

State Vs. Rakesh

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Court : Delhi

Decided On : Sep-23-2011

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

Acts : Indian Penal Code (IPC) - Section 302; Code of Criminal Procedure (CrPC)
- Sections 313, 315, 161

Appeal No. : CRL.L.P.10/2011

Appellant : State

Respondent : Rakesh

Advocate for Pet/Ap. : Ms. Richa Kapoor, Adv.

Judgement :

1. The State seeks leave to appeal against the judgment dated 09.08.2010 in Sessions Case No.09/07 whereby Respondent Rakesh (the accused) was acquitted of the charge under Section 302 IPC. The facts of the case can be extracted from paras 2 to 7 of the impugned judgment which are reproduced as under:

"2. It would be apposite to take note briefly of the prosecution case, at the outset. The incident involving the alleged murder of Kiran wife of accused (hereinafter "the deceased") is shown to have come to the notice of police on telephone information given on phone about a quarrel taking place in House No.172, Sangam Colony,

Gopal Dairy, which was recorded vide DD No.7/A at 03.24 hours on 11.10.2006 (Ex.PW3/A) which was entrusted to ASI Rajinder Singh (PW-10), who was on night emergency duty. It is stated that the said information was also made over to SI Jitender (PW-13), who was on night patrolling duty. It is alleged that the quarrel referred to, in the said DD entry, had taken place noisily between the accused and his wife (deceased) and was heard by a neighbour Balwant (PW-4), resident of Jhuggi No. A-277 located nearby, who intervened and pacified the couple. Later, at about 3 O'clock in the night, noise of quarrel again started coming and it was learnt by Balwant (PW-4), that Suraj son of the accused and the deceased was saying that his mother (deceased) had been stabbed by his father (accused). It is alleged that Balwant (PW-4) immediately rushed to the house of Sushil Kumar (PW-1), brother of the deceased, who lives in Gali No.21, Durga Mohalla, near Hanuman Mandir, Baljeet Nagar, Patel Nagar, Delhi. As per prosecution case, PW-4 Balwant reached the house of PW-1 Sushil Kumar and informed him at 2:45 pm that the quarrel was going on between his sister Kiran and her husband (accused) and that the latter was beating the former. On this information, PW-1 Sushil Kumar accompanied by his brother Vijay Kumar (PW-2) rushed to the house where the accused was living with the deceased and their children.

3. It is alleged that PW-1 Sushil Kumar and PW-2 Vijay Kumar reached the house in question and when they opened the door, they saw the accused inflicting wounds on the person of their sister (Kiran) with a knife as a result of which, she was profusely bleeding. They are stated to have seen the accused holding the blood stained knife. It is alleged that on seeing them (PW-1 Sushil Kumar and PW-2 Vijay Kumar), accused poured acid on the deceased, as a result of burning with it the deceased came out in the street where she fell down.

4. By the time PW-10 ASI Rajinder Singh and PW-13 SI Jitender are stated to have arrived at the scene, police control room (PCR) vehicle is stated to have shifted the injured (Kiran, the deceased wife of the accused) to Din Dayal Upadhyaya Hospital, New Delhi (hereinafter "the Hospital"). Thus, when PW-10 ASI Rajinder Singh and PW-13 SI Jitender reached at the scene, they did not find any eye witness at the scene. They noticed blood stains inside and outside the house and also on the bed lying inside with broken glass bangles also lying in the

street.

5. In the hospital, the deceased was declared brought dead on 04.15 hours on 11.10.2006. MLC in her respect was prepared vide no.26614 by the Causality Medical Officer who noticed multiple stab wounds, the details of which, however, were not noted in the MLC which task was left to be carried out in the mortuary (during the postmortem examination.)

6. The information about Kiran wife of accused having been brought dead to hospital by HC Mehar Singh (PCR) was communicated to police station, which was logged vide DD No.8-A (Ex.PW 3-B) and also made over to ASI Rajinder Singh (PW-10). On learning about these facts, Inspector Amarjit Singh Bajwa (now ACP), the then Station House Officer (SHO) of police station, PW-15 (also examined as PW-17) accompanied by Ct.Bani Singh (PW-6) reached the scene and after examining the same, they proceeded with PW-10 ASI Rajinder Singh to the hospital where he collected MLC.

7. The SHO was met in the hospital by PW-1 Sushil Kumar, who gave his statement. Ex.PW1/A which indicated that he was an eye witness to the crime. It is stated that SHO then made his endorsement (Ex.PW 5/A), and sent his rukka to the police station through Ct.Vinod (PW-7) for registration of the FIR. The rukka was dispatched at 6:30 am on 11.10.2006 on which FIR (Ex.PW3/B) is shown to have been registered at 7:15 am.

