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Subhash Gulati Vs. State

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Court : Delhi

Decided On : Feb-01-1996

Reported in : 1996IAD(Delhi)677; 62(1996)DLT145; 1996(36)DRJ696

Judge : Usha Mehra, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 323

Appeal No. : Criminal Appeal No. 48 of 1982

Appellant : Subhash Gulati

Respondent : State

Advocate for Pet/Ap. : Rajeev Awasthi and; Anil Soni, Advs

Judgement :

Usha Mehra, J.

(1) Appellant has been convicted under Section 323 Indian Penal Code (in short IPC) and sentenced to undergo rigorous imprisonment for three months and a fine of Rs.500.00 in default to undergo simple imprisonment for one month. This order of the Additional Sessions Judge, Delhi, has been assailed by the appellant, inter alia, on the ground that author of the Fir, Shri Ram Singh, alleged to be an eye witness had not been examined by the prosecution. The other eye witness Mahender Verma's testimony had been discredited and nor relied by the Trial

Court on the charge of murder because of the contradictory statements, made by him. His testimony on the point of injuries alleged to have been inflicted by the appellant ought not to have been relied for the same reason. That Dr.V.K.Kapoor's testimony docs not support the version of injuries given by Shri Mahender Verma. Hence, testimony of Shri Mohinder Verma, Pw ought to have been rejected as a whole and the conviction could not have been handed down to the appellant. The possibility of Mahender Verma trying to shield his brother has been ignored. No question relating to injuries on the person of the appellants were put to him while recording his statement under Section 313 of Criminal Procedure Code . Since the circumstances as to how the injuries were caused to him were doubtful, thereforee, no adverse inference could be drawn against the appellant. It is in this background that the present appeal has been preferred.

(2) To appreciate the challenge, we have to have the story of the case as put up by the prosecution. It was stated that Mahender Verma and Surender Verma are real brothers. Mahender Verma had settled in London and was dealing in cloth business. His younger brother Surender Verma was living in India. He was having office on the 13th floor of Rohit House, Connaught Place, New Delhi. He was dealing in some business. Appellant had also an office in the same building. He was friendly to Surender Verma. Madan Lal was also having business and friendly to Surender Verma as well as to the appellant.

(3) The deceased Virender Minocha's father Ram Minocha was friendly to Mahender Verma. Virender Minocha had been visiting Mahender Verma at London in connection with his business, while Mahender Verma whenever in India used to visit and at times resided with Virender Minocha at his residence. In July, 1978 Mahender Verma came to India. His daughters were already in India. They were staying with his in-laws. Mahender Verma was at Bombay when he heard his mother had expired. Mother used to reside in the house of his younger brother Surender Verma. On hearing this news he reached Delhi. After sometime of the death of his mother, Mahender Verma rang up' his brother Surender Verma to enquire about the welfare of the family and whether they had settled down after the death of the mother. In response thereto younger brother invited Mahender Verma to his office. Pursuance to the invitation Mahender Verma Along with

Virender Minocha visited the office of Surender Verma in the evening of 25th July,1978. Surender invited the appellant and Madan Lal. All the five took liquor on. the terrace of 13th floor of that building and thereafter Madan Lal took them to a restaurant at Pandara Road for dinner. Mahender Verma in order to reciprocate the hospitality of his brother also decided to entertain Surender Verma and his friends. He accordingly informed Surender Verma about the same and told him to call his friends namely the appellant and Madan Lal. All the five persons met on 27th July,1978 on the 13th floor terrace of Rohit House New Delhi. Mahender Verma and Virender Minocha purchased two bottles of whisky from Connaught Place and reached Rohit House. At about 7.30 p.m. all the five persons started enjoying themselves over whiskey on the 13th floor of the said building. Ram Singh, who was employee of Surender Verma laid the table, chairs and spread other items on the table including eatables and bottles of Campa Cola etc. After consuming two bottles of whisky they bought the third bottle of whisky. The drinking session continued till late past 10.00 or 10.30 p.m. While unmaking session "as going on, Surender Verma remarked to his brother Mahender Verma that he was not bothered for his brother instead he was helping others. At the same time he made derogatory remarks against Virender Minocha. Virender Minocha did not like the same. To which Mahender Verma strongly objected. On this hot words were exchanged between Mahender Verma and Surender Verma. This provoked the appellant who in order to support Surender Verma started abusing Mahender Verma. Mahender Verma objected to the language used by the appellant pursuance to which grappling started. This grappling continued till such time Mahender Verma's head struck against a pipe and he became unconscious. According to prosecution, Virender Minocha was pushed down from the terrace. Appellant as well as Surender Verma sustained injuries. Madan Lal did not sustain any bodily injuries. As per the statement of Mahender Verma dated 31st July,1978, appellant, Surender Verma and Madan Lal gave him beatings. He also fought back but appellant being stronger had upper hand in the fight and, thereforee, could beat him. It was further the case of the prosecution that when the appellant was hitting Mahender Verma, Virender Minocha tried to intervene but he was pushed by the appellant. Madan Lal dragged Virender Minocha from the hair on which appellant leaving Mahender Verma pounced upon Varender Minocha.

