

Mohd. Hammad Vs. the State and ors

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Court : Delhi

Decided On : Dec-22-2011

Appellant : Mohd. Hammad

Respondent : The State and ors

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on: 22.12.2011 + CRL.A. No.792/2010 MOHD. HAMMAD Appellant versus THE STATE and ORS Respondent Advocates who appeared in this case:- For the Appellant : Mr Zafar Sadique, Advocate For the Respondent : Mr Pavan Narang, APP for the State. Mr Tanveer Ahmad Mir with Mr Dhruv Gupta, Advocates for Respondent nos 2 to.

5. CORAM:- HON'BLE MR JUSTICE BADAR DURREZ AHMED HON'BLE MS JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

1. Present is an appeal under the proviso to Section 372 of Code of Criminal Procedure, 1973 on behalf of the complainant i.e., son of deceased Mohd. Isa. The appeal is directed against the impugned judgment dated 25.02.2010, in sessions case no.24/2009, passed by the Additional Sessions Judge, Fast Track Court, New Delhi and South East District, New Delhi whereby the respondents 2 to 5, namely, Kanchid @ Raja, Rashid @ Chairman, Matloob Ahmed @ Pradhan and CRL.A. No.792/2010 *Page 1 of 15* Maenuddin @ Maen have been acquitted of the charges leveled against them under Section 364/302/201/120B IPC..

2. The case of the prosecution is that on 16.08.2002, the appellant i.e., the complainant Mohd Hammad s/o Mohd. Isa went to police station Hazrat Nizamuddin and gave information that his father Mohd. Isa was missing. The said information was recorded in the police station by the Duty Officer vide D.D. No.6A dated 16.08.2002 Ex.PW5/B. As per the information given by him, it was recorded in the aforesaid DD that on 26.07.2002 his father Mohd. Isa had gone to Ahmedabad to attend a marriage. On 03.08.2002 he had come to his in-laws house at Basti Nizamuddin, New Delhi. He had seen his father in the house of his in-laws. He had further stated that on 03.08.2002 at about 11.20 A.M., his father had gone to his native village with one person namely Shakil s/o Qudratullah, r/o village Kuraina, PS Hafizpur, District Ghaziabad, UP. On 12.08.2002, when he called up at his native village, he came to know that his father had yet not reached there and Shakil had reached the village. On enquiry made by him from Shakil, he did not disclose anything. He has given description of his father in the said DD report. The said missing report was handed over to SI Baldar Singh who made his endorsement Ex.PW7/A and got FIR No.476/2002 registered under Section 365 IPC. Later on, by way of supplementary statement, complainant Mohd. Hammad stated that due to inadvertence, he had given the date 3.8.2002 but actually his father had left Delhi on 2.8.2002. Thereafter, hue and cry notices were published in the newspaper. Even the CRL.A. No.792/2010 *Page 2 of 15* photographs of Mohd. Isa were sent to missing persons squad and were broadcast on TV. Further the case of the prosecution is that on the basis of a secret information received on 29.01.2003, respondent no.

2. i.e., accused Kanchid @ Raja was apprehended by the police near Surya Sofital Hotel. After interrogation, he was arrested and his disclosure statement was recorded. As per investigation, Kanchid @ Raja i.e., the respondent no.2 led the police to Alwar on 30.01.2003 where he pointed out towards the place of alleged occurrence. On inquiry from PS Sadar, Alwar, the Delhi Police officials came to know that on 03.08.2002, a case FIR No.225/2002, under Section 302/201 IPC was registered at PS Sadar, Alwar. Ultimately, the said FIR was got transferred to Delhi. During the course of investigation, the photographs of the deceased taken by Rajasthan police were shown to the appellant i.e., Mohd Hammad who had identified the same as that of his father. On the basis of disclosure statement of

the respondent no.2 Kanchid @ Raja, the other respondents, namely, Rashid @ Chairman i.e. respondent no.4, Matloob Ahmed @ Pradhan i.e. respondent no.5 and Maenuddin @ Maen i.e. respondent no.3 were arrested and their respective disclosure statements were also recorded. The co-accused Tayyab could not be arrested and was declared as a proclaimed offender by the concerned court. After completion of investigation, a challan was filed in the court of learned Metropolitan Magistrate. The learned Metropolitan Magistrate committed the case to the sessions on 13.06.2003. Before the Additional Sessions Judge, charge was framed against the respondents for having committed the offence punishable under Section 302/364/201/120B IPC wherein they CRL.A. No.792/2010 Page 3 of 15 had pleaded not guilty and claimed trial. The prosecution in all had examined 38 witnesses including police officials and witnesses relating to medical evidence..