2. In order to bring home the guilt of the accused, the prosecution examined 17 witnesses. PWs 1 and 2 are Kiran's brothers who were called by PW-4 Balwant on the statement of Suraj (the deceased and the accused eldest son) that his mother had been stabbed by his father (the accused). Examination of PW-4 (Balwant) is very small and straight which is extracted hereunder:

"Gudan is my sister. She is living at Sangam Nagar. Rakesh was living at some distance from our house near to the house of Gudan. The name of the wife of Rakesh was Kiran. The incident in question is of the day of karvachauth of the last year. I was present in the house and was having my food. I heard some noise of quarrel between Rakesh and Kiran. They were pacified by us. I reheard the noise

coming from their house at around 3 midnight. Suraj is the son of Rakesh and Kiran. I heard Suraj was saying that his mother has been stabbed by his father. I immediately went to Baljit Nagar to call Sushil brother of Kiran. He is known to me. By the time we returned to the house of the accused along with Sushil and other family members the body of Kiran was no present in the hospital."

3. In cross-examination the witness deposed that he had told about the incident to Sushil and Rakesh's uncle and aunt. He deposed having returned to Rakesh's house after the arrival of Sushil and other family members as he was suffering from apendicites and used to move slowly. He added that they (PWs 1 and 2) had gone to the spot in their Maruti car.

4. PW-1 Sushil Kumar (the deceased's brother) deposed that the accused and his sister used to reside in A-277, Sangam Colony, Pandav Nagar, Delhi. They had three children. The eldest was aged 11-12 years. In the night intervening 11.10.2006 at about 2:45 A.M. Ballo (the accused's neighbour) went to his house and talked him about the quarrel between the accused and his sister. He went to the house of his younger brother Vijay who used to live nearby. He reached the accused's house, opened the door and saw the accused inflicting knife blows on his sister and then the accused poured acid on the deceased and ran away. Due to burning, his sister ran outside and fell in the gali, consequently somebody informed the PCR. He accompanied his sister to the Din Dayal Upadhyaya Hospital where she was declared brought dead. He then deposed about the recovery of a knife from a drain near the Railway line and a pant and a shirt from the nala opposite Jankak Cinema.

5. PW-2 Vijay Kumar corroborated PW-1 Sushil's testimony. He deposed that he, and his brother went to the accused's house on a bicycle. Sushil opened the door and saw the accused inflicting knife blows on their sister. He deposed about the deceased's removal to Din Dayal Upadhyaya Hospital.

6. When examined under Section 313 Cr.P.C. the accused denied the prosecution's allegation. He claimed that he was not in Delhi at the time of incident. On 09.10.2006 he went to Farrukabad to meet his sister. He was apprehended by the police on 12.10.2006 and was falsely implicated in the case.

The accused also entered the witness box as his own witness under Section 315 Cr.P.C. He deposed that on 09.10.2006 he went to Farrukabad to see his sister. On 12.10.2006 four police officers reached Farrukabad and asked him to accompany them on the pretext that his wife was unwell. On reaching Delhi he was sent to the lock up and was falsely implicated in the case.

7. By the impugned order the Trial Court doubted PWs 1 & 2's presence at the scene of occurrence as it had come on record through PW 4's testimony that he had heard the cries of the accused's son at about 3 O'clock that his father had stabbed his mother. This indicated that the stabbing incident took place before 3 O'clock. PW-4 deposed having gone to Baljit Nagar to inform the deceased's brother about the incident; he took half an hour to reach the place. The Trial Court held that PWs 1 & 2 claimed to have reached the spot and must have taken at least 10-15 minutes. Thus PW-1's testimony that he saw the accused inflicting the injuries was neither probable nor believable. The Trial Court observed that the incident of stabbing could not have continued for over an hour because according to the postmortem examination there were just eight injuries on Kiran's body which could have been inflicted in a few seconds or at the most in a few minutes. Moreover, PW-1 deposed that some acid was thrown at the deceased but no burn injury was noticed in the postmortem report or the MLC. In the circumstances, the Trial Court held that the very genesis of the case was shrouded in mystery and PWs 2 and 4 were not reliable and trustworthy. The Trial Court noticed contradictions in PWs 4 and 2's testimony. PW-4 deposed that PWs 1 and 2 had reached the spot in a Maruti car whereas PW-2 (the deceased's brother) deposed that they had travelled by a cycle. PW-1's testimony was also doubted on the ground that though he claimed to have accompanied the deceased in the PCR van yet the MLC did not reflect his name. Rather the MLC showed that the deceased was brought to the hospital by a PCR constable. PW-4's testimony was also doubted on the ground that though he claimed that information of the accused having stabbed the deceased was conveyed by Suraj (Appellant's son) yet the IO preferred not to examine Suraj under Section 161 Cr.P.C. On the other hand the IO stated that the children did not witness the incident as they were sleeping on the roof of the house.