Madan Lal and appellant together pushed Virender Minocha past a parapet wall of about 2-1/2 feet height and thus he fell down. Virender Minocha died at the spot.

(4) Ram Karan Thakar, Public Witness was the Chowkidar in that building. He was present on the ground floor. He heard the loud thud of fall of the body and noticed that Virender Minocha was lying on the floor. He rang up police Control Room. Pcr van reached there and recorded the Roznamcha and gave message to Police Station Connaught Place. Ram Karan informed that some persons had ran away while others were at the roof of, the building. While Asi Raghbir Chand Public Witness decided to go up stairs leaving Chhattar Singh to guard the body. While he had covered half way of the stairs he met Mahender Verma who was coming down. Mahender Verma's body was smeared with blood. He was wearing only a pant. Asi Raghbir Chand escorted him down. Asi Raghbir Chand did not reach the roof of 13th floor of that building. Mahender Verma when asked to identify the body of Virender Minocha could not do so. He was then taken to hospital. Si Lachhman Dass Public Witness after reaching the spot recorded the statement of Ram Singh servant of Surender Verma who had laid the table and chairs on the roof of 13th floor of the building. When Si Lachhman Dass, Public Witness accompanied by Ram Singh reached the roof of 13th floor, he found no light on the terrace. It was dark. With the help of torch he saw Surender Verma lying on the terrace in a semiconscious condition.

(5) After analysing the prosecution evidence the learned Additional Sessions Judge Came to the conclusion that no case under Section 302 Indian Penal Code had been made out. The learned Additional Sessions Judge in fact doubted the story of prosecution regarding pushing of Virender Minocha from the roof top by anybody. He in fact doubted the testimony of Mahender Verma the star witness of the prosecution in this regard. Mahender Verma had made first statement to police on 31st July,1978 wherein he stated that on account of this grappling and fight his head was hit against a pipe and, thereforee, became unconscious. Since he was unconscious he did not see how Virender Minocha fell down from the roof top. When he gained conscious he did not find anyone on the roof terrace he, thereforee, started climbing down. On reaching ground floor he was shown the body of Virender Minocha but being not fully conscious he told the police that he

could not recognise the body. He further stated that he was beaten by three persons namely the appellant, his brother Surender Verma and Madan Lal. They gave .him and deceased Virender Minocha severe beatings. After' about a month he made another statement staling therein that he was not unconscious. He told the police so because he was apprehensive that if he named the accused the life of his daughters would be in danger as was the case of Billa-Ranga. Since he was conscious, thereforee, he knew that it was the appellant who pushed the deceased and killed him. It was the appellant alone who gave him beatings.

