

Satbir Singh Vs. State

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Court : Delhi

Decided On : Dec-03-2012

Judge : Sanjiv Khanna

Appellant : Satbir Singh

Respondent : State

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI CrI. Appeal No. 164/2012
Reserved on:

1. t November, 2012 Date of Decision:

03. d December, 2012 % SATBIR SINGH ThroughAppellant Mr. Joginder Tuli and Mr. Kuldeep Singh, Advocates. Versus Respondent STATE Through Mr. Sanjay Lao, APP. CORAM: HONBLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE S. P. GARG SANJIV KHANNA, J.

What was presented as a simple case of robbery, where a gang attacked a couple travelling late night and murdered the wife, stands obfuscated with the prosecution allegation that it is rather a case of disgruntled husband murdering his wife and feigning his defense. The husband blames the death of his wife on three-four looters who attacked them with gandasas outside Nala road, Jharoda, Delhi. Finding these vagaries to be patently absurd, the prosecution argues that it is a case of murder by degenerated husband who now uses subterfuge to avoid

incarceration. In this imbroglio we are required to determine in this case which has come for appeal from Session Case No. 123/2010, arising out of FIR No. 226/2010, wherein, by judgment dated 12th December, 2011 the appellant has been convicted under Section 302 IPC and vide order of sentence dated 23rd December 2011, he has been sentenced to Rigorous Imprisonment for life and fine of Rs. 10,000/-, in default of payment of fine, he is to undergo SI for six months. Under Section 498A IPC, the appellant has been convicted and sentenced to Rigorous Imprisonment for one year and fine of Rs 5,000/-, in default of which, he is to undergo SI for three months. Homicidal death and Injuries on the deceased.

2. It remains undisputed that the deceased Beena, wife of the appellant, died a homicidal death, in the intervening night of 28th - 29th July, 2010. At about 1.30 A.M. on 29th July, 2010, she was found dead in a pit at Jharoda Pusta Nala Road. Dr. Rabindra Kumar (PW-2), who proved MLC Ex. PW2/A, had examined her in the casualty ward of Aruna Asaf Ali Hospital, Rajpur Road, New Delhi. The MLC, recorded at 3.30 A.M., mentions that the patient was brought unconscious and did not respond to any stimulus. Heart sound was not audible and no blood pressure was recordable. At 3.35 A.M. she was declared to have been brought dead. The Post Mortem Report (Ex. PW3/A), conducted by Dr. Akash Jhanjee (PW-3), Jr. Specialist in Forensic Medicines, delineates the cause of death to be cerebral damage to the head, consequent upon blunt force impact, which was sufficient to cause death in the ordinary course of nature. The deceased suffered as many as 20 injuries and all but Injury No. 14 were caused by blunt force impact. Injury No. 14 i.e. linear abrasion was caused by a sharp pointed object. The injuries are as below:

1. Lacerated wound, 3 x 1.5 cm scalp layers over left side parietal region lying 7 cm above top of left side ear, with surrounding contusions reddish 6 x 4 cm.

2. Abrasion, reddish, 2 x 2 cm upper surface of left shoulder region.

3. Abrasion, reddish, 3 x 2 cm over upper half front of left side chest region, lying 2 cm below the left of the supra sternal notch area.

4. Abrasion, reddish 1 x 0.5 cm on right side face just outer to right nostril opening.

5. Contusion abrasion, reddish, 3 x 2 cm over inner front of lower half of left thigh region.

6. Contusion, reddish 2 x 2 cm in front of upper half of left leg region.

7. Contusion, reddish, 3 x 3 cm in front of lower half of right leg region.

8. Contusion, reddish, 3 x 3 cm in front of lower half of right leg region.

9. Contusion, swelling, reddish 3.8 cm x 2 cm over back middle half of right forearm region. 10. Contusion, reddish 2 x 2 cm back of lower half of right forearm region. 11. Abrasion, reddish, 2 x 0.6 cm on outer half of right knee region. 12. Abrasion, reddish, 3 x 1 cm over back surface of middle half of right thigh region. 13. Contusion, reddish, 3 x 2 cm over upper half of front of left side neck. 14. Linear abrasion over outer front of upper half of right arm region. 15. Contusion, reddish, 2 x 2 cm over out front of middle half of left arm region. 16. Contusion, reddish, 2 x 2 cm on back of middle half of forearm region 17. Contusion, reddish, 2 x 2 cm over back surface of left hand region lying in line with knuckle of middle finger. 18. Contusion, reddish, 2 x 1 cm over left chin region of face, lying 1.5 cm below left angle of mouth region. 19. Contusion, reddish, 4 x 3 cm upper surface of right shoulder region. 20. Contusion, swelling, reddish 3 x 3 cm over right side parietal region of head lying 4.7 cm above top of left ear opening level. Cause of injuries or who caused them.

