

Ravi Kumar Vs. State

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Court : Delhi

Decided On : Mar-27-2003

Reported in : 2003VIAD(Delhi)647; 107(2003)DLT285; 2003(70)DRJ684; 2003(3)JCC1495

Judge : Dalveer Bhandari and; H.R. Malhotra, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 324; ;Code of Criminal Procedure (CrPC) - Sections 173 and 313

Appeal No. : CRLA 310/1997

Appellant : Ravi Kumar

Respondent : State

Advocate for Def. : Ravinder Chadha, Adv.

Advocate for Pet/Ap. : Rajiv Awasthi, Adv

Judgement :

H.R. Malhotra, J.

1. The appellant, vide judgment dated 30th July, 1997 was convicted for commission of an offence punishable under Section 302 and also under Section 324 of the IPC and consequently sentenced to suffer life imprisonment besides a

fine of Rs.2,000/- with default clause of six months imprisonment. The appellant was further sentenced to imprisonment of six months for commission of offence under Section 324 of the IPC. Order on the points of sentence was made on 31st July, 1997.

2. The appellant has assailed both, the conviction and the sentence by way of preferring the instant appeal

3. Facts as set out in the police report sent under the provision of Section 173 Cr.P.C. are that on 5th January, 1995 Vikram since deceased and Jaspal Singh were going from Baba Colony from the side of 25 Foota Road at about 7.20 P.M. when the appellant met them on the way. All the three then went towards street near Worship Public School. While they were talking to each other, Jaspal Singh confronted the appellant as to why he gave beating to Monu earlier in the day and warned him not to behave in that manner again on which the appellant accosted Jaspal Singh saying him in derogatory manner as to whether he was the 'Mama' of Monu and simultaneously, the appellant gave fist blows to Jaspal Singh. Jaspal Singh also retaliated by inflicting fist blows to the appellant. On this the appellant took out a knife from the pocket of his trouser and assaulted Jaspal Singh and hit him on the left side of his chin. In the meantime Vikram deceased who was with Jaspal Singh came to the rescue of Jaspal Singh. The appellant attacked Vikram with knife inflicting injury on his neck and he fell down. Jaspal raised hue and cry. This led the appellant to flee from the spot. Jaspal then reached the house of Vikram and informed his brother Vicky. Both of them came to the scene of crime and removed Vikram to Hindurao Hospital in an injured condition and got him admitted. Vikram however succumbed to injury on 11th January, 1995 in the hospital itself. Jaspal Singh also got treated his injury in the hospital and discharged on the same day.

4. Since the incident in question was brought to the notice of police which was recorded in DD No.7 by ASI Darshan Kumar as such he accompanied by constable Bharat Lal proceeded to Hindurao Hospital and obtained injury sheet of Vikram who was not fit to make statement at that time. Jaspal however was found present there and his statement was recorded by the police and the same was

sent to the police station on which basis, FIR of the case was registered. The police came into action and proceeded towards the scene of crime and conducted necessary investigation including taking the blood stained on the earth as well as sample of the earth besides preparing the site plan at the instance of Jaspal Singh.

5. Dead body of Vikram was sent for autopsy and the post mortem was conducted on 11th January, 1995. Following injuries were found:-

1. Stitched wound 2.5 cm. long situated on left side of the face over angle of medible.

2. Incised wound 1 cm. x 0.2.cm. on left temple.

3. Multiple stabbed starch abrasion in an areas of 15 x 3 cm. over front of middle part of left leg.

4. One incised wound 2.5 x 1 cm. front of left knee.

6. The doctor gave the opinion that the death had caused due to injury No.2 due to crania cerebral damage and was caused by sharp edged weapon and further opined that injury No.2 was sufficient to cause the death in the ordinary course of nature.

7. The appellant was arrested in this case on 8th January, 1995 when Jaspal Singh accompanied by head constable Rajmal and constable Bharat Lal had gone in the area in search of the appellant. The appellant was arrested on the pointing out of PW Jaspal Singh. The appellant was interrogated by the police and during sustained interrogation he broke down and made disclosure statement admitting his guilt and also disclosed before the police that he could get the knife recovered with which he had committed the murder of Vikram. He led the police team to his house and pointed out the taunt in the front side of his house and got recovered knife. The sketch was prepared by ASI Darshan Kumar and the knife put in a sealed cover and deposited in the Malkhana and subsequently sent to CFSL for opinion. This knife was however not shown to the doctor till 3rd June, 1995 thereforee doctor was not able to give definite opinion whether injuries so received

by the deceased could be caused by that weapon or not.

