

State (Delhi Administration) Vs. Pawan Kumar and anr.

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Court : Delhi

Decided On : Sep-16-2004

Reported in : 2004(76)DRJ649

Judge : T.S. Thakur and; J.P. Singh, JJ.

Acts : Indian Penal Code (IPC) - Sections 34 and 302;

Appeal No. : CRLA 247/1981

Appellant : State (Delhi Administration)

Respondent : Pawan Kumar and anr.

Advocate for Def. : Asha Tiwari, Adv.

Advocate for Pet/Ap. : Ravinder Chadha, Additional Public Prosecuto

Disposition : Appeal dismissed

Judgement :

J.P. Singh, J.

1. This acquittal appeal has been preferred by State against the judgment dated 4.7.1981, giving benefit of doubt to both the accused persons and acquitting them for an alleged offence under section 302/34 IPC.

2. We have heard Shri Ravinder Chadha, learned Additional Public Prosecutor for the State and Ms. Asha Tiwari, Advocate, learned counsel for the respondents and have gone through the record.

3. Brief facts of the case are that on 25.6.1980 at 9.05 p.m. Balbir Kumar reported at police station Original Road, Delhi that his younger brother Prem Kumar had been stabbed with a knife by some unknown person and was lying in a pool of blood at the spot. Copy of the DD entry was handed over to SI Khem Chand for necessary action, who reached JPN Hospital and recorded the statement of Sushil Kumar, another brother of injured Prem Kumar. Sushil Kumar stated that after closing his shop he was going to Joshi Road for purchasing a betel (Paan) at about 8:45 pm when he heard screams of his brother Prem Kumar. He rushed to the spot and saw that accused Soma had caught hold of his brother while Soma's brother accused Pawan Kumar was inflicting knife injuries. On his intervention Soma, who was also having a knife, gave a knife blow in the abdomen of Prem Kumar and then both fled away. Many other persons including Chander Mohan had seen the occurrence. PCR van had arrived. He seated his brother in the PCR van and got him admitted to J.P.N. Hospital. On this statement FIR was registered and the investigation commenced. On the same night both the accused persons were found standing at the corner of Rohtak Road and were arrested at 2:30 am i.e. on the night between 25/26.6.1980. Personal search memo (Ex.PW-2/C) is of Pawan Kumar and personal search memo (Ex.PW2/D) is of Som Nath @ Soma. However, blood stained clothes of accused Pawan Kumar and accused Som Nath were taken into possession after two days on 28.6.1980 vide memo Ex.PW2/F and memo Ex. PW2/G respectively. The weapons of offence could not be recovered.

4. Learned Additional Public Prosecutor has argued that Learned Additional Sessions Judge ought to have believed the statement of the two eye-witnesses because their statements were quite natural and inspired confidence. Secondly, since the weapon of offence was not found, therefore, it was not possible for the doctors to explain the incised or punctured injuries having been caused by a particular weapon and, in any case, this was not a significant flaw in the case. Thirdly, that even if there was load shedding of electricity by DESU (then Delhi Electric Supply Undertaking) in the area the witnesses still could have seen the

occurrence and the assailants and lastly that the acquittal has resulted in miscarriage of justice. On the other hand, learned counsel for the respondents besides highlighting the lacunae in the prosecution case has submitted that this Court has somewhat limited jurisdiction to convert an acquittal into conviction.

5. The prosecution examined eighteen witnesses and the accused persons produced two witnesses in support of their defense. PW-1 is Doctor Ram Kapoor of JPN Hospital. He examined the injured at 9:40 pm when he was admitted in the hospital. He found the patient fully conscious and noted six injuries with sharp edged weapon. He also recorded the history as given by the patient having been stabbed by some one several times. PW-2 is Sushil Kumar brother of the deceased. He has supported the prosecution story. PW-4 is Chander Mohan who also claimed to be an eye witness having watched the occurrence from a distance of about 100-125 yards. He has also supported the prosecution witness, when in a crowd he saw his brother in a pool of blood and he says that his other brother Sushil Kumar was also present and was holding his injured brother. PW-12 is Doctor B.N. Reddy who conducted the postmortem. According to him injury no.9 an story. PW-6 is Balbir Kumar another brother of deceased who was a chance w 10 were sufficient to cause death in the ordinary course of nature individually as well as collectively. PW-18 is the Investigating Officer who has supported the prosecution case. The remaining witnesses are rather formal witnesses relating to the procedure like recording of the FIR, etc. and sending the case property for expert opinion.

