

Sushil Vs. State

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Court : Delhi

Decided On : Mar-22-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Crl. Appeal No. 275/2008

Appellant : Sushil

Respondent : State

Advocate for Def. : M.N. Dudeja, A.P.P.

Advocate for Pet/Ap. : Mukesh Kalia and; V.K. Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. When examined under Section 313 Cr.P.C. the appellant responded to the last question: Why this case against you and why the P.Ws have deposed against you? By answering:

It is a false case. On that day, I was going from the side. Jaswant was with me. Two boys attacked us i.e. me and Jaswant. One of them had caught hold of me.

He had caused injuries on my person. In the meantime, one police official had come there. The person whom I had caught, in the mean time, had succeeded in fleeing away. The other boy had been apprehended by the police official. However, that boy had succeeded in getting himself released from the clutches of the police officials. He had also fled away. I asked the police official to catch that boy but the police official did not catch him. Thereafter, this case was foisted on me.

2. The appellant claims that two boys attacked him and his friend Jaswant (the deceased) and that he i.e. the appellant received injuries. Let us note at the outset the injuries detected on the person of the appellant. The same stand recorded on the MLC Ex.PW-23/A. The date recorded thereon is 5.2.2002. The time recorded is 2:35AM. The author of the MLC is Dr. Kamna and has been proved at the trial by Dr. Girish Shastri PW-23 who claimed to be conversant with the handwriting and signatures of Dr. Kamna. The injuries recorded on the MLC are: Fresh injury c stitches in situ on Rt hand dorsum in first inter digital cleft. Injury of approx. 2cm in length. On the MLC it has been further recorded that a linear scar mark on the forehead right side and a scar mark above the elbow joint of left arm on medial side was detected.

3. It is apparent that the linear scar mark on the forehead and the scar mark on the elbow, being scar marks, were very old injuries. The fresh injury noted was on the right hand dorsum in the first inter digital cleft. It had been stitched.

4. It assumes importance to note at the outset, with reference to the defence of the appellant, that there is no evidence of any doctor stitching the wound on the hand of the appellant. It further assumes importance to note that as per the prosecution the appellant was apprehended at the spot as he was detected committing the crime by Ct.Pramod Tyagi PW-8, Ct.Har Sikander Singh PW-9 and SI Babbar Bhan PW-13 at around 9PM on 4.2.2002. He remained in custody of the police and was medically examined on 5.2.2002 at 2:35AM. As deposed to by SI Sunder Singh PW-19, he took the appellant to Lady Harding Hospital for examination on the direction of Inspector Rajinder Singh PW-21, the Investigating Officer of the case, who summoned him to Tank Road (the place where the deceased was

murdered) and that he reached the spot at around 1:10AM on 5.2.2002 and took the appellant to the hospital and brought the appellant back to the police station at around 3:45AM after having him medically examined. SI Sunder Singh PW-19 has categorically deposed when he took custody of the appellant, blood was oozing from the right hand of the appellant and the hand was bandaged.

5. It is apparent that the right hand of the appellant had a bandage on it when the appellant was apprehended at Tank Road and this means that the injury on the hand of the appellant was not the result of something which happened at Tank Road in the night of 4th February, 2002. The injury, though nascent, was prior in point of time, for only then could it be bandaged, and had started bleeding afresh. This also suggests that the appellant had grasped something in his wrist and had struck the said object and when force was applied by him, the recently stitched wound gave way. Alternatively it could be the result of somebody hitting or catching with force the right hand of the appellant.

6. Vide impugned judgment and order dated 18th January, 2008 the appellant has been convicted for the offence of having murdered his friend Jaswant.

7. In harmony with his defence aforementioned, learned Counsel for the appellant did not dispute that Jaswant was brutally murdered at around 9PM near the parking at Tank Road on 4.2.2002. Learned Counsel for the appellant did not dispute the postmortem report Ex.PW-1/A of the deceased as per which as many as 19 wounds, all caused by a sharp edged weapon, 6 of which were stab wounds and 13 were incised wounds, showed that Jaswant was brutally assaulted and the weapon of offence could be the knife Ex.P-1, sketch whereof Ex.PW-9/A was drawn by Inspector Rajinder Singh PW-21 after it was seized vide memo Ex.PW-9/B on being handed over, as deposed to by SI Babbar Bhan PW-13 to Inspector Rajinder Singh PW-21.

