

Johnson Vs. State

Johnson Vs. State

SooperKanoon Citation : sooperkanoon.com/947989

Court : Delhi

Decided On : Feb-29-2012

Judge : S. Ravindra Bhat & S.P.Garg

Appeal No. : CRL.A No.775 OF 2011

Appellant : Johnson

Respondent : State

Judgement :

S.P.GARG, J.

CRL.M.A.7412/2011 (condonation of delay)

For the reasons stated in the application, delay is condoned.

Application is allowed and disposed of.

CRL.A.No.775/2011, CRL.M.B.1660/2011

1. The appellant-Johnson has preferred the present appeal against the judgment dated 22.03.2010 and order on sentence dated 01.04.2010 of Ld. Addl.Sessions Judge in SC No.571/2006 by which he was convicted for committing offence punishable under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs.1,00,000/-.

2. Criminal law was set into motion at around 9:25 P.M. on 08.03.2006 when DD entry No.32/A (Ex.PW-12/A) was recorded by ASI Vijay Pal Singh to the effect that an individual has been stabbed near Sharma Dairy, at G-1/77, Shahid Chand Marg, Uttam Nagar, in front of State Bank of India. Investigation was assigned to Insp.Bhagwan Singh (PW-16) who along with ASI Jagpal and Ct.Rajnish reached the spot and came to know that the injured had been taken to DDU hospital. Leaving Ct.Rajnish at the spot, Insp.Bhagwan Singh and ASI Jagpal reached the DDU hospital and collected the MLC of one Deepak Sharma @ Deepu already declared as 'brought dead'. Ct. Subhash and one Harish were present there. Ct.Subhash Chander (PW-5) made statement that on 08.03.2006 while on patrolling duty, he reached near Sharma Book Depot, Shahid Chander Marg, Uttam Nagar at about 9:00 P.M., and saw one Deepak Sharma being attacked by three assailants. One of the assailants was a young boy aged about 13 or 14 years and the other was aged about 25 years, both had caught hold him; the third aged about 17-18 was tall and slim and was stabbing Deepak Sharma @ Deepu with a knife. When he tried to apprehend them, they ran in different directions. The injured disclosed his name Deepak @ Deepu and told him that the small boy (who had caught hold him) was Prince R/o Kali Basti; the bigger boy (who had also caught hold him) was Johnson (appellant herein) and the third who had stabbed him was Nand Kishore @ Nandu s/o Kishan Kabari. The injured also told him that the accused had an altercation with him two days back. Ct. Subhash Chander further disclosed that one Harish, known to the injured, reached the spot and they shifted Deepak in a Maruti Van and took him to DDU hospital. On the way to hospital, Deepak lost consciousness. When they were going to DDU hospital, on Najafgarh Road, Harish spotted one Mohd.Shakir and made him sit in the van.

3. SI Bhagwan Singh made an endorsement on the statement of Ct.Subhash (Ex.PW5/A) and sent the rukka for registering the FIR under Section 302 IPC. Investigation was taken over by Insp.Ishwar Singh(PW-15). During the course of investigation, he inspected the spot and took the photographs; he summoned the crime team who inspected the spot; IO lifted blood, blood stained earth; sample earth; pair of chappals lying at the spot and prepared the necessary seizure memos; he also prepared the rough site plan and recorded statements of witnesses conversant with the facts.

4. Since the deceased had indicted the appellant, Prince and Nand Kishore @ Nandu, the police set out to apprehend them. On 09.03.2006, on the receipt of secret information, accused Nand Kishore @ Nandu and Prince, were arrested near DDA parking, Kali Basti, Uttam Nagar. Accused Nand Kishore pursuant to his disclosure statement led the police to DDA Park, Uttam Nagar and from the bushes took out one polythene containing his blood stained clothes, i.e., pant and shirt. He also recovered blood stained knife from the bushes. Necessary memos were prepared about their seizure. The accused-Prince, pursuant to his disclosure statement, recovered one polythene from the bushes of the park containing his pant and shirt. On 24.03.2006 the appellant Johnson surrendered in the Court and was arrested with the permission of the Court. He also made disclosure statement Ex.PW11/B. After conclusion of investigations, the appellant was charge-sheeted for committing the offence punishable under Section 302/34 IPC. The accused Prince and Nand Kishore @ Nandu were sent for trial before Juvenile Justice Board. The accused Nand Kishore has since been murdered and an FIR No.174/2006 has been registered in that regard.

5. To bring home the charge, the prosecution examined 15 witnesses. Main reliance was placed upon the testimony of PW-5 star witness. Statement of the accused was recorded under Section 313 Cr.PC to afford him an opportunity to explain the incriminating circumstances appearing against him. Appellant denied his hand in the crime and pleaded that he was falsely implicated in this case due to enmity.