6. Learned Additional Sessions Judge after having discussed the entire evidence has come to the conclusion that the eye-witnesses Sushil Kumar and Chander Mohan did not appear to be present at the spot and had not seen the occurrence. Moreover, it had come on record that PW-Chander Mohan, father of the deceased and PW-Sushil Kumar were in the same business and thus friends. Learned Additional Sessions Judge was of the view that prosecution has not been able to bring home guilt of the accused persons and acquitted them by giving benefit of doubt. We have also thoroughly examined the entire record. The following material points emerge from the record:

a. Shri Balbir Kumar, brother of the deceased, was the first to report the matter to the police who stated that his brother was stabbed with a knife by some unknown person and was lying in a pool of blood at the place of occurrence. It is surprising the police did not treat it as FIR but rather kept it only as a daily diary entry and the FIR was registered on the statement of Sushil Kumar another brother of the deceased. The variance between the two statements is that in the first statement there is mention of one unnamed assailant and one knife while in the second statement which is the basis of FIR there are two named assailants and two knives. The FIR was recorded at 11:25 p.m. and copy of the FIR under section 157 Cr.P.C. was sent to the Metropolitan Magistrate at 4.00 p.m. on the next day i.e. 27.6.1980.

b. If Sushil Kumar, as stated in the FIR, had attended to and given physical support to his injured brother Prem Kumar and had seated him in the PCR van as also accompanied him to the hospital and got him admitted, there is no reason why his name does not appear in the MLC as a near relative or friend who got admitted the injured person.

c. As per the MLC timed 9:40 pm, the injured himself gave a history of having been stabbed several times by some one. The injured was stated to be "fully conscious". He gave his own name, his father's name and address but still he did not disclose the names of the assailants.

d. Both the accused persons were spotted at 2:30 am on the same night at Rohtak Road which is not far off from the place of occurrence and were arrested but again it remains unexplained as to why their blood stained clothes were taken into possession after two days i.e. on 28.6.1980.

e. As per CFSL report the blood stained clothes of these two accused persons did not have any discernible blood stains.

f. Despite having taken remand for two days, the weapons of offence could not be recovered and no further remand was sought for making more efforts to recover the knives.

g. In the absence of weapons of offence it was not possible to seek clarification from the Doctors as to what weapons could cause incised wounds and what weapons could cause punctured injuries because there were above stated two types of main injuries on the deceased besides other injuries.

h. The learned Additional Sessions Judge has opined that PW- Sushil Kumar could not be relied upon because some material points have become doubtful and also because Sushil Kumar was a bad character of the area and was externed from Delhi for two years meaning thereby that he was having several enemies and even as per case file record his statement was not trustworthy. Further, there is no Explanation as to why Sushil Kumar who attended to his injured brother and helped him in boarding the PCR van and to him admitted in the hospital did not hand over his own blood stained clothes to the police.

i. PW-Chander mohan claims to have seen the occurrence from a distance of about 100-125 yards specially when it has come on record that it was a cloudy night, therefore, on the face of it, it was not possible from such a long distance to recognize the assailants. Moreover, father of deceased, PW-Sushil Kumar and PW-Chander Mohan are doing the same business of repairing motor-parts.

j. There is no motive as to why the accused persons intended to murder Prem Kumar.

K. There is no Explanation as to why both the brothers namely Balbir Kumar and Sushil Kumar despite being eye-witnesses did not immediately remove their seriously injured brother to the nearest hospital but rather allowed him to bleed and waited for the police to arrive.

L. The accused persons have examined employees of DESU (Delhi Electricity Supply Undertaking) who proved on record that at the time of occurrence there was load shedding in the area. Learned Additional Sessions Judge has taken note of this aspect which adds to the holes in the prosecution case.

7. Learned counsel for the respondents has drawn our attention to the following rulings in support of her contentions: Tota Singh and Another Vs . State of Punjab,

: 1987 CriLJ974 wherein it was held as under: "The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the Consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous." . Similar opinion was expressed by the Supreme Court of India in Kunju Mohammed @ Khumani and Anr. Vs . State of Kerala : (2004)9SCC193 as under: "This Court in Dhanna etc. V. State of M.P. had laid down that though the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. While doing so it ought to bear in mind: first, that there is a general presumption in favor of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal. Secondly, it should bear in mind that every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him, he would retain that benefit in the appellate court also. Thus, the appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interfered with or disturbed. In Shailendra Pratap and Anr. V. State of U.P. : 2003 CriLJ1270 , this Court held: " It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse."

8. Considering all the facts and circumstances, we are of the view that there are several shortcomings and infirmities in the evidence which throw a cloud of doubt and suspicion on the prosecution case and there is no manifest illegality or perversity in the judgment. Keeping in view the facts and circumstances of the case and the law laid down by the Supreme Court of India we find no justification to interfere in the judgment of the trial court. The appeal is, consequently,

dismissed.

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