8. It is the case of the prosecution that Ct.Pramod Tyagi, Ct.Har Sinkander and SI Babbar Bhan chanced to reach the parking at Tank Road because SI Babbar Bhan had to meet a secret informer on Tank Road and they noted a person lying on the ground and another sitting on him and stabbing him. They rushed to the rescue of the victim and before the assailant i.e. the appellant could flee, they not

only apprehended him but even disarmed him. This happened at around 9PM. Inspector Rajinder Singh PW-21, the SHO of the police station who was patrolling in the area happened to reach Tank Road and took over the investigation. He took possession of the knife handed over to him by SI Babbar Bhan and recorded the statement Ex.PW-13/A of SI Babbar Bhan and making the endorsement Ex.PW21/A sent the same through Ct.Pramod for FIR to be registered, recording the time of dispatch of the tehrir at 10:30PM. The FIR Ex.PW-5/A was recorded at the police station by HC Ramesh Kumar PW-5 at 10:35PM. It stands recorded on the FIR that the distance of the police station from the place where the crime took place is about 300 mtrs. in the north-west direction. Simultaneously, as deposed to by HC Ramesh Kumar PW-5, he made a corresponding entry in the daily diary vide DD No. 30-A, Ex.PW-5/C noting therein the receipt of the statement of SI Babbar Bhan and the tehrir dispatched by Inspector Rajinder Singh pertaining the incident of stabbing in question and that the crime team and the photographer were being requisitioned to go to the spot.

9. Since the appellant has claimed the defence as aforementioned in para 1 above, no useful purpose would be served in noting the evidence of the witnesses who state that the appellant and the deceased were friends and were seeing together in the late evening of 4.2.2002.

10. What needs to be considered and answered is, as to which of the two rival versions inspires confidence. Is it the version of the appellant or that of Ct.Pramod Tyagi, Ct.Har Sikander Singh and SI Babbar Bhan?

11. Ct.Pramod Tyagi and Ct.Har Sikander Singh have deposed in harmony that they were posted at PS Prashad Nagar and were together in the company of SI Babbar Bhan doing patrolling in the area of their beat. At around 9PM they were proceeding towards Jheel Park and had reached near the parking on Tank Road where they saw a person lying on the ground and a person sitting over him and stabbing him. SI Babbar Bhan gave a call to the person who was stabbing who started running. The three police officers chased him and caught him at a distance of 10-15 paces and disarmed him. SI Babbar Bhan interrogated the accused i.e. the appellant and in the meanwhile Inspector Rajinder Singh, the SHO of the

police station reached to whom the knife was handed over and custody of the accused was entrusted.

12. The difference in the testimony of the two witnesses i.e. Ct.Pramod Tyagi and Ct.Har Sikander Singh is that Ct.Pramod Tyagi deposed: SHO directed me to trace out if any other person was also with the accd and on his direction I left the spot but no other person was found present nearby the spot. Ct.Har Sikandar Singh stated said fact but in a different language. He stated that Ct.Pramod searched for an accused. SI Babbar Bhan also stated that Ct.Pramod was directed to look for another accused if any.

13. With reference to the testimony of the said three police officers, it was urged that if the three police officers had seen only one man stab Jaswant and had nabbed the assailant, where was the occasion to search for another accused. It was urged that the said conduct of Ct.Pramod and the evidence of the three witnesses proving the said conduct was in harmony with the defence that there was another assailant as claimed by the appellant.

14. Insp.Rajender Singh PW-21, under whose instructions Ct.Pramod is stated to have searched for another accused deposed (Quote): I had not instructed Ct.Pramod to look for any other assailants nearby. Vol. I had asked him to see if any other person was present around or not.

15. As urged by learned Counsel for the State it is apparent that Insp.Rajender Singh was trying to associate a public person and Ct.Pramod looked around and searched if a public person could be associated, but while deposing in Court the three junior police officers took flights of fancy.

