereforee, those circumstances created doubt about the truth of the prosecution case and, thereforee, the learned counsel for the appellant, contended before us that the appellant should be given benefit of doubt. In the alternative, he submitted, that the appellant should be held to have committed the offence punishable under S. 304, Part II of the IPC by holding that the act committed by him was under grave and sudden provocation.

7. Mr. R. D. Jolly, learned counsel for the State contended before us that there is clear evidence against the accused and the material on record clearly shows that he had intentionally and knowingly caused the death of the deceased. He, thereforee, contended that the appeal be dismissed and the order of conviction and sentence passed by the trial Court should be maintained.

8. There is no dispute over the fact that the evidence against the present appellant consists of two eye-witnesses PW 1 Zamir Ahmed and PW 2 Zafar Ahmed, who are related to deceased Hafeez Ahmed. Thus, these two witnesses are interested witnesses but merely because they are interested witnesses their evidence could not be thrown out. It is the settled law that merely because the eye-witnesses are related to the deceased their evidence could not be discarded. What the law expects in such a situation is that the Court must scrutinise the evidence of such witnesses very scrupulously and thereafter should come to a conclusion as to whether the said evidence is to be accepted or not. If the evidence of PW 1 Zamir Ahmed and PW 2 Zafar Ahmed is taken into consideration along with the testimony of PW 4 Farooq and PW 11 Bobby, then it would be quite clear that the presence of both these witnesses at the spot at the time of the incident could not be at all doubted. The evidence of PW 11 Bobby clearly shows that on that day he and PW 1 Zamir Ahmed were playing gulli-danda in the Lambi Gali and when they were so playing the present appellant came there with another boy and assaulted both of them and thereafter PW 1 Zamir Ahmed went weeping towards his house near the primary school. If the cross-examination of PW 11 Bobby is taken into consideration then it would be quite clear that his claim about this part of the prosecution case is not at all shattered.

9. PW 4 Farooq has also deposed that on that fateful afternoon he heard some noise and disturbance coming from the road and, thereforee, he came out of his house and at that time he found deceased Hafeez Ahmed standing with his hand on the injury on his chest and at that time PW 1 Zamir Ahmed and PW 2 Zafar Ahmed came back to that spot and then all the three put Hafeez Ahmed in the rickshaw and he was taken to the hospital. This witness has also deposed that he had questioned Hafeez on the way as to what had happened and at that time Hafeez had told him that the appellant had stabbed him. thereforee, the evidence

of PW 4 Farooq gives support and corroboration to the earlier evidence of the two witnesses, viz. PW 1 Zamir Ahmed and PW 2 Zafar Ahmed. It is pertinent to note that the M.L.C. Exhibit PW 15/A shows that at the time of the admission of deceased Hafeez Ahmed in the hospital PW 4 Farooq had given the history of injury by saying that he was 'stabbed by one Abdul Hamid son of Abdul Wahid in front of Nagar Nigam School, Lambi Gali, at 2-00 p.m.' This history is given by him at 2-30 p.m. If the time of the incident is taken into consideration along with the time of the M.L.C. then it would be quite clear that there was no scope for any concoction or making any improvements.

10. If the evidence of PW 1 Zamir Ahmed and PW 2 Zafar Ahmed is seen it would be quite clear that the evidence of both of them is quite consistent and cogent. Their evidence clearly shows that on that day when PW 2 Zafar Ahmed and deceased Hafeez Ahmed were talking with each other PW 1 Zamir Ahmed came there weeping saying that he was assaulted by the appellant and at that time appellant came there and he assaulted Zamir Ahmed, PW 1 in their presence. At that time deceased Hafeez Ahmed had abused and scolded the appellant who went away by saying that he would teach him a lesson. Appellant returned within five to 10 minutes and gave a blow with dagger-cum-chhuri on the chest of deceased and took to his heels. If the cross-examination of PW 1 Zamir Ahmed and PW 2 Zafar Ahmed is seen it would be quite clear that the version given by them is not at all shattered and no major inconsistencies or contradictions are brought out in their cross-examination. No doubt there are a few minor discrepancies but those minor discrepancies instead of creating doubt about their evidence rather indicate that the witnesses were not tutored. Their statements in Court are quite natural and trustworthy. The minor discrepancies are bound to take place in view of the fact that the witnesses were deposing about the incident after more than one and a half year from the date of the incident.

11. It must be further mentioned here that if the cross-examination of four prosecution witnesses, Viz. PW 1 Zamir Ahmed, PW 2 Zafar Ahmed, PW 4 Farooq and PW 11 Bobby is considered it would be quite clear that in none of the cross-examinations there is any suggestion of any one of them having any animosity or ill-will towards the appellant. The appellant also does not claim in his statement

under S. 313 that because of certain events or incidents these prosecution witnesses were interested in falsely implicating him. When the witnesses are related to the deceased and when they have no animosity or ill-will towards the appellant it would not at all be probable that they would leave the real culprit and try to falsely implicate the appellant.

