

Birbal Vs. State

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Court : Delhi

Decided On : Jan-19-2012

Appellant : Birbal

Respondent : State

Advocate for Def. : Ms. Richa Kapoor

Advocate for Pet/Ap. : Mr. R.S. Misra

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: 19.01.2012
+ CRL.A.373/1997 BIRBAL Appellant Through: Mr. R.S. Misra, Advocate.
Appellant in person. versus STATE Respondent Through: Ms. Richa Kapoor,
APP. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR.
JUSTICE S.P.GARG MR. JUSTICE S. RAVINDRA BHAT %.

1. The appellant impugns the judgment and order of the learned Additional Sessions Judge (ASJ) dated 24.05.1997 in S.C. No. 96/1995. He was convicted for the offence punishable under Section 302 IPC, and sentenced to undergo life imprisonment and also to pay fine..

2. The prosecution case was that Police Station Jahangirpuri was informed on 26.07.1992 at 07.25 PM about the discovery of the dead body of a female. The concerned Station House Officer (SHO) reached the spot and during inquiry discovered that the body belonged to one Bindu; it was lying on a cot. A piece of

cloth had been tied around her neck. Subsequently, Crl.A.373/1997 Page 1 a case was registered. The prosecution alleged that when the police reached the spot, during search, a cardboard piece with a paper stuck on it was recovered; the same was produced in the trial proceedings as Ex. 3/C. It allegedly was a confessional statement by the present appellant. The said paper containing the confessional statement was taken into possession by seizure memo, Ex. PW-3/B, in the presence of Anil Kapoor, who deposed as PW-3. It is further alleged that on 27.07.1992, the police went to the appellant's village; Munna, his brother produced a diary, Ex. 10/A. At that time, the appellant had been named as an accused; he was arrested on 08.10.1992, allegedly pursuant to secret information received by the police, near Sabzi Mandi, Adarsh Nagar. The prosecution alleged that his specimen handwriting was secured on 7 sheets of paper, Ex. S-1 to S-7. The cardboard with the paper, Ex. 3/C; the diary, Ex. 10/A and the specimen handwritings were sent for comparison to the handwriting expert, PW-12. By his report, Ex. PW-12/A, the opinion given was that the specimen handwritings matched with the handwritings in the other documents and that they were by the same person..

3. After conclusion of investigations, the appellant was charged with committing the offence. He pleaded not guilty and claimed trial..

4. The prosecution examined 18 witnesses and also relied upon several documents, including Ex. PW-3/C, the handwriting expert report; Ex. 12/A, the postmortem report etc. After considering all these, the Trial Court, by the impugned judgment convicted the appellant, and sentenced him to undergo imprisonment in the manner prescribed earlier. Learned counsel for the appellant submitted that this was a clear case of false implication and the Crl.A.373/1997 Page 2 conviction under challenge cannot be sustained. He placed great stress on the fact that the independent witnesses, PWs-3 and 17 were hostile and did not support the prosecution. It was argued that the Trial Court fell into error in holding that the appellant had written the alleged confessional statement, Ex.3/C. Learned counsel contended that this mere circumstance was insufficient to conclude his guilt because at best it amounted to an opinion by an expert which could not have been the sole basis for convicting the appellant..

5. Learned counsel next submitted that there are inconsistencies and contradictions in the testimonies of prosecution witnesses, PWs-8 and.

18. Whereas PW-8 stated that the police reached the premises at 07.40 PM, the other witness, PW-18 deposed the police having reached the spot at 08.00 PM. The evidence of latter witness also established that several people were present. Besides, PW-1, PW-3 and PW-17, there were several others; the prosecution did not examine the others. PWs-3 and 17, on the other hand, did not support the prosecution story. Having regard to these facts, the possibility of false implication by the police (of the accused) could not be ruled-out..