16. It was urged that during cross-examination SI Babbar Bhan admitted that as a Sub Inspector he was in- charge of Division I and that Tank Road did not fall within his division. He also admitted that the length of Tank Road was 1 km. He as also Ct.Pramod and Ct.Har Sikandar admitted that they left the police station at different points of time with Ct.Pramod and Ct.Har Sikandar being together. Counsel urged that it was strange that SI Babbar Bhan met the two constables per chance and asked them to meet him at Tank Road and the two reached Tank

Road parking at the same time when SI Babbar Bhan reached the parking. Counsel highlighted that the three police officers have not stated that SI Babbar Bhan told the two constables to meet him at the parking of Tank Road. Counsel wondered as to how come on a road which was 1 km in length could the two constables figure out the whereabouts of SI Babbar Bhan. Counsel concluded the submission by urging that the defence version as put to the three witnesses was the only probable version, being that SI Babbar Bhan was alone near the parking at Tank Road when two assailants attacked the appellant and his friend Jaswant. One managed to flee and the other was apprehended by the appellant. SI Babbar Bhan was entrusted custody of the assailant. SI Babbar Bhan used his mobile phone to call Ct.Pramod and Ct.Har Sikandar Singh and by the time two constables reached Tank Road the culprit managed to flee and the three police officers contrived to falsely implicate the appellant.

17. SI Babbar Bhan has stated that he had to meet a secret informer near Tank Road and that was the reason for him to go to Tank Road. There is nothing unnatural for him to meet Ct.Pramod and Ct.Har Sikandar who were on a beat in Division I i.e. the Division of which SI Babbar Bhan was in-charge. There is nothing unnatural for SI Babbar Bhan to tell them to meet him at a spot on Tank Road. It is true that neither police officer has stated that a spot on Tank Road was identified as the meeting place, but it is a fact noted in various judicial pronouncements that for unexplainable reasons, witnesses in India do not speak with precision and clarity. It is unfortunate that public prosecutors do not ask supplementary and clarificatory questions. This requires the Court to evaluate evidence as a common reasonable prudent person would so do keeping in view the prevailing linguistic skills of the populace. It is obvious that SI Babbar Bhan had told the two constables to meet him near the parking of Tank Road and that is the reason why they met him there.

18. Picking on the conduct of the three police officers, with reference to the FIR where it was noted that the distance of the place of the crime from the police station was 300 meters and the admission of SI Babbar Bhan, Ct.Pramod and Ct.Har Sikandar that Insp.Rajender Singh PW-21 reached the place of the crime after about 15 minutes as also the admission of Insp.Rajender Singh that he

chanced to reach the spot during patrol duty, counsel urged that how come the three police officers could ever think that Insp. Rajender Singh who was not in touch with them and was patrolling in the area would chance to reach the spot. Counsel urged that had the three police officers caught the appellant while committing the crime it was natural that at least one of them would have rushed to the police station to fetch a vehicle and rush the victim to the hospital who could well be alive. Counsel highlighted that the three police officers were not doctors. Thus, counsel urges that even this conduct shows that when one out of the two real assailant who was caught by the appellant and handed over to SI Babbar Bhan managed to flee, the three police officers stood at the spot and contrived to falsely implicate the appellant.

19. SI Babbar Bhan has stated that after the appellant was caught he interrogated him. It is once again unfortunate that the learned APP did not bring out by asking clarificatory questions as to what interrogation was done. But, to a person having even rudimentary knowledge of the procedures of the criminal law it is apparent that when a cognizable crime is noted or is brought to the notice of a police officer an FIR has to be got registered and for this the minimal preliminary inquiry within the constraints of the time and the situation is required to be done with reference to the name and address of the victim as also that of the assailant if any. If eye witnesses are seen at the spot it is desirable to note down their names and addresses. It is obvious that SI Babbar Bhan was in the process of ascertaining the aforesaid and it is just a matter of chance that in the meanwhile SI Rajender Singh reached the spot. We find nothing mystic in this. As regards the suppositively strange conduct of the three junior police officers to not rush the victim to the hospital, with reference to the photographs of the deceased which were taken at the spot it is evident that the neck was slit at the Adams apple and even the trachea has been cut. The wound is gapping open and has an opening of about 2 cms. Any person who saw such a victim would instantly form the definite opinion that the victim is dead and thus no useful purpose would be served to rush the victim to the hospital and hence it would be advisable to preserve the scene of the crime.

