

Jitender Kumar Singh Vs. State

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Court : Delhi

Decided On : Dec-19-2011

Appellant : Jitender Kumar Singh

Respondent : State

Advocate for Def. : Mr. Sanjay Lao

Advocate for Pet/Ap. : Mr. Avadesh Kumar Singh

Judgement :

§~8 * IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON: 19.12.2011 + CRL.A. 1140/2011 JITENDER KUMAR SINGH Appellant Through: Mr. Avadesh Kumar Singh, Adv. versus STATE Respondent Through: Mr. Sanjay Lao, APP CORAM: MR. JUSTICE S. RAVINDRA BHAT MS. JUSTICE PRATIBHA RANI MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT) %.

1. The present appeal is directed against the judgment and order dated 28.2.2011 convicting the appellant for the offence punishable under Section 302, IPC (Sessions Case No.145/2009), sentencing him to undergo life imprisonment with fine. The appeal was heard since the Appellant has been in jail for over 7 years..

2. The prosecution in this case alleged that information was received at PS Patel Nagar at around 09.30 AM on 09.04.2004 regarding a stabbing incident at T-497, Prem Nagar Near Goushala Road. This was recorded in the form of DD No.3A. It

is the prosecution's case that three police personnel went to the spot and CRL.A. 1140/2011 *Page 1 of 12* found blood in the staircase of House No.2132/C7, Gali No.3, Prem Nagar Near Goushala Road. They were informed that the injured had been rushed for medical aid; they went to Janaki Das Hospital. S.I. Jagdish Prasad claims that he left Constable Jagbir at the spot and rushed to the hospital along with ASI Sudesh Pal. They managed to get the MLC of the victim prepared, which recorded that the injured was brought dead. The MLC is a part of the record, marked as Ex.PW-5/A; a look at it would reveal that the injured was taken to the hospital at 10.00 AM. The prosecution's further case is that the statement of PW-1, the complainant, was recorded in the hospital; around 11 AM. The rukka, Ex.PW-1/A, was prepared at 11.30 AM and sent for registering the FIR, which was done at 12.15 PM (Ex.PW-20/A)..

3. PW-1 claimed to be the employer of the appellant, Jitender. He claimed that he was owner of a factory which was housed on the third floor of his premises; he was engaged in manufacturing "decks". He stated that on the day of the incident i.e. 09.04.2009, the accused Jitender (who apparently used to reside elsewhere) went to the premises i.e. the factory on the third floor at around 9.00 AM. PW-1 went on to say that after taking out his shirt and hanging it on a peg, the appellant went down with a dagger and immediately thereafter the witness heard Rizwan (hereinafter referred to as the deceased) crying out "Uncle Mujhe Bachhao, Jitender Ne Mujhe Chhura Maar Diya". PW-1 stated that the deceased used to live on the second floor of the CRL.A. 1140/2011 *Page 2 of 12* same premises along with his father (Sikander), who deposed as PW-4 during the trial. PW-1 went on to state that he went and tried to rescue the injured. He claimed that the appellant, Jitender, pushed Rizwan down the stairs. The police further alleged that on the basis of the statement of PW-1 and another eye-witness, PW-2 (Raju), certain recoveries were made including that of a dagger (seized by Memo Ex.PW-1/D). The dagger was produced during the trial; its sketch was also made a part of the record (Ex.PW-1/E). The prosecution alleged that the appellant was arrested later i.e. on 15.4.2004. According to the prosecution, the disclosure statement by the appellant led to recovery of certain articles such as his blood stained cloths, which were seized by Memo Ex.PW-1/J. It was further alleged that the articles were sent for forensic examination. The reports of the FSL and the biology report were

placed on record as Ex.PW-25/D and PW-25/E. After conclusion of investigation, the appellant was charged for committing the offence. He denied complicity and trial was conducted. During the proceedings before the Trial Court, prosecution relied on the testimony of 25 witnesses and also placed on record certain exhibits. After the accused answered queries put to him under Section 313 Cr.P.C., he chose to lead evidence and relied on the testimony of two defence witnesses. On an overall consideration of all these, the Trial Court held that the Appellant was guilty as charged and sentenced him in the manner described in the earlier part of the judgment. CRL.A. 1140/2011 Page 3 of 12.

