

Deepak Vs. State

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Court : Delhi

Decided On : Aug-10-2011

Judge : Badar Durrez Ahmed; Veena Birbal, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 34; Evidence Act - Section 27

Appeal No. : CRL.A. No. 838/2009

Appellant : Deepak

Respondent : State

Advocate for Def. : Mr Sanjay Lao, Adv.

Advocate for Pet/Ap. : Mr Uday Gupta; Mrs.Shivani Lal; Mr M.K.Tripathi, Adv.

Judgement :

1. Present appeal is directed against the judgment dated 29th August, 2009 passed by the learned Addl. Sessions Judge, New Delhi arising out of FIR No.297/07 registered under Section 302 read with section 34 IPC wherein appellant Deepak has been convicted for the offence punishable under Section 302 IPC. The appeal is also directed against the order of sentence dated 10th September, 2009 whereby the appellant has been sentenced to undergo life imprisonment and to pay a fine of Rs.10000/- and in default of payment of fine to undergo simple imprisonment for six months. The co-accused i.e. the father of the appellant has been acquitted of the charge.

2. The case of the prosecution is that complainant Hans Raj, PW5, had made a statement to the police, Ex. PW5/A, alleging that on 21st April, 2007, his father Wazir Singh, i.e., the deceased had gone to Patiala House Courts to attend a complaint case filed by him against his brother Sri Kishan i.e., the accused in the present case as well as his sons Deepak i.e., the appellant, Ram Khiladi and wife of Sri Kishan and Santosh wife of Kailash. All the aforesaid persons had also gone to attend the said case on the said date. At about 1.30 pm his father i.e., the deceased had returned to his house i.e., House No.616, Village Devli. When Hansraj PW-5 went to meet the deceased, he told him that he had come back with the aforesaid persons in the same bus and when he had got down at Devli bus stand, his son Sri Kishan and appellant Deepak had abused him and he did not say anything to them and came back to his house quietly. It is alleged that when complainant Hans Raj, PW-5, was taking his father i.e., deceased to his house and reached the door of his house, appellant Deepak and his father Sri Kishan were standing in front of their house and started abusing and beating the deceased. On hearing the commotion, both the sons of Hans Raj-PW5 came out and tried to save the deceased from the accused persons. In that process, there was a scuffle between appellant Deepak and Sandeep, PW1. Thereafter appellant Deepak went to his house while Sri Kishan continued quarrelling with the deceased. Immediately, Deepak came back with a stick like object in his hand and from that he took out a "Gupti" and uttered the words that AAJ DADA KA KAAM TAMAM KAR DETA HU and stabbed in the stomach of deceased with the said Gupti and at that time co-accused Sri Kishan had held deceased Wazir Singh from his back. Thereafter appellant and co-accused ran towards their house and both the sons of Hans Raj PW-5 brought the deceased to their house and made him lie on the cot. It is alleged that thereafter Hans Raj PW-5 called 100 number from his mobile. It is alleged that blood was flowing profusely from the stomach of the deceased. He was taken to Batra hospital in the car of a relative, namely, Dharmaveer. The doctor of the said hospital had declared him as having been brought dead. It is alleged that Sri Kishan and his son Deepak had committed the murder of Wazir Singh. On the said statement, IO had made the endorsement and got registered FIR Ex.PW 11/E against the appellant as well as co-accused under Section 302/34 IPC. Thereafter, the Additional SHO Sandeep Byale, IO PW-11,

reached the spot with his staff. The crime team was called at the spot and took photographs Ex. PW11/F1 to F4. The blood, earth control, blood samples were lifted from the spot by the I.O. PW-11 and the same were seized by preparing memos Ex.PW5/D. The I.O. PW-11 also seized one mattress, bed-sheet from the cot by preparing memo Ex. 11/G. The I.O. PW-11 also prepared the site plan and thereafter went for the search of appellant and co- accused with Hans Raj PW-5.