3. Beenas dead body was found in a pit, on the Jharoda Pusta Nala, by Constable Shatrujeet (PW-21) who was on duty to patrol that night. He saw a motor cycle lying on the road and noticed a male and female lying in a pit gadda/small khaee nearby. A call to number 100 was made and SI Kishore Kumar (PW-22) arrived at the crime spot. It is an accepted position that the man lying there was the appellant Satbir and the motorcycle found belonged to him. Statement of PW-21, to this effect, stands corroborated by Insp. Shiv Dayal (PW-23), SI Sanjay Kumar (PW-17), Constable Ct. Satyavir Singh (PW-20) and SI Kishore Kumar (PW-22). (i) Conduct of the appellant.

4. Kiran Devi (PW-7), aunt mausi of the deceased, avers that, on 28th July, 2010, the appellant, along with the deceased, dined at her house, at Balswara Dairy, New Delhi. PW-7 states that the two had come to her house unannounced, at about 7.00 P.M and this was appellants first visit to her residence, with Beena, after their marriage. The two left, at about 10.15/10.30 P.M., and next morning she was intimated that Beena had expired. PW-7 says that she had requested them to stay over, at night, but accused Satbir insisted against this. In the cross-examination, however, it was revealed that PW-7 had only a single room, in her house.

5. The appellant accepts aforesaid visit to residence of PW-7 and their departure at 10.15/10.30 PM to be true but disputes his subsequent visit to Jai Lal Kumar PW-1s house. Jai Lal Kumar (PW-1) was a coworker of the appellant in a factory, at Wazirpur Industrial Estate, New Delhi. PW-1 states that at 10.30 P.M., on 28th July, 2010, the appellant called him, on PW-1s telephone number 9540962026, and intimated that he would be paying a visit. At about 10.40 P.M., the appellant came with a lady who was introduced as his wife Meena (sic Beena), on a motorcycle. The two stayed, for 15-20 minutes, and left at around 11.00 P.M. Since the appellant disputes paying PW-1 a visit or even calling him, PW-1 was extensively cross-examined. We are inclined to accept PW-1s statement because he is an independent witness, and therefore, lacks motive to falsely implicate the appellant. More importantly, the fact that PW-1 did receive a call from the appellant is established through call details (Ex. PW14/F1 & F2 and PW14/E1 to E4), certified under Section 65 B of the Evidence Act (Ex. PW14/G), which stand proved by Ajit Singh (PW-14) Assistant Nodal Officer, Idea Cellular. Hence, it is discernible that appellant left PW-7s residence, late night, at around 10.30 P.M. and, thereafter, went to PW-1s residence for 15-20 minutes, with his wife, and left around 11.00 P.M.

6. Thereafter, their motorcycle was found lying on the unpaved or kaccha road, similar to a service lane. The site plans (Ex. PW15/A and PW 23/B) have been proved by (PW-15) SI Mahesh Kumar and (PW23) Inspector Shiv Dayal. The isolated road was next to a vacant land, beyond which were Delhi Jal Board Pipelines, on one side, and a ganda nala on another. At night, the road was

desolate with few travelers using the said road. Interestingly, the scaled site plan (Ex. PW15/A) also shows an outer ring road, which is nearby, where vehicles generally ply round the clock. Being a main road, it was frequented by public even at night time. However, the appellant did not take this outer ring road but an inside bylane which was an unpaved/kaccha road and, therefore, secluded. (ii) Differences between the appellant and Beena 7. The appellant married Beena on 31st November, 2008. The appellant repudiates having any differences, with Beena and her family, or that there was a demand for dowry. Relatives of Beena and the police officials, however, state to the contrary. Mahender Singh (PW-5), father of Beena, avers that, 2-3 months post the marriage, the appellant started quarreling with Beena. He often harassed her, demanding dowry of Rupees One Lakh to start his business. PW-5 paid Rs 5,000/-, Rs.6,000/and Rs.10,000/-, on different occasions, to meet this demand. However, the appellant was not satisfied and once had even physically assaulted Beena, injuring her eyes and hand. On this, Beena had returned to her parental house and PW-5s brother had taken her to their native village for treatment. 5-6 days after her return, Satbir came to take Beena and the dispute was discussed. Heated arguments took place on which Beena intervened and requested that she should be sent with the appellant. One or one and a half months subsequent to Beenas return to her matrimonial home, Beena was murdered. PW-5 accepts that, when Beena was alive, no police report, against the appellant, was filed.