6. Upon evaluation of the evidence on record and after hearing the counsel for the parties, the Trial Court convicted and sentenced the accused- Appellant as aforesaid giving rise to this Appeal.

7. Appellant's counsel has assailed the findings of the Trial Court and argued that it did not appreciate the evidence in proper perspective. It heavily relied upon the deposition of PW-5 (Ct.Subhash Chander) whose presence at the spot was doubtful. Prosecution failed to explain why the driver of the van in which the deceased was taken to DDU hospital was not examined. After sustaining serious injuries, Deepak was not physically capable of disclosing the name of the

assailants. No independent public witness from the locality was joined in the investigation. Police did not move the court for holding TIP. The witnesses made vital improvements in their depositions which were ignored.

8. Ld.Addl.PP justified the conviction of the appellant for the detailed reasons mentioned in the impugned judgment. He urged that PW-5 (Ct.Subhash Chander) had no ulterior motive to falsely implicate the accused with whom he had no animosity. Presence of PW-5 was quite

natural and probable at the spot as he was on official duty in the area. Recovery of weapon of offence and blood stained clothes are vital incriminating circumstance to corroborate PW-5's version. Altercation between the accused persons and the deceased two days earlier was strong motive to murder him.

9. Apparently, the Trial Court based its conviction heavily relying upon the testimony of PW-5 (Ct.Subhash Chander) and concluded that he was present at the spot and had witnessed the incident. He was considered a truthful witness as no motive was assigned to him for false implication of the deceased. PW-2 Harish corroborated his testimonies on material facts. However, we do not feel it safe to accept the deposition of PW-5 on its face value for number of reasons noted below.

10. PW-5 states that while on patrolling duty on 08.03.2006, he reached near Sharma Book Depot, Uttam Nagar at about 9.00 P.M. and saw Deepak Sharma being attacked by three assailants. Despite witnessing the incident, he did not send any intimation to the PCR or the police station to which he was attached. Even after reaching the DDU hospital at about 10.30 P.M. he did not inform the PCR or his officers about the occurrence. The PCR form Ex.PW-14/A reveals that one Dinesh Kumar had called PCR on mobile No.9868279231 at about 21.21 i.e. (9.21 P.M.) informing that an individual had been stabbed near Sharma Book Depot. He (Dinesh Kumar) did not give other particulars i.e. number of assailants or presence of PW-5 at the spot etc. Being the informant, he was a crucial witness regarding detailed information about the occurrence. But for unknown reasons, he was not examined during the investigation. Adverse inference has therefore to be drawn against the prosecution for withholding this material witness. Other glaring

aspect of the case is that even after getting information from Dinesh Kumar, the PCR did not rush to the spot. PW-14 ASI H.Rehman (who had recorded the information) Ex.PW-14/A in the PCR form did not claim that on getting the information, PCR had reached the spot. No PCR official was cited as a witness. Contents of the other portion of PCR form Ex.PW-14/A have not been proved. The information contained in this part of PCR form was entered at 21.28 i.e (9.28 P.M.) when SI Bhagwan Singh, Addl.SHO reached the spot. Till that time, the PCR or PS Uttam Nagar were not aware who had taken the injured to the hospital.

11. SI Bhagwan Singh from PS Uttam Nagar on receipt of DD No. 32A recorded at 9.25 P.M. (Ex.PW-12/E) reached the spot with ASI Jagpal and Ct.Rajneesh. In this DD Ex.PW-12/E there is no mention that PW-5 (Ct.Subhash Chander) had taken the injured to the hospital.

12. The MLC Ex.PW-4/A reveals that the victim was taken to DDU Hospital at 10.35 P.M. by Ct.Subhash Chander and Harish. However, the alleged history does not reveal details of the incident; the number of assailants and their names. PW-5 (Ct.Subhash Chander) did not explain why the names of the assailants were not disclosed to the doctor. No reasons were given why it took more than one hour to reach the DDU Hospital. On a close scrutiny of MLC Ex.PW-4/A, it transpires that name of relative or friend who brought the victim mentioned was Harish s/o Ghanshyam. However, on the upper portion, the name of Ct.Subhash Chander 817W seems to be have been added. It creates suspicion if Ct.Subhash Chander had in fact taken the victim to the hospital with Harish. PW-5 (Ct.Subhash Chander) even on reaching the hospital at 10.35 P.M. did not inform his officers about the incident. The Ct. on duty at DDU Hospital also did not send any intimation about arrival of the victim at the hospital.

