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Sanjeev Kumar Vs. State

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Court : Delhi

Decided On : Feb-07-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Code Of Criminal Procedure (CRPC) - Section 157

Appeal No. : CRL.A. 5/1999

Appellant : Sanjeev Kumar

Respondent : State

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr.Sumeet Verma, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

1. Believing that Deepak PW-13 was an eye-witness to the incident and accepting his testimony as creditworthy; further finding strong incriminating circumstantial evidence through the percipient testimonial evidence of HC Ram Charan PW-10 and Ct.Jaipal PW-15, vide impugned judgment and order dated 5.9.1998, the appellant has been convicted for the offence of having murdered Brij Mohan

@Bobby on 14.9.1995 at around 1:30/1:45 PM.

2. Let us note the facts leading to the registration of FIR Ex.PW-12/A (we find that on the FIR exhibit mark written is Ex.PW/A). Vide DD No.21 dated 14.9.1995, Ex.PW-8/A, duly proved at the trial through the testimony of its scribe Ct.Raj Kumar PW-8, at the police picket Trilokpuri it was recorded in the Daily Diary that pursuant to information flashed by the Police Control Room through Lady Constable Asha at 2:25 PM, it was informed that at Block No.36, Gurudwara Road, Trilokpuri a boy has been stabbed and the assailant has been apprehended in Block No.22, Trilokpuri by HC Ram Charan and police be sent. At about 2:45 PM, as recorded vide DD No.22, Ex.PW-8/B, proved at the trial by the scribe thereof, Ct.Raj Kumar PW-8, it was recorded that the Duty Constable at JPN Hospital had informed through wireless that one Brij Mohan S/o Jagdish Prasad was got admitted at the hospital in an injured condition by his brother Pramod Kumar and that the injured was declared brought dead.

3. Relevant would it be to note that Ct.Raj Kumar has duly proved DD No.21 and DD No.22. His testimony has not been challenged evidenced by the fact that when tendered for being cross-examined, counsel for the appellant did not cross-examine Ct.Raj Kumar. Thus, it conclusively stands proved that information was conveyed to the police post at 2:25 PM that the person who had stabbed a boy in Block 36, Gurudwara Road, Trilokpuri had been apprehended by HC Ram Charan a few blocks away.

4. Indeed, Brij Mohan S/o Jagdish Prasad was brought to JPN Hospital and as recorded on the MLC Ex.PW-16/A, proved at the trial by Dr.M.S.Chopra who identified the signatures of Dr.Dutta, the author of the MLC as Dr.M.S.Chopra claimed to have seen Dr.Dutta write and sign during official duties, it stands recorded that at 2:00 PM on 14.9.1995 Brij Mohan S/o Jagdish Prasad R/o 36 Trilokpuri was brought to the hospital by Pramod Kumar S/o Jagdish Prasad a resident of the same place as the patient, who was declared dead on arrival. It stands recorded therein that there were 3 stab injuries on the chest as also various other injuries on the head, neck and back.

5. It be noted that Dr.M.S.Chopra has not been cross- examined with respect to his testimony and he having duly proved the MLC Ex.PW-16/A, has not been quizzed qua the said MLC.

6. The FIR in question has been registered on the basis of the statement Ex.PW-13/A made by Deepak and upon which the endorsement Ex.PW-17/A has been made by Insp.Dharam Pal Singh PW-17, who, as deposed to by him was at Block No. 27 Trilok puri at 2:30pm when he received information that a stabbing incident had taken place near Gurudwara in Block No.36 and the assailant had been caught and was in the custody of HC Ram Charan and another constable, thus he proceeded to Block No.36. As mentioned in the endorsement Ex.PW-17/A it was dispatched from the spot at 4:10 PM.

7. It may be noted that the statement Ex.PW-13/A and the endorsement Ex.PW-17/A spans 2 pages, legibly written, having about 15 words in each line and 42 lines on the first page and 21 lines on the second. It would have approximately 915 words written thereon and one can safely estimate that it would have taken not less than 30 minutes to write the two.

8. It may be noted that while being cross-examined no suggestion has been made to Insp.Dharam Pal PW-17 that the statement Ex.PW-13/A and the endorsement Ex.PW-17/A is not in his handwriting.