8. The police after completing the investigation, sent the charge sheet to the Court. Appellant was charged for commission of offence punishable under Section 302 and also charged under Section 324 for causing injury on the person of Jaspal Singh which charges he denied and claimed trial. He was put on trial. The prosecution to bring home guilt to the appellant, examined as many as 19 witnesses. They included PW Jaspal Singh, PW Raju an eye witness, Police Officers and the doctor who conducted post mortem of the deceased. The appellant was also examined under Section 313 of the Code of Criminal Procedure. He denied the correctness of the prosecution witnesses and claimed himself an innocent person. He stated in his statement that he did not commit this offence as he being a student of 9th standard at that time remained in school from 1.00 P.M. to 6.00 P.M. He also stated that this case was framed against him at the behest of Jaspal Singh as Jaspal Singh used to purchase grocery items from the shop of his father and an amount of Rs.15,00/- had become due to him and that when the appellant demanded the said amount from him several times he could not pay the same and falsely implicated him in this case.

9. We have heard learned counsel for the appellant and also learned additional standing counsel for the State and with their able assistance have carefully looked into the judicial record containing the oral testimonies of the witnesses and also documentary evidence produced in support of the case.

10. Since the appellant pleaded alibi as such we deem it proper to deal with this aspect first. At the threshold we state that alibi is a plea which must be proved to the fullest satisfaction of the Court and for that the person who takes such plea must put forward cogent evidence in this regard burden of which heavily lies on the accused/appellant. In this case, the appellant has miserably failed to discharge this burden. No documentary proof or school record has been produced to prove that the appellant was a student in those days nor it has been proved if he had attended the class on that day. therefore, plea as taken by the appellant has no legs to stand and deserves to be turned down. The appellant has also taken the defense that this case is the result of enmity between PW Jaspal Singh and the

appellant. We are not at all impressed by such defense, it being devoid of any substance is accordingly rejected.

11. Let us now examine the evidence led by the prosecution. PW 6,13,14 and 15 are the star witnesses of the prosecution. PW-15 is the person to whom the appellant had beaten earlier in the day because of which unfortunate incident had taken place later in the day on the issue of giving beating to PW-15 on 5th January, 1995. This witness confirmed about the incident having taken place. This witness testified that the appellant hit him with his legs and that PW-15 had narrated this incident to PW Jaspal Singh and Vikram on the same day when they met him in the bazaar as PW-15 was friendly to Vikram and Jaspal Singh and they also knew the appellant. This witness was subjected to cross-examination and he withstood the test of cross-examination. He reaffirmed in the cross-examination about being beaten by the appellant. PW-13 and 14 are the eye witnesses of the occurrence. PW-13 Jaspal Singh confirmed in his examination in chief that Monu allies Raju PW-15 had told him in the afternoon on 5th January, 1995 that appellant gave beating to him (Monu). This witness further testified that he accompanied by deceased Vikram were going towards Baba Nagar Colony on 5th January, 1995 at about 7.20 P.M. or 7.30 P.M, when they saw the appellant near M/s Pawan Jewelers, 25 Foota Road and Jaspal Singh asked him as to why he gave beating to Monu on which the appellant spoke in an abusive manner and asked if he was 'Mama' of Monu and he became furious and gave him fist blows. This witness further testified that he also retaliated and gave 3,4 fist blows to the appellant and immediately thereafter appellant took out a 'Chhuri' from the pocket of his trouser and assaulted him and caused injury near his chin. Vikram, the deceased when tried to rescue was also assaulted by the appellant as a result of which he received two injuries on his neck.

12. Having perused the testimony of this witness including the cross-examination part, we are of the definite view that this witness completely deposed in line with the prosecution case. The prosecution has been able to prove beyond any doubt about the presence of this witness on the spot and his presence is fortified from the fact that he had also received injury on his chin. The appellant failed to explain as to how injuries was received by Jaspal Singh. Whereas prosecution has been

able to establish that the injury was the result of altercation between the deceased and Jaspal Singh. We are thus of the firm view that the incident had taken place in the presence of this witness and that it was the appellant only who had caused injury on the person of Vikram as well as this witness. Statement of this witness was in conformity with the statement made by him before the police, both the statements one made before the police and one made before the Court are consistent in nature.

