

Satender Vs. State

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Court : Delhi

Decided On : May-12-2011

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

Acts : Indian Penal Code (IPC) - Sections 302, 307, 498A, 448; Code of Criminal Procedure (CrPC) - Section 161

Appeal No. : CRL.A.1479/2010

Appellant : Satender

Respondent : State

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

Advocate for Pet/Ap. : Sh. B.S. Rana, Adv.

Judgement :

1. This judgment will dispose of an appeal against the judgment and order of learned Additional Sessions Judge dated 30.11.2010 in SC No.46/2009. The impugned judgment convicted the appellant under Section 302 IPC and sentenced him to undergo life imprisonment with a fine of Rs.5,000/- in the fault of which he is to undergo 3 months simple imprisonment.

2. The prosecution allegations briefly were that the appellant was not in good terms with his wife Pinky (hereafter referred to as 'the deceased'). The latter had

initiated criminal proceedings against him by lodging First Information Report (No.289/2007) alleging that he (the appellant) had committed offences punishable under Sections 307/498A and 448 IPC and apparently another First Information Report, alleging the commission of offence under Section 324 IPC had also been lodged against the appellant. The trial in those cases were pending before the Rohini Court. Shri Vipin Siroha, PW -14 (Pinki's counsel) had stated that she had also preferred a complaint under the Protection of Women from Domestic Violence Act, 2005 against the appellant, which too was pending before the Rohini Court and was scheduled for hearing on 18.10.2007. It was alleged that PW-14 received a call on his mobile from Pinky's telephone and heard the cry "Bachao Bachao" upon which he informed the Police by calling 100. The prosecution alleged that the immediately PCR Van was intimated at about 3.38 PM. PW-1 (Head Constable Maha Singh) and PW 2 (Constable Manoj Kumar); who were on patrol duty upon receiving the call regarding the quarrel at Pinki's premises i.e. 510, Pana Udyan, Narela reached the place and found the house bolted from outside. They allegedly saw through the gap that a lady was lying down and someone was hitting with bricks and stones. The gate/entrance was open. PW-1 and PW-2 went inside and they discovered that the deceased had multiple injuries on her head. They allegedly apprehended the appellant, the deceased was taken to SRHC Hospital by the two witnesses. The appellant was also taken there. The deceased was declared as "brought dead". This information was conveyed to P.S. Narela in two DD Entries 25 and 26. It is further alleged that Inspector Jai Singh, PW-21 reached the hospital upon receipt of information and the appellant was handed over to him. PW-21 recorded the statement of PW-1. The appellant's blood stains clothes were seized. The crime team was called in; it inspected the site. After registering the First Information Report No.553/2007, (FIR), investigation was carried out and charge sheet was filed in Court. Upon being charged with committing the offence, the appellant pleaded not guilty and claimed trial.

3. The prosecution examined 23 witnesses and in support of its case besides relying on exhibits which were placed on record as part of the prosecution case. By the impugned judgment the trial court held that the prosecution had proved its case beyond reasonable doubt and convicted the appellant as charged, it also sentenced him to undergo life imprisonment.

4. Mr. B.S. Rana, learned counsel urged that the trial court fell into an error in accepting the version of prosecution. It was alleged that PWs 1 and 2 could not be treated as eye witnesses and at best they arrived at the scene after the incident had occurred. Learned counsel submitted that the FIR was actually registered on 6.35 PM even though the incident is alleged to have occurred around 3.30 PM. It was argued that the statements of PW-1 would show that he had no knowledge about who had called the PCR which led to his visiting the site along with PW-2. Learned counsel sought to emphasize this aspect by stating that even though PCR call records were available, they were not produced. Similarly he submitted that PCR call book which would have ordinarily contained an entry on this aspect was not seized. Relying upon the MLC (PW- 18/A), learned counsel urged that the prosecution story is further falsified because the appellant's name has not been mentioned in the MLC which was recorded at 4.25 PM. Counsel highlighted that PW-1's deposition as well as a reading of Ex.PW18/A revealed that the doctor who had examined the deceased, PW-18 was not informed about the assailant's name and identity even though the prosecution alleged that he was nabbed at the spot and taken to the same hospital.