3. As per prosecution case, appellant Deepak as well as co-accused Sri Kishan were arrested on the same day i.e., 21st April, 2007 at Holi Chowk, Devli Gaon, New Delhi by the Investigating Officer PW-11 vide arrest memo Ex. PW-5/B and Ex. PW-5/C respectively. On interrogation, they had made separate disclosure statements PW 5/E & PW 5/F respectively. On the pointing of appellant-Deepak alleged weapon of offence Gupti Ex.P-1 was recovered from his house which he had kept beneath the stairs of his house i.e., house No.499 A, Devli village, which was seized vide Ex.PW-5/B. After completing necessary formalities in this regard, postmortem examination of deceased was got done at AIIMS. The weapon of offence Ex.P-1 which was seized during investigation was also sent to the concerned Doctor who had conducted the postmortem examination of deceased and his opinion was also taken in this regard.

4. After completion of necessary investigation, a report u/s 173 Cr.P.C was filed before the learned M.M., Delhi. Thereafter case was committed to the Sessions court where charge was framed against the accused persons for having committed the offence punishable u/s 302/34 IPC. The appellant and the co-accused had pleaded not guilty to the same and claimed trial and thus were tried before the learned Additional Sessions Judge, Delhi.

5. The prosecution in all had examined 22 witnesses. Out of which Sandeep PW-1, Prateek PW-2 and complainant Hans Raj PW-5 were the alleged eye witnesses to the occurrence. Remaining evidence relates to police and medical witnesses.

6. Incriminating evidence was put to the appellant as well as to the co-accused in their statement u/s 313 Cr.P.C They had denied the same and stated that they were innocent persons and were falsely implicated. The appellant also stated that Gupti Ex.P1 and blood had been planted upon him.

7. The ocular witnesses i.e., Sandeep PW-1, Prateek PW-2 and Hansraj PW-5, did not support the prosecution case and denied having seen the alleged occurrence. The learned Addl. Sessions Judge relying on circumstantial evidence convicted the appellant Deepak for having committed the offence u/s 302 IPC whereas his father i.e., the co-accused Sri Kishan was acquitted.

8. Learned counsel for the appellant has contended that the eye witnesses of the prosecution i.e., Sandeep PW-1, Prateek PW-2 and Hans Raj PW-5 did not support the case of prosecution and were declared hostile and were cross examined at length by the APP. Despite lengthy cross-examination, nothing relevant has come out which could connect the appellant with the alleged occurrence. It is contended that the circumstantial evidence relied upon by the Addl. Sessions Judge is common for the appellant and the co-accused Sri Kishan. On the same set of evidence, appellant has been convicted while the co-accused has been acquitted.

9. It is contended that the learned Addl. Sessions Judge, New Delhi has relied upon PCR information Ex. PW-9/A giving the name of appellant as one of the assailants. It is contended that the learned Addl Sessions Judge has also relied upon the recovery of weapon of offence i.e., Gupti Ex.P1 alleged to have been recovered at the instance of appellant. It is contended that the witness to the alleged recovery are complainant Hansraj PW-5 and SI Om Parkash, PW-21 in whose presence the appellant is alleged to have got recovered Gupti Ex.P1 and thereafter, same was seized by the IO PW-21 vide seizure memo Ex.PW-21/B. It is contended that Hansraj PW-5 has not supported the alleged recovery. As per his deposition, no recovery was effected at his instance and police got his signatures on blank papers. It is further contended that as per testimony of SI Om Parkash, PW-21 the alleged recovery was effected before recording of disclosure statement Ex.PW-5/F of appellant Deepak. It is contended that even the evidence of IO PW-11 is also not believable in this regard. It is contended that Dr. Chittaranjan Behera PW-8 had conducted the postmortem examination on the body of deceased on 22.04.2007 vide report Ex.PW 8/A. As per prosecution case on the said date, at noon time weapon of offence Gupti ExP1 was sent to the said doctor in a sealed packet. The said doctor has deposed that on opening the said