8. Kamlesh (PW-6), mother of Beena, reiterated that Beena suffered mental and physical harassment in her matrimonial home. Demand for dowry were constantly made and Rs 21,000/-, in toto, were paid to the accused. Still harassment continued and Beena was battered, by Satbir, leading to hand and eye injury on which Beena was brought back home and sent to native village for medical aid. Ultimately, Beena returned to Satbirs house and, on 29th July, 2010, at about 3.00 A.M., a police officer called and apprised them about the said incident. In the crossexamination, she states that Jai Narain had acted as a mediator, in the marriage between the appellant and Beena, and they had not lodged any formal complaint against Satbir, or any of his family members, in the Women Commission/Women Cell or to any other authority.

9. Basant Chauhan (PW-9), brother of Beena, deposed on similar lines regarding dowry demand of Rs 1 Lakh, some money paid on three occasions to the appellant and resultant harassment. PW-6 visited her, before Raksha Bandhan, with intention to take her back to her parental house for the festival, but appellants family refused stating that the appellant would be leaving for Kavadi yatra. PW-9 accepted that his family had not filed any complaint, against appellant or his family, at CAW Cell or any other authority. Rinku Singh (PW-12), second brother of the deceased, avers that the appellant did not like Beena and used to beat her. Though Rs.5,000/-, Rs.6,000/- and Rs.10,000/- were given to the appellant but his demand for Rs one lakh was not fulfilled, therefore, Beena was physically assaulted and her arm was fractured. In the cross-examination, PW-12 was confronted with his Section 161 Cr.P.C. statement where it is not stated that payment of Rs.21,000/-, on three occasions, were made or that Satbir, and his family members, had threatened his sister or that the appellant had caused injuries, on Beena's hand. He accepted not lodging any formal complaint.

10. It is discernible from the aforesaid statement of Beena's family members that the appellant did not have cordial relationship with his wife Beena. The marriage was solemnized, not long before the incident, on 30th November, 2008. In spite of blatant differences and physical abuse, Beena had to reside with the appellant, in the matrimonial home, and in these circumstances it might not have been appropriate for her family members to lodge a formal complaint. Therefore, we do not think that failure to report, to an authority or police, dents their statements.

11. Ajay Kumar Arora (PW-13) who was posted as Executive Magistrate, Civil Lines, North District states that on 29th July 2010, at about 11.00 A.M., he received information, from S.I. Sanjay Kumar (PW-17), PS Burari, that one female had expired and her body was preserved, at Subzi Mandi Mortuary. The police was suspicious that it was a case of murder committed by her husband Satbir. At 3.00 P.M., he received another call intimating that the deceased's family had reached and, at 4.00 P.M., he reached Subzi Mandi Mortuary and met the deceased's parents. Deceased's father, (PW-5) Mahender Singh's statement (Ex. PW 5/A) and deceased's mother (PW-6) Kamlesh's statement (Ex. PW 6/A) was recorded where it is apparent that they suspected the appellant Satbir, right from

the very beginning, and had clearly implicated him. (iii) Contentions that the appellant was unconscious and was injured by third persons.

12. Appellants counsel, relying upon MLC (Ex. PW4/A), submits that the appellant too was found unconscious in the pit, with deceased Beena. The MLC records that the appellant was brought to Hindu Rao Hospital, in a PCR Van, with alleged history of physical assault. It mentions that the patient had history of unconsciousness and nose bleeding. Initially in the MLC (Ex. PW4/A) words RTA (Road Transport Accident) were written which were scored off and word assault was inserted. The MLC records the general condition of the appellant as - fair, conscious, oriented with no active bleeding. The police version is that the appellant, after killing his wife Beena, deliberately gave himself minor external injuries and, on arrival of the police, pretended to be unconscious to appear as a victim and not the perpetrator. Prosecution rightly points out that the MLC (Ex. PW4/A) states that the appellant had multiple superficial bruises, near the abdomen, right side of the chest and one lacerated wound near forehead. But when one compares these wounds, with wounds and injuries on the deceased, the difference is stark. While the deceased suffered around 20 injuries and was badly beaten up, the appellant sustained only minor and superficial abrasions/cuts.