5. It was argued that the prosecution did not examine the driver, Constable Krishan Kumar who allegedly accompanied PW-1. It did not also examine Head Constable Jai Bhagwan to whom the DD entry was assigned and who reached the spot at the earliest point in time. Learned counsel submitted that the said Head Constable Jai Bhagwan was in fact partly examined on oath on 21.07.2010, after which his examination was deferred; he however never appeared before the trial court thereafter. Consequently his deposition could not be treated as evidence which includes Examination-in-Chief, Cross-Examination and re-examination, if any.

6. It was argued that there are major contradictions between the statement of PW-1 and PW-2. The latter (PW-2) stated that he was not aware whether he stated to the I.O. about having no knowledge regarding the incident and that he merely removed the injured from the spot to the hospital. It was submitted that he further deposed as follows: "IO merely asked my name and PIS No. besides this I did not state anything else to the IO. Today before entering the Court, I had gone through

my statement and I had made statement today which I read outside the court."

7. It was submitted that this statement amply clarifies that PW-2 was unreliable and his statement was not worthy of credence. The trial court according to the appellant's counsel fell into serious error in taking into account and considering his deposition.

8. Learned counsel further argued that PW-1 had clearly deposed that the incident occurred in the middle of a residential area and that there were houses all around it. Yet no independent witnesses, besides PW-1 and PW-2 were produced in Court. Learned counsel also highlighted PW-1's deposition that he had not told the doctor that the lady had been injured by her husband and merely stated that upon receiving the call he had removed the injured to the hospital. This was in line with the information initially provided by DD-43B (Ex. 11/A), where too the appellant's name was not mentioned. Learned counsel submitted that other documents, such as D.D.25A (i.e. Ex. PW4/E) and the MLC also did not contain the appellant's name. In this circumstance, there was a real possibility of the appellant's having been falsely implicated in the case and the FIR being an afterthought. Learned counsel added that even the time of arrest reflected in the memo i.e. Ex PW-11/P showed that it was 8.45 PM whereas according to the prosecution, the appellant was apprehended at 3.38 PM and the FIR was registered at 6.35 PM. No explanation has been given, which strengthens the suspicion about fabrication of the case and ante dating of the FIR.

9. It was submitted that PW-21 had deposed having recorded the statement of Zile Singh, father of the deceased on 19.10.2007, after which he interrogated Jai Bhagwan, Narain, Ashok, Surinder and Sunita. It was submitted that no incriminating evidence was found against them. These circumstances, according to the appellant, point to the FIR being ante dated and actually having been recorded on 19.10.2007 after Zile Singh's statement was verified by the I.O. This was corroborated, submitted learned counsel, at the time of Zile Singh's statement as PW-2 when he deposed about having intended to register the FIR on 19.10.2007.

10. It was argued that PW-1's statement could also not be relied upon because he had deposed that having received a call from mobile No.9990951448 which according to him belonged to Pinki. However, there was nothing to corroborate this statement i.e. the cell number was of Pinki and was used by her. Moreover submitted learned counsel, the material placed on record also showed that calls emanated from that Mobile number even after Pinki's alleged death (at 3.30 PM) i.e. till 5.45 PM. This was further corroborated, according to the counsel, by the testimony of PW-3, who deposed that she did not ask the name of the caller and that the caller did not reply to the question. Learned counsel further emphasized that PW-14's statement was recorded about two months after the incident. It was argued that all the above infirmities went into the root of the matter and undermines the prosecution case. The Trial Court, in holding that the charges had been proved beyond reasonable doubt, committed an error of law. Learned counsel relied on judgment reported as *Madhkami Baja v. State*, 1986 CriLJ 433, to say that the evidence of a prosecution witness is not to be accepted in a criminal case merely because the defense could not explain why an accused was implicated. Reliance was also placed upon the decision reported as *Sakha Ram v. State of Madhya Pradesh*, 1992 (2) SCC 153 for the proposition that the presence of accused at the time and place of occurrence is insufficient to hold that he committed a crime, without the prosecution establishing all the other elements and circumstances necessary to prove the guilt beyond reasonable doubt. He lastly relied upon a judgment reported as *Shyam Lal v. State of M.P.*, 2002 CriLJ 344, to say that the recovery of an article which is unconnected with the accused is no evidence to establish his guilt.