13. Similarly, PW-14 cannot be termed as a chance witness or a stock witness as he gave birds eye view of the incident which he had witnessed. This witness stated in his cross-examination that he had visited the hospital at about 8.30 P.M. and perhaps for that reason, the police when reached the hospital about 8.00 P.M. found only PW-Jaspal Singh and not this witness. There is nothing appearing on the record wherefrom his testimony can be disbelieved. Statements of PW-1,2,3,4,5 and PW-7 being formal in nature are not being discussed.

14. Now coming to the statements of Investigating Officer PW-16 Inspector K.S.Bhatnagar, PW-17 A.S.I. Darshan Kumar and the statement of PW-6 Dr.C.B.Dabbas who conducted the post mortem examination of the deceased. PW-16, the Investigating Officer proved the investigation carried out by him and exhibited certain documents like inquest form, statements of witnesses, CFSL reports and so on. Both PW-16 and PW-17 deposed in tune with the prosecution case. Similarly, Dr.Dabbas, PW-6 who conducted post mortem examination of the deceased gave his report which is not assailed by the defense counsel. Only point which favors the accused to some extent is that the weapon of offence was not shown to the doctor for obtaining his opinion if injury No.2 could be caused by that weapon but this sole factor cannot be of serious consequence as the doctor while giving the nature of injury No.2 categorically stated that injury No.2 was caused by a sharp edged weapon and this being so the appellant cannot derive any benefit because of such lapse on the prosecution. However, it was the bounden duty of the investigators to take such opinion promptly and not belatedly as has been noticed in this case. Except this, other evidence brought on record by the prosecution is sufficient to bring the appellant in the net.

15. Now coming to the aspect if appellant was rightly convicted under the provision of Section 302 IPC or he ought to have been convicted under the provision of Section 304 part 2 of IPC. Prosecution story as emerging from the police report and more particularly from the statement of Jaspal Singh which form part of the FIR, it is manifest that the appellant met the deceased and Jaspal Singh just per chance. The appellant did not know if PW Jaspal Singh and the deceased would be coming together on 25 Foota Road nor did Jaspal Singh and deceased Vikram know if they would be confronted with him on the way. Such meeting was a sheer coincidence therefore, it cannot be said that there was a pre-meditation for commission of this offence. Prosecution story further speaks that it was PW-Jaspal Singh who had provoked appellant by reminding him as to why he had given beating to Monu on that day. It is not that the appellant was the aggressor nor did he utter anything to PW Jaspal Singh and Vikram on seeing them. It is not that the appellant immediately took out a knife from his trouser after he was reminded of the incident taken place earlier in the day. The appellant restricted his anger by giving few slaps to Jaspal Singh. He had no intention to do the worst to Jaspal Singh. He could immediately carry out his plan by taking out his knife as he was already in possession of the knife. But he did not do so. Jaspal Singh when retaliated, it was only then he took out a knife but again the appellant did not inflict injury on any vital part of Jaspal Singh's body. He inflicted injury on his chin only. The worst came when Vikram joined hands by coming to the help of Jaspal. Perhaps at this juncture, the appellant thought that opposite party was more in number than him. Thereafter, he used his weapon and inflicted injury on Vikram. The sequence of the events when viewed, clearly show that appellant did not intend to commit the murder at the very first instance. We gather that the injury so inflicted by the appellant is not the result of his intentional act. If really he had an intention to kill either Jaspal Singh or Vikram he could execute his job by giving multiple injuries on either of them. More so the appellant had nothing against Vikram as it was only Jaspal Singh who had challenged the appellant by saying as to why he had given beating to Monu earlier in the day. Hot words were exchanged between Jaspal Singh and appellant only. Why would appellant then kill Vikram? His target should have been PW Jaspal Singh with whom he had verbal altercation therefore, it is quite clear that appellant had no intention to

commit murder of Vikram however, since the appellant was armed with knife and he actually used it therefore knowledge can certainly be attributed to him that his act was likely to cause death.

16. For these reasons we are of the considered opinion that it is not a fit case where appellant should be convicted under Section 302 IPC as the accusation appearing against him do not really bring out the case of the prosecution under Section 302 IPC. This is a case where appellant should be convicted under Section 304 part II IPC.

17. Accordingly his conviction is altered to under Section 304 IPC part II in place of Section 302 IPC. We are told that he has already suffered incarnations for about seven years. Ends of Justice, according to us shall be fully met if he is ordered to be sentenced to the period already under gone including offence under Section 324 IPC. This results in acceptance of appeal to that extent only. The impugned judgment rendered by the Additional Sessions Judge is set aside to that extent but life sentenced as awarded is reduced to the period already under gone.

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