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SooperKanoon Citation : sooperkanoon.com/683597

Court : Delhi

Decided On : Jul-30-1979

Reported in : 1980RLR120

Judge : V.D. Misra and; F.S.Gill, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 300

Appeal No. : Criminal Application Appeal Nos 321 of 1976

Appellant : Ravinder Kumar

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; K.K. Sud, Advs

Judgement :

V.D. Misra, J.

(1) Ravinder Kumar alias Ravi has been convicted under section 302, Indian Penal Code, by an Additional Sessions Judge, New Delhi, for having committed the murder of one Farasat Ali Khan. Ravi now appeals against his conviction and sentence.

(2) Ravi and Farasat Ali Khan were friends. They were living in the same street. On May 26, 1975 at 6.30 P.M. or so they quarreled before the shop of one Imami,

vegetable-seller near Tiraha Mandir, Bharat Nagar, New Delhi. The dispute, related to some money matter. Ravi was demanding money from Farasat Ali Khan who was asserting that he had returned the money to the person from whom he had borrowed. Exchange of hot words and abuses resulted. Ravi suddenly took out a chhura (Exihibit P1) from his Dhaba and thurst it in the abdomen of Farasat Ali. The latter fell down in a pool of blood and Ravi ran away. The injured was immediately removedto the nearby Holy Family Hospital where he was declared dead. John Jacob (PW5), a clerk of Hospital, rang up Police Stn. Okhla at 7.30 P.M. and informed them that an injured person was brought to the hospital who had been declared dead. A copy of this report was sent to Sub-Inspector Om Prakash. The Sub- Inspector was investigating a case in village Masihgarh where he received the report. He directed a constable to go to the place of incident while he himself went to the hospital. He found Rabat Ali Khan, brother of the deceased present there and recorded his statement (Exhibit PW10/A). It was sent to the police- station for registration of a case. Later on the Sub-Inspector went to the place of occurrence where he took into possession bloodstained earth etc. and recorded the statements of witnesses- He searched for the appellant but could not trace him.

(3) Next day, Sub-Inspector Om Prakash prepared an inquest report (Exhibit PW10/D) and sent the dead-body for post-mortem examination. Dr. Bharat Singh, Police Surgeon, conducted the post mortem examination. He found one injury. It was an 'incised stab wound over the epigastric area placed obliquely. Size of the wound was l.3/4' x3/4 ' ?. Margins of the would were regular and angles were tapering. Wound was covered by blood. Omentum was protruding the opening of the wound'. On opening the abdomen he found that the injury had entered the abdomen and had cut the stomach on the anterior surface and had come out on its posterior surface finally cutting the pancreas. Total depth of the injury was 41/2'. In the opinion of the doctor the injury was sufficient in the ordinary course of nature to cause death. He was also of the opinion that the injury was possible by chhura (Exhibit P1).

(4) It was on June 3, 1975 that the police succeeded in apprehending the appellant near Okhla Mor. He was interrogated. He made a disclosure statement

(Exihibit PW7/A) and got chhura (Exhibit P1) recovered from a pit. This chhura was found to be blood stained. It was duly converted into a sealed parcel and taken into possession. Blood stained Clothes of the deceased as well as the chhura were sent to the Central Forensic Science Laboratory. The bloodstained clothes of the deceased were found to have blood of blood group 'A,. Chhura (Exhibit PI) was also found to be stained with blood of blood group 'A' (Exhibit PW16/G. After completing (he investigation, the appellant was charge-sheeted u/s 302, IPC.

(5) The defense of the appellant, as disclosed in his statement recorded u/s 313 of the Code of Criminal Procedure, was one of complete denial. He pleaded alibi and alleged that he had been falsely involved in the case.

(6) Mr. D.R. Sethi, learned counsel for the appellant, assails the eye-witnesses produced by the prosecution. He contends that none of them was present at the time of incident and had not seen the stabbing. He also contends that the police investigation was not fair. Lastly, he submits that the case falls under Exception 4 of S. 306, IPC.

(7) The eye-witnesses produced by the prosecution are Sarkar Begum (PW9), mother of the deceased, Rabat Ali, (Pw10), brother of the deceased, and vegetable seller Imam-ud-din, PW13). The statements of Sarkar Begum and Rahat Ali Khan are assailed on the ground that none of them had accompanied the injured to the hospital and in case they had seen the incident one of them must have accompanied the injured. We see force in this contention. Now Rahat Ali Khan would have us believe that not only he was present at the time of the incident but he had also chased the assailant. He would further have us believe that one Nawab Khan had also witnessed the occurrence. He is belied by the statement of Nawab Khan. It was Nawab Khan (PW14) who had removed the injured to the hospital. He states that he had not seen the incident but had come to the scene noticing a crowd. We have no reason to disbelieve him. He was living in the same house in which the deceased was residing. Whereas the deceased was living on the ground floor, this witness was living on the first- floor. He would be the last person to decline to support the prosecution version if he had in fact seen the

incident. He was not even declared hostile by the prosecution. Perhaps the Public Prosecutor had no ground to request the court to allow him to cross examine this witness.

