

Braham Parkash @ Babloo Vs. State

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Court : Delhi

Decided On : Feb-09-2011

Judge : S. Ravindra Bhat; G.P.Mittal, Jj.

Acts : Indian Penal Code (IPC) - Section 302; Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 313, 174

Appeal No. : CRL. A. 830/2001

Appellant : Braham Parkash @ Babloo

Respondent : State

Advocate for Def. : Mr. Jaideep Malik, Adv.

Advocate for Pet/Ap. : Mr. Vikas Yadav, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the Order? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Order should be reported in the Digest? Yes

1. This is an Appeal against the judgment dated 22.09.2001 whereby the Appellant was held guilty of the offence punishable under Section 302 of the Indian Penal Code (the Code) and order of sentence dated 25.09.2001 whereby the Appellant was sentenced to undergo imprisonment for life.

2. This case was registered on the basis of the statement of Ms. Seema, daughter of the deceased Suraj Mal. According to the prosecution version Seema (PW-1) was a student of 10th standard. Braham Prakash @ Babloo (the Appellant) was her neighbour, living in a rented room. For about a month prior to the incident the Appellant started teasing Seema and would also follow her. The Appellant also expressed his desire to marry Seema as he was in love with her. According to the prosecution in spite of refusal by Seema, to agree to such expression of love by the Appellant, he persisted with the same. Seema accordingly made a complaint to her father Suraj Mal. The deceased reprimanded the Appellant and advised him not to harass Seema. The appellant took ill of advice given.

3. On 18.07.1995 at about 6:00 A.M. as usual, Seema accompanied the deceased to fetch water from the municipal tap in the DDA park near their house. The Appellant, who was sitting on a cot in the street, followed them and caught hold of Seemas hand and asked her to accompany him. Seema declined to follow his dictates. At the same time deceased and Seema reprimanded the Appellant and freed her hand.

4. The Appellant took out a sharp edged weapon from his pocket and attacked her father on his chest, abdomen and arm. Seema raised an alarm as a result of which people from the street gathered. Her father was removed to the hospital, whereas the Appellant escaped brandishing his weapon and threatening if anybody approached him would be killed.

5. The Appellant pleaded not guilty to the charge framed under Section 302 of the Code. Consequently, the prosecution examined as many as 30 witnesses in order to bring home the guilt of the Appellant.

6. In his examination under Section 313 of the Code of Criminal Procedure (for short Cr.PC), the Appellant denied that he would tease or chase Seema or that he had caused injuries with any dagger on the person of Suraj Mal. The Appellant denied that he got recovered dagger Ex.P1 from the bushes near railway lines, Patel Nagar. He took the plea that he was known only by the name of Braham Prakash and not as Babloo, that the dagger was planted on him and he has been falsely implicated in the case.

7. During the course of trial the arguments; i.e. that the so called eye witnesses had not seen the Appellant inflicting any injury; they were introduced later, simply to implicate the Appellant; there were contradictions between the ocular and medical evidence; the bloodstained apparels of the Appellant seized at the time of his arrest, the dagger alleged to be recovered at the instance of the Appellant were found to be not containing O group blood of the deceased and thus were of no consequence, - did not find favour with him. The Trial Court took the view that preference had to be given to the ocular evidence vis-a-vis the medical evidence. The relation witnesses are the most natural and trustworthy who would not allow the real culprit to go scot free and would also not falsely implicate any innocent person. The contentions thus raised on behalf of the Appellant were rejected and he was convicted as aforesaid.

8. We have heard Mr. Vikas Yadav learned counsel for the Appellant and Mr. Jaideep Malik, learned Additional Public Prosecutor for the State and have perused the record.

