

Mohd. Aamir Khan Vs. State

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Court : Delhi

Decided On : Aug-04-2006

Reported in : 138(2007)DLT759

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

Acts : Explosive Substances Act - Sections 3; Indian Penal Code (IPC) - Sections 302, 307 and 436

Appeal No. : Criminal Appeal No. 823 of 2003 and Crl. M. 6130 of 2003

Appellant : Mohd. Aamir Khan

Respondent : State

Advocate for Def. : Ravinder Chadha, Addl. Public Prosecutor and ; Jagdish Prasad, Adv.

Advocate for Pet/Ap. : Rajesh Mahajan, Adv

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal No. 823 of 2003 challenges the judgment of conviction dated 23.4.2003 and order of sentence dated 8.5.2003 passed by the Additional Sessions Judge, Delhi, convicting and sentencing the appellant under Sections

302/307/436 IPC and Section 3 of the Explosive Substances Act in Sessions case No. 104 of 1998 arising out of FIR No. 631 of 1997, Police Station Karol Bagh, New Delhi.

2. Brief facts of the Prosecution case, as have been noted by the Additional Sessions Judge in his judgment under challenge, are as follows:

That on 26.10.97, SI Sandeep Gupta along with HC Makkhan Singh and other police officials were on patrolling duty and were present near Hardayal Singh Road and Azmal Khan crossing, when at about 7.00 pm., he heard the explosion and he went to the spot i.e. Roshan Di Kulfi. The S.H.O. and A.C.P. also came to the spot. Several persons had sustained injuries in the explosion and a substantial damage was also caused to the shop. The injured were removed to Dr.Ram Manohar Lohiya Hospital and Sir Ganga Ram Hospital for treatment. Kumari Sonia d/o Sh. G.S. Arora, resident of Basant Vihar was declared brought dead by the doctors.

SI Sandeep Gupta collected the MLC of injured persons and returned back to the spot, where he recorded the statement of Sh. Ashok Kumar Soni, owner of the shop Roshan Di Kulfi.

Sh. Ashok Kumar Soni stated in his statement that he is the owner of the said shop and restaurant Roshan Di kulfi and on 26.10.97 at about 7.00 pm, he was present at his shop. At that time, there was a big rush of customers and eatables were served by the staff to the customers. Suddenly an explosion took place and the entire shop was filled with smoke and several persons had sustained injuries.

IO sent rukka to the Police Station for the registration of the case, on the basis of which, a formal FIR was registered. He also inspected the spot and the scene of occurrence was also got photographed by him and prepared the site plan and lifted the material such as iron-pieces, dibba etc, vide memo and he recorded the statements of the injured persons and of other witnesses and sent the dead body of Kumari Sonia for autopsy.

During the investigation, the recovered explosive material was sent to C.F.S.L. Chandigarh for analysis.

Investigation of this case was transferred to Crime Branch and on 27.2.1998 accused Amir Khan was arrested in case FIR No. 49/98, Police Station Railway Main Delhi and a revolver and 10 live cartridges were recovered from his possession. The accused was interrogated and he made a disclosure statement and during the investigation, it was revealed that this accused had planted bomb at Roshan Di Kulfi in Karol Bagh.

3. Upon completion of investigation, the Police filed challan in Court against the Appellant and one Mohd. Shakeel who was allegedly making the bomb and had supplied the same to Mohd. Amir Khan. Charges were framed under Sections 302/307/436 IPC and Section 3 of the Explosive Substances Act against the appellant only while his co-accused was discharged.

4. The substratum of the allegations against the appellant are that on 26.10.1977 he planted a low intensity bomb in Shop No. 2816/18, Beadon Pura known as Roshan Di Kulfi with intent to cause death of persons at random. The bomb exploded causing death of Kumari Sonia as also multiple injuries were received by several persons besides damage to the property. The appellant pleaded not guilty to the charges so framed and, therefore, the case was put up for trial.