13. No particulars/registration number of the van in which the victim was taken to DDU Hospital were disclosed, nor was its driver cited as a witness. One Mohd. Shakir, who accompanied to the DDU Hospital, on the way, too was not examined. The prosecution failed to explain what made police take Mohd. Shakir when there was urgency to shift the victim in critical condition to the hospital.

14. The post-mortem report Ex.PW-3/A, shows that the victim had sustained four stab injuries on his vital organs. Injury No.3 was opined individually sufficient to cause death in the ordinary course of nature. Despite the victim having suffered dangerous injuries on his vital organs, no efforts were made to provide him first aid or to take him to the nearest hospital/dispensary/clinic. Normal conduct of the police witness would have been to take the victim to the nearby hospital/clinic and not to DDU Hospital at a distance of five km., to save precious time. The occurrence took place at a busy or crowded place where there were number of shops on both the sides of the road. No independent public witness was joined during the investigation who could throw light as to how and under what circumstances, the occurrence took place or when the quarrel started.

15. PW-2 Harish's testimony is of no consequence. He merely testified that Deepak Sharma was found in a bloody condition and was alive at that time. This witness did not elaborate the exact time when he reached the spot or that he had seen the assailants at the spot or running in different directions after the incident. He did not corroborate PW-5 Ct.Subhash Chander's testimony that the victim had narrated him the names of the assailants. PW-2 did not claim if any conversation took place between PW-5 and the victim. He did not depose about the victim's physical or mental condition, to speak or that he was conscious and oriented at that time. He also did not state at what time and place Deepak Sharma lost consciousness. PW-5 (Ct.Subhash Chander) did not share with him names of the assailants disclosed to him by the victim.

16. During the trial, prosecution proved the rough sketch (Ex.PW-5/B) and scaled site plan (Ex.PW-17/A). On examining these exhibits, it transpires that at place 'A' the victim was stabbed, in front of Sharma Book Depot; 'B' is the place where victim fell down and blood was found on the other side of the road, in front of Mahak Hair Dresser; 'C' is the place from where the victim was taken to the hospital. In Ex.PW-5/B the victim is shown to have been taken in a van by a passersby. Contrary to that, Ex.PW-17/A discloses 'C' is the place from where the victim was taken by Ct.Subhash Chander with the help of Harish and Mohd. Shakir. It shows that at the time of preparation of rough sketch Ex.PW-5/B, the police was not aware that the victim was taken to the hospital in a van by

Ct.Subhash Chander and Harish. Place 'C' is altogether on the other side of the road in front of a vacant plot.

17. PW-16 Insp.Bhagwan Singh recorded the statement of Ct.Subhash Chander (Ex.PW-5/A) at the DDU Hospital and sent the rukka at 11.30 P.M. for registering the case. PW-8 Ct.Ram Kishan stated that on 09.03.2006 at about 5.00 A.M. he took the copies of the FIR for delivery at the residence of concerned officers. The FIR, containing endorsement of the Magistrate has not been placed on record. The prosecution failed to explain inordinate delay in sending the special report to the concerned officers after 5.00 A.M. It seems that the FIR was ante-timed.

18. The prosecution failed to explain why relatives of the victim were not informed about the occurrence. PW-2 Harish and one Mohd. Shakir known to the victim; they did not inform his family members. PW-1 Hari Lal Dass stated that he was called by the IO to the mortuary of DDU Hospital on 09.03.2006 and he identified the dead body. Conduct of PW-2 Harish and Mohd. Shakir not informing the relatives is unnatural and makes their presence at the spot doubtful.

19. The prosecution failed to establish the accused's motive to brutally stab the deceased. No antecedents of the deceased or that of the accused were collected during the course of investigation. The only motive assigned to the assailants by PW-5 was an altercation which took place with the deceased two days earlier. The IO did not collect any evidence to substantiate, if any altercation had taken place between the deceased and the accused at any time. There is nothing on record to infer what issue the altercation had taken place and if so, when and where. No complaint was lodged by the deceased or his family members regarding the alleged altercation. Police did not examine any family member of the deceased on this aspect. PW-1 Hira Lal Dass younger brother of the deceased, who identified the deceased with his younger brother Inder Dev did not reveal in his testimony that there was any previous animosity with the accused or that they were known to them. He also did not depose that the deceased had complained to him about any such altercation or threat at the hands of accused. It is not clear, if the accused were armed with any deadly weapons at that time. Police did not examine any witness from that place to prove altercation. The prosecution, thus, failed to prove

whether any serious altercation took place prompting the accused to take extreme step in a crowded place.