6. Learned APP argued that the impugned judgment is based on credible evidence and sound reasoning and that does not call for interference. It was highlighted that several prosecution witnesses deposed that the appellant and the deceased were living together as husband and wife in the tenanted premises. Even though some of the prosecution witnesses turned hostile, the sub-stratum of the case against the appellant, i.e. living together with the deceased who was his wife; his absence immediately after the incident and CrI.A.373/1997 Page 3 the matching of his specimen handwriting with that in Ex. 3/C as well as other documents were fully established. Therefore, there was no question of false implication or false case. Besides this submission, learned APP urged that the deposition of PW-12 regarding the handwriting match between the specimen handwritings, Ex. S-1 to S-7 on one hand and the writings, Ex. PW-3/C went unchallenged. Learned APP pointed-out, in addition, that PW-3 disclosed the appellant's identity and also was a witness to the seizure memo, Ex. 3/B by which the document, Ex. 3/C had been taken into custody by the police. Furthermore, urged counsel, the specimen signatures and handwriting taken from the appellant were witnessed by PW-4, an independent witness, who had employed the appellant as well as PW-13. This was also corroborated by PW-11, who deposed having taken the specimen writings of the accused after he joined the case on 08.11.1992. Having regard to all these facts, the mere circumstance that some of the prosecution witnesses turned hostile did not in any manner affect the case adversely. Learned APP submitted that the Trial Court's impugned findings should not be disturbed..

7. It can be seen from the above discussion that the prosecution version began with the reporting of Bindu's body being discovered some time during the day on the date of the incident. PW-8, SI Ishwar Singh mentioned having visited the spot and sent the intimation, which resulted in the First Information Report (FIR) being lodged, at about 08.30 PM. PW-3 was apparently present when the police visited the spot and recovered some articles, including the letter, Ex. PW-3/C. In his deposition, this witness supported the prosecution as far as the recovery is concerned. He also CrI.A.373/1997 Page 4 mentioned that the appellant used to live with Bindu as her husband in the premises. Similarly, even though PW-17 was declared hostile and permission to cross-examine him was given by the Trial Court, yet, in his examination-in-chief, he deposed that the appellant lived in the same premises, L-23, Mahendra Park with the deceased, his wife, at the relevant time. He also identified the appellant in Court. PW-16, on the other hand, resiled from her previous statement and refused to identify the appellant; she was also unaware about the identity of the deceased and her name. PW-3's deposition further shows that a letter (Ex. PW-3/C) had been kept in a shelf-like place in the wall. PW-3 also confirmed having seen the piece of cloth tied on the deceased's throat. He mentioned having seen the appellant with the deceased the previous night, i.e. on 25.07.1992..

8. The appellant was employed by PW-4, a building contractor. He deposed that the employment had taken place just a few days prior to the incident. According to the witness, the appellant was regular for 7-8 days and that subsequently, he worked for just 1-2 hours and left without informing him. He recollected having gone to the appellant's house after hearing some news about the murder. This witness too was subsequently declared hostile. However, the fact of the appellant having been employed by him was in fact deposed during the examination-in-chief. PW-11 deposed about the appellant's arrest and more importantly, having taken specimen signatures and writings on Ex. S-1 to S-7, which were taken into possession through Memo, Ex. PW-11/D..

9. From the above analysis, what can be deduced is that PW-3's testimony proved that the appellant lived in the premises and they were CrI.A.373/1997 Page 5 together on the night of 25.07.1992. In fact, the appellant admitted to this in his

statement under Section 313 Cr.PC. The question, therefore, is whether the prosecution proved his guilt..

10. Now the previous narrative would show that the prosecution had relied heavily on the document said to be a confessional statement. The relevant translation of the confessional statement is in the following terms: "XXXXXX XXXXXX XXXXXX My name is Birbal. I married the girl named Bindu in Court. But this girl did not obey me after marriage. She became a whore. I killed her. When I was sleeping, the girl made attempt to strike me with knife so I saved myself and killed her....." XXXXXX XXXXXX XXXXXX".

11. Though PW-4 was apparently cited in support of the submission, regarding the seizure of other documents and also the specimen signatures of the appellant, he turned hostile. PW-11, however, deposed having obtained the specimen writings and signatures of the appellant; his cross-examination did not elicit anything favorable to the appellant. The testimony of PW-12 - as well as the report, Ex. PW-12/A clearly shows that the admitted writings (Ex. A-1 to A-6) matched with that of the specimen writings, Ex. S-1 to S-7. The expert clearly deposed that both were written by the same individual..

