

Mohd. Shafi Vs. State

Mohd. Shafi Vs. State

SooperKanoon Citation : sooperkanoon.com/688921

Court : Delhi

Decided On : Jan-17-1989

Reported in : 1989(3)Crimes210; 37(1989)DLT406

Judge : Charanjit Talwar and; Malik Sharief-Ud-Din, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 157; Punjab Police Rules, 1934 - Rule 24.1

Appeal No. : Criminal Appeal No. 183 of 1985

Appellant : Mohd. Shafi

Respondent : State

Advocate for Pet/Ap. : H.R. Khan and; M.S. Siddique, Advs

Judgement :

Charanjit Talwar, J.

(1) The appellant Mohd. Shafi was convicted by the Additional Sessions Judge, Delhi vide his judgment of 6th May, 1985 for an offence punishable under Section 302 of the Indian Penal Code. By a separate order of the same date, he was sentenced to undergo imprisonment for life and also to pay a fine of Rs. 100.00 . In default of payment of fine, the appellant was directed to undergo further R.I. for one month. The prosecution case which has been found to have been proved was

that the appellant had murdered Sharmim Ara on 21st July, 1983 at about 10 A.M. by inflicting cut injuries with a razor (Ustra). The motive for this crime, however, has not been established.

(2) It is unnecessary to deal with the prosecution case in detail. We may at the outset notice that a number of infirmities have been brought to our notice by Mr. HR. Khan, learned counsel for the appellant, appointed at State expense. The First Information Report, it is apparent, was not recorded at the time it is stated to have been recorded As per Ex. Pw 18/B the time shown therein of the report is 11.30 A.M.-on 21st July, 1983. This F I R.is stated to have been recorded on the statement of Public Witness .I, Mst Zarina. That statement has been proved as Ex. Public Witness . I/A and according to the endorsement made thereon by Sub. Inspector Manohar Lal, it was recorded at 11.15 A.M. at the place of occurrence itself, i.e., House No 7138/5 Bari Wali Bagh, Delhi and dispatched to the Police Station, Bara Hindu Rao, Delhi at 11.30 A.M. on that very day. However, a copy of this report was sent to the lake Magistrate on the next day, i.e., 22nd July 1983 It is admitted that as per the requirement of Section 157 of the Code of Criminal Procedure and the Punjab Police Rules, 1934, this report termed as 'Special Report' was required to be sent forthwith to .the Magistrate competent to take cognizance of the offence. No Explanationn whatsoever is offered by the prosecution for the delay in sending the report.

(3) Public Witness . 21, Inspector Randhir Singh, while admitting that the said report was a special report, stated that: 'Special report of this case was sent to the Magistrate in routine next day'. Thereafter the Court asked a question. The said question and his answer are reproduced below: 'C 0 Why it was sent in routine although case having been ' registered u/s 307 Indian Penal Code initially the injured bad died when you were still at the spot Ans I did not come to the police station before 10 or 11 p.m. and it was the duly of the duty officer to send the report himself'.

(4) At this stage we may note that the Duty Officer has also been produced. Public Witness . 18, A.S.I. Jamadar Singb, in his examination stated that : 'I did not send the copies of the F.I.R. to higher police officers'. and then he volunteered : 'It was

to be sent in routine'. During cross-examination, he tried to retrieve the situation and stated that the special report was not sent till 8 P.M. It appears that his effort was to that the report was in fact sent on the but that is not factually correct, as admitted by Public Witness . 21, S.H.O. Randhir Singb. .

(5) According to the prosecution, a copy of the Inquest Report and the other related papers were sent to the mortuary along with the body of the deceased. The application to the Police Surgeon seeking his opinion for the cause of death stands proved-as Ex.P.W.21/E. The statement incorporating the brief facts of the case sent Along with the copy of the Inquest Report, has been proved as Ex. Public Witness . 21/F and the Inquest Report as Public Witness . 21/C. From the endorsement of the Police Surgeon on Ex. Public Witness . 21/E, it is clear that the body was received at 5.00 P.M. on 21st July, 1983. The papers, however, were received on the next day at 9.10 A.M. The endorsement reads: 'Body Received at 5 00 P.M. on 21.7.83 Papers Received at 9.10 A.M. on 22.7-83'