9. It stands recorded in Ex.PW-13/A that the statement was made by Deepak S/o Shripal Sharma R/o 36/53-54 Trilokpuri, Delhi. As per the statement Deepak told Insp.Dharam Pal that along with his mother he was residing with his maternal uncles Brij Mohan, Pramod Kumar, Rajender Prasad and Jitender Kumar at the address disclosed and was a student of Class-IX in the Government Boys Senior School, Block-27, Trilokpuri. That in the year 1994 Nanhe @Munna R/o 26/70 Trilokpuri was murdered and in that connection, Rajender, Kunwar Pal both residents of Block 36 Trilokpuri and my maternal uncle Brij Mohan were arrested and sent to jail. After their acquittal Brij Mohan came to the house on 15.7.1995 and after that Rajender and his brother Sanjeev many times threatened Brij Mohan for having falsely implicated Rajender in Munna's murder. On the evening of 12.9.1995 Brij Mohan had a scuffle with Sanjeev near Mother Dairy Booth. His

uncle Brij Mohan had gone with his TSR to Indira Market, Block 36, Trilokpuri to have a punctured tyre repair and he had gone to the same market to buy copy and books when at about 1:45 PM near the Gurudwara on the main road he saw Sanjeev pushing his uncle and yelling "Aaj mauka mila hai ab tujhe bachaney waala nahi aayega" and took out a knife from the right pocket of his trousers and inflicted several blows on the chest and temple region of his uncle who fell on the ground in a pool of blood.

As he ran towards his uncle raging an alarm, Sanjeev ran towards Block 26 with blood stained chhuri in his hand and he i.e. Deepak ran to his house to inform his family members who took Brij Mohan, in a TSR to JPN Hospital.

10. It stands recorded in the endorsement Ex.PW-17/A as under:-

"Hon'ble Duty Officer Trilokpuri Delhi. It is stated that during the patrolling I was present at 13 Block Trilokpuri and at about 2.27 PM I received a wireless message that in Block 36 Gurudwara Road, Trilokpuri one boy has stabbed somebody and the assailant has been captured at 22 Block Trilokpuri by Head Constable Ramcharan and Arup. For receiving this information when I reached near jhughis in Block 26 Trilokpuri Main road there Head Constable Ram Charan No.66/8 and Constable Jaipal No.1323/8 presented accused Sanjeev @Bittoo, whose name and address was known after enquiry, who was holding blood stained bented churri in his right hand and blood was on his clothes and shoes as well on his both hands. When I reached near by about 50 yards in 36 block Trilokpuri in front of Indira Market on Main Road there was blood on road and deceased was taken to unknown hospital."

11. It may be noted that as per the post-mortem report Ex.PW-9/A of the deceased, proved through the testimony of the author thereof, Dr.Harish, who we note has not been cross- examined, in spite of opportunity granted, 4 incised wounds were suffered by the deceased on his head and on the face in front of the left ear lobe, abrasions and contusions and lacerations were found on the hand and the neck. 4 penetrating incised wound injuries on the chest and 1 on the back of the shoulder have also been recorded.

12. Cause of death is haemorrhagic shock consequent upon injury No.10 and 11, which we note pierced the right lung and the heart.

13. Injury No.1, 4, 5 and 6 on the face near the ear and the head were opined to be caused by some sharp pointed object and injury No.10, 11, 12 and 13 were opined to be caused by a sharp, double-edged cutting weapon. Injury No.10 and 11 were opined to be sufficient in the ordinary course of nature to cause death.

14. It would be apparent to the reader of the present decision that the case required hardly any investigation, it was all a question whether the witnesses supported the case of the prosecution.

15. Deepak PW-13 deposed in line with his statement Ex.PW- 13/A, contents whereof have been briefly noted by us herein above and stated that the statement Ex.PW-13/A was recorded at the spot when the police came after some time of the incident by which time his uncle had been removed to the hospital. He disclosed that he had seen the incident from a distance of 30-40 yards and that a crowd had gathered at some distance. He stated that the police came after 5 10 minutes after his uncle had been removed to the hospital and by which time the accused, holding a bent blade of a knife was also brought to the spot. That his shirt Ex.P-5 was taken into possession by the police and the pant Ex.P-3 and the T-shirt Ex.P-2 worn by the accused were also taken into possession by the police in his presence.

16. Relevant would it be to note that Deepak was cross- examined at length and indeed, nothing has been brought out worthy of being noted which could discredit his testimony.

17. HC Ram Charan PW-10 and Ct.Jaipal PW-15 deposed that they were on duty and were proceeding towards the Gurudwara near Block 26, Trilokpuri and when they were near Super Bazar Main Road saw the accused running in a perplexed condition with a knife Ex.P-1 in his hand, front blade portion whereof was bent. The blade had blood thereon. They caught the accused who told them about the incident and when they were still enquiring, Insp.Dharam Pal and his staff came. Insp.Dharam Pal made a sketch Ex.PW-10/B of the knife and seized the same as

per seizure memo Ex.PW-10/A. The Inspector recorded the statement of Deepak Sharma and made an endorsement thereunder and was handed over to Ct.Ram Phool for FIR to be registered who left the spot at 4:00 PM.