5. The Prosecution in order to prove their case examined as many as 62 witnesses which included the injured persons. The appellant took a plea in defense which has been summed up by the trial court as follows:

That in the year 1997, he had gone to Pakistan Embassy situated at Chanakyapuri for obtaining the visa for visiting Pakistan as his sister was married there. There one Gupta Ji met and told him that he works in Intelligence Bureau, Govt. of India, and took him to a nearby shop and told him that in case he works for the country, the Government would support him financially and would provide him security. He was asked to collect information regarding the Pakistan Navy, their officers, monograms regarding the Pakistan Navy and also to collect certain documents from a person, who would be meeting him at Karachi. On 12.12.97 he visited

Pakistan to meet his sister and fell ill there. Because of intensive patrolling, he could not collect information, which was required to be collected, but he collected the documents from a person in Karachi and returned back to India on 12.2.98. When he reached at Wagah Border by train, he found that passengers were being searched intensively by the Pakistan Police as well as by the Indian Police and he got perplexed and he had thrown those documents, which he had brought from Pakistan and returned back to Delhi on the next day. Thereafter, Gupta Ji met him and showed his inability to collect the information, on which he was threatened by him that he would be involved in false cases. On 20.2.98 when he was passing through Bahadurgarh Road, he was lifted by some persons in a Gypsy vehicle and was taken to the office, where Guptaji, Ravi Shankar ACP, Ins.Rajender Bhattia, Ins.Rakesh Dixit and Ins.Subhash Tandon were present and he was tortured by them and obtained his signatures on blank papers and was falsely implicated in this case. He has however, not led any evidence in his defense.

6. The Prosecution's case primarily hinges on the evidence of PW-1, Shri Vikas as also his mother PW-56, Smt. Sushma Narula. PW-1, Shri Vikas, in his deposition states that on 26.10.1997 he together with his mother, Smt. Sushma Narula, Shri N.D. Verma as also his wife, Smt. Namita, and daughter, Shivani, went to Karol Bagh for shopping. While at Karol Bagh, this witness along with others went to Roshan Di Kulfi, Ajmal Khan Road. At Roshan Di Kulfi there was a rush for seats which necessitated some waiting period. After some time, a seat fell vacant in the third row on the left side, probably second or third table. The seat had been vacated by the appellant, Mohd. Amir Khan, who had finished having gol goppas. The witness identified the accused on account of permanent cut mark on the cheek. The witness deposes that after 4 or 5 minutes of the accused having vacated the seat and while the witness and the party had taken their seats, a blast occurred. This caused injuries to the witness, his mother, Shri N.D. Verma, his wife and daughter. Thereafter the witness goes on to explain the nature of injuries caused by the explosion. He also states that the accused left the table with a bag in his hand.

7. PW-56, Smt. Sushma Narula, states that on 26.10.1997, she along with her son and neighbour had gone to Karol Bagh for shopping and thereafter went to

Roshan Di Kulfi. Since there was waiting period, they waited for 5/7 minutes and saw one table which was likely to be vacated. They went towards that table on which two boys were sitting. One of them had a beard and the other had a cut mark on his cheek. On the table being vacated, this witness along with others occupied the same. She states that immediately thereafter an explosion took place beneath the seat whereupon she sustained serious injuries. The witness identified the appellant as the person who had vacated the seat which was later occupied by her. The other so-called injured witnesses don't identify the appellant.

8. It may be noticed here that besides the evidence of these two witnesses, there is no material to connect the accused with the explosion. It was argued by counsel for the appellant that taking the testimony of the witnesses, at the highest, what stands proved is that the accused was present at Roshan Di Kulfi, was seated on the seat beneath which a blast occurred after he vacated the same. This evidence, in no way, holds the appellant responsible for planting of the explosive substance which detonated subsequently. Suspicion, howsoever strong it may be, does not take place of evidence. He also submitted that the appellant was arrested in case FIR 49/1998 on 27.2.1998 which is much after the explosion at Roshan Di Kulfi and during the long period of his detention in that case he was shown to many persons and his photographs were also published in newspapers and so appellant's refusal to join TIP, for which application was moved on 30/03/98 was justified and in any case in the application names of witnesses to identify him were not disclosed. Nothing incriminating was recovered from the appellant which connects him with the explosion at Roshan Di Kulfi. It is also interesting that the co-accused, Mohd. Shakeel, was discharged in this case. In the absence of any material to connect the accused with the blast at Roshan Di Kulfi, his mere presence would not be sufficient to bring home the guilt.