13. Learned counsel for the appellant states that the appellant was found unconscious which is recorded in the PCR record (Ex. PW11/A). To be precise, the PCR information states that the boy was in semiconscious condition (behoshi ke halat mein tha). PW-21, in his examination in chief, states the appellant to be blinking his eyes and appearing to be unconscious, on the arrival of the police, at the crime spot. PW-21 had also noticed that the engine of the motorcycle was not on, though the back light was. Neither did he see any kavadis, on the road, and nor any pandal was set up in front of that spot. Const. Satyavir Singh (PW-20), in his cross-examination, states that no public person was present, at the spot, and no pandal for kavadi devotees was there. No Kavadi devotee could be spotted. He mentions that the SHO had found a mobile phone and a purse, on the deceased. Insp. Shiv Dayal (PW-23) reiterated that there was no pandal for kavadiyas, near the crime spot. He found the dead female to be wearing mangalsutra, chain, ear, rings and pajeb. Insp. J.S. Mishra (PW-25) who took over the investigation, from

SHO Shiv Dayal, in his cross-examination, states that he had interrogated Satbir at about 2.00 P.M. on 30th July, 2010. Initially Satbir was evasive but when he was confronted with facts, but he ultimately confessed. The confession is inadmissible and has to be ignored. In his cross-examination, he clearly rules out loot, by 2-3 motorcycle riders, as cause of Beenas death because all the valuable articles were intact on the body of the deceased, as well as, the accused.

14. Appellant Satbir Singh, in his Section 313 statement under C.r.P.C., accepts that he was driving the motor cycle with Beena on the pillion seat, in the night of 28th/ 29th July, 2010. He admits that his wife was found dead, in a pit, the same night. In his Section 313 Cr.P.C statement, he states as under:Q.16. It is further in evidence against you that you took Beena to his mausis house and while coming back to matrimonial home on the way in a jungle, Beena was killed by you. In the police station, you told to the police that you had killed Beena in presence of PW5 and PW9. What have you to say? Ans. It is incorrect and denied. It is incorrect that I killed Beena. I have too much love and affection for Beena. I did not kill Beena so I did not tell to police in the presence of PW5 and PW9. It is submitted that Beena and I was attacked by three-four persons. We both sustained various injuries. By the grace of god, my life was saved due to timely treatment. Due to delay in treatment and due to various injuries given by culprits, life of my wife Beena could not be saved. XXXXXXX Q.

36. It is further in evidence against you that PW21/Ct. Shatrujeet produced you before PW25/Inspector J.S. Mishra who interrogated you and directed you to join investigation on 30.7.2010. What have you to say? Ans. It is incorrect and denied. It is wrong and denied that PW21 Shatrujeet produced me before PW25 Inspector J.S. Mishra. It is further wrong and denied that I was interrogated and directed to join investigation on 30.7.2010. It is submitted that when I regained senses in hospital I found Inspector J.S. Mishra, my family members and relatives of Beena. I was got discharged from the hospital by the police and I was straight away taken to police station from hospital. I was not allowed to go anywhere. Police officials did not take me to anywhere. I told the police that I and my wife were attached by three-four persons. They were having dandas. I tried to save myself and my wife but they were more in numbers. I succeeded in hitting one of the culprit and his

shirt was torn by me. At that time, I was wearing helmet when they gave blow on my head. Shiv Karadias were passing from there and they tried to save us. Seeing Shiv Kavadias, culprits ran away. Shiv Kavadias also made phone call to police. Thereafter I became unconscious due to bleeding and injuries. xxxxxx Q.

50. Do you want to say anything else? Ans. It is submitted that police officials did not do fair investigation. Police officials did not make any attempt to arrest real culprits. If police officials had sent dog squad and done fair investigation, real culprits would have been arrested. Police officials did not do any attempt to arrest the person who was wearing lining shirt. Police officials did not make any effort to enquire Shive Kavadias for arresting real culprits. I am innocent.