4. It is urged by the appellant that the Trial Court's findings are unsustainable. Learned counsel questioned the credibility and truthfulness of PW-1. It was submitted that the testimony of this witness raises more questions than answers. Firstly, it was urged that testimony of this witness as well as deposition of PW-2 establishes that the incident was seen not only by two witnesses but by many others. Learned counsel emphasized that PW-1 mentioned that the attacker was given chase not just by PW-2 but by two others including Ajit. Counsel submitted that non-examination of the other two witnesses was a serious infirmity which the Trial Court ought to have considered and given due importance. It was next urged that the appellant's name did not find mention in some crucial documents such as Ex.PW-3/E and in other places. This, it was urged, is a clear pointer to his being falsely implicated. Counsel also sought to emphasize that the blood stained dagger was also alleged to have been recovered on the date of the incident itself i.e. 9.4.2004 from an open area accessible to all. It was submitted that having regard to the totality of the circumstances and depositions of the defence witnesses, the role of the police in planting such an article could not be ruled out..

5. Learned counsel urged that there were other discrepancies such as PW-1's claim that he (the appellant) was an employee, was unsupported by any documentary or objective evidence; similarly counsel claimed that PW-1 admitted that Raju (PW-2) had been involved previously in a murder case. It was also urged that the CRL.A. 1140/2011 *Page 4 of 12* testimony of PW-2 further established that the Appellant was not arrested on 15.4.2004, but on 11.4.2004 as was claimed by him in the trial. The testimony of PW-1 also establishes that more than

150 people were there in the spot. Serious objection was taken to the prosecution's inability to produce and rely on the deposition of Vandana, PW-1's daughter..

6. Relying on the testimony of DW-1 and 2, it was urged by counsel that PW-1 had a motive in falsely implicating the appellant. According to counsel, the appellant had intimated the witness i.e. PW- 1 about the affair between Vandana, his unmarried daughter and the deceased, Rizwan. This was consequently a convenient circumstance seized upon by the appellant in order to get rid of Rizwan, whose tenancy was a nuisance; at the same time by falsely implicating the appellant, even though the authors of the crime were others; PW-1 achieved his ultimate goal of having the premises vacated..

7. Learned counsel lastly urged that the recoveries made by the police on 9.4.2004 as well as on 15.4.2004 (the latter pursuant to the disclosure statement of the appellant) were unreliable and could not have been taken note of by the Trial Court. It was emphasized that the Trial Court overlooked a very important legal aspect i.e. the testimony of the defence witness ought to have received due deliberation. In not following this salutary principle and in unduly relying on the testimony of the prosecution witness, the Trial Court fell into serious error. It was urged that having regard to these CRL.A. 1140/2011 *Page 5 of 12* circumstances, this Court should reverse the findings and acquit the appellant..

8. The learned APP contended that the findings of the Trial Court are sound and based on a correct reading of the evidence. It was argued that PW-1 was the primary witness to the incident. He clearly deposed having seen the appellant going down to Rizwan's premises and the very next moment hearing the latter crying out in pain for help. Although, the PW-1 did not witness the incident in the sense that the attack did not take place in front of him, he could hear and was a part of the incident. Learned counsel submitted that the reliance by the Trial Court on Section 6 of the Evidence Act in this case was an apt in this regard. Counsel emphasized that the testimony of PW-2 corroborated that of PW-1. The latter saw the appellant fleeing from the spot after carrying out his design and attacking the injured. The fact that others witnessed the appellant fleeing or some of them could

not be examined during the course of the investigation, in no manner, detracts from the essential facts deposed to by these two witnesses which were consistent with the statements recorded at the earlier points of time under Section 161 Cr.P.C. during the investigation and that too in the immediate aftermath of the incident within a couple of hours. Learned counsel emphasized that the possibility of false implication and planting of evidence in this case would be entirely ruled out because the PCR intimation was received at 9.30 AM i.e. the time around when the DD was recorded; MLC Ex.PW-5/A clearly CRL.A. 1140/2011 *Page 6 of 12* established that the deceased was taken to the hospital at 10.00 AM; rukka Ex.PW-1/A was prepared at 11.30 AM and forwarded to the police station; and the FIR was lodged at 12.15 PM. In the latter two documents, both prepared within couple of hours after the attack, the accused's name, role and the general outline as to the origin of the attack were clearly mentioned. The PW-1 stuck to the story. Having regard to all the circumstances, the lack of motive was irrelevant..

