

State Vs Sh.Prem Singh @ Kale and Dwarka Nath @ Rakesh.

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Court : Delhi

Decided On : Aug-25-2010

Judge : Mr. Anil kumar, ; Mr. Suresh Kait. J J.

Appeal No. : Crl.M.A 8224/2010 & CRL.LP No.213/2010.

Appellant : State

Respondent : Sh.Prem Singh @ Kale and Dwarka Nath @ Rakesh.

Advocate for Pet/Ap. : Mr.Lovkesh Sawhney, Avs.

Judgement :

1. Whether reporters of Local papers may be YES allowed to see the judgment?
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported NO in the Digest?

ORDER

This is an application seeking condonation of delay of 109 days in filing the leave to appeal. For the reasons stated in the application, the delay in filing the leave to appeal is condoned and the application is allowed.

1. The petition is against the order dated 18th August, 2009 acquitting Sh.Prem Singh and Sh.Dwarka Nath of charges under Sections 302/ 201/ 394/ 120 B/ 397/

411/ 34 of the Indian Penal Code read with Sections 27/54/59 of the Arms Act by the Sessions Judge in SC no. 20 of 2008 in FIR No. 306 of 2004 Police Station Sultan Puri.

2. Brief facts to comprehend the case are that on 23rd March, 2004 pursuant to a call made at about 7.15 a.m, a dead body lying in a vacant plot in front of Karan Public School, Aman Vihar, Sultan Puri, Delhi was recovered, which was later on identified to be of one Sh.Prahlad. The prosecution case is that during investigation on 23rd March, 2004, it came to the notice of the Investigating Officer, Sh.Preet Singh PW 13 that two persons, namely, Sh.Ram Chander PW 7 and Sh.Vijay Kumar PW 6 had witnessed the incident. They revealed that they were returning from Nangloi and when they reached near Karan Public School, three boys surrounded them and one of them namely, Amar Chand put a knife on the chest of Sh.Ram Chander PW 7 and others searched them and on finding nothing, Sh.Ram Chander PW 7 and Sh.Vijay Kumar PW 6 were allowed to go, however they had been beaten also. According to the petitioner when these two persons had gone only about 75 to 100 steps, they saw another person wearing a red shirt and black trousers coming from the side of Karan Public School. Out of curiosity, Sh.Ram Chander PW 7 and Sh.Vijay Kumar PW 6 hide themselves in a dark corner in order to witness as to what the accused persons would do with that person who had come wearing a red shirt.

3. The case of the prosecution is that Sh.Ram Chander and Sh.Vijay Kumar witnessed, that the accused Prem Singh caught hold of the victim from behind whereas accused Amar Chand put a knife on his chest and accused Suraj searched him which was resisted by that person. As he resisted the bid to rob him, he tried to raise noise because of which accused Amar Chand stabbed him in the chest. As the victim screamed on being knifed, Sh.Ram Chander PW 7 and Sh.Vijay Kumar PW 6 got frightened and left for their houses. The victim was later identified as Prahlad, father of Sh.Suraj who had come to lodge a missing person's report of his father with a photograph of the same.

4. Later on, all the accused, namely Prem Singh, Dwarka Nath, Suraj and Amar Chand were arrested and they made their confessional statements. At their

instances, allegedly one purse belonging to the deceased Prahlad was recovered from the house of Amar Chand, whereas a mobile phone of the deceased was recovered at the instance of the Dwarka Nath from his house. The alleged weapon of offence, a spring activated knife was also recovered at the instance of the accused Amar Chand from his house.

5. The accused were charged under Sections 394/ 302/ 201/ 34 of the Indian Penal Code and also under Sections 25/ 27 of the Arms Act to which the accused pleaded not guilty. Since the accused Suraj was a juvenile and the accused Amar Chand was also declared a juvenile during the proceedings, their cases were sent to the Juvenile Court for them to face trial there.

6. The case was tried against Prem Singh @ Kale and Dwarka Nath @ Rakesh @ Deena and prosecution examined 13 witnesses and the statements of accused, Prem Singh and Dwarka Nath were recorded under Section 313 of the Indian Penal Code, wherein they submitted that they are innocent and have been falsely implicated in this case. Accused Dwarka had claimed that his younger brother was lifted from his house by the police and when he went to Police Station to get his brother released, he was falsely implicated in this case. Whereas accused Prem Singh claimed that he was working as a gas cutter and as his family members were taken away by the police officials, he went to get them released, he was falsely implicated in this case.