9. In order to establish its case the prosecution produced three types of evidence; (i) Ocular evidence in the shape of testimony of PW-1 Seema, PW-2 Savita and PW-5 Muninder Singh; (ii) Link evidence in the shape of recovery of bloodstained trousers Ex.P6 and T-shirt Ex.P5 from the Appellants person at the time of his arrest, disclosure statement of the Appellant, recovery of dagger Ex.P1 from the bushes near the Railway line Patel Nagar in pursuance to disclosure statement Ex. PW-10/A and the report of the Forensic Science Laboratory Ex. PX and PY. On this aspect, the prosecution examined PW-14 Ct. Ramesh Kumar, PW-13 Rakesh Gupta, PW-21 Suresh Chander, PW-28 SI Surinder Kumar Gulia, apart from PW-30 Inspector Ved Prakash, Investigating Officer of the case; and (iii) Medical evidence in the shape of testimony of PW-12 Dr. L.K. Barwa who had conducted the postmortem examination on the dead body of Suraj Mal and Post Mortem Report Ex.PW-12/A, PW-18 Dr. Deepak Verma who proved the MLC Ex.PW-18/A by which Suraj Mal was admitted to the casualty of Deen Dayal Upadhyay hospital and on medical examination was declared brought dead by the doctor.

10. First of all, we shall deal with the ocular evidence produced by the prosecution. As per PW-1 Seema when the Appellant had caught hold of her hand and had proposed to marry her, she as well as her father Suraj Mal reprimanded him which angered the Appellant. The Appellant took out a knife from his pocket and stabbed Suraj Mal on his chest, hand and abdomen. She raised an alarm which attracted persons from the street. The Appellant, however, managed to escape brandishing his knife threatening members of the public that if anybody approached him, he would be stabbed to death. Seema was categorical that nobody dared to apprehend the Appellant who merrily escaped.

11. The Postmortem report Ex.PW-12/A coupled with testimony of PW-12 Dr. L.K. Barwa would show that there are as many as 14 injuries on various parts of the body of Suraj Mal. It is quite natural that as soon as the knife is taken out by the assailant and first blow is given any close relation and in this case, daughter of the deceased Seema, would immediately raise an alarm. It would definitely take some time in inflicting 14 injuries on the person of Suraj Mal when the attack is single handed. It is obvious that people from the street would immediately get attracted, particularly, in an unauthorized locality like Prem Nagar where this incident had taken place people stay in small houses and fetch water from the public tap in the morning at 6:00 AM during the hot and humid weather of July.

12. None has been cited as a witness from the public not only on the actual incident of stabbing but even immediately thereafter before escape of the Appellant except the sister and brother-in-law of PW-1 Seema. There is no gainsaying that many a time persons of the public even immediate neighbours as in the instant case where such incidents occur, in the same street, where the deceased was residing with his family, would not come forward in order to avoid going to the police and Courts. Witnesses related to the victim, therefore, cannot be disbelieved simply on the ground that they are interested in the success of the case or the punishment to the culprit. But, at the same time, the Court has to be convinced about the presence of such a witness at the spot and the witness is truthful and found to be reliable in the circumstances of the case.

13. When we turn to the facts of the instant case, we find that there are number of circumstances which would lead us to believe that the cited witnesses were not present at the spot at the time the injuries were inflicted on the person of Suraj Mal.

14. This case was registered on the basis of statement Ex.PW-1/A made by PW-1 Seema to Inspector Ved Prakash. A perusal of the statement would show that Seema had not even described the weapon which had been used for inflicting injuries on the person of Suraj Mal. She was content to tell Inspector Ved Prakash that the injuries were inflicted with some sharp edged weapon. As per the prosecution, Suraj Mal and PW-1 Seema were going together to fetch water. The entire incident right from the catching the hand of Seema upto the fleeing of the Appellant had taken place in her presence. As stated earlier, as many as 14 injuries were inflicted on the person of Suraj Mal. Seema could have seen that the injuries were inflicted with a knife or a dagger or any other sharp weapon. Not describing the weapon would show that till that time the prosecution was in doubt as to what exactly was the weapon used for inflicting the injuries.