12. The evidence of the eye-witnesses is also supported by the medical evidence on record. Evidence of Dr. George Paul, P.W. 7, clearly shows that there was a single stab injury on the chest of the deceased and the said single injury had resulted into injury of the lobe on the left lung and a cut injury on the left lung. The doctor has also opined that the said injury was anti-mortem and the said injury in the ordinary course was sufficient to cause the death.

13. No doubt the prosecution has not examined any independent witnesses to support the version of PW 1 Zamir Ahmed and PW 2 Zafar Ahmed but if the cross-examination of these two witnesses as well as PW 4 Farooq is considered, then it would be quite clear that there is no material on record to hold positively that there were other witnesses to the incident in question. No doubt the incident in question has taken place in daylight on a public road in a galli but the evidence of the witnesses clearly shows that only a few persons were passing on the road. In any case, the material on record clearly shows that the Investigating Officer had not recorded the statement of any other witness under S. 161 of the Criminal Procedure Code. When a statement is not recorded under S. 161 of the Criminal Procedure Code by the Investigating Officer there is no question of drawing any adverse inference against the prosecution under S. 114(G) of the Evidence Act as it could not be said as to what those statements could have been. (See Sechan v. State of Maharashtra, : 1967 CriLJ414 .

14. Then it must be also mentioned here that now-a-days people in the vicinity where the incident takes place avoid to come forward to give evidence. They try to withdraw themselves as far as possible from the place of occurrence with a view to avoid appearing as witnesses. Consequently, the Investigating Officers are not in a position to get independent witnesses. Hence, merely the failure of examination of independent witnesses could result in rejecting prosecution case. The same

situation is aptly described by the apex Court in the case of Appa Bhai v. State of Gujarat, : 1988 CriLJ848 , wherein it is noted :

'It is no doubt true that the prosecution has not been able to produce any independent witness to the murder that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable, they think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, thereforee, instead of doubting the prosecution case for want of independent witness must consider the spectrum or the prosecution version and then search for the nugget of truth with due regard to probability. if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly, the horror stricken witness at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, thereforee, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.'

15. Learned counsel for the appellant vehemently urged before us that there was delay in recording the First Information Report as well as in sending the copy of the First Information Report to the Metropolitan Magistrate. The incident in question has taken place between 2-00 p.m. to 2-15 p.m. in the afternoon. The First Information Report was received in the Police Station as per DD No. 20-A at 3-15 p.m. about the admission of the injured person in the JPN Hospital and thereafter the officials from Police Station, Hauz Qazi went to the hospital and they recorded the First Information Report on the basis of the statement made by PW/1 Zamir Ahmed. The said First Information Report was registered at 4-10 p.m. and it was dispatched at 4-30 p.m. It must be further mentioned that it is but natural that

PW 1 and PW 2 would first take steps to rush the injured person to the hospital than to run to the police to lodge the report. In view of the timings given above, it would be quite clear that there is no delay in lodging the First Information Report in the instant case. The prosecution has brought on record through Shri K. K. Chhibber, PW. 15, that the contents of the M.L.C. are in the handwriting of Dr. P. P. Mandal and that he is acquainted very well with the handwriting and signature of Dr. P. P. Mandal and Dr. Sundresh. He has further deposed that both Dr. Sundresh and Dr. P. P. Mandal have left the job in the J.P.N. Hospital and their addresses and whereabouts are not known. He has further deposed that the contents of the said M.L.C. are in the handwriting of Dr. Sundresh. The said evidence of P.W. 15 is not challenged or discredited in his cross-examination. The said M.L.C. is prepared by Dr. Sundresh in discharge of his duty as a public servant and in due course of his business and occupation. thereforee, in these circumstances, the document Ex. PW. 15/A is admissible evidence. (See Prithi Chand v. State of Uttar Pradesh, : 1989 CriLJ841 .

16. In the M.L.C. in question the doctor has made the following endorsement :

'Alleged H/o being stabbed by one Abdul Hamid (s/o Abdul Wahid) in front of Nagar Nigam School, Lambi Gali, around 2-00 p.m. (as stated by Mohd. Farooq neighbour).'

This endorsement is made by the doctor on the same day of 26-1-1987 at 2-30 p.m. thereforee, it is quite obvious that the said intimation was given without any lapse of time and PW 4 Farooq has deposed that deceased himself had given him the name of the appellant as the person who had stabbed him. thereforee, in view of the said document Ex. PW. 15/A it is quite obvious that there was no question of any concoction for implicating the appellant in this case. In view of the said document it could not be said that there was purposeful delay in recording the First Information Report. It mus be further mentioned here that the offence was initially registered under Section 307 and as per the provisions of Punjab Police Rules, which are applicable to the Delhi Police the copy of the First Information Report only in case of murder is to be sent to the Magistrate forthwith through special messenger and the copies of the First Information Report in other cases are to be

sent within 24 hours in routine manner. thereforee, as the offence was initially registered under S. 307 on the strength of the First Information Report, the copy of the First Information Report in this case was not sent with special messenger and, thereforee, that act of the investigating agency could not be said to be a deliberate act so as to cast any doubt on the prosecution case. We are unable to accept the contention of the learned counsel for the appellant that there was a deliberate delay in lodging the First Information Report and sending the copy of the First Information Report to the Magistrate.