9. Counsel for the State has very feebly tried to take benefit of the testimony of the junk/scrap dealer, PW-36, Mukesh Nayeer, who states that the appellant had purchased some junk from him about 3' years back. This, counsel submitted, would be sufficient to show that the material for preparing the bomb was collected by the appellant from the junk dealer and thereafter planted at Roshan Di Kulfi to create terror.

10. With the help of counsel we have meticulously gone through the record of the case. We find that, but for the statements of PW-1 as also PW-56, there is nothing to suggest that the accused-appellant herein had either purchased material for making a bomb, made the bomb, or placed the bomb under the seat in Roshan Di Kulfi. This evidence being woefully absent cannot connect the accused to the crime. Evidence of PW-36, the junk dealer, leads us nowhere since there is no evidence brought on record by the prosecution to show that the iron pieces allegedly sold by this witness to the accused were used in making the bomb which had exploded at Roshan Di Kulfi. In fact even the samples of iron pieces seized from the shop of PW-36 and sent to National Physical Laboratory were not even produced in court and were destroyed in the laboratory itself. Although prosecution had also examined, PW-10, 11, 28 and 32, to show that the accused had purchased some Chemicals used for making bombs from them but none of them supported the prosecution. Other witnesses examined by the prosecution, as noticed already, are either injured persons who do not even claim to have seen the appellant at Roshan Di Kulfi or are policemen who had taken some part or the other in the course of investigation of the incident of explosion and so their evidence is totally irrelevant as far as the involvement of the appellant in the crime is concerned.

11. Presence of the appellant at the spot cannot be doubted but mere presence is not sufficient to bring home the guilt of the accused to the charges framed. There is no doubt also that the explosion took place soon after the accused left the seat. This fact too, is not sufficient to conclusively infer that the accused had planted the bomb and thereafter left. There is evidence on record to show that the accused himself had partaken in eating gol goppas which must have taken sometime, but there is nothing on record to suggest that the crude bomb blast was the handiwork of this accused. It may be that the accused- appellant himself providentially escaped the consequences of a blast. Suspicion, if at all, no matter how grave, is no substitute for evidence. The circumstances in this case do not form a chain of events strong enough to bring home the guilt of the accused.

12. The trial court in its deliberations has held the accused guilty in paragraph 29 of the judgment which reads as follows:

The testimonies of PW-1, Sh. Vikas, and PW-56, Smt. Sushma Narula, duly prove that an explosion was caused by a bomb which was planted by the accused Amir Khan, who was present at the shop at the relevant time, consequent of which the aforesaid several persons sustained injuries and Kumari Sonia later expired.

13. With great respect to the trial court, analysis of the testimonies of PW-1 and PW-56 does not lead to the conclusion as has been drawn. At the highest, presence of appellant-Amir Khan at the shop prior to the explosion of the bomb is the only fact that has been deposed to and not to planting of the bomb. The trial court has also in paragraph 31 noted - 'the evidence on record, thus duly proves that it was the accused, who had planted the bomb in the aforesaid shop.' Once again, with great respect, we fail to see which is the evidence on record that duly proves the planting of the bomb by the accused- appellant in the shop. If we look at the chief-examination of PW-56, she says there were two boys sitting on the table and PW-12, mother of the deceased, had come out with an altogether different version. She deposed that the table, under which explosion took place, was occupied by 4/5 boys before it was occupied by other family (which was of PWs 1 and 56 only). PW-12 does not say that the appellant was one of those boys. In any case, if there were other persons also besides the appellant occupying the table under which explosion took place the appellant cannot be singled out of them in the absence of any other incriminating evidence and accused of planting the bomb there.

14. Having given our careful consideration to the material on record and the reasoning of the Additional Sessions Judge, we are of the opinion that the judgment under challenge cannot be sustained. The Prosecution has miserably failed to adduce any evidence to connect the accused-appellant with the charges framed muchless prove them. Accordingly, the appeal is allowed and the judgment of conviction dated 23.4.2003 and order of sentence dated 8.5.2003 are set aside. The appellant who is in custody, be released forthwith, if not wanted in any other case. The appeal and the application stand disposed of.