packet, a wooden case containing Gupti was found which was having „dried reddish stains. It is contended that in the sketch Ex.PW-21/A, seizure memo Ex.PW-21/B which were prepared by the IO at the time of alleged seizure of weapon of offence, there is no mention of such stains. Even in the deposition of SI Om Prakash, PW-21, IO PW-11 nothing in this regard has come. It is contended that in these circumstances, the alleged recovery of Gupti Ex.P1 becomes doubtful. It is further contended that the said piece of evidence cannot be relied upon and the chain of circumstances relied upon by the learned Addl. Sessions Judge to convict the appellant breaks there. It is further contended that when there is a doubt in the recovery of Gupti Ex.P1, the benefit of same ought to have been given to the appellant. It is further contended that disclosure statement Ex. PW-5/E of co-accused Sri Kishan was recorded prior to recording of disclosure statement of appellant Ex. PW-5/F. In the disclosure statement of Sri Kishan Ex. PW-5/E he had already stated to the police that appellant-Deepak had kept Gupti in the house as such the place of recovery was already in the knowledge of Investigating Officer. In these circumstances, the alleged recovery at the instance of appellant has no meaning.

10. Learned APP has argued that the name of appellant has come in PCR information Ex. PW-9/A, the second call which was received at 1310 hrs. It is further contended that litigation was going on between the deceased Wazir Singh and his son Sri Kishan as well as grandsons Deepak i.e., appellant and Ram Khiladi as such there was a motive to eliminate him. It is further contended that there is no doubt about the alleged recovery of Gupti Ex.P1 and the evidence in this regard does not create any doubt as is contended. The dried reddish stains were found on the Gupti Ex.P1 as is evident from the testimony of Dr. Chittaranjan Behera PW-8. As per CFSL report Ex.PW-9/B blood is detected on Gupti Ex.P1 and as per CFSL report Ex.PW-10/A the blood group is „A which tallies with the blood group of deceased. Dr. Chittaranjan PW-8 who has conducted the postmortem examination on the body of deceased has opined that injury no.1 on the body of deceased could be sustained by the Gupti.

11. It is contended that there are documents on record i.e., complaint Ex. PW17/B dated 25th July, 2006 of deceased Wazir Singh filed against co-accused Sri

Kishan and his family including the appellant before ACMM, New Delhi to the effect that they were harassing him and wanted to reside in the property of the deceased. It is contended that there are other complaints of deceased i.e., Ex.PW 22/B to Ex.PW 22/D against his family members including the appellant and from the said complaints motive of appellant to commit the alleged occurrence is clearly established. It is contended that on the pointing of Hans Raj PW-5, IO PW11 had apprehended the appellant and co-accused. It is further contended that the learned Addl. Sessions Judge has rightly convicted the appellant on the basis of circumstantial evidence established against the appellant and the appeal is liable to be dismissed.

12. We have heard learned counsel for the parties at length and perused the material on record.

13. There are three eye witnesses to the alleged occurrence i.e. Sandeep PW-1, Prateek PW-2, both sons of Hans Raj PW-5. The deceased Wazir Singh was the father of Hans Raj PW5. The aforesaid prosecution witnesses have not supported the case of the prosecution in any manner. Sandeep, PW-1 and Prateek, PW-2 were confronted with their statements Ex.PW1/A & Ex.PW 2/A respectively alleged to have been made by them to police. The witnesses have denied having made any such statements to the police. The complainant Hans Raj PW-5 was also confronted with the statement Ex.PW 11/C alleged to have been made to the police on the basis of which FIR Ex.PW-11/E was registered. He has also denied having made any such statement to the police. He has deposed that police got a number of blank papers signed from him. There is nothing in the evidence of the alleged eye witnesses by which it can be said that appellant had caused the alleged occurrence.

14. The circumstantial evidence relied upon by the prosecution is PCR form Ex.P-9/A and Ex.PW 15/A, arrest of the accused persons at the instance of complainant Hans Raj PW-5, Blood stained Gupti Ex.P1 which is alleged to have been recovered from beneath of the staircase from the house of appellant at his instance. The opinion Ex.PW-8/B of Dr Chitranjan Behera about weapon of offence and CFSL report Ex.PW-10/A as per which blood group `A is found on the

Gupti which is that of deceased.