(6) The argument of Mr. Khan is that the Inquest Report and the other papers which are mandatorily to be sent to the Police Surgeon under the Punjab Police Rules were not in existence at the time the dead body was sent. The plea that fact itself establishes that there were no witnesses available to support the theory of the prosecution upto that time, appears to be justified. We may note here that in the said Inquest Report (P.W. 21/C). the two witnesses who identified the dead body were Mohd. Sualin (husband of the deceased) and Mohd. Umar Hayat Beg. In the statement of brief facts (Ex. Public Witness . 21/F) submitted to the Police Surgeon, it is stated that the statements of the witnesses are being sent. A copy of the only statement alleged to have been made, which we have been able to find out is that of Umar Hayat Beg. According to that statement, Umar Hayat Beg was present in his house at about 10.15 A.M. when he heard shrieks of Mst. Shamirn Ara wife of Mohd. Sualin. He heard her cries to the effect that Vakil (the reference is to the appellant who was also known as Vakil) had stabbed her. Umar Hayat Beg, however, has not been produced as an eye witness. These infirmities together with the fact that none of the eye witnesses was available at the scene of incident when the police first went on spot also create a great deal of doubt about the incident having taken place in the manner as suggested by the prosecution.

(7) There is another aspect of this case which has strengthened the argument urged before us regarding the late recording of the F.I.R. In the Daily Diary Report at the Police Control Room (Ex. Public Witness . 17/A), the first message in time received at 10.34 hours on 21st July, 1983 was to the following effect: , 'Malik Des Raj has informed through Telephone No. 51237 from House No. 6892, Bari Wala Bagh-I, Mian Wali that one lady has been stabbed with a knife in her house by someone and the accused has managed to escape'. This message was received and recorded by Public Witness . 17, Asi Punni Ram. Malik Des Raj, it is alleged, by the prosecution, had given this telephonic message after visiting the house of the deceased in the presence of Public Witness . 4 Mohd. Guizar, who also is a tenant in the same house and is son of Umar Hayat Beg. By that time, if the prosecution story is to be believed, it was known that the appellant had stabbed Mst. Shamin Ara and thereafter managed to escape. Thus the name of the appellant was known and was expected to be disclosed to the Police Station. Malik Des Raj and Mohd. Guizar, Public Witness s were expected to know the names of the witnesses also. The fact regarding the weapon of offence having been allegedly recovered from the place of occurrence later on by the S.H.O. of the Police Station in the presence of witnesses was also known but there is no mention in the Daily Diary Report either about the name of the accused or the names of the witnesses, the place of occurrence or the weapon used. What is important, however, is that the substance of offence, as required under Rule 24.1 of the Punjab Police Rules, has not been mentioned therein. It has been repeatedly held by this Court that the failure to enter the substance of the offence in the Daily Diary Report is indicative of the fact that when the said entry was made. full facts in regard to the occurrence were not known. This fact coupled with the fact that the special report was sent to the lake Magistrate a day later together with the fact that the Inquest Report and the connected papers were dispatched to the Police Surgeon on the next. day, i.e., on 22nd July, 1983. strengthens our belief that the prosecution story as disclosed by prosecution witnesses Public Witness .1, Mst.Zarina,P.W.2, Mst. Shamim and Public Witness . 4, Mohd. Gulzar s/o Umar Hayat Beg was not in existence to say the least, till the evening of 21st July, 1983.

(8) We may notice here that there has been an attempt to produce false witnesses to involve the appellant herein. Public Witness . 3 Mst.. Nisa, who is the mother-in-law of the deceased has deposed that she had seen the appellant just outside the house of her son at about 9 A.M. on the day of the incident when he was going inside that house. On scrutiny we find that this witness is not to be believed at all. She admitted in her cross-examination that her statement was not recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure. She further admitted that she had seen the appellant for the first time on that very day.

(9) Another startling feature of the case is that 'during investigation, it was found necessary to provide an alibi to the husband of the deceased, Mohd. Sualin. It appears to us that the prosecution itself was not willing to accept the theory as propounded till late in the evening of that very day. It was considered necessary to find out from the officer-in-charge of Mohd. Sualin as to whether he was on duty on the day of the incident. There was no need to investigate this aspect in case the facts were known to and were being believed by the prosecution. Thus we have no option but to hold that the prosecution has not established the true facts of the crime.

(10) The result is that the appeal is allowed. The impugned Judgment and the order of sentence are hereby set aside. The appellant, we are informed is undergoing sentence at Tihar Jail, New Delhi. He, if not required in any other case, be released forthwith.