17. Learned counsel for the appellant has cited before us the case of State v. Khem Chand 1993 JCC 490 in support of his submission that there was delay in lodging the First Information Report and that the name of the accused was also not recorded in the daily diary. He is also relying on the same case for non-production of the blood stained clothes of the eye-witnesses. It must be mentioned here that the daily diary and First Information Report are recorded simultaneously and in the First Information Report the name of the appellant as well as the eye-witnesses is clearly mentioned and, thereforee, the non-appearance of the names of the eye-witnesses in the daily diary entry is not of any serious consequence in this case. It must be further mentioned here that in the cross-examination of the eye-witnesses there is no cross-examination regarding the blood stains on their clothes. It is not known as to whether any blood stains had fallen on the clothes of the eye-witnesses or not. The Investigating Officer was also not cross-examined on that point. It is not brought on record through the cross-examination of eye-witnesses that as a matter of fact any blood stains had come on their clothes when they helped in putting the deceased in the rickshaw. Similarly, the Investigating Officer was also not cross-examined on this point and was not asked as to why he had not attached blood stained clothes of the eye-witnesses. thereforee, in these circumstances, no adverse inference could be drawn against the prosecution for non-attachment of the blood stained clothes of the prosecution witnesses. For holding this we rely on the observations of the Hon'ble Supreme Court in the case of Balwant Singh v. State of Haryana : [1994]3SCR136 , where the following principles are laid down :

'There is nothing on record to show that the clothes of PW 8 and PW 10 had not been stained with blood while lifting the deceased and the mere negligence of the Investigating Officer to take their clothes into possession cannot affect the trustworthiness of these witnesses.'

18. Thus, in view of the above discussion we are of the opinion that the learned Additional Sessions Judge was quite right and justified in accepting the evidence of the prosecution and to hold that the present appellant had stabbed the deceased and deceased had met with homicidal death due to the said stab injury.

19. Learned counsel for the appellant further urged before us that the appellant in this case could not be held to be guilty of the offence punishable under S. 302 of the Indian Penal Code. He submitted before us that the appellant had given only one single blow to the deceased. As per the evidence of the eye-witnesses there was exchange of abuses between the appellant and the deceased and deceased had also admonished the appellant. thereforee, in view of these admitted facts, there must have been grave provocation for the appellant and that grave and sudden provocation must have led him in committing the offence in question. He, thereforee, urged before us that the appellant could be held guilty for the offence of culpable homicide not amounting to murder. In support of this submission he has cited before us the case of Gurdip Singh v. State 1995 (1) AD Del 41. In view of the peculiar facts of the said case it was held that appellant Gurdip Singh was not guilty of the offence punishable under S. 302 of the IPC but he was guilty of the offence punishable under S. 304, Part I. In that case, deceased Murlidhar was quarrelling with one Ishwar and they were abusing each other. At that time appellant Gurdip Singh and one Ram Swarup intervened and separated both deceased Murlidhar and Ishwar and, thereafter, Ishwar went away but deceased Murlidhar for no reason picked up quarrel with the appellant. He not only caught hold of the appellant by his collar and gave him filthy abuses but also started physically struggling with him and in that heat of passion appellant, a Sikh gentleman, who was armed with Kirpan, gave blows of the same on the deceased. thereforee, in view of those peculiar circumstances we had found appellant guilty of the offence punishable under S. 304, Part I. But the facts of the case before us are quite distinguishable. In this case, admittedly, the appellant himself was the

aggressor. He first attacked and assaulted PW 1, Zamir Ahmed and when he was questioned by deceased he again assaulted Zamir Ahmed in the presence of deceased and, thereforee, deceased, who was the Uncle of PW 1, abused him and had also admonished him. The accused, thereafter, went away to his house and returned with a dagger-cum-chhuri and gave a forceful blow of the same on the chest of deceased. thereforee, in these circumstances, it could not be said that he had acted on account of any grave or sudden provocation. No doubt he has given a single blow but he had given the blow with a sharp edged weapon on the vital part of the body with great force. thereforee, in view of the fact that he had given the blow on the vital part of the body with force and with a dangerous and deadly weapon and when the deceased had not at that time done any wrong to him, it is quite obvious that he did intend to cause his death and he had knowledge that he was going to cause his death. thereforee, in these circumstances, we hold that he has been rightly held guilty of the offence punishable under S. 302 of the IPC.

20. Thus, in view of our discussion above, the appeal is dismissed. The order of conviction and sentence passed by the trial Court is maintained. The appellant be informed about the decision of this appeal through the jail authorities.

21. Appeal dismissed.

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