3. The incriminating evidence was put to the accused persons i.e., respondents 2 to 5 and their statements under 313 Cr.P.C. were recorded wherein they had denied the same and stated that they are innocent persons and have been falsely implicated in this case. The respondent no.4 Rashid had led defence evidence wherein he had examined Dharambir Singh as DW-1..

4. After the arguments and on the basis of material on record the learned Additional Sessions Judge held that the case is based on circumstantial evidence and out of the chain of circumstances alleged against respondents 2 to 5, the prosecution could not establish even a single circumstance alleged against them. Accordingly, the learned trial court gave benefit of doubt and acquitted them vide judgment dated 25.02.2010..

5. The learned counsel for the appellant contended that there are three important pieces of evidence in this case i.e., motive of respondents 2 to 5 to commit the alleged occurrence, pointing out memo by respondent no.

2. Kanchid @ Raja in respect of the place of occurrence where the alleged murder has taken place. It is contended that there is also evidence of recovery of Ustra Ex.PX at the instance of respondent no.3. It is contended that as per opinion of Doctor CRL.A. No.792/2010 Page 4 of 15 P.S.Chaudhary PW-3 injuries on deceased were possible with Ustra Ex. PX. It is contended that the evidence led

by the prosecution on the aforesaid circumstantial evidence clearly points towards the guilt of the respondent nos.

2. to.

5. It is contended that the finding of the court below is contrary to the evidence on record. It is also contended that the document Ex.PW 38/F has not been taken into consideration by the learned Additional Sessions Judge while giving finding on motive. It is contended that the said document clearly proves the motive of the respondents 2 to 5 in committing the alleged occurrence..

6. On the other hand, the learned counsel for the respondent nos 2 to 5 has argued that the main witness in this case is Shakil with whom it is alleged that the deceased had left the house of the father-in-law of the complainant PW-6 for his native village on 2.8.2002 at 11.20 a.m. It is contended that the said witness has been dropped by the prosecution. It is further contended that none of the pieces of circumstantial evidence relied upon by the prosecution have been proved against the respondents 2 to 5 and the learned trial court has rightly acquitted them by giving benefit of doubt..

7. We have heard the submissions made and perused the material on record..

8. As noted above, present is an appeal filed by the complainant i.e. son of the deceased challenging the acquittal of the respondent nos 2 to.

5. The parameters of appreciation of evidence and limitation of CRL.A. No.792/2010 *Page 5 of 15* the appellate court have been discussed in *State of Goa v. Sanjay Thakran and Anr and Subhash Chandra Nanda v. Sanjay Thakran and Anr : (2007) 3 SCC 755*, wherein after considering its earlier decision on the subject, the Supreme Court has held as under:- "From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two

views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below. However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappraise the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with."

9. In the light of above, the evidence on record is considered. The most important witness in this case is Shakil. As per case of prosecution, the deceased had left the house of in-laws of complainant i.e., PW6 at Basti Nizamuddin, New Delhi, on 02.08.2002 at 11.20 am. On 12.08.2002, when he called up his native village, he came to know that his father had not reached there and he had made inquiries CRL.A. No.792/2010 Page 6 of 15 from Shakil who was not disclosing anything. According to Mohd. Hammad PW-6 when the deceased had left Delhi, Shakil was accompanying him and both were seen by him. The trial court record shows that the said witness was dropped by the prosecution. The relevant order dated 24.01.2007 of the trial court in this regard is as under:- "Present: Sh.Devender, Addl.PP for State. Accused Kanchid and Rashid in custody. Accused Tayyab Khan PO. Accused Matloob and Moinuddin on bail. An application has been moved by complainant Hammad duly forwarded by the Addl. PP Sh. Devender for dropping the witness Shakil Ahmed alleging therein that the witness is related to the accused Matloob and Moinudin. These allegations are denied by the accused however in view of the contents of the application and for the reason that several opportunities have already been given to the prosecution to produce this witness including last opportunity on 4/3/06 and further opportunities thereafter but the witness has not been produced in court who is reported to be out of India, he is dropped from the array of witnesses on the request of the complainant and Addl. PP, though no adverse inference shall be drawn against the accused persons in respect to the allegations that the witness has been won over by the accused as there is no such material on record."

