

Jitender @ Jeetu Vs. State

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Court : Delhi

Decided On : Aug-21-2006

Reported in : 2006(92)DRJ714

Judge : R.S. Sodhi and; P.K. Bhasin, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : Crl. A. No. 679/2004

Appellant : Jitender @ Jeetu

Respondent : State

Advocate for Def. : Ravinder Chadha, APP

Advocate for Pet/Ap. : Sumeet Verma, Adv

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal No. 679 of 2004 seeks to challenge the judgment and order dated 28.2.2003 of the Additional Sessions Judge, Karkardooma Courts, Delhi, passed in Sessions Case No. 22/2000, arising out of FIR No. 142/2000, Police Station Khajoori Khas, whereby the learned Judge has held the appellant guilty for the offence punishable under Section 302 IPC while has acquitted

Mukesh/accused No. 2 who along with convicted accused was charged under Section 302/34 IPC. Further, by order of sentence dated 6.3.2003 the trial court has sentenced the appellant to undergo imprisonment for life and a fine of Rs. 2,000/- and in default whereof further rigorous imprisonment for two months for the offence under Section 302 IPC.

2. Brief facts of the case, as have been noted by the learned Additional Sessions Judge in the impugned judgment, are:

The facts of the case as alleged in chargesheet are that on 20.05.00 Ct. Om Prakash presented DD No. 14 A before SI R.K. Meena at Road Khajuri Khas. On receipt of its copy SI along with his accompanying Ct. Murari and Ct. Om Prakash reached spot of incident at T Point Nanaksar Gurudwara Wajirabad, Delhi where chartered bus No. DLIP8662 was found parked on footpath in front of its front gate, dead body of a young man aged about 25.26 was lying, wearing pant shirt, banian, underwear, belt and was barefooted. From his personal search, one HMT quartz writ watch with broken chain, one cigarette packet and one match box smeared with blood were recovered from pocket of his pant. There were two knife stab wounds beneath nipple - of his chest. Right pocket of his pant was outside and was found torn. There was blood on the body. On inspection of the bus, blood was found lying on 3rd seat from back on conductor side and from that seat up to front gate. Black leather chappal apparently of the deceased was lying near that seat. Statement of Sanjay Kumar, bus conductor was recorded. He stated that as usual the bus proceeded from Nand Nagri for Ajmeri Gate at about 6.45 p.m. On that date to pick up the contract passengers; when the bus reached near Yamuna Vihar bus stand at about 7.15 p.m., its driver/owner Anil Anand slowed it due to traffic jam; suddenly 6-7 boys boarded that bus from the front gate; on enquiry one of them said that they would alight ahead at some distance; those boys sat here and there on separate seats in the bus; when the bus crossed Khajoori red light and was still 500 yards away from Nanaksar T point Wazirabad Road, those boys opened back door of the bus; the bus driver stopped the bus but it was still in motion when those boys jumped from the rear gate and ran towards Khajuri red light; in order to close the rear gate, he (the conductor) got up and saw blood smeared body of one of the boys who was seated on third seat from the back on

conductor's side; that boy tried to get up but fell down on the seat; on his (conductor's) raising alarm, the bus driver Anil Anand also came back and both of them took out the body of that boy who was murdered by those boys who had fled away. On this statement, the case was registered and was investigated. The bus was seized. Photographs of the spot and the body were taken. All India wireless message was flashed and the body was preserved for identification purposes. On 24.5.2000 the body was identified as that of Azad Malik by his brother Vinod. The accused No. 1 was arrested on 3.6.00 while accused No. 2 was arrested on 5.6.2000. Their disclosure statements were recorded. On 24.5.2000 post mortem was conducted on the dead body and it was handed over to his heirs. Exs. were sent FSL Malviya Nagar. As per result of the post mortem, cause of death was shock due to hypovolemia due to anti mortem injury No. (B)1 and (B)2 produced as a result of injury by sharp edged weapon and sufficient to cause death in ordinary course of nature. Scaled map of the site was prepared on 31.5.2000. After completing investigation the chargesheet was submitted.