(6) Mr. Rajiv Awasthi appearing for the appellant urged that statement of Mahender Verma Public Witness cannot be relied and acted upon. This witness tried to improve his statement from one stage to another. First statement made on 31st July,1978 was changed when he made the second statement in August, 1978, followed by third statement on 1st September, 1978. This witness also tried to introduce the case of Billa Ranga which had not even been registered by then, Fir in that case was registered on 29th August,1978. thereforee, when Mahender Verma made his first statement on 31st July,1978 he could not have been under fear because of the incident of Ranga Billa which incident by then had not happened. thereforee, as per Asi Raghubir Chander he met Mahender Verma in the stairs whereas Mahender Verma stated that he did not meet any police officer, rather having coming down he asked somebody to call for the police. The learned Additional Sessions Judge, thereforee, rightly discarded the testimony Mahender Verma on pushing of the deceased, theory tried to be set up by this witness subsequently. This witness was not found trust worthy. On parity of reasoning, to my mind, no reliance on this part of his statement should have been attached. No Explanationn has been furnished nor brought on record by the prosecution as to what prevented this witness from stating so to the police on 31st July,1978, when he first made a statement after he became fully conscious that all injuries on his person were caused by the appellant. On 31st July,1978 he was in the hospital. There could not have been any pressure on him. There was no apparent reason for him to withhold the truth from the police atleast on that date. His Explanationn that he was afraid of the safety of daughters loosing life has been disbelieved by the Trial Court and, to my mind, rightly so. He never told the police at whose instance he was afraid. He is such a witness who cannot wholly be relied. But

surprisingly the testimony of this very witness with regard to beatings has been relied by the Trial Court, whereas in view of the contradictory statements made by him it ought to have been rejected as a whole.

(7) Attacking the Trial Court's conclusion with regard to beatings being given by the appellant, Mr.Rajiv Awasthi contended that a witness whose testimony could not be relied because of contradictions and deliberate improvement made by him ought to have been rejected out rightly coupled with the fact that Mahender Verma in his statement recorded on 31st July,1978 in no uncertain words admitted that he was beaten by three accused namely the appellant, his brother Surender Verma and Madan Lal meaning thereby by all the three persons. But the Trial Court conveniently ignored this part of his testimony and held only the appellant guilty under Section 323 of the Code. No reason has been given as to why the testimony of Mahender Verma made on 31st July,1978, implicating his brother Surender Verma and Madan Lal has been ignored. This witness had in no uncertain words stated that his brother Surender Verma and Madan Lal had also beaten him. Again when he made the statement on 31st August,1978, he reiterated that his brother also kicked him beside beatings being given by the appellant. Mr.Awasthi states that in view of this statement there was nothing before the Trial Court to reach a conclusion that all injuries on the person of Mahender Verma were caused by the appellant. In the words of Mahender Verma 'GULATI Or Mere Bhai Wa Madan Lal Ne Mar Pit Kari THI'. (Gulati and his brother and Madan Lal started beatings). In view of this testimony of the witness, to my mind, it is difficult to conclude which injury was caused to Mahender Verma and by whom. The prosecution has not produced the medical report of the hospital where Mahender Verma was treated in order to prove what injuries were caused to him and what treatment was given. We have only the testimony of Dr.V.K.Kapoor Public Witness -16 who initially examined Mahender Verma. He could only say that he found following injuries on the person of this witness;

1.Haematoma right supra orbital region (Above the eye brow over forehead) 2'x2' in size.

2.Haemotomae left frontal region 3'x3'. There was swelling over the left lid present and small abrasion on the left side of the fore-head.

(8) DR.KAPOOR advised X-Ray of the skull and referred to Surgical Unit for detailed examination and management. Dr.Kapoor's report is Ex.PW-16/A. These injuries were caused by whom there is no evidence. According to the injured himself he was beaten by three persons namely the appellant, his brother Surender Verma and Madan Lal. He nowhere stated as to out of these three persons who caused injury No.1 and who caused injury No.2. To that extent he is absolutely silent. In his third statement recorded on 1st September,1978 this witness Mahender Verma tried to im prove his statement thereby giving clean chit to his brother. This is apparent when he stated that he was beaten only by the appellant. He conveniently skipped the name of his brother Surender Verma. This shows motive to save the brother. Hence conviction on the basis of such a testimony of interested witness cannot be relied upon. He changed his testimony as and when it suited him. In the subsequent statement made in August, 1978, he omitted the name of Madan Lal because he realised that Madan Lal was not having any injuries on his person hence it would be difficult to involve him. He stacked to the beatings being given by his brother, and the appellant. But in the third statement made on 1st September,1978 he gave up his brother. This shows that Mahender Verma was not only improving his statements but also tried to save his brother whom he had already implicated vide his testimony dated 31st July,1978 and 31st August,1978. thereforee, to my mind, the case of prosecution with regard to beating also is not free from doubt. Reliance on the testimony of Mahender Verma on the charge under Section 323 of the Code by the Trial Court, to my mind, is without substance. Testimony of such a witness who shifted his stand to suit his convenience and who tried to improve his statements is not worthy of reliance or credence.