15. The prosecution case is that the appellant deliberately chose the deserted byelane, to murder Beena. The fact that the appellant chose such an isolated lane, to drive home, by itself is not sufficient to incriminate him but there is other evidence and material. The present case is premised upon circumstantial evidence. It is a settled position in law that, in case of circumstantial evidence, the court has to consider the cumulative effect of the entire evidence, proved by the prosecution, and then decide upon the matter. It has to be established that the appellant/accused executed or was involved with the crime. The facts should exclude possibility of any third person involvement in the crime which squarely leaves the appellant/accused as the perpetrator.

16. We shall now examine the incriminating evidence proved against the appellant and the effect thereof. The following facts have been proved beyond doubt and on cumulative effect thereof we are convinced that the appellant and no third person is the perpetrator and the appellant is the person who has committed the offence in question: (i) The appellant recently got married to Beena on 31st November, 2008, about one and a half years before the date of occurrence but there were disputes and differences between them as established from the testimony of PW5, PW6, PW9 and PW12. The appellant had asked for money from his in-laws and had harassed Beena. (ii) The appellant and Beena had gone to the residence of PW7 and after dinner had left her house at Balswara Dairy, New Delhi at 10.15/10.30 PM. Thereafter the appellant went to the house of his coworker PW1

and they left his residence at about 11.00 PM on 28 th July, 2010. The appellant delayed their departure for returning home. (iii) The appellant took a lonely and deserted road in the middle of the night. He did not drive on the main road which was frequented by the public even at night. (iv) PW21 on night patrol duty saw a fallen motor cycle on the road and thereafter noticed the appellant and the deceased were lying in a pit at about 1.30 AM on 29th July, 2010. Beena when taken to the hospital was declared dead and had suffered as many as 20 wounds/abrasions. The appellant had suffered minor injuries. (v) The allegation of the prosecution that the appellant had contrived and feigned unconsciousness, as stated by several police witnesses and as noticed in paragraph 15 above is supported and corroborated by the injuries as recorded and noticed in the MLC of the appellant, Ex. PW4/A. (vi) As per MLC (PW4/A), the appellant had initially given road traffic accident as the reason for the injuries on Beena. Subsequently, this was scored off and the word assault was inserted. If it was a case of assault, it is not understood why only superficial injuries were found on the appellant and grievous and 20 injuries were found on the deceased Beena. Jewellery and ornaments worn by Beena, were untouched and were found on her body. Robbery, therefore, is ruled out and was not the reason or cause behind the crime. The purse and mobile phone of the deceased were not removed. The story of assault for robbery is belied and contra-indicated. (vii) No Kavadias were found at the spot. The plea that kavadias had saved the appellant is palpably false and incorrect. No one from the public or kavadias made any phone call to police about any incident or assault. Police witnesses as noticed in paragraph 15 have categorically stated that no kavadi devotee could be spotted.

17. The statement of the accused u/s 313 and his explanation requires some consideration. It is not that we are relying upon accuseds statement under Section 313 to convict him or are using it as primary evidence, as the burden to prove the commission of offence is on the State. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads: (b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him. As Supreme

Court in *State of W.B. v. Mir Mohammad Omar* (2000) 8 SCC 38. observed:

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. Similarly, it was held in *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681.14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 31.: (1944) 2 All ER 1.(HL)] quoted with approval by Arijit Pasayat, J.

in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 27.:

2004. SCC (Cri) 135] .) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Thus the test applicable to cases of circumstantial evidence is satisfied.

20. We also uphold the conviction of the appellant under Section 498A, in view of the testimony of in-laws of the appellant i.e. PW5, PW6, PW9 and PW12, who specifically averred about demand of Rs.1 lac and harassment suffered by Beena and thereafter payment of Rs.21,000/- to the appellant on different occasions.

21. From the aforesaid facts a clear picture has emerged. This was the perfect crime, at least, that's what the appellant Satbir thought when he concocted and executed it. If not for the discrepancy in the relevant and pertinent details, like the

deceased being found with valuables on her, the non-serious nature of injuries sustained by the appellant vis--vis the deceased, loopholes in the kavad story etc., the appellant would have mislead. However, this plan has failed and the truth has emerged.

22. In view of the aforesaid, we dismiss the appeal