9. From the above discussion, it is evident that the Trial Court based its findings primarily on the testimony of PW-1 and.

2. We notice from a reading of the impugned judgment that more or less, most of the arguments urged during the course of the appeal were also urged in the case of the Trial Court proceedings. We do not, therefore, wish to elaborately deal with the findings of the Trial Court, except notice this salient aspect. As far as the credibility of PW-1 and the alleged motive ascribed to him by the defence witness is concerned, this Court is conscious of the fact that there are certain rulings of the Supreme Court which state that equal weightage has to be given to all witnesses in the course of criminal trial. However, at the same time, Court seized of the matter has to consider probabilities of the facts as emerging from the testimony of the witnesses. The Trial Court in regard to the testimony of the two defence witnesses, PW-1 and 2 had this to say this: "44. Accused examined two witnesses in this defence. DW1 did not deposed anything regarding alleged illicit relations of the daughter of the complainant with the deceased. DW2, on the other CRL.A. 1140/2011 *Page 7 of 12* hand, deposed that there had been 2-3 persons when quarrel took place between PW-1 Durgesh Prasad and Sikander Ali and deceased for vacating of house of Durgesh Prasad because of the reason that Durgesh

Prasad had seen his daughter with Rizwan in an unapproved obscene condition. However, in his cross-examination, the witness admitted that he had not taken any action against false implication of accused Jitender in this case, Further, in his examination in chief itself, he deposed that accused Jitender was having cordial relations with the complainant Durgesh Prasad and in my opinion, from the testimony evidence of this witness the defence sought to be raised by the accused could be established on record..

45. Moreover, I find it difficult to believe that merely in order to get his house evicted, the complainant would falsely implicate the accused in this case. I also find it difficult to believe that even if accused had seen daughter of the complainant in objectionable condition with the deceased, false implication of the accused, would in any manner help in subsiding the entire episode or would compel the deceased not to disclose about illicit relations of daughter of complainant with deceased."

10. We do not see any infirmity in the above findings. This Court is of the opinion that the defence by the Appellant during the course of the trial i.e. PW-1 wished to get rid of Rizwan and his father, who were tenants in the premises, since the appellant had seen Rizwan in an objectionable position with his daughter, is too farfetched. We are conscious that in reply to answer to question No.30 put to him under Section 313 Cr.P.C. , the appellant did not mention anything about such illicit relationship. However, one significant aspect is that PW-4, Sikander, the deceased's father deposed during the trial. The only question put to him in the cross-examination did not pertain to the alleged affair that the deceased had with PW-1's daughter; what he CRL.A. 1140/2011 *Page 8 of 12* was asked was whether Rizwan had had a fight with the appellant. We are of the opinion that the Trial Court was justified in holding that the defence's version was not believable; which is reinforced by the complete absence of cross-examination of PW-4, who could have been put to some searching questions in this regard..

11. As far as the credibility of PW-1 or 2 is concerned, though the learned counsel argued that the first witness did not produce anything to prove Jitender's employment with him, we are not impressed with this statement. The evidence on