3. Prosecution had sought to establish its case on examination of 21 witnesses. Of these, PW-2 and PW-4 are the so-called star witnesses. It is PW-2. Sanjay Kumar, who states that on 20.5.2000 he was working as a helper on a Chartered bus No. DL-IP-8662 and at about 6.45 p.m. while bus was proceeding from Nand Nagri for Ajmeri Gate, when it reached Yamuna Vihar Bus Stand, the bus slowed down as there was a traffic jam. In the meantime 5-6 persons boarded the bus from the front gate and sat on the separate seats in the bus. On enquiry, one of them replied that they would alight from the bus at some distance. This witness was sitting in the cabin of the bus which was being driven by Anil Anand. When the bus crossed the red light of Khajoori, driver of the bus noticed that somebody had opened the rear door of the bus and all the boys alighted. This witness further said that when he went to close the rear door of the bus, he noticed that one boy was bleeding. The boy got up and fell. This witness further states that he and driver removed the injured boy from the bus and laid him on the pavement. Injured person had also boarded the bus along with the other boys. Lots of people gathered and someone informed the Police. Witness goes on to say that persons who had boarded the bus were between the age group of 20-22 years. One of them had broken teeth and another bandage on his right hand. The statement of

this witness was recorded on the spot which is Ex.PW 2/A. The injured person expired. Personal search of the deceased was conducted by the Police, one HMT writ watch in a broken condition, one packet of cigarette and 2 or 4 rupees etc were recovered. The same was taken in possession which is Ex.PW 2/B. Thereafter, he goes on to say that the dead body was taken to PS Khajoori Khas. On 3.6.2000, he joined investigation and accompanied 7-8 police officials to Vishnu Garden where he identified one person sitting on the wall who was involved in the incident of killing in the bus. The said accused was Jitender. Jitender was arrested and personal search conducted but nothing was recovered from his person.

On further interrogation, Jitender made disclosure statement PW 2/G and got recovered blood stained shirt Ex.P-1 taken into possession vide memo Ex.PW2/H. He further goes on to say that during investigation this accused Jitender discloses the name of other co-accused. On 6.6.2000, the witness was called to the Police Station and saw Mukesh present there. Mukesh was identified as being one of the persons who boarded the bus on 20.5.2000 along with Jitender. In cross-examination, witness states that the driver of the bus was also called to the Police Station along with him. He had also accompanied the Police when accused Jitender was arrested. Witness further states that he did not notice any weapon in the hands of any of those 5-7 persons who had boarded the bus. He also states that he did not see Jitender actually stabbing the deceased. He also states that nothing was found in the personal search of accused Mukesh. Nothing was pointed out by Mukesh nor anything was recovered from the possession of Mukesh in his presence. Witness also states that he did not know who were the other five persons. He also says that he cannot tell as to who out of 6-7 person might have stabbed the deceased. On further cross-examination, the witness states that all the 6-7 boys who boarded the bus were wearing pants and shirts. He states that he does not remember the colours of those pants and shirts. He also says that driver had signed on all the papers on which this witness had signed.

4. PW -4 Anil Anand states that he is the owner of the bus No. DL-IP-8662. On 20.5.2000 at about 6.45 pm the bus was going to Ajmeri Gate from Nand Nagri

