

Shaukat Ali Vs. State

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Court : Delhi

Decided On : Sep-20-2007

Reported in : 2008CriLJ795

Judge : R.S. Sodhi and; B.N. Chaturvedi, JJ.

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

Appeal No. : Cri. Appeal No. 739 of 2003

Appellant : Shaukat Ali

Respondent : State

Advocate for Def. : Richa Kapoor, Adv.

Advocate for Pet/Ap. : Sumeet Verma, Adv

Disposition : Appeal allowed

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal No. 739 of 2003 seeks to challenge judgment and order of the learned Additional Sessions Judge, New Delhi, in Sessions Case No. 16 of 2002, arising out of FIR No. 555 of 2001, registered at Police Station Okhla Industrial Area, whereby learned Judge vide his judgment dated 7-8-2003 has held the

appellant, Shaukat Ali alias Bechan, guilty under Section 302, IPC for murder of Shamshad. Further, vide separate order dated 7-8-2003, has sentenced the appellant to imprisonment for life together with fine of Rs. 500/- under Section 302 IPC and in default of payment of fine, further Simple Imprisonment for three months.

2. Brief facts of the case as have been noted by learned Additional Sessions Judge in his judgment under challenge are as follows: that one Shamshad was admitted in AIIMS hospital by one Javed, a tea vendor, R/o D-637, Indra Kalyan Alla Mohalla, Phase-I, Okhla, in injured condition. On examination, Shamshad was declared dead. This information was passed on to P.S. Okhla Industrial Area (O.I.A.) on 7-10-2001 at about 9.50 p.m. On the basis of this information, IO visited the AIIMS and clothes of the deceased were taken into possession, dead body was sent for post-mortem examination. In the post-mortem report, doctor opined the cause of death as haemorrhagic shock due to stab injury No. 2, i.e., stab wound over the left side of lower chest 2.5 x 1.4 cm in size, vertically placed, elliptical in shape, exposing subcutaneous fat. It was opined that the wound has gone deep through 6th inter costal space with diffuse muscular haematoma around, piercing the pericardium and gone into the right ventricle of the heart on the anterior aspect. On the basis of said information, a case was registered and investigation commenced. IO is deposed to have reached the place of incident and ultimately could find out the alleged eye-witness, namely, Javed. He recorded statement of Javed, Jainnuddin, Vijay, Nasruddin and Qaumuddin, who disclosed the involvement of present accused in the murder of the deceased. On 10-10-2001, accused is deposed to have been arrested on the basis of secret information from H.N. 114, Alla Mohalla, Okhla. He was allegedly interrogated and he is alleged to have made disclosure statement regarding whereabouts of knife allegedly used by him in this incident and subsequently got recovered the knife which was taken into possession. Accused is also alleged to have disclosed about the whereabouts of cloths which were worn by him at the time of incident. He allegedly took the police party towards the heap of garbage and produced one polythene bag which was found containing blood stained jeans which was taken into possession by the police. Samples handed over by the doctor at the time of post mortem examination and other samples were seized by the police.

Statements of the witnesses were recorded. After investigation of the case, police came to the conclusion that prima facie a case Under Section 302, IPC was made out. against accused, accordingly, challan was filed.

3. Prosecution in order to establish its case examined as many as 15 witnesses. Of these, P.W. 1, Javed, is the eye-witness. P.W. 2 is Vijay, the neighbourer. P.W. 3, Dr. Arun Kumar Agnihotri, Senior Resident, Department of Forensic Medicine, AIIMS, proved MLC of deceased, Shamshad, Exhibit P.W. 3/A. P.W. 4, Head Constable Hoshiyar Singh, was working as a Duty Officer on 7-10-2001 and proved DD No. 34-B, Exhibit P.W. 4/A, rukka, Exhibit P.W. 4/B and copy of FIR, Exhibit P.W. 4/C. P.W. 5, Constable Yogesh Kumar, accompanied SI Lokesh Sharma (P.W. 9A) to AIIMS Hospital. P.W. 6 is Constable Dilawar Singh. P.W. 7, Dr. Varun Dixit, Junior Resident, AIIMS, conducted postmortem examination on the dead body of Shamshad and proved his reports Exhibit P.W. 7/A and P.W. 7/B. P.W. 8 is Constable Dharmender Kumar, who took the dead body for post-mortem examination, received the samples and handed over the same to the IO vide memo Exhibit P.W. 8/A. P.W. 9 is Jainnudin. P.W. 9A is SI Lokesh Sharma. P.W. 10, SI Nirbhay Sharma, proved application for opinion, Exhibit P.W. 10/A. P.W. 11 SI Mahesh Kumar, Draftsman, Crime Branch, prepared site plan, Exhibit P.W. 11/ A.P.W. 12, Mohd. Gunni, father of the deceased, identified the dead body and proved his statement Exhibit P.W. 12/A. P.W. 13, Mohd. Kamal, identified the dead body and proved his statement, Exhibit P.W. 13/A. P.W. 14 is Constable Pramod Kumar. P.W. 15 is Head Constable Sompal Singh.

4. Learned Counsel for the appellant contends that there is no material on record which positively proves that the appellant has committed the offence beyond reasonable doubt. He contends that except for P.W. 2, Vijay, who states that he saw the accused running away with the knife in his hand, there is no other evidence to link the accused with the crime.