(9) Mr. Anil Soni's contention that so far as beating by appellant to Mahender Verma is concerned that testimony is consistent hence appellate has been rightly convicted. He has in all the three statements maintained that appellant gave him beatings. There is no doubt that this witness mentioned and alleged that appellant gave him beatings in his statement recorded under Section 161 and 164, Criminal

Procedure Code ., but the question is whether those statements have been corroborated by the testimony of the doctor and also which of the injury was caused by whom. There is no evidence to this effect. So far as fight and beating part are concerned Mahender Verma at the very first available opportunity implicated all the three persons namely his brother Surender Verma, the appellant and Madan Lal. If three persons had given him beat- ings then who caused which injury assumes importance for the purpose of establishing the charge Mahender Verma's testimony is doubtful. On 31st July,1978 he said all the three accused gave him beatings. In the second testimony dated 31st August,1978, he testified that Surender Verma his brother and appellant gave him beatings and in the third statement only appellant gave him beatings. He also stated that Virender Minocha was badly beaten, but the post mortem report does not corroborate this part of his testimony. Post mortem report of Virender Minocha shows that there was no bodily injury inflicted on him. Hence there is no substance in the arguments of Mr.Soni that this witness was consistent with regard to beatings being given by the appellant. Prosecution has miserably failed to bring home the guilt of the appellant. There is no evidence linking the appellant with either of the injury inflicted on this witness. In the absence of which appellant could not be held guilty.

(10) MR.SONI then contended that since Mahender Verma says that grappling was started by the appellant, therfore, the ingredients of Section 323 have been made out. I am afraid this argument is also without force. As already pointed out above, Mahender Verma in his statements EX.DA and EX.DB nowhere stated that grappling was started by the appellant. In fact reading of these documents show that fight suddenly started on the provocative statement and derogatory remarks made by Surender Verma against his brother Mahender Verma and his friend Virender Minocha the deceased. Objections were raised against these remarks with the result hot words were exchanged between the parties and thereafter physical fight started. Who started is not clear from the reading of Ex.DA and DB. thereforee, it cannot be said that appellant grappled with Mabender Verma or that he was the villain of the peace and thereforee, culprit. Nor from the evidence which has come on record it can be said that appellant alone beat Mahender Verma. It was free for all fight started when all the five persons were under influence of liquor and on the derogatory remarks made by Surender Verma and

on the objections raised by Mahender Verma and Virender Minocha. The possibility that the appellant intervened when the two brothers were fighting cannot also be ruled out. Appellant in his defense has explained that he intervened when both the brothers were fighting and that is how he sustained bodily injuries. No question was asked to him about his injuries when he gave jus statement under section 313 Criminal Procedure Code . Moreover, according to Public Witness -9, Ram Karan Thakur the appellant and Madan Lal had already come down before Virender Minocha fell down. thereforee, the defense set up by the accused that he intervened to separate the two brothers who were fighting cannot be brushed aside coupled with the fact that Mahender Verma's injuries as described by him are not supported by his MLC. He being an interested witness who tried to save his brother by implicating the appellant alone cannote be relied. His testimony as a whole deserves rejection. To arrive at this conclusion reference can be made to his statement recorded on 31st July,1978, wherein he stated that he was beaten by the three accused. Prosecution did not charge the other accused under Section 323, nor took any action against Mahender Verma who admitted that he also gave beatings to the appellant. If beatings were given by all then why Madan Lal and Surender Verma have not been prosecuted by the prosecution. There is no Explanationn to this effect. It appears that the Prosecution took easy way by implicating the appellant without ascertaining correct facts.

(11) For the reasons stated above lam of the considered view that prosecution failed to bring home the guilt of the accused. Hence the impugned judgment thereby convicting the appellant cannot be sustained. Accordingly, the conviction and the sentence are set aside.

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