and one Sanjay Kumar was deputed as conductor on the bus. He was going to collect the passengers of the bus from offices as usual. At about 7.15 pm when the bus reached Yamuna Vihar as there was a traffic jam, the bus slowed down, and 6-7 boys boarded the bus suddenly from the front gate entrance. One of the boys was of thin built and his front teeth were broken and was curly haired. Those boys sat on the seats and alighted from the bus from the back gate. The witness states that he stopped the bus and asked the conductor to close the rear gate who noticed that one person was lying in the pool of blood on the seat. This witness became perplexed and he also went back and saw that one person was lying on the seat in sitting position and was having injuries and blood was oozing. In the process of removing the injured to the hospital, he was taken out from the bus, but at that time it was noticed that injured had expired. Consequently, he was laid down on the pavement of the road. The police was informed and several people gathered around. On the arrival of the Police, his statement as also that of Sanjay Kumar was recorded. The dead body was removed to the hospital. He goes on to say that Jitender present in court was one of the said 6-7 boys who had boarded the bus. He cannot say about the other accused person present in court. In cross examination, this witness says that he did not give the description of the accused person present in court, namely Jitender to the Police. He did not disclose the physical description of accused Jitender. He also goes on to depose that after the date of occurrence he saw the accused Jitender in the Police Station and thereafter in the court. He states that he saw Jitender in the Police Station after 7-8 days of occurrence. He denies suggestion that Jitender never boarded the bus.

5. PW-5 is Dr. Gaurav Aggarwal who conducted the post mortem on the dead body. He finds the following injuries:

External Anti Mortem Injuries (Capital B)

1. Insized stabbed wound 3.2 X 1.1 X 11.5 cm. Horizontallly placed on right side lower front of chest. The median and of the wound being 6.5 cm. away from midline epigastrii on opening the chest cavity and further dissection the track goes between 8th and 9th. Intercostal space cutting the diaphragm on the right side then entering into the liver substance making an inside stabbed wound of size

2.5 X IX 7.5 cm. and ending there. Extra position of blood is seen all along with trap of the wound. The direction of the wound downward backwards and laterally.

2. Inside stabbed wound of size 1.5 X 8 X 13.8 cm. Vertically placed over right side lower boarder of rib cage present 15.5. cm below sternal north and 2 cm lateral to midline epigistriun. On opening the chest cavity and further exploration right 10th rib is seen insized just adjacent to the midline then the track enters the paricardial cavity to enter the interior wall right ventrical of the heart. It then enters the posterior wall of right ventical of the heart making an insized would of size 1.5 X 3 X .3 cm. Extra position of blood seen. All along the track of the wound.

3. Insized stabbed wound 2 X 1.5 X 3.5 Combically placed over lower nape -of neck, 6cm to the right of the midline mussels of the neck were found cut in the depth of the wound with extraviction of blod.

4. Insized stabbed wound 1.5 X .8 X 2 cm oblically placed on left upper aspect of back of chest. 14cm below top of shoulder and 6c. to the left of midline. Muscles of back and vesseles were found cut in the depth of the wound along with extra visilation of blood.

Internal Examination (Capital C)

1(a) Head and neck: Skull and scalpe were intact. Brain was 1150 gms and pale.

(b) Neck structure were as described in injury No. B-3 and B-4.

2. Chest: Rips and strunal were as described in injury No. B-2 Lungs right weight 500 gms. and left 400 gms., both were pale. Heart weight 250 gms. injury as in injury No. B.2. About 1.5 litre of blood was seen in the paricardial cavity and left an right hemithoras (total amount).

3. Abadomen and others: stomach was empty. Liver was 1100 gms, pale injury as in B-1, spleen was 150 gms. pale. Both kidneys were 100 gms. each and were pale. Bladdar contain about 100 ml. of clear urine. About one litre of blood was in the territorial cavity.

6. There is another witness, PW-8 Ram Chander Dixit, who deposed to the effect that he is the Manager of Nav Jeevan Model School. The deceased Azad Singh was working as a servant with him for the last about two years before his death. On 5.5.2000 when he was present in his house, one person namely Jeetu resident of Village Khayala came to his residence at about 7 or 8 pm and enquired from him regarding Azad Singh and went on to complain that Azad Singh was having illicit relations with his sister Geeta and that this witness should use his good offices to prevent this from continuing. The witness further states that at that time, Jeetu was drunk. In cross-examination, witness states that he did not know Jeetu prior to 5.5.2000 when Jeetu came to his house. He denied the suggestion that Jeetu never visited his house nor had any conversation with him about Azad Singh.