11. The learned APP argued that in this case the prosecution has placed on record Ex. PW 11/A, the DD entry made at 3.50 PM regarding the incident. The DD report made next is at 4.37 PM i.e. number 25-A (Ex. PW 4/E). The next entry DD No.26-A (Ex.PW-4/F) mentions the time which is crucial here i.e. at 4.40 PM, at the time of incident (attack on Pinky) when the appellant had been apprehended. DD No.28-A (Ex. PW 4/C) was prepared at 6.35 PM and corresponds to the registration of FIR Ex. PW 4/A. The appellant attempt to argue that the FIR was ante dated, is based primarily on the statement of PW-7 about his having been examined by the Police on 19.10.2007 i.e. a day after the incident;

the second argument is that the MLC as well as DD entries made even after PW-1 and PW-2 reached the spot did not contain his (the appellant) name. It was submitted that PW-21 the I.O. explained that Zile Singh's statement on 19.10.2007 resulted in examination of others, against whom no incriminating evidence was found. He also stated that the FIR was not registered on the basis of Zile Singh's statement and no eye witness except PW-1 was found during the investigation. He denied the suggestion that PW-1 was introduced as an eye witness. The prosecution in this case examined PW-4 H.C. Champa Topo who recorded the FIR Ex. PW4/A. She deposed about being on duty between 4.00 PM to 12.00 mid night on 18.12.2007 and having received the rukka from PW-21 which was the basis for FIR. Ex. PW-21/B shows that it was sent to the police Station at about 6.15 PM. PW- 10 was HC Virender Kumar deposed on 18.10.2007 when he was the In-charge of Malkhana, Inspector Jai Singh deposited four sealed parcels which were entered vide serial no.579 in Register No.19, a copy of that entry was marked as Ex. PW10/A. He further deposed that two more sealed parcels with the seal of BJRM Hospital, KG along with a sample seal. The entry to this effect was made at Serial No.581 in Register no. 19 on 19.10.2007. A copy of that entry was brought on record as Ex. PW10/B.

12. The learned APP argued that Ex. PW4/X is evidence wherein it is stated that FIR was dispatched to the Magistrate in conformity with the provision of Section 157 Cr.P.C, at 7.50 PM. The sketch prepared by I.O. Ex. PW21/C is dated 18.10.2007 and further corroborates that the FIR was in fact registered and the prosecution story is in no way false. The APP relied upon Ex. PW18/A, the MLC Register to say that it clearly mentioned that PW-1 had taken the deceased to the hospital under diary No.43 B. The said Diary No.43 B was exhibited as Ex. PW 11/A.

13. It was urged that the information provided by Mahanagar Telephone Nigam Limited (MTNL) through the letter marked as Ex. PW 20/B with the call details provided in a table as well as the certificate in terms of Section 65 B of the Evidence Act (Ex. PW 20/C) showed that the mobile No.9868092326 was that of PW-14 Vipin Siroha. Further-more the recovery of the mobile phone of the deceased was mentioned in MLC Ex. PW 8/A and it was also produced in Court

as an exhibit. Learned APP submitted that in the cross-examination PW-14 was asked that someone- other than Pinky had called from 9990951448. If these were to be cumulatively read with PW-14's positive assertion of having received Pinky's call on his mobile number 9868092326, there was no error in the Trial Court's finding about the call having been received by PW-14. It was stated that PW-21's evidence further corroborated this fact; he deposed having verified from the PCR call form that information had been given from the mobile number 9868092326. In these circumstances, argued the learned APP, the prosecution version about receipt of information by PW-14 and in turn, intimation to the Police, could not be doubted and was therefore established. Learned APP argued that there can be no doubt about the appellant's role since his clothes Ex. 6-A, 6-B and 7-B which were sent to the forensic lab (CFSL) were found to contain B group- which was the deceased's blood group. In view of these facts, submitted the learned APP, the Trial Court's finding about the appellant's presence and involvement in the incident were justified. The Appellant was under a duty to explain the circumstances which appeared against him and an opportunity was provided under Section 313. He did not do so. The relevant witnesses such as PW-10, PW-21 AND PW-2 were cross-examined on the material aspects of evidence which appeared against the appellant. In these circumstances the conviction and sentence imposed, argued learned APP should not be interfered with.