(8) In case Rahat Ali Khan or Sarkar Begum were present at the time Nawab Khan removed the injured to the hospital, one of them was bound to accompany them. It was suggested by Mr. K.K. Sud, learned Standing Counsellor the state that the mother had become nonplussed and had fainted, and Rahat Ali Khan stayed back to look after her. There is nothing on the record to show that the mother had fainted. Neither the mother nor the brother of the deceased goes to the extent of deposing that she had in fact fainted and so they could not accompany injured to the hospital. It was also contended by Mr. Sud that the injured had been removed to the hospital before Rabat Ali Khan could return to the place of occurrence after unsuccessfully chasing the assailant. Nawab Khan categorically states that Rabat Ali Khan was not present when he removed the injured to the hospital. Sarkar Begum admits that when she reached hospital the police officer had already arrived. She goes on to assert that Rahat Ali Khan reached the hospital after she had reached. Now Sub Inspector Om Parkash reached the hospital at about 7.45 or 8 p.m. This apparent from the statement of Constable Parghat Singh (PW3) who had accompanied the Sub Inspector. The constable tells us that he had reached the place of incident at about 7.45 or 8 p.m. and found Rahat Ali present there. Apparently Rahat Ali reached the hospital thereafter. It may be recalled that the stabbing took place at 6.30 p m. in which the injured was mortally wounded. It was not expected of the mother and brother of the accused to remain on the place of incident for such a long time. Their normal behavior would be to rush to the hospital to find out the condition of the injured. Not going to the hospital till 8 p.m. or so shows that both these witnesses had come to know of the incident some time after the injured had been removed. It may be noticed that the injured reached the hospital at 6.30 p.m, and was declared dead at 7 p.m. Now Rahat Ali Khan has a history of some convictions. He was convicted under the Arms Act for keeping a knife and was sentenced to six month's rigorous imprisonment. He was twice convicted under the Excise Act. Being a brother he could go out of his way to support the prosecution in a case in which his brother has been murdered. In these circumstances we do not find them reliable.

(9) Immamuddin (PW13) is the third eye witness. He is a vegetable seller. The encident had taken place in front of his shop during broad daylight. The presence of this witness is supported by Ram Parshad (DWl)whowas examined by the appellant in defense. According to Ram Parshad, he was present at the shop of Immamuddin that evening and persons were buying vegetables from him. Of course this witness would have us believe that he did not see anyone stabbing Farasat and that he noticed Farasat only when the latter shouted 'Hai' and fell down on the ground in a pool of blood. We cannot believe the defense witness. If he was present he was bound to see the assailant running away. Coming back to the statement of Immamuddin, we do not find any reason to disbelieve him. It fact, no reason has been advanced by learned counsel for the appellant. The only contention put forward by Mr. Sethi is that being busy in selling vegetables, he would have no occasion to see the assailant stabbing Farasat. We find that Immamuddin is trustworthy. He admits that the mother of the deceased had come after the quarrel and the brother of the deceased came thereafter. He also admits that he did not see the appellant taking out knife. He had known the injured as well as the appellant. The house of the injured was at a distance of about 50 or 60 yards from his shop and the appellant was residing in a house in front of the appellant's house. Attention of this witness was likely to be drawn to those two persons when they were quarreling and exchanging hot words and abuses. It is true that Imam-ud-Din admits not seeing the appellant taking out a knife. But then one may not see an assailant drawing out a weapon and still see the stabbing. Even if one may not see the actual stabbing, one may see the assailant running away immediately after stabbing during a quarrel. Even then there could not be any doubt about the identity of the assailant. In the totality of the circumstances, we have no reason to disbelieve Immamuddin.

(10) Mr. Sethi submits that the medico' legal report (Exhibit PW16/DA) prepared in the Holy Family Hospital shows that Farasat got the injury by falling on a Khunta (Peg). It is, thereforee, contended that the injury received by the deceased was because of the fall on a peg and not by stabbing. He blames the police for not investigating on this line. We are afraid we cannot agree with him. Dr. Bharat Singh had found an incised wound. This cannot be possible by falling on a peg. Moreover, this medico-legal report is not even proved since neither the doctor has

come into the witness-box nor the person who had written it. The injured was declared dead at the hospital and thereforee it follows that he could not say how the injmy was caused. Who had given the history of the injury remains a mystery Nawab Khan was not even questioned by the defense to find out if he had given any version of the cause of injury to the hospital authority. And how could he give any version He was not an eye witness. He had not seen the incident. In any view of the matter since the injury had been found to be the result of a sharp edged weapon, we have to reject straightaway the probability of the injured falling on a peg and injuring himself. We may also record that we have scrutinised the photographs of the place of incident. These show that the incident had taken place practically in the middle of the road where the blood was lying. We do not expect pegs in the middle of the road. We would, thereforee say, nothing more about it.

(11) The disclosure statement made by the appellant and the consequent recovery of chhura (Exhibit PI) are supported by Irshad Ali Khan and Rahat Jahan Khan PWs. They are not in any way related to the family of the deceased. They are not even residents of that area. It is true that they are residents of a far away locality of Sarai Rohilla. However, they explain there presence near Okhla Mor (this is the place where a road from Okhia meets Mathura road) by stating that they were going to a nearby factory. Both the witnesses are artisans. One is a painter 'and the other is a carpenter. They are not regularly employed like many artisans. We have, thereforee, no reason to doubt their presence. The recovery of churra (Exhibit P1) was from a pit which was hidden by bushes. It has been found blood stained and the blood is group 'A' which is the bloodgroup of the deceased found on his clothes. We would, thereforee, accept the recovery of chhura as a result of the disclosure statement by the appellant.

(12) The only reason for the contention of the offence falling under Exception 4 of the Section 300 is stated to be that there was no premeditation, it was a sudden quarrel resulting in a sudden fight where the appellant is said to have not taken undue advantage or acted in any cruel or unusual manner. We agree that there was no premeditation and there was a sudden quarrel but we cannot hold the exchange of abuses and hot words as a fight There was no grappling nor the injured had hit the appellant in any manner whatsoever. The appellant had in fact

acted in an unusual manner of suddenly whipping out a dagger and stabbing the deceased. We, thereforee, hold that the case does not fall under this Exception.