20. In the light of above omissions and inconsistencies, the testimony of PW-5/A (Ct.Subhash Chander) needs close scrutiny. In statement Ex.PW-5/A, he stated that on reaching at chowk, near Sharma Book Depot at about 9.00 P.M., he saw three boys quarrelling with Deepak Sharma. One younger boy aged about 13/14 years and the other elder boy aged about 25 years had caught hold him and the third boy aged about 17/18 years was stabbing him with '*chure*'. When he ran to catch hold the assailants, they fled in different directions. In the Court, he proved the version given to the police. If PW-5's version is correct, it contradicts the contents of site plan Ex.PW-17/A. As per PW-5's testimony, the whole occurrence occurred at 'one place'. PW-5 (Ct.Subhash Chander) did not at all state, if victim was stabbed at 'A' place; he fell down covering some distance at place 'B' and was removed to DDU Hospital in a Maruti Van from place 'C'. The prosecution failed to explain this vital discrepancy in the prosecution's case as all that points 'A', 'B' and 'C' depicted in site plans are altogether in different directions.

21. PW-5 also did not disclose when Harish reached the spot and at what time Mohd. Shakir met them on the way to the hospital. He also did not elaborate at what time, the victim lost consciousness. At the time of preparation of MLC Ex.PW-4/A, he was already dead. The victim had suffered dangerous stab injuries and no independent evidence was produced to corroborate PW-5's version that the victim was physically fit/capable to narrate detail particulars of the incident including name and addresses of assailants at that time. No such dying declaration was made before PW-2 Harish. Police did not examine Mohd. Shakir and the driver of the van to throw light that the victim was alive and physically fit to speak and narrate the incident. IO did not seek opinion from at PW-4 Dr.Babita Garbiyal (who examined the patient at the first instance at 10.30 P.M. at DDU Hospital) and PW-3 Dr.Pooja Rastogi (who conducted the post-mortem on the deceased) if after sustaining fatal blows, the victim was in a fit state of mind to divulge the details of the incident. Absolute reliance on Ct.Subhash Chander's statement without any corroboration whatsoever is highly risky. No passerby about the happening of such incident was joined in the investigation to support PW-5's

version that the victim was in his senses to give a true account of the occurrence.

22. PW-5 Ct.Subhash Chander's testimony is to be perused with the great caution as he was attached with the police station and was posted as a beat officer in the area where he was supposed to be vigilant and prevent any such occurrence. Introduction of PW-5 as an eye witness by the police to save their skin cannot be ruled out. Presence of PW-5 at the spot becomes doubtful as he failed to inform at his police station about the incident and as per PW-15 ACP Ishwar Singh posted as SHO, PS Uttam Nagar, he received the information about the incident on wireless at about 10.30 P.M. and reached the spot at around 11.45 P.M. It is curious that a police constable attached to the concerned police station will not intimate his immediate superior officer i.e. SHO. Prosecution failed to bring on record the relevant daily diary (D.D.) entry by which PW-5 Ct.Subhash Chander was deputed on patrolling duty. PW-5 disclosed in cross-examination that Harish reached the spot 8-10 minutes after the victim had received injuries. This time gap was sufficient to inform the police or the PCR.

23. Clothes of this witness and that of PW-2 Harish were not seized by the police to show if they were stained with blood while taking the deceased to DDU Hospital. This serious lapse makes their presence at the spot doubtful. Crime report (Ex.PW-7/A) prepared on 09.03.2006 between 12.25 A.M. to 12.55 A.M. does not contain the facts alleged by the prosecution. Had Ct.Subhash Chander taken the victim to the hospital and witnessed the occurrence, the crime team would have noted these facts in its report prepared after the arrival of Ct.Subhash Chander at the spot from the hospital. PW-7 Insp.Devender Singh did not testify that at the time of preparing report Ex.PW-7/A, PW-5 (Ct.Subhash Chander) was present or that he had claimed himself a witness to the incident and of the dying declaration.

24. PW-5 was not known to the assailants; their description given was incomplete; they were not arrested at the spot. Under these circumstances, the police was under legal obligation to put the assailants on test identification parade (TIP). However, for the reasons known to the police, no application was moved before the Ld.Magistrate to conduct test identification proceedings for identification by

PW-5 (Ct.Subhash Chander). Police also failed to explain why no raid was conducted after the occurrence when names and place of residence of the accused were known to them. There was no recovery of any incriminating article from the possession of the accused. Police failed to lead any evidence that appellant shared common intention with co-accused Nand Kishore (since deceased) who stabbed the deceased.

25. In the light of above discussion, we do not feel, it is safe to accept the uncorroborated testimony of PW-5 as credible one to convict the appellant for the offence under Section 302 IPC. The appellant deserves benefit of doubt.

26. The impugned judgment cannot be sustained and is accordingly, set aside. The appeal is allowed. Conviction of the accused/appellant under Section 302 IPC is set aside. He shall be set at liberty forthwith, if not required to be detained in connection with any other offence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com