Learned Counsel for the State contends that P.W. 2, Vijay, is an eye-witness who has seen the accused fleeing from the place of incident armed with a knife from which it can safely be deduced that he saw the perpetrator of the crime.

5. Having heard counsel for the parties, we have perused the material on record with great care. We find the prosecution's case rest on the testimony of P.W. 2, Vijay, as also the recoveries made at the instance of the accused, namely, the knife and a pair of jeans, P.W. 2, Vijay, in his deposition states that on 8-10-2001 at about 7-30 p.m. he was present near the temple as he was neighbour of Jainnuddin. Accused Shaukat Ali and deceased Shamshad also used to reside in the same place and were from the same village. Accused Shaukat Ali and deceased Shamshad had some money dispute. Shaukat Ali used to demand payment from Shamshad. On the date of incident, a quarrel had ensued between Shaukat Ali and Shamshad and later on Shaukat Ali killed Shamshad with a knife. The witness did not see Shaukat Ali actually stabbing Shamshad but saw Shaukat Ali running with a knife and after that he heard noises. He does not remember whether Shaukat Ali uttered any words while he was running. In cross-examination by Additional Public Prosecutor, this witness admitted that he saw Shaukat Ali running with a knife behind Shiv Mandir on 7-10-2001 at about 7.30 p.m. and at that time, he was standing outside his jhuggi. He denied the other suggestions except that there was a dispute of Rs.3,500/- between the appellant and the deceased. In cross-examination by the counsel for the accused, he admits that the Police arrived at the spot after the occurrence and that his statement was recorded on 10-10-2001. He also admits that he did not meet the police from 7-10-2001 to 10-10-2001. He admits that the jhuggi of Jainnuddin was at a distance of ten juggies from C-177.

6. From the analysis of evidence of this witness, we can safely come to the conclusion that even though the police came to the spot soon after the occurrence, the witness did not join the investigation. He did not tell the police or any other person that he had seen the appellant running from the spot with a knife in his hand. It is only after four days of the occurrence that this witness makes a statement to the effect that he saw the accused running from the spot with a knife in his hand. In examination-in-chief, the witness says that the occurrence took place on 8-10-2001 while in cross-examination, he says it took place on 7-10-2001. Obviously, this witness is not steadfast nor a reliable witness even according to the prosecution. The trial Court, while appreciating the evidence of P.W. 2 has held that it is true that DD No. 34-B, Exhibit P.W. 4/A in respect of this

incident was recorded on 7-10-2001 at about 9-50 p.m. There is no mention of the person as to who had stabbed and caused injuries but in the absence of any motive on the part of P.W. 2 to falsely implicate appellant in this case, his version that 'the accused was running from the spot with a knife in his hand' cannot be disbelieved. Merely because the defense could not attribute motive to P.W. 2, does not technically mean that the witness that the witness is telling the truth. There is no Explanation forthcoming as to why this witness did not inform the police for four days as to what he claims to have seen. It is difficult to believe that in a jhuggi cluster locality where a murder has taken place, the eye-witness would be oblivious of the investigations being conducted by the police. Even though P.W. 9, Jainnudin, who was the neighbour of P.W. 2, Vijay, has participated in the investigation inasmuch as he took the deceased to the hospital. P.W. 2 does not tell him anything. Surely, neighbours would exchange notes on a sensational incident such as a murder next door. P.W. 9 claims he did not see the assailant and as noticed by the trial Court, Exhibit P.W. 4A does not implicate the accused. There is no reasonable Explanation as to why the information available with P.W. 2 was withheld from investigation for four days. This itself creates a doubt in the veracity of the testimony of this witness.

7. Coming to the next aspect of the matter, namely, recovery of dagger and a pair of jeans at the instance of the accused, we note that the recovery witness, namely, P.W. 8, Constable Dharmender Kumar, does not support the recovery. He states that in his presence the appellant was not interrogated by the Investigating Officer and does not talk of the seizure of the dagger nor the jeans. However, this witness is a signatory to the recovery memo. The other independent witness of recovery, P.W. 9, Jainnudin, also does not support the prosecution. The dagger as also the jeans were sent for Chemical examination where it was found that the dagger does not have any remains of blood on it, while jeans had blood of 'A' group which was similar to that of the deceased. Interestingly, however, no witness says that the accused was wearing jeans at the time when the crime was committed. Even, P.W. 2, does not state that the accused was wearing jeans when he saw him running. There is no admissible piece of evidence on record to link the jeans purportedly recovered at the instance of the accused. Besides the nature of evidence adduced and discussed above, there is no other material adduced by the

prosecution to establish its case. The trial Court went wrong in assuming that the jeans belonged to the deceased when there being no material on record to suggest such a connection. As a matter of fact, this is a case where even the maker of the FIR does not support the case of the prosecution.

8. From a careful analysis of the material on record, we find that the trial Court erred in relying upon assumptions and conjunctures to hold the appellant guilty. Consequently, judgment and order on sentence dated 7-8-2003 cannot be sustained. It is, therefore, set aside and the appellant herein is acquitted of all the charges framed. Criminal Appeal No. 739 of 2003 stands allowed. The appellant, who is in jail, shall be set at liberty forthwith unless wanted in any other case.

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