14. The above discussion would reveal that the appellant is questioning the trial court findings on three main aspects i.e. the timing of the FIR; the credibility of PW-1, PW-2, PW-14 and the recovery. On the first aspect PW-1 received information at 3.38 from the Control Room regarding the quarrel. PW-2 and another police-man Constable Krishan Kumar were on duty with him. PW-1 and PW-2 rushed to the spot; the iron rod door was bolted from inside but because of the gaps what was going on inside was visible. Both PW-1 and PW-2 deposed having noticed that the Appellant was beating the deceased, who was lying in the gallery with multiple injuries. These witnesses also testified consistently that the appellant was beating the deceased with bricks and stone pieces. The deceased was immediately rushed to SRHC Hospital as is evidenced by Pw-18/A, the MLC. This document records the time when the deceased was brought as 4.25 PM. No doubt the MLC does not record the deceased's name; however, importantly it

records DD NO.43/B which was exhibited in the Court. The post mortem report Ex. PW 15/A mentions that the dead body was received in the morgue at 7.30 PM at 18.10.2007. PW-10/A, PW 10/C, PW10/D and PW 10/E are extracts from the malkhana register placed on the record; PW 10 deposed about the articles being lodged by PW-21. The first entry in relation to this case records FIR No.553/2007 and the articles seized from the deceased at the time the MLC was prepared. Significantly it also mentions the blood stained cloths of Satender, the Appellant.

15. Besides the above, Ex. PW-4/F was recorded by PW-4 at about 4.40 PM; she has not been cross-examined on this aspect. That entry mentions about the deceased, her marriage about 8 years prior to the incident, the injury marks on her body and lastly that the Appellant Satender had been apprehended.

16. So far as the appellant's argument that the arrest memo was prepared at 8.45 PM and therefore the FIR being recorded much later- as well as his name not appearing in other contemporaneous documents such as MLC Ex. PW 18/A- is concerned, this Court is of the opinion that not much mileage can be drawn from these. As noticed previously, Ex. PW-4/F mentions the appellant's name; he did not chose to cross-examine PW-4. Similarly the Malkhana register records the particulars of the FIR with an entry of 18.10.2007. This entry also reflects appellant's name. For these reasons we find no infirmity with the trial court's conclusion and the FIR which was recorded on 18.10.2007. The subsequent examination of Zile Singh (PW- 7) and the statement of Police witness that others were also interrogated, does not in any manner dilute the prosecution version about the attack on 18.10.2007 and the recording of FIR on that day at about 6.35 PM.

17. Coming to the second aspect, PW-1 and PW-2, both have deposed uniformly having witnessed the attack which led to multiple injuries on the deceased, her being rushed to the hospital and being declared brought dead; PW-14 deposed having received a telephone call from Pinky the deceased. The call details have been placed on the record by Ex. PW20/B and 20/C. These clearly establish that PW-14 had received a call from Pinky's number, an aspect which was proved in cross-examination. PW-21's deposition that he verified as to the origin of the

informant and discovered that the PCR forms contain PW-14's mobile number, was also not challenged in the cross-examination. Further the previous FIRs lodged by the deceased Pinky i.e. Ex. PW18/A (dated 14.08.2007) and Ex. PW 19/B 9dated 22.05.2007) shown that the appellant was an accused in two criminal cases where his wife, the deceased was informant. One of these had alleged that the appellant committed an offence punishable under Section 307 IPC i.e. attempt to murder. The hypothesis sought to be projected by the appellant's counsel that the appellant was implicated on 19.10.2007 till which time the identity, name and particulars of the deceased's assailant was unknown cannot be accepted. PW-2 stated that when he and PW-1 left for the hospital no other police man from Police Station Narela had reached the spot where the incident occurred. He also deposed clearly about having sitting outside near the hospital, along with the accused in the van when the deceased was rushed for treatment. According to him the IO reached the hospital at about 4.30/4.40 PM and went directly inside and returned after an indeterminate period. No doubt in the cross-examination PW-2 deposed that he did not remember whether he had been called to PS Narela by the IO and when his statement was recorded. He also deposed that the blood stained clothes were not collected by the IO. However, he denied of suggestion that he was deposing falsely or that the assailants had run away. If this testimony in this Court's opinion provides the explanation for the absence of the appellant's name in the MLC and certain other documents, the rukka was received in the police Station at 6.35 PM when the FIR was recorded by the time appellant's identity was known. He was no doubt formally arrested subsequently. However, it is important to notice that the prosecution never claimed that the appellant was arrested at 3.38 PM or so. Its case was that he was apprehended or caught red handed and immediately taken in the PCR along with the injured in a critical condition. Thereafter, he remained with the police who appeared to have registered the FIR after ascertaining the particulars and subsequently arrested him formally.