15. As per PCR form Ex.15/A, on 21st April, 2007 at about 12.41 pm, Head Constable Mahavir PW-15 had received a telephone call from Hans Raj, PW-5, phone no.9968199212, who had informed about a quarrel at Holy Chowk, Devli village regarding stabbing of father of caller by a knife. HC Mahavir PW-15 transmitted the call details to wireless operator and reduced the said information into writing vide PCR form Ex. PW15/A. It may be noticed that in the said information name of the person having stabbed is not given. As per prosecution case, the said message was transmitted to the PCR South Zone Vehicle Eagle 47. As per recording in PCR form Ex. PW9/A, under the heading of action taken by the police in the PCR form, it is stated therein that the police official posted at E-47 had met Hans Raj PW-5 at the spot and was told by him that his father Wazir Singh aged 87 years had been stabbed by the grandsons and the name stated therein are Srikishan, Deepak and Ram Khiladi. The said information recorded in the PCR form is contrary to the deposition of ASI Om Prakash PW-19 who at the relevant time was posted in the PCR South Zone Eagle 47. As per his deposition, on reaching the spot, injured was not found and he was informed that it was a property dispute between the family members. In these circumstances, even the aforesaid information recorded in Ex.PW19/A cannot be relied upon. The other two entries of PCR form Ex. PW9/A are recorded at 1359 hours and 1442 hours. As per information record at 1359 hours, it is stated that at Batra Hospital, CMO informed that Wazir Singh aged 87 years was brought dead in the hospital. The seat of injury is also stated therein. In the said information, name of accused persons is not mentioned. The other information was recorded at 1442 hours wherein it was recorded that caller had informed that incident had occurred five minutes back and his father had been stabbed by khukri by his son Sri Kishan and the two sons Deepak and Ram Khilari.

16. Further the case of the prosecution is that on 21st April, 2007, appellant and co-accused were apprehended at 11 pm at the instance of Hans Raj PW-5. It is stated that appellant disclosed that he could get the weapon of offence Gupti Ex.P1 recovered. Thereafter, he led the police party to his house and got recovered the weapon of offence Gupti Ex.P1 from beneath the staircase. The

Gupti Ex.P-1 was seized by the IO PW-11 in the presence of SI Om Prakash PW-21 and PW-5 Hans Raj. Hans Raj PW-5 has not supported the recovery of Gupti Ex. P-1. SI Om Prakash PW-21 has deposed that after conducting the personal search of appellant Deepak and co-accused Sri Kishan, vide memo Ex.PW-5/B and Ex.PW-5/A respectively, they led the police party to House No.499A, Devli Village and the appellant got recovered Gupti Ex.P-1 beneath the staircase of their house. Thereafter, sketch of Gupti was prepared Ex.PW-21/A which was also signed by him and Gupti was also seized vide Ex.PW-21/B and it was sealed with the seal of SB. Thereafter, IO PW-11 recorded the disclosure statement of appellant Deepak and Sri Kishan signed their Ex.PW.5/F and Ex.PW.5/E respectively and he also signed both the disclosure statements. Thereafter, they came back to police station along with the case property.

As per the above deposition of SI Om Prakash PW-11, the alleged recovery was effected prior to recording of disclosure statement Ex. PW 5/F of appellant Deepak, which is no recovery in the eyes of law as such is not admissible under Section 27 of the Indian Evidence Act. Further he has nowhere stated that Gupti Ex.P1 was having reddish stains. The Gupti Ex. P1 was sent to Dr. Chitranjan Behera PW-8 for seeking his opinion on the weapon offence. The said witness has categorically stated in his evidence that Gupti Ex.P-1 was having „dried reddish stains and he recorded the same in report Ex. PW-8/B. It is also an admitted position that no finger prints were lifted from the weapon of offence i.e. Gupti Ex.P-1 before the same was seized. It is also admitted position that in the sketch Ex.PW 21/A, seizure memo it is not mentioned that Gupti was having „dried reddish stains on any portion of it. After reading the evidence it is noticed that after sealing the pulanda and seizing the weapon of offence, the seal after use was not handed over by the IO to Hans Raj PW-5 or to SI Om Praksh PW-21.