18. The 2 witnesses further deposed to the spot proceedings conducted with respect to the seizures effected at the spot and deposed on the same lines as Deepak qua the T-shirt and the pant of the accused being seized as also that of Deepak.

19. Insp.Dharam Pal Singh PW-17 deposed on similar lines.

20. The FSL report Ex.PA-1 establishes that the T-shirt and shirt seized at the spot which were worn by the accused as also the shirt of Deepak was detected with human blood of the same group as that of the deceased. Even the knife Ex.P-1 was detected with human blood of the same group as that of the deceased.

21. The prosecution has not proved the FIR being sent to the Area Magistrate as required by Section 157 Cr.P.C.

22. This has been latched upon by the learned counsel for the appellant to urge that Deepak was a planted witness and that the time recorded on the FIR as the time when it was registered has been ante timed. Extending the argument further, learned counsel urged that it was a working day and at 1:30 PM, the stated time of the incident, Deepak should have been in his school. Conceding that there was nothing in the cross-examination of Deepak which could falsify him, counsel relied upon Deepak's conduct of not running to help his uncle. Counsel further highlighted that Deepak admitted having watched the incident from a distance of about 40 yards and that a crowd had gathered at the spot and wherefrom it was urged that it would be difficult for Deepak to have identified the assailant.

23. Before analyzing the submissions, we may note that Pramod Kumar PW-4, the brother of the deceased deposed that his brother had gone to the market and at around 2:00 PM, Deepak informed that Brij Mohan had been stabbed. He i.e. Pramod Kumar, his brother Rajender and Deepak went to Block 36, Near the Gurudwara where Brij Mohan was lying in blood and they removed him to the

hospital where the doctor declared him dead. That pertaining to a murder in Anand Vihar, Rajender, real brother of the accused was arrested by the police and Rajender and the accused suspected that Brij Mohan had named Rajender for the said murder and this was the reason for enmity. He deposed that when he came to the spot police took into possession his vest which was seized vide memo Ex.PW-4/A. It may be noted that nothing has been brought out in the cross-examination of the witness which could discredit him.

24. It is true that the prosecution has been negligent in not leading evidence to establish that a copy of the FIR in question was delivered promptly to the Area Magistrate, but that does not mean that we should not look to other evidence wherefrom the time when Deepak's statement was recorded at the spot and pursuant whereto the FIR was registered can be gathered.

25. Now, the effect of the FIR being ante timed could be evidence being planted. But, we note that much before the FIR was registered, at 2:25 PM on 14.9.1995 it stands recorded in DD No.21, Ex.PW-8/A that the assailant who had stabbed somebody near Gurudwara in Block No.36 Trilokpuri had been apprehended by HC Ram Charan. As noted herein above the scribe of the DD entry was not cross-examined on the contents thereof. Thus, virtually contemporaneous with the time when the crime was committed, we have unimpeachable evidence of it being recorded in the official records that HC Ram Charan had apprehended the accused who had stabbed somebody near the Gurudwara at Block No.36, Trilokpuri. HC Ram Charan PW-10 and Ct.Jaipal PW-15 have deposed having apprehended the accused at the Super Bazar near Block No.26, Trilokpuri i.e. at a spot quite near the place of the incident and their testimony establishes that the accused was perplexed, had a bent knife Ex.P-1 having blood thereon and his clothes having blood stains. It is apparent that the appellant was caught near the place of the crime and nothing has been shown to us from the cross-examination of the 2 police officers that they could be possibly deposing falsely.

26. It is in this background we have to consider the fact that Deepak was aged 15 years when the incident took place and his conduct of running to his house nearby to summon a rescue for his uncle is not such unreasonable conduct wherefrom he

can be discredited. A perplexed young boy, seeing nobody from the crowd reaching to help his uncle, may be justified in running to his house to summon his other uncles. In a panic situation rationality evidenced by a reasonable man in a normal situation cannot be expected.

27. It is not unknown for children to bunk school and therefore it is inconsequential that the time and the date of the offence was when Deepak was expected to be in his school. We note the testimony of Deepak that his shirt Ex.P-5 was taken into possession by the police has not been challenged and the fact that on the shirt human blood of the same group as that of the deceased was detected is proof of the fact that when the deceased was injured, Deepak was nearby, immediately or soon thereafter. Now, Deepak has explained his shirt being stained with the blood of his uncle inasmuch as he has stated that when he returned to the spot with his uncles all of them put the deceased inside a TSR and removed him to the hospital. It is apparent that at that point of time Deepak's shirt got stained with the blood of his uncle. That Pramod Kumar PW-4 took the deceased to the hospital is evidenced by the MLC Ex.PW-16/A and this establishes that at some point of time prior thereto he was with his brother and removed him from the spot and took him to the hospital. On oath Pramod Kumar has stated that he reached the spot where his brother was injured on being informed by Deepak. This testimony has not been challenged. Thus, it was Deepak who had summoned a rescue for his injured uncle.