20. Drawing our attention to DD No. 30A, Ex.PW-5/C, where the name of the accused is not mentioned, it was urged that if the appellant was apprehended as claimed by the prosecution, before the tehrir was sent from the spot, how is it that the name of the accused was not mentioned in DD No. 30A.

21. The answer is to be found in the callousness of HC Ramesh Kumar PW-5 who while complying with the requirement of law in the Union Territory of Delhi to make a brief entry in the daily diary when an FIR is registered, has made the entry a little too brief by simply recording that he had received the statement Ex.PW-13/A of SI Babbar Bhan and had registered the FIR thereon.

22. We note that when HC Ramesh Kumar PW-5 proved DD No. 30A no suggestion has been put to him that he had not received the statement of SI Babbar Bhan. A bald suggestion was put to him that he had anti-timed the registration of FIR and the DD entry, a fact which he denied. Thus, it is apparent that the only statement with HC Ramesh Kumar when he registered the FIR was that of SI Babbar Bhan and as recorded by Insp.Rajender Singh.

23. It is settled law that procedural lapses and defects during investigations cannot destroy the proof of facts by the prosecution if there is credible and unimpeachable evidence to prove the guilt of an accused.

24. It was submitted that Tank Road is in a thickly populated area and as admitted by the four police officers there are DDA flats nearby. It was urged that not joining a public witness required an adverse inference to be drawn for the reason the accused was pitted against the rival version given by four police officers, whose contemporaneous conduct was not free from doubt.

25. As regards the alleged unnaturalness in the contemporaneous conduct of the four police officers, we have already dealt with the same hereinabove and have found nothing unnatural about the same. As regards not joining a public witness, suffice would it be to note that as per Insp.Rajender Singh he asked Ct.Pramod to see if there was any witness around and that none could be found. No law requires the police to go about and bring a public man to be their witness. All what is required is and that too by way of prudence and caution that if public persons

are readily available it would be desirable to associate them during investigation for the reason this lends credibility to the investigation. But, experience has shown that either public witnesses shy away from associating themselves with investigation and unfortunately we note, with pain and anguish, that when public witnesses are associated during investigation by the police, more often than not they turn hostile. We do not think that this is the proper occasion for us to go into the reasons as to why public witnesses are turning hostile by the dozens, a phenomenon noted by us in case after case being dealt with by us. We repeat, in the instant case there is evidence that an attempt was made to look for a public witness, but none was available.

26. It was urged that it is the case of the prosecution that the appellant and the deceased were friends. It was urged that the doctor who conducted the post-mortem of the deceased ruled out any evidence of sodomy. Thus, counsel wondered as to how come the appellant would be expected to kill his friend.

27. Strange are the ways of urban lifestyle and strange is the behaviour of the residents in the Metropolis city of Delhi. Hearing criminal appeals for the last 15 months we have come across the strangest of cases, some with such trivial motives and many without none, yet the crime was committed. Behavioural scientists can possibly search for some answers, but in the absence of any research work on the point, we shy from venturing into an answer.

28. It is settled law that motive not being proved would be irrelevant if there is percipient evidence or a strong circumstantial evidence before a Court.

29. Reverting back to where we commenced our journey i.e. the defence of the appellant and the injury on his right hand dorsum in the first inter digital cleft. The injury existed with a bandage on it when the appellant was apprehended (as per his claim when he was at the spot with his friend) and this means that the injury was not inflicted upon the appellant by any assailant as claimed by him. This fact completely falsifies the defence of the appellant and since we have two rival versions, one of which i.e. that projected by the appellant has fallen flat, the other has to be accepted, more so for the reason that the evidence brought on record not only probablizes the version but proves it beyond all reasonable doubts.

30. An additional link in the chain of incriminating evidence against the appellant is the fact that his shirt Ex.P-10 which was seized at the spot when he was apprehended at the spot has been opined, vide FSL Report Ex.PW-15/B to be stained with human blood of the same group as that of deceased Jaswant.

31. We find no merit in the appeal which is dismissed.

32. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar to be made available to the appellant.

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