15. There were no less than 14 injuries on the person of Suraj Mal and as admitted by PW-1 Seema during her cross examination he was bleeding profusely (after injuries were inflicted). The report under Section 174 Cr. P.C. Ex.PW-10/C (Page 1 Column 11) would reveal that blood was oozing from the wounds. PW-1 Seema says that she had helped her father being put in the jeep, (for his removal to the hospital). Yet she stated that her clothes were not stained with blood. PW-2 Savita another daughter of Suraj Mal also similarly stated during her cross examination that when she reached the spot lot of people had gathered there, her father was lying on the ground and her sister Seema was lying on her father and was crying. At the same time, she added that there were no bloodstains on the clothes of Seema.

16. PW-30 Inspector Ved Prakash had returned to the spot from the hospital at about 9:00 AM and had met PW-1 Seema, PW-2 Savita and PW-5 Muninder Singh. He did not ask them as to why they had not accompanied the injured to the hospital. A perusal of Ex.PW-1/A reveals that the statement of Seema was

recorded before 11:15 AM and rukka was sent to the Police Station at 11:15 AM. Obviously, Inspector Ved Prakash would have seized the clothes of Seema, if the same had been found to be smeared with blood.

17. In similar circumstances, in *State of Rajasthan vs. Teja Singh*, 2001 (3) SCC 147, it was held by the Supreme Court that the absence of blood on the clothes of the witness who had lifted the body of the deceased which was bleeding would make the presence of such witness to be doubtful.

18. In her statement Ex.PW-1/A as well as in the statement as PW-1 in the Court, Seema described the site of injury to be chest, abdomen and arm of Suraj Mal whereas according to the postmortem report Ex.PW-12/A there were number of injuries near the neck, clavicle and thighs of Suraj Mal. It is true that every witness cannot have a photographic memory of the scene of occurrence and this circumstance by itself may not have been of much significance yet this fact coupled with other circumstances would point out that perhaps Seema had just seen the deceased lying injured and not the actual incident.

19. PW-1 Seema stated in her examination-in-chief that she raised alarm when her father was being stabbed and people from the street had gathered there. The Appellant, however, escaped brandishing his knife threatening the persons of the public that they will be killed if any of them came near him. Admittedly, no member of the public was cited as a witness in this case. The incident had taken place in the street where PW-1 was residing along with other members of the family. According to the prosecution, the Appellant was also staying in a rented room nearby. PW-1 Seema would have recognized most of the persons of the street and would also have known many of them by name. Not joining any such person from the street in the circumstances would lead us to infer that the incident had not taken place in the manner as alleged by the prosecution.

20. Similarly when we turn to testimony of PW-2 Savita another daughter of Suraj Mal it is revealed that she and her brother-in-law Muninder Singh were attracted to the spot on account of the shouts of her sister Seema. She corroborated PW-1 that the Appellant had given knife blows to her father and then escaped brandishing the knife. During cross examination this witness deposed that when

she reached the spot lot of people had already gathered there, meaning thereby that there were other people of the locality who had seen the incident as they had reached the spot prior to her reaching there. Inspite of this, not joining of any neighbour or citing anyone else as a witness makes the testimony of this witness suspicious. Moreover, Savita saw injuries being inflicted on her father but could not notice her father being removed to the hospital which is highly improbable. Being a close relation her priority would be to save the life and manage removal of her father to the hospital without any loss of time.

21. PW-2 Savita stated during her cross examination that when she reached the spot she found her father lying on the ground and her sister Seema lying over her father and crying. If this is so, PW-2 Savita had not seen the actual incident.

22. PW-5 Muninder Singh also claims to be a witness to the incident of stabbing of Suraj Mal by the Appellant. According to him he reached the spot on hearing an alarm by PW-1 Seema. It can be understood that PW-1 and PW-2 being young girls did not accompany their father to the hospital. Yet it is quite strange that PW-5 Muninder Singh did not accompany his father-in-law to the hospital. He stated that he did not even assist the police in keeping him (his father-in-law) in the van. He says that he did not go to the hospital on that day. It is highly improbable that such a close relation would neither accompany his injured father-in-law to the hospital nor would follow him to ensure proper medical assistance to him.