18. What transpires from the above discussion is that PW-1 and PW-2 are corroborated in all material details yet some of the documentary evidence placed on record has to explain why the Appellant's name was not mentioned in some of the documents. So far as the testimony of PW- 14 is concerned this Court has

previously noticed that he deposed having received the telephone call; from Pinky's number and also that he was her counsel. That statement finds corroboration in the Ex. PW 20/B and 20/C. Furthermore his cross-examination also establishes Pinky's telephone number. PW-21, in his deposition, mentions about the information having been given from PW-14's telephone number. Having regard to all these circumstances, this Court is of the view that the eye witness accounts of PW-1, PW-2 and PW-14 cannot be doubted and that the prosecution also established that deceased Pinky had cried for help while calling PW-14 which ultimately resulted in the information being furnished to the police.

19. Of course PW2 stated in his cross-examination that the IO merely asked his name and PIS No.; he did not state anything else to the IO and that he had gone through the police statement before entering the Court. He admitted that he deposed in the Court, as per that statement, PW2 denied the suggestion that he did not go to the spot or that the accused (Appellant) was not present at the spot. PW2 in his examination-in-chief deposed that when they reached the spot they saw "from the gate which was of iron rods having gap in between that accused Satender present in the Court today (pointed out correctly) was hitting a lady with brick and stone pieces. The lady was lying on the ground in the gallery. Upon this we opened the said gate after putting a hand inside from the gap at the top of the gate. We accordingly went inside the overpowered accused. The lady was having injuries on her forehead, hands & her throat was having a cut injury." No suggestion was given to PW2 in cross-examination that he did not see the Appellant hitting the deceased or that he (the Appellant) was not present at the spot. Similarly, it has to be borne in mind that statement under Section 161 Cr.P.C. is not signed by any witness. The IO simply interrogates a witness and the answers given are reduced into writing without the witness knowing that his statement has been recorded. PW2 had no motive to make a false statement against the Appellant. We, therefore, hold that he had spoken the truth and deposed to what he saw. The contention raised that his (PW-2's) statement was not recorded by the IO or that he had gone through the police statement before entering the court does not help the Appellant.

20. PW-21 deposed that the Appellant's blood stained clothes were seized by seizure Memo PW 11/A, after converting them into a pulanda and one blood stained DAV was recovered (Ex. PW 3) as also two blood stained half bricks Ex. P-2 and a cemented concrete slab with blood stain and all through Ex. PW 11/C. These blood stained clothes were collected under memo PW- 16/A and all these were sent to CFSL for analyses. The report Ex. 21/E mention that blood detected on the exhibit, was of human origin and were of Group B. The blood group on the appellant's clothes, of the deceased, as well as on the weapon of offence Ex. P1, Dav Ex. P-2 and Ex.P-3 were those of the deceased. Having regard to these circumstances, the Appellant who was represented before the trial court did not shake the credibility of the witnesses who deposed about recoveries. It is no doubt a fact that Constable Jai Bhagwan did not depose in cross- examination. However the report of the CFSL has not been challenged; PW-21's testimony about the recoveries as well as the depositions of PW1 and PW 2 regarding nature of attack and PW 2's specific mention of use of brick and stone pieces, establish the link between the recoveries of articles in this case and the appellant. Having regard these and the rapidity in which events seem to have occurred i.e. appellant's apprehension, his being taken along with the deceased to the hospital, the I.O reaching there, recording of FIR and his formal arrest, there can be no doubt that the prosecution established all these facts. In such a situation the appellant had a duty to explain all these circumstances i.e. particularly his blood stained clothes, his presence at the site being taken to the hospital and subsequently being arrested after the FIR was formally lodged, by virtue of Section 106 of the Evidence Act, 1872. The absence of such an explanation both in the Section 313 statement by the appellant and his omission to lead any evidence in this case, has an adverse impact on his plea (Ref. State of West Bengal v. Mir Mohd Omar ,2008 (8) SCC 382, Succha Singh v. State of Punjab, 2001 (4) SCC 375 and Harbans Singh v. Govt. of NCT of Delhi 2007 (12) SCC 535).

21. For the above reasons, this Court is of the opinion that the impugned judgment has to be affirmed. The appeal therefore fails and is accordingly dismissed.