7. It is argued by the counsel for the appellant that trial court while acquitting Mukesh has wrongly convicted the appellant under Section 302 IPC simplicitor. He submits that charge framed against this appellant was under 302 read with 34. He submits that there is nothing on record to show that the appellant had done any act which should individually bind him down to the act of murder. He also submits that there is no evidence on record to show that any description of the appellant was furnished to the Police by any of the witnesses and, therefore, the so-called secret information received by the investigating Officer pursuant to which he summoned PW-2 and PW-4 to join him to identify Jeetu was nothing but eye-wash. He further goes on to challenge the recovery of the the so-called blood stained shirt of the accused/appellant. He also goes on to challenge the result of blood stained articles sent to the FSL. Counsel states that the very fact that the clothes of the deceased and the so-called recoveries were sent to the FSL after one month cannot rule out possibility of fetal play. Counsel submits that prosecution has miserably failed to bring home the guilt of the appellant to the charges framed.

8. Counsel for the State submits that the trial court by its detailed and reasoned order convicted the accused and that, he supports the same with all vigour. He points out to the fact that recovery of blood stained shirt of the accused/appellant was/at his instance only and he was the part of group that inflicted injuries on the

deceased. He also submits that blood group on the shirt got recovered by the accused/appellant was group 'B' which was the same as that of the deceased as that circumstance implicated the appellant. Counsel also submits that there was motive enough for this accused to have caused injuries to the deceased since the deceased was having illicit relations with the sister of the appellant.

9. We have heard the counsel for the parties and carefully gone through the records of the case. On the question of arrest of the accused Jitender, we find it rather interesting to note that there was no description of any of the persons who had allegedly boarded the bus. The witnesses nowhere state that they had passed on the description of Jitender to the Police, yet the Investigating Officer on a receipt of secret information that the accused was present in the park, effected the arrest of the accused on being identified by PW-2. The nature and the manner of arrest on the basis of this so-called secret information does not inspire confidence.

10. The recovery of the blood stained shirt belonging to the appellant/Jitender got recovered at his instance is also not free from doubt. PW-2 refers to the recovery of the shirt made at the instance of Jitender to be of white colour whereas the shirt shown to be recovered and exhibited in Court was of chocolate colour. Further, we find from the report of the FSL that the chocolate colour shirt showed positive result of human blood group 'B', which is stated to be blood of the deceased, but at the same time the report shows no reaction to the blood soaked clothes of the deceased. We have also noted that the clothes worn by the deceased were held back and sent to the FSL after one month along with chocolate colour shirt which is alleged to have been recovered at the instance of the appellant. The holding back of the recovered articles for a period of one month cannot rule out the possibility of foul play.

11. As regards the motive, the prosecution has alleged that Jitender had axe to grind on account of deceased having illicit relations with Geeta, the sister of Jitender, yet there is nothing on record to show that Jitender, in fact, had a sister named Geeta. In the absence of evidence that Jitender had a sister named Geeta, the prosecution has not been able to establish the motive. The learned Trial Judge has, with great respect, not appreciated the evidence on record in its correct

perspective. The learned Judge has believed the recovery, even though PW-2 says that a white colour shirt was recovered whereas the shirt shown to-be recovered and exhibited in Court was of chocolate colour. The learned Judge has also believed the motive theory when there is neither on record to show that Geeta was the sister of Jitender nor has she been examined. The very basis of conviction is on doubtful and insufficient evidence. So, find it difficult to uphold the judgment of conviction.

12. We hold that the prosecution has miserably failed in brining home the guilt of the accused, who was charged for an offence under Section 302/34 IPC, but held guilty for an offence under Section 302 simplicitor without any specific role being assigned to him. As a result, we set aside the judgment and order dated 28.2.2003, acquit the appellant of the charge framed against him and allow the Crl. Appeal No. 679/2004. The appellant who is in jail shall be set at liberty forthwith unless wanted in any other case. This order be communicated to the appellant through the Superintendent, Tihar Jail.

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