12. The appellant is no doubt right when he contends that a conviction cannot be based solely on the opinion of an expert. However, in this case, the opinion about the appellant's handwriting is a strong corroborative material. What is important is the deposition of PW-3, who clearly testified that the appellant used to live with Bindu and that he went missing after the CrI.A.373/1997 Page 6 day of the incident. Even though PW-4 turned hostile in the cross, in the examination-in-chief, he supported this part of prosecution story. Furthermore, the appellant himself admitted living in the premises. If these circumstances are held to be proved, what emerges is that both the appellant and his wife were seen together in the night preceding the incident. Having regard to the mandate of Section 106 Evidence Act, it was imperative for the appellant, who alone knew the circumstances which compelled him to leave the premises; to explain where he had gone and to establish his innocence. Although the Court would not draw an adverse inference against the accused on his abscondence, yet the fact of the matter is that

immediately after the incident, the appellant was missing. He did not state where he went and what kept him away during the time before he was arrested..

13. The Trial Court had noticed the contention that the earliest intimation, Ex. 18/B did not make any mention of the document, Ex. PW-3/C. However, the Court dealt with this and concluded that such circumstance alone could not lead to the inference that it had not been recovered at the time when the prosecution claimed it to have been so recovered. The relevant discussion leading to the appellant's guilt is in the following terms: "XXXXXX XXXXXX XXXXXX.

9. My attention has been drawn to the rukka Ex. PW 18/8 and the inquest paper Ex. PW 18/C. None of these documents mentions Ex. PW 3/C. It is therefore contended that Ex. PW 3/C was not recovered from the place of occurrence and that it was subsequently fabricated by the police. This arguments is positively rebutted by PW 3 Anil Kapar. Anil Kapar was occupying a room in the same house as tenant. He had not ill will against the accused. He is by all means an independent and disinterested witness. He says categorically that the paper Ex. CrI.A.373/1997 Page 7 PW-3/C was recovered from a rack affixed in the wall of the room. His testimony is corroborated by PW 8 SI Ishwar Singh and PW 18 Inspt. Ishwar Singh..

10. The confession scribed on Ex. PW 3/C has been retracted by the accused but it can still be the basis of conviction because there are other corroborating circumstances. It is an admitted fact that the accused was living with deceased Bindu in a room in H. No. L-23, Mahindra Park, Jahangir Puri. He states U/s 313 Cr.P.C. that he left for work around 3.00 pm and returned from duty next morning and then he came to know about the death of his wife. The postmortem report Ex. PW 7/A gives inference to the contrary. The autopsy was conducted on 27.7.92 at 10.00 a.m. In the opinion of the doctor the time since death was about 24 hours. This means that the death had occurred around 10.00 am on 26.7.92. If the accused used to leave around 3.00 pm for duty, he must have been at home around 10.00 am. This shows that accused was present in the house at the time of death. He admits that he absconded due to fear. If he did not have a guilty conscience, there could be nothing for him to fear..

11. The fact that the accused was present in the room at or about the time of death and his subsequent absconion lend corroboration to the confessional statement written on Ex. PW 3/C. His presence at the time of death, subsequent absconsion and the confession statement Ex. PW 3/C are all incriminating facts of conclusive nature and they have been satisfactorily established beyond a shadow of doubt. The cumulative effect of the three facts is so compelling that it is difficult to imagine any story consistent with the innocence of the accused. I, therefore, hold him guilty u/s 302 IPC for murder of Bindu. XXXXXX XXXXXX XXXXXX".

14. This Court is of the opinion that once prosecution established that the appellant lived together with the deceased as her husband and that the wife died a homicidal death, in the peculiar circumstances, where both were seen Crl.A.373/1997 Page 8 together last by PW-3, his failure to give any reasonable explanation is a strong incriminating circumstance. By itself, it could not have led the Court to believe that he was guilty as he was last seen with the deceased. The testimony of PW-12 and the report, Ex. PW-12/A corroborate the hypothesis of the prosecution that it was the appellant alone and none else who was responsible for the crime and that all other hypothesis of his innocence had been ruled-out..

15. In view of the above discussion, this Court is of the opinion that the appeal is lacking in merits. It is accordingly dismissed. The appellant is present in Court today. The respondents are directed to take the appellant into custody forthwith. The records of the Trial Court shall be transmitted immediately by the Registry. Order dasti under signatures of the Court Master, to the parties. S. RAVINDRA BHAT (JUDGE) S.P.GARG (JUDGE) JANUARY 19, 2012 'ajk' Crl.A.373/1997 Page 9