23. According to the prosecution PW-2 Savita and PW-5 Muninder Singh are the witnesses of the occurrence. Recording of the statement Ex.PW-1/A of PW-1 Seema was completed at 11:15 A.M. by Inspector Ved Prakash and then rukka was sent to the Police Station. From this, it can be inferred that Inspector Ved Prakash might have started taking down the statement of Seema at about 11:00 A.M. i.e. after about five hours of the incident, despite the fact that DD No.42-A in respect of incident was recorded in the Police Station Patel Nagar at 6:32AM. It is not believable that she would not even disclose the names of her sister and brother-in-law as eye witnesses to the incident.

24. All the circumstances coupled with the fact that the rukka was sent to the Police Station after about five hours of the incident would make us believe that in

all probability the incident was not witnessed by any of the three eye witnesses cited by the prosecution and the FIR was lodged after due deliberation naming the Appellant as the assailant only on suspicion.

25. Learned counsel for the Appellant has drawn our attention to the various contradictions and discrepancies in the case of the prosecution which would further show that the investigation was not fairly conducted by Inspector Ved Prakash. The Appellant was arrested at Vijay Enclave, Dabri on the late evening of 18.07.1995, his clothes having washed bloodstains were seized by the Investigating Officer at that time and sealed at the spot with the seal of VP. It is, however, quite strange that the seal after use was not handed over to any witness and thus, the entire sanctity of sealing and depositing the case property with the MHC in Police Station loses credibility.

26. According to the prosecution the dagger Ex.P-1 was recovered at the instance of the Appellant in pursuance of the disclosure statement Ex.PW- 10/A on 19.07.1995. But, as per the record, it was never deposited in the Police Station. We do not know where the dagger Ex.P-1 was kept by the Investigating Officer. The opinion Ex.PW-12/B of PW-12 Dr. L.K. Barwa that the injuries could be caused by the dagger Ex.P-1 loses any significance. The alleged recovery of the dagger Ex. P-1 at the instance of the Appellant itself becomes inconsequential.

27. Admittedly, this dagger Ex.P-1 is a single edged weapon. However, as per PW-12 Dr. L.K. Barwa all injuries except injuries No.3,6,8,10 and 11 could be caused by a double edged weapon. Dr. L.K. Barwa further opined that injuries no.3,6,9 and 10 were caused by a weapon having some bend or breakage or curve on the sharp side of the weapon; the prosecution, however, is unable to show any such weapon was used as dagger Ex.P-1 is not the kind of this weapon. This would clearly show that at least two weapons were used by the assailants / assailant in causing injuries on the person of Suraj Mal.

28. This contention raised on behalf of the defence was rejected by the Trial Court on the ground that when ocular evidence is cogent and clear much importance cannot be given to the medical evidence. In our view, the Trial Court fell into grave error in not appreciating the contention in the right perspective. The prosecution

ought to have obtained a clarification from PW-12 Dr. L.K. Barwa that the injuries were possible from a single edged weapon, if the same are inflicted in a particular manner.

29. The testimony of eye witnesses itself becomes suspect in view of the opinion of the doctor which is indicative of the fact that in all probability two weapons had been used to inflict the injuries.

30. It is true that the medical evidence is generally of corroborative nature unless it completely rules out the possibility of the injury being inflicted in the manner as deposed by the witnesses. In *Solanki Chimanbahi Ukabhai vs. State of Gujarat*, AIR 1983 SC 484 it was observed as under:-

"Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye witnesses, the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence."

31. In the instant case the prosecution story is completely belied by the medical opinion which makes the presence of three eye witnesses very doubtful.

32. We are of the view that there are grave doubts in the case of the prosecution. The impugned order therefore cannot be sustained; it is accordingly set aside. The Appeal is allowed and the Appellant is hereby acquitted. The bail bond is cancelled and sureties are therefore discharged.

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