10. As the case rests on circumstantial evidence, the evidence of Shakil was the most important evidence. His evidence was a material piece of evidence in completing the chain of circumstantial evidence. Though in the above order of learned trial court it has come that the CRL.A. No.792/2010 *Page 7 of 15* appellant had stated that the said witness is related to accused Matloob and Moinudin, but the said allegations were denied by the respondents 2 to.

5. Necessary details of relationship have also not been given by the appellant. It has also come in the evidence of Mohd. Hammad PW6 that Shakil had met him on 6th or 7th August, 2002 at Okhla but he did not ask him about his father. It has also come in his evidence that Shakil had left for Saudi Arabia after 5-6 months of the lodging of the FIR. This shows that the conduct of Mohd. Hammad, PW-6 was very unnatural specially when as per him his father had left Delhi on 2.8.2002 with Shakil and thereafter when Shakil met him, he did not make any enquiry from him about the whereabouts of his father..

11. It has also come in the evidence of Shahnajar Ali PW-8, Nissar Ahmed PW-12 and Mohd. Ayub PW-16 that they had seen deceased Mohd. Isa lastly with Shakil. But none of the aforesaid witnesses have deposed that the deceased was last seen by them in the company of respondents 2 to.

5. 12. As regards evidence relating to motive of respondents 2 to 5, as per prosecution story, in 1999 deceased Mohd. Isa had contested the election to the position of Village Pradhan against Raiz Ahmad, brother of respondent nos 3 and 5 had won the election. But four-five months thereafter Raiz Ahmed was murdered. As per the prosecution story the respondents suspected that the deceased and his son i.e. PW6 were involved in the murder of Raiz Ahmad and in order to take revenge for the murder of their brother, respondents have murdered CRL.A. No.792/2010 *Page 8 of 15* the deceased. The witness of alleged motive is complainant Mohd Hammad i.e. PW-6 who has deposed that his father had been Village Pradhan for quite some time and later on Raiz Ahmad, brother of respondent Matloob had become the Village Pradhan. There had been enimical feeling between his family and the family of Raiz Ahmad. After some days, Raiz Ahmad was killed. The family of Raiz Ahmad suspected the hand of his father in

the murder. It has also come in the evidence of Mohd. Hammad, PW-6 that by 16.8.2002 when he lodged DD No.6A about his father being missing, he did not have any suspicion over anyone. It is not the stand of PW-6 that any complaint or FIR was lodged by the respondents 2 to 5 against complainant PW- 6 or his deceased father. In the absence of any cogent material on record, the statement of Mohd. Hammad, PW-6 is not sufficient to prove the allegation of motive..