8. We have heard Ms. Richa Kapoor learned APP for the State and have perused the record.

9. It is urged by the learned APP that even if PWs 1 & 2 are held to be unreliable and untrustworthy, the Trial Court committed a grave error in discounting PW-4's testimony. It is contended that PW-4 was a natural witness being a neighbour and he was at least a witness of the deceased being last seen alive in the accused's company and unless the accused explained as to how he parted company with the deceased he cannot escape the liability without leading any evidence in support of it. The false plea of alibi, it is contended, is an additional circumstance showing guilt of the accused.

10. PW-4's testimony makes an interesting reading. Though the prosecution projected him as the deceased's and (Appellant's) neighbor, yet, he nowhere stated that he was the deceased's neighbour. His house was not shown in the site plan. He deposed that his sister Gudan used to reside near the house of Rakesh (the accused). He deposed that on the day of karvachauth (last year) he was having food in his house when he heard the noise of a quarrel between Rakesh and Kiran. He deposed that "they were pacified by us". PW-4 does not claim that at the relevant time he was present in his sister Gudan's house; the question which naturally arises how he could hear the noise from the deceased's house- the same remains shrouded in mystery. He then says that at about 03:00 A.M. in the mid night he heard the deceased's son Suraj, saying that his mother had been stabbed by his father. This part of PW-4's testimony was falsified by the IO (PW-17) who deposed that Suraj was not examined under Section 161 Cr.P.C. as he did not claim to have witnessed the occurrence and was said to be sleeping on the roof at the time of the incident. In these circumstances we are of the view that the Trial Court was justified in not relying upon PW-4's testimony as it is a fundamental principle of criminal jurisprudence that the charge against the accused must be proved beyond reasonable doubt.

11. PWs 1 and 2's testimonies were also rightly disbelieved as there were not only discrepancies in them but also because they were unnatural and improbable. PW-4 admitted that it took about half an hour in reaching PW-1's house. PW-1 then

went to his younger brother that is PW-2's house and then they together reached the spot. PW-4 stated that PWs 1 and 2 went to the spot in a Maruti car whereas PW-2 says that they reached there on a bicycle. Even if it is assumed that they went to the spot in a Maruti car it must have taken them at least 15 minutes and further adding the time taken by PW-4 to reach PW-1's house, PW-1 reaching PW-2's house and then returning the spot, it must have taken them at least an hour; the incident of stabbing could not have continued for such a long time. Thus it is apparent that either the incident had not taken place in the manner alleged by the prosecution or PW's 1 and 2 had not seen the Appellant causing any injury to the deceased.

12. According to the prosecution the accused fled after committing the crime. It is unbelievable that the accused would flee to evade the law and yet would get a knife and his blood stained clothes recovered from an open place near the Railway line, Patel Nagar or from the nala near Janak Cinema. The recovery of the knife and blood stained clothes then otherwise were innocuous as no specific blood group was detected either on the knife or in the blood stained clothes. It only indicated presence of blood of human origin. Thus the recoveries even if believed do not connect the Appellant with the crime. Having rejected PW-1's testimony who claimed himself to be an eye-witness to the occurrence we do not find any circumstance which may unerringly point to the guilt of the accused.

13. Although the plea of alibi was not proved by the accused by examining his sister whom he had visited at Farrukabad at the relevant time, yet the prosecution was not absolved from discharging the onus to bring home the accused's guilt beyond any reasonable doubt.

14. Since we are not inclined to believe that the deceased was last seen alive in the accused's company, the accused is not under any obligation to render an explanation as to how he parted the deceased's company.

15. The High Court is slow to interfere in an order of acquittal because the order puts a stamp of confirmation on the presumption of innocence of an accused. The Court interferes only when there are substantial and compelling reasons and there is miscarriage of justice. Reference may be made to Chandrappa & Others v.

State of Karnataka (2007) 4 SCC 415 where the Supreme Court observed as follows:

"In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;
- (ii) The trial court's decision was based on an erroneous view of law; (iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
- (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- (v) The trial court's judgment was manifestly unjust and unreasonable; (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.
- (vii) This list is intended to be illustrative, no exhaustive.

The Appellate Court must always give proper weight and consideration to the findings of the trial court.

If two reasonable views can be reached- one that leads to acquittal, the other to conviction- the High Courts/appellate courts must rule in favour of the accused.

Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."

16. For the above reasons we do not find any error or infirmity in the order of acquittal. The State is, therefore, not entitled to grant of leave to appeal against the impugned judgment. The leave petition is accordingly dismissed.

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