17. ACP Sandeep Bayala, PW-11 was the additional SHO of P.S Ambedkar Nagar at the relevant time and was the IO of the case. As per his deposition, appellant had made a disclosure statement Ex.PW- 5/F and had disclosed that he could get recovered the weapon of offence. Thereafter, he had led the police party to House No. 499-A, Devli Village and got recovered Gupti Ex.P1 beneath the staircase of the aforesaid house which was seized vide seizure memo Ex. PW-21/B and he

had proved his signature on the disclosure statement Ex.PW- 5/F. In the seizure memo Ex.PW-21/B, it is clearly stated that before seizing, Gupti was checked. It is no where recorded in the said memo that Gupti was having „dried reddish stains. Even in the sketch Ex. PW 21/A of Gupti, Ex.P1 there is no mention of „dried reddish stains. Even in the evidence, it is not so stated by him. IO PW-11 has also stated in the evidence that he did not lift any finger prints from Gupti Ex.P1.

18. In view of evidence discussed above, different versions are coming about alleged recovery of Gupti Ex.P1. The complainant Hans Raj PW-5 has denied that the appellant got recovered the alleged weapon of offence Ex.P1 under the staircase of his house no.499, Devli Village. According to SI Om Prakash PW-21, Gupti Ex.P1, was recovered first and thereafter disclosure statement Ex.PW-5/F was recorded. In these circumstances, the recovery of weapon of offence is not admissible u/s 27 of the Evidence Act. Even if the evidence of aforesaid witnesses is ignored, the testimony of IO PW-11 also does not inspire confidence. IO PW-11 in his deposition has stated that after sealing the pulanda, he has handed over the seal to SI Om Parkash PW-21 but the said fact is not recorded in the seizure memo Ex. PW-21/B. As noted above, it is nowhere stated in the sketch of Gupti Ex.P1 or in the seizure memo Ex. PW-21/B of Gupti that the same was having dried reddish stains as is stated by Dr. Chitranjan Behera PW-8. Dr. Chitranjan Behera PW-8, has noticed the „dried reddish stains on Gupti Ex.P-1 on opening the sealed pulanda, as is recorded in Ex.PW-8/B as well as in his deposition before court. Had the said stains been there at the time of alleged recovery, SI Om Prakash PW-21 as well as IO PW-11, who had seized the same, would not have escaped their attention. The stand of appellant is Gupti Ex.P1 and blood stains are planted. In view of the above, it cannot be said that recovery of Gupti Ex.P1 is established by the prosecution beyond doubt.

19. It may also be mentioned that disclosure statement of co-accused Sri Kishan Ex. PW-5/E was recorded prior to disclosure statement Ex. PW-5/F of appellant Deepak and in the said disclosure statement, place of recovery had already come. Instead of acting upon the said disclosure statement, IO PW-11 recorded the disclosure statement Ex. PW-5/F of the appellant and thereafter proceeded for recovery pursuant to said disclosure statement. In these circumstances, even

otherwise the said disclosure statement Ex. PW-5/F leading to alleged recovery is not admissible in evidence.

20. As per CFSL report Ex. PW-10/A blood group „A is detected on Gupti Ex.P1 which tallies with blood group of deceased. When the recovery of Ex.P1 is doubtful, the said report Ex. PW-10/A is of no help to prosecution.

21. In view of above discussion, no reliance can be placed on the said circumstantial evidence of alleged recovery of weapon of offence Gupti Ex.P1. There are documents on record to show that there was property dispute between deceased and appellant and his son Sri Kishan co-accused and his family including appellant. In the absence of material evidence on record, evidence regarding motive, name of appellant coming in PCR form Ex. PW-9/A is not sufficient to convict the appellant.

22. Considering the overall circumstantial evidence, appellant deserves to be given the benefit of doubt. The judgment dated 29th August, 2009 and the order of sentence dated 10th September, 2009 passed against the appellant are set aside. Accordingly, appeal is allowed and the appellant-Deepak stands acquitted by giving him the benefit of doubt. He be released forthwith if not required in any other case.

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