record suggests that the premises are located in a congested, narrow gali, the structure is built in a 20 sq. yds. plot. The nature of the unit can hardly be given the expression "factory" which is used in a very loose or generic sense; it can hardly be called a manufacturing unit in a term normally understood. Having regard to these facts, the lack of evidence about the appellant's employment by PW-1 is not of much consequence. Besides, we notice that the appellant in reply to the first query put to him under Section 313, Cr.P.C., even while denying his employment with PW-1, stated that Jitender was a supplier of ancillary items. However, he himself did not produce any material in support of that statement. What is important, however, is the deposition of the PW-1 that Rizwan used to reside in the second floor of the premises; the manufacturing/assembling unit was located on the third floor. The appellant went there on the fateful day i.e. 9.4.2004 in the morning and after removing his shirt proceeded downstairs with a dagger. A CRL.A. 1140/2011 *Page 9 of 12* few moments later, the witness, PW-1 heard Rizwan crying out for help and also that Jitender had attacked him with a knife. The witness thereafter saw the appellant pushing down Rizwan. PW-1 further stated that Jitender fled from the spot. PW-2 supported this testimony by stating that he saw Jitender running away with a blood stained dagger. At one stage, he claimed to have been attacked when he tried to catch him; he clarified later, during the course of cross- examination, that he was threatened by the appellant with a knife. The appellant admitted to undermining the testimony of these two witnesses by saying that PW-2 had been involved in some murder case, is however not of much consequence. Whether one of the witnesses was implicated in some other criminal case or what was its outcome, at best might be a pointer to the propensity of that witness; however, his deposition would have to be tested having regard to what he deposed in the Court and how credible it is. The testimony of PW- 2 in this case, is at best corroborative of what PW-1 says. Furthermore, the recovery made on the same day, of the dagger (seizure Memo was Ex.PW-1/D), in fact, lends credit to the prosecution witness storey in this regard. We, therefore, are of the opinion that the appellant's attempt to impeach the credibility and undermine the deposition of PW-1 and 2 is insubstantial..

12. The Trial Court had in this case recorded that even though the witnesses relied upon by the prosecution were not, strictly speaking, eye-witnesses; they were

witnesses *res gestae* within the meaning of CRL.A. 1140/2011 *Page 10 of 12* the expression understood under Section 6 of the Evidence Act. The Trial Court had also relied upon the judgment reported as *Ujjagar Singh Vs. State of Punjab 2008 Cr.L.J.*

808. The testimony of PW-1 clearly establishes that he was a witness to the events which immediately preceded and the events which immediately occurred after the incidence of attack which were intrinsically connected to each other. Furthermore, he even heard cries of the deceased and saw that Rizwan was being thrown down the stairs by Jitender who held the dagger with him. Rizwan has also stated that Jitender had attacked him. For all practical purposes, PW-1, in the opinion of this Court, can be treated as an eye-witness to the incidence. If that is the correct position, the absence of motive, in this Court's opinion, is of little or no consequence..

13. The testimony of the prosecution witness in the opinion of the Court was also strengthened and supported by the forensic reports, Ex.PW-25/D and 25/E. The latter report, in fact, confirmed that the blood stains on the clothes, seized on 15.4.2004 upon the disclosure statement made by the appellant, were of the deceased's blood group i.e. "B". Having regard to these circumstances, the post mortem report, PW-6/A, shows that injury No.1 was sufficient in the ordinary course of nature to cause death, and did indeed caused the death. The Doctor, PW-6, testified that injury given caused by a sharp instrument, a dagger. The dagger, Ex.PW-1 was, in fact, shown to him; its sketch is a part of the record as PW-1/E. All these CRL.A. 1140/2011 *Page 11 of 12* circumstances were put to the appellant in the course of his examination under Section 313, Cr.P.C. He, however, chose to level allegations against PW-1. We have discussed how the defence witnesses' version as well as the explanation given by the appellant is unconvincing and not reasonable. Having regard to all these facts, the absence of any reasonable explanation by the appellant about his involvement is damaging..

14. In view of the above discussion, we are of the opinion that the findings recorded by the Trial Court are sound and do not call for any interference..

15. Having regard to the settled principles applicable in this regard i.e. the appellate court may substitute its findings only if substantial and compelling reasons exist on an overall consideration of the record, this Court does not see any reason to interfere with the Trial Court's findings..

16. The appeal, therefore, has to fail. It is accordingly dismissed. S. RAVINDRA BHAT (JUDGE) PRATIBHA RANI (JUDGE) DECEMBER 19, 2011 s.pal CRL.A. 1140/2011 Page 12 of 12

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