28. The post-mortem of the deceased was conducted the next day i.e. on 15.9.1995 and it assumes importance that Deepak's statement was recorded on 14.9.1995. In his statement he had disclosed that his uncle was stabbed on the face, head and chest and we note that the post-mortem report also evidenced deceased being injured on the said part of his body. Deepak telling the body parts where his uncle was attacked and the same being corroborated through the post-mortem report is an indication of Deepak having seen what he told.

29. That Deepak stated that he saw the incident from a distance of about 40 yards was a distance stated by approximation and not that Deepak measured the same using a measuring tape. The distance could be 30 yards, it could also be 50 yards.

The time of the incident is around 1:30 PM and the date is 14.9.1995. No suggestion has been given to any witness that it was a cloudy day. Thus, one can safely presume that it was bright sunshine which had lit the area and one could recognize known persons from the distance of 50 yards. The testimony of Deepak and his uncle PW-4 clearly establish that the accused was known to Deepak and Deepak could certainly have recognized him from a distance of 30 50 yards. That there was a crowd at the spot, does not mean that the crowd was blocking the vision of Deepak. It be noted that as per Deepak the crowd was nearby. No questions have been put to Deepak as to the exact spot where the crowd had gathered and thus no speculative argument can be advanced to discredit Deepak.

30. It was then urged that the knife Ex.P-1 was not sent to the doctor who conducted the post-mortem of the deceased to elicit an opinion whether the injuries on the deceased could be caused by the knife in question. This obviously is a lapse of the investigating officer and sufficient would it be for us to record that if there is credible evidence of unimpeachable character, lapses by the Investigating Officer cannot be used to throw out the case of the prosecution.

31. It was then urged that as per the opinion of the doctor who conducted the post-mortem, injuries 1, 4, 5 and 6 on the person of the deceased were caused by a sharp pointed object.

32. It be noted that injury No.1 is on the left back of the head directly above the left ear. Injury No.4 is on the left ear, communicating with the ear meatus. Injury No.5 is on the left side of the face, just in front of the left ear lobe and injury No.6 is on the left face, 1 cm inner to injury No.5.

33. The situs of the injuries shows that they are on the part of the body having virtually no muscle or fat mass. The bare minimum epidermis tissue with the skin tissue above would obviously receive a wound caused by a sharp pointed object if the same is struck vertically and not horizontally. If blows are inflicted horizontally they would result in incised wounds. Now, the sketch Ex.PW-10/B of the knife Ex.P-1 which was recovered from the hand of the appellant when he was apprehended near the spot shows the blade, in a bent condition; the blade tapering towards the front i.e. being a pointed knife.

34. A feeble attempt was made to urge that the intention of the appellant was to grievously injure the deceased evidenced by the fact that of the 14 injuries, 10 are on the neck, the face and the head.

35. It may be noted that there are 4 injuries on the other parts of the body, 1 on the left back shoulder and 3 in the chest region. The injuries on the deceased shows that he was caught by the scuff of his neck, obviously to demobilize him and repeated blows were struck. That 3 blows were directed towards the chest and with sufficient force evidenced by the fact that as per the post-mortem report and testimony of the doctor, the fatal injuries cut 10 cm deep inside the body. There is hardly any scope to debate that the intention was not to murder the deceased.

36. The motive for the crime has emerged through the testimony of PW-4 and PW-13 i.e. the accused harbouring a grouse that the deceased was responsible for his brother being falsely implicated in a prior murder case. We may note that what has happened is that when Brij Mohan was arrested in a murder case, in his disclosure statement he had named Rajender, the brother of the appellant as his associate and as a result thereof Rajender was also arrested in the said case and had to remain in jail along with the deceased, till both of them were acquitted.

37. The totality of the evidence unequivocally establishes beyond reasonable doubt that it is the appellant who has committed the murder of the deceased. The percipient evidence of Deepak and the testimony of HC Ram Charan and Ct.Jaipal is akin to what is conventionally understood as res gestate evidence. In a case of percipient evidence, which is direct evidence, the witness acts as the eye of the Court and if he is believed, no further inferences have to be drawn.

38. The appeal is dismissed. The bail bond and surety bond furnished by the appellant are cancelled. The appellant is directed to surrender and suffer the remaining sentence, which we note is to undergo imprisonment for life.

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