7. The Sessions Court considered the testimonies of (PW6) Sh.Vijay Kumar and (PW7), Sh.Ram Chander, the alleged eye witnesses, and held that the corroboration of all the facts is not a sine qua non for conviction, and no corroboration is required, if after careful perusal, the version of eye witnesses is found cogent, convincing and inspires confidence of the Court. However, considering in detail the testimonies of these two eye witnesses and the other testimonies, especially of the Investigating Officer, (PW13) Inspector Preet Singh, the Court disbelieved the testimonies of alleged eye witnesses and thus, acquitted the respondents Sh.Prem Singh and Sh.Dwarka Nath of the charges framed against them.

8. This Court has heard detailed submissions made on behalf of the State by the learned prosecutor and have also perused the entire trial court record. The emphasis of learned counsel for the petitioner Mr.Lovkesh Sawhney is that the testimonies of eye witnesses Sh.Vijay Kumar (PW 6) and Sh.Ram Chander (PW 7) who are the spot witnesses do not suffer from any grave infirmity, nor have contradictions and are cogent and convincing, and therefore, the Sessions Court ought to have relied on them along with other materials to infer the guilt of the respondents/accused. Regarding contradictions in the testimonies of (PW 6) and (PW 7), Sh.Vijay Kumar and Sh.Ram Chander respectively, it is contended that the contradictions are in fact, minor discrepancies which do not go to the root of the matter so as to disbelieve them.

9. The Trial Judge has noticed the variations in the testimonies of (PW 6) and (PW7) as Sh.Vijay Kumar (PW6) has deposed that he along with (PW7) Sh.Ram Chander had gone to meet their friend Mukesh at Nangloi at about 9.00 p.m. and left at 10.30/11.00 p.m., and as stated by Sh.Ram Chander (PW7) during cross-examination he gave the time of meeting the friend at 8.00/8.30 p.m., however, he did not know the name of the friend with whom he along with Vijay Kumar had admittedly interacted for more than two hours. Vijay Kumar PW 6 had stated that he knew Ram Chander PW 7 for last about three months prior to the incident who resides at a distance of about 70 to 75 meters from his house, whereas, Ram Chander stated that he had known Vijay Kumar for the last 4 to 5 years. This was also noticed that though they are neighbours and had been meeting each other, , Vijay Kumar did not know about the profession of Ram Chander. Sh.Vijay Kumar had deposed that he did not know accused Prem Singh prior to the occurrence and he came to know his name only on hearing the conversation between the accused as they were calling names of each other, whereas Ram Chander has deposed that accused Prem Singh is not only known to him but that he was also known to Vijay Kumar (PW 6) from before as the accused used to visit their locality with accused Amar Chand.

10. According to Vijay Kumar, PW 6 injuries were sustained by him and he had gone to the doctor, which fact is contradicted by PW 7 Ram Chander who stated that neither he nor Vijay Kumar sustained injuries nor had they visited the doctor

on account of alleged beatings given to them by the accused.

11. The variations in the testimonies of PW 6 and PW 7 who are the alleged eye witnesses is also substantial, regarding the arrival of the deceased, as according to PW 6 he was coming from the side of Karan Public School whereas Ram Chandra PW 7 had stated that he passed near the place where they were standing. These variations in the testimonies of the two eye witnesses cannot be termed minor discrepancies and considering the entirety of the facts and circumstances, these discrepancies are apparently major contradictions and cannot be relied on.

12. The Trial Court has also noticed the unusual behavior of these two eye witnesses which dilutes their credibility. Though both of them were stopped by the accused persons and even beaten up and as nothing was found on them, they were allowed to go. Yet instead of running from there to save their lives as categorically stated by them that one of the accused had allegedly put a knife on the chest of (PW7), they preferred to remain present at the spot at a very short distance of about 75 to 100 steps to see as to what accused would do to another passerby. If according to Ram Chandra, PW 7, the deceased had passed from near the place where they were standing, then normally they would have stopped him or cautioned him about the danger of the accused trying to rob the passersby. However, nothing was done by them which casts a serious doubt about the credibility of these two witnesses.

13. There are other major contradictions in the testimonies of these two witnesses as (PW 6) Sh.Vijay Kumar had deposed that police officials met him at 7.00 p.m. on 23rd March, 2004, and at another place he stated that his statement was recorded at 4.00 p.m. on 23rd March, 2004. If the police officials had first time met him at 7.00 p.m. on 23rd March, 2004, then how could his statement be recorded at 4.00 p.m. has not been satisfactory explained by the learned counsel for the petitioner. These statements of PW 6 Vijay Kumar are irreconcilable.

14. The testimony of the Inspector Preet Singh (PW13) also has cast doubts on the veracity of the statements of the alleged eye witnesses PW 6 and PW 7. Inspector Preet Singh was handed over the investigation a day after 22nd March,

2004, the day of the incident. He had prepared inquest papers, got the deceased identified, postmortem Ex. PW8/B was got conducted by him and subsequently the dead body was handed over to the legal heirs on 24th March, 2004 vide receipt Ex. PW3/C. He had also arrested Prem Singh @ Kale on 6th April, 2004 vide arrest memo Ex. PW13/B and conducted his personal search vide Ex. PW13/C and also recorded Prem Singh's alleged disclosure statement Ex. PW13/D during which he had disclosed that he had handed over the mobile phone of the deceased to the co-accused Dwarka Nath and also prepared pointing memo at his instance vide Ex. PW 13/E regarding place of occurrence. It was further testified by Inspector Preet Singh that Dwarka Nath was arrested on 10th April, 2004 vide memo Ex. PW 13/F whose personal search was conducted vide memo PW13/G and the alleged disclosure statement was also recorded vide memo Ex. PW13/H on the basis of which one mobile phone was recovered from the house of Dwarka Nath and the seizure memo was Ex. PW13/I.

15. The said Inspector had also testified that one black coloured shoe was recovered from the spot where the dead body of the deceased was found whereas another shoe was recovered at some distance and an unscaled site plan Ex. PW13/O was prepared. Though PW 6 and PW 7, the alleged eye witnesses have deposed that at various points of time they were made to join the investigation and also witnessed various proceedings during investigation, however, Inspector Preet Singh has conspicuously been quite about the alleged eye witnesses having joined the investigation or being taken to the mortuary of Sanjay Gandhi Hospital, for identification of the deceased or that they had accompanied the Inspector and other police officials to the house of Suraj from where he was arrested and that the recoveries were effected in their presence. The perusal of the testimonies of Inspector Preet Singh (PW13) rather reflects as if these witnesses never existed and he was not aware of their presence. The said IO of the case also failed to depose about the alleged recovery made from the house of the accused Suraj or that he had made a disclosure statement that accused Amar Chand had taken the purse and that Suraj has retained the wrist watch and Prem Singh had taken the mobile phone of the deceased. Though independent witnesses were present but neither the disclosure statements had been recorded in their presence nor recoveries were made in their presence.

16. Though the accused Dwarka was arrested on 10th April, 2004 from an area which is thickly populated yet no neighbour or independent person was joined in the investigation at the time of his disclosure. Rather it has not been shown that even any effort was made to join any person during recovery of case property at the instance of accused Dwarka. The site plan Ex. PW 1/F of the place from where the mobile phone was recovered does not indicate from where the mobile phone was recovered.

17. The learned counsel for the petitioner is unable to give any cogent or reliable reason as to why the recoveries were not made pursuant to the disclosure statement in the presence of the independent witnesses though the independent witnesses were present. Reliance can be placed on *Chander Pal and Ors. v. State*, 1998 (3) CC Cases HC 215 and *State of Haryana v. Ram Singh*, 2002 SCC (Crl.) 351 holding that when the disclosures and arrests are made in the absence of independent witnesses, a doubt or suspicion is created and benefit of such a doubt is to be given to the accused.

18. Learned counsel for the petitioner is also unable to give any satisfactory reply regarding deposition of IO regarding recovery effected on 8th April, 2004 or anything done by the investigating officer PW 13 on that day. Though constable Naresh Kumar PW 2 deposed that proceedings were conducted on 8th April, 2004, in which the accused Amar Chand and Prem led the police party consisting of himself, constable Virender and IO to B Block, Karan Vihar, Part- V where at his instance, a spring activated knife was recovered from the Almirah of his house, however, PW 13 has not deposed anything about the same.

19. These points as detailed hereinabove are the major contradictions and hence cannot be construed to be minor discrepancies considering the facts and circumstances of the case. If the alleged eye witnesses do not give the name of the person after visiting him, if despite being neighbors they do not know the profession of each other; despite the fact that though on account of being beaten and threat given by one of the accused and putting a knife on their chest, instead of running from there, they waited at a distance of only 75 feet and did not warn or caution another passerby who was allegedly ultimately killed by the alleged

accused would constitute major contradictions. Apparent lacunas in the testimony of the investigating officer, makes it difficult to infer that the prosecution has been able to establish all the links in the chain of events pointing to the guilt of the accused that the crime of murdering the deceased Sh.Prahlad was committed by them.

20. Despite arrest and recoveries made from the places which are thickly populated, no cogent reasons have been disclosed for not making any efforts to arrest or making recoveries or recording the disclosure of the statements in the presence of independent persons.

21. Testimonies of PW1, PW3, PW4, PW5, PW8 & PW9 also do not reveal any such fact which will incriminate the accused Prem Singh and Dwarka Nath. If the testimonies of PW6 and PW7 Vijay Kumar and Ram Chander are disbelieved as not being creditable, it cannot be held that the accused had killed the deceased.

22. This cannot be disputed that merely on the basis of suspicion a person cannot be held guilty as each of the circumstances relied on has to be proved with certainty so as to exclude the probability of innocence of the accused. In the totality of the facts and circumstances, the undeniable inference to be drawn is that the petitioner has failed to establish that the accused Prem Singh and Dwarka Nath/respondents had committed robbery on the person of Prahlad and robbed him of the mobile phone, the purse and the wrist watch and has caused culpable homicide amounting to his murder. This has also not been established that Prem Singh and Dwarka Nath were present at the spot at the relevant time, or that they have committed or participated in the alleged offence and that the alleged stolen mobile phone was recovered from the person of the Dwarka Nath in absence of any recoveries made in presence of independent witnesses in the facts and circumstances and on the basis of testimonies of alleged eye witnesses Pw6 & Pw7..

23. The learned counsel for the petitioner is also unable to reply satisfactorily as to how the alleged eye witnesses PW6 and PW7 could have witnessed the alleged robbery and knifing of the deceased by the respondents, as the body of the deceased was found in a vacant plot which has a boundary wall around it, which

boundary wall was broken only at two places. In Ex. PW11/A, the scaled site plan prepared by the prosecution is of the recovery of dead body only and it has not been shown as to where alleged eye witnesses PW6 and PW7 were hiding. Surprisingly detailed site plan was not prepared detailing all relevant aspects of crime. This is not the case of the prosecution that they were hiding in the same plot having boundary wall around it where the dead body was found. If that be so it has not been established as to where they were hiding and from the place of hiding, whether the whole incident could be witnessed or not. If once consider the plan Ex. PW11/A, alleged eye witnesses were at a distance of about 75 steps or feet, then they would have been across the wide road which is about 75 feet. Nothing is shown in the plan that there were such structures or obstacles behind which they could hide himself. The version of PW 6 and PW 7 is also that at the time of incident it was quite dark. There is no satisfactory explanation as to how they could see the alleged incident in such darkness from such a distance. Neither the testimonies of witnesses nor the plan depict any light source because of which even in the darkness on account of light from such a source, the alleged witnesses could watch robbing and stabbing of the deceased.

24. The learned counsel for the petitioner has also argued that the incident happened not inside the plot but outside the plot which was visible and could be viewed by PW6 and PW7 and later on the body was dragged inside the plot. However, even this plea also cannot be established on the basis of evidence on record, nor does such a hypothesis emerges from the testimonies of all the witnesses. Rather the testimony of one of the alleged eye witness is that the deceased was stabbed by one of the accused. If the stabbing was outside the plot having boundary wall all around it, then there should have been either sign of blood or struggle or dragging of body by the accused inside the vacant plot. The place where the alleged knifing of the deceased took place has not been shown in the scaled site plan Ex. PW11/A.

25. In the totality of the facts and circumstances, appreciation of testimonies of the witnesses of the prosecution by the trial judge does not suffer from any grave infirmity or such error which requires any interference by this Court in the facts and circumstances of this case. This cannot be disputed that unless the conclusions of

the trial court drawn on the evidence are unreasonable, perverse or unsustainable, the appellate court is not to interfere with the order of acquittal.

26. Learned counsel for the petitioner has not been able to show any such unreasonableness or perversity which will impel this Appellate Court to interfere with the order of the acquittal. This is no more *res integra* that as a rule of prudence, the appellate court should always give proper consideration to matters such as:

- i) views of the trial judges as to the credibility of the witnesses;
- ii) the presumption of innocence in favor of the accused, a presumption which is not weakened in any manner on account of acquittal at the trial;
- iii) the right of the accused to the benefit of any doubt and
- iv) the slowness of the appellate Court in disturbing of a finding of fact arrived at by the trial judge who has the advantage of seeing and noticing the witnesses and noticing their demeanor.

27. No other ground has been raised by the learned counsel for the petitioner seeking leave against the judgment of the trial court dated 18th August, 2009 in Session Case No.20 of 2008 pursuant to FIR No.306 of 2004, PS Sultan Puri, under Section 302, 201, 394, 120- B,397, 411 & 34 of the Indian Penal Code read with Sections 27, 54 & 59 of the Arms Act. As the view taken by the trial court does not suffer from any unreasonableness or perversity, there are no grounds to grant leave to the petitioner more so because on analysis of facts and circumstances and the evidence of the prosecution, this court also does not differ with the inferences of the trial court acquitting the respondents.

28. For foregoing reasons, we do not find any ground to interfere with the decision of the trial court acquitting the respondents from the charges made against them. There are no grounds to grant leave to appeal to the petitioner, and consequently, leave to appeal is declined and the petition is dismissed.