13. We have also considered Ex.PW 38/F which, as per learned counsel for the appellant, has not been considered by the learned trial court. The same is a complaint dated 11th August, 2002 by the respondents 4 and 5 i.e., Rashid and Matloob Ahmed to Senior Police Officers at Ghaziabad. The said complaint shows that respondents were apprehending action at the hands of the deceased and his son complainant Mohd. Hammad, PW-6. It is alleged in the aforesaid complaint that deceased and his son Mohd. Hammad, PW-6 were having a grudge against them as they had won the election and they were threatening them to implicate them in false cases. They have also stated in the said complaint that their brother Rais Ahmad who CRL.A. No.792/2010 *Page 9 of 15* was the Pradhan of the village was also murdered by the deceased and his son Mohd. Hammad, PW-6. Thereafter elections were held and deceaseds party lost the election. Rather in the said complaint, allegations are that Mohd. Hammad, PW-6 was giving life-threats to them and a request was made by the respondents to the police to take appropriate action. The above document does not substantiate allegations of motive in any manner of the respondents to commit the alleged occurrence. Rather it shows that respondents 4 and 5 were apprehending danger to their lives at the hands of the present appellant as well as party of the deceased Mohd Isa. Mohd. Hammad, PW-6 in his cross-examination has also admitted that a case u/s 107/151 Cr.P.C was pending against him at Hapur. The complaint Ex. PW 38/F as well as the evidence of Mohd. Hammad, PW-6 show that it was Mohd. Hammad, PW-6 who was enimical against respondents 2 to.

5. In the absence of reliable or cogent evidence, the learned trial court has rightly held that the prosecution has failed to establish the motive..

14. As regards the pointing out memo Ex.PW 1/14 by which it is alleged that respondent no.2 Kanchid @ Raja had pointed out the place of occurrence i.e., where the alleged murder of deceased was committed, the public witnesses to the said memo are Bhajan Singh, PW-1 and Amar Singh. The police witnesses are Constable Vikal Singh, PW-28 and Constable N.K.Pavithran, PW-37. The public witness Amar Singh is not produced. The police witnesses Constable Vikal Singh, PW-28 has deposed that on 30.1.2003 he had investigated this case with IO SI Ramesh Chand. On that day, they CRL.A. No.792/2010 *Page 10 of 15* had gone to Alwar with respondent no.2 Kanchid @ Raja. They had gone to Padisal Railway station and respondent no.2 Kanchid @ Raja pointed towards a field behind the railway station which was on a service road and pointed out the place of occurrence vide Memo Ex.PW1/14. The other other witness is Constable N.K.Pavithran, PW- 37 who has also deposed in the same manner. Both the witnesses have proved their respective signatures on the aforesaid memo. Bhajan Singh, PW-1 has deposed having joined investigation with the police on that day and has proved his signature on it..

15. Further case of the prosecution is that deceased was brought to said place in a Maruti car DL 4CA 6732. It is the case of the prosecution that car was of accused Matloob Ahmed @ Pradhan. However, the owner of the said car on the relevant day was Dr.Matloob Ali, PW-13 who has deposed that he had purchased the car from respondent no.5 Matloob Ahmed @ Pradhan on 15th July, 2002 and he had proved the memo Ex.13/A in this regard. In cross- examination he has stated that the car remained with him from 15th July, 2002 to the day it was seized by the police. The incident took place on 2nd/3rd August, 2002. According to the evidence on record, on the day of alleged murder, the car was not in possession of respondent no.5 Matloob Ahmed @ Pradhan. In these circumstances, the pointing out memo alone is not sufficient to link the respondents 2 to 5 with the alleged occurrence. The other pointing memos on record at the instance of other accused/respondents on subsequent dates have no meaning especially when police had already come to CRL.A. No.792/2010 *Page 11 of 15* know about the alleged place of occurrence on the pointing out memo Ex.PW 1/14 at the instance of respondent no.2 Kanchid @ Raja..

16. As regards the recovery of Ustra/Razor at the instance of accused Rashid @ Chairman on 5th August, 2003 vide memo Ex.PW 9/2, the learned trial court has appreciated the evidence of witnesses of aforesaid memo and has held as under:- "Another chain of circumstances in this case is recovery of weapon of offence and to prove it, the prosecution has examined PW9 Balbir Singh and PW14 Hassan Khan. PW9 Balbir Singh has stated that one person named Arshad Chairman (named wrongly stated - real name is Rashid) and he identified Raja Kanchid as accused and stated that he got recovered a polythene bag contained ushra. PW14 Hassan Khan has stated that accused Rashid Ali led 3-4 persons to nearby bushes in the field and pointed out the place and took out a polythene bag from the bushes which contained a razor/ushra. The razor had blood stains. Both the witnesses stated about preparing the sketch and taking into possession of the said ushra. PW9 first of all could not identify accused Rashid Chairman that he got recovered the said Ustra and he identified accused Kanchid Raja in his place. However, in cross examination he has stated that he could not identify the proper person because his eye sight is weak. No document regarding the eye sight of this witness has been proved by the prosecution on record to establish that his eye sight was really weak. However, it has come in the evidence of PW9 that :- One envelope sealed with court seal produced. As per note given on this envelope Ushtra has been kept there. One seal of envelope is in broken condition. Ushtra is not there. Another CRL.A. No.792/2010 *Page 12 of 15* sealed envelope with court seal opened. Ushtra is shown to the witness. According to witness Ex.PX is the same which was recovered. It was taken vide mem Ex.PW9-2 which bears his signatures at point A. From the above version, in first envelope in which as per note, ustra was kept has not been found in the envelope and seal was also found broken which create doubt in the mind. However, in second envelope which was opened with court seal ushra was found and PW9 identified it as Ex.PX. PW9 has stated in cross examination that police showed him the papers prepared by them. He did not go through contents of those papers and he signed those papers without going through those documents. From this version it seems that the papers were not prepared by the police in his presence at the place of recovery of ushra and these were already prepared by the police and he had only signed those documents. PW9 Balbir Singh has stated that seal after used was giving to

PW14 Hassan Khan. But PW14 is silent in this respect. PW14 could not tell any special mark of identification on the razor. Even at the time of identification of razor he has stated that the razor was like Ex.P1. So, he is not sure and certain that it was the same razor which was recovered by accused Rashid Chairman. From the testimonies of both the witnesses it is revealed that Delhi Police has not associated Rajasthan Police at the time of recovery effected at the instance of accused Rashid Chairman while the recovery was being effected within their jurisdiction. PW14 has stated that there was abadi at a distance of 20 or 30 paces from the place from where razor was recovered. It seems that the place where the razor was thrown is accessible to the general public. It was recovered after about 7 months of the murder. It has come in evidence that it was found in the polythene bag. But the said polythene bag has not been produced in the court. PW14 in cross examination CRL.A. No.792/2010 *Page 13 of 15* has stated that he cannot say if those persons who obtained his signatures were not police officials. It is not understandable as to how he joined investigation when he was not aware as to whether police official or someone else was asking him to join the investigation. The version of witnesses that the razor was found in a polythene bag also does not inspire confidence. The recovery of razor has been effected at the instance of accused Rashid Ali after about seven months of murder."

17. The learned trial court has rightly appreciated the evidence of aforesaid witnesses and justified reasons are given in rejecting the alleged recovery of Ustra/Razor. Further, as per sketch of Ustra/Razor Ex.PX, there was mark of identification "MEN BEAUTY BANDER". The trial court has observed that neither Balbir Singh, PW-9 nor HassanKhan, PW-14 who are witnesses to the recovery have stated about the mark of identification on Ustra/Razor. It has also come in the evidence that the same was recovered from an open place, accessible to all, after seven months of date of occurrence..

18. The learned trial court has also observed that Dr. P.S. Chaudhary, PW-3 who has given his opinion vide report Ex.PW 3/B to the effect that injuries on the deceased could have been caused by weapon shown to him i.e., Ustra Ex.PX but he has admitted in cross- examination that there was no mark of identification on the Ustra/Razor Ex.PX when his opinion was taken. Under these circumstances,

there is a doubt that the alleged recovered Ustra/Razor was shown to Dr P.S. Chaudhary, PW-3. CRL.A. No.792/2010 Page 14 of 15.

19. In the light of the above discussion, the learned trial court has rightly discarded the circumstantial evidence alleged against the respondents 2 to.

5. There is no conclusive evidence to prove the circumstances alleged against the respondents 2 to.

5. The finding of the learned trial court is not perverse nor any material piece of evidence is ignored by the learned trial court. We are of the opinion that the learned trial court has rightly given the benefit of doubt to them. Accordingly, the appeal stands dismissed. VEENA BIRBAL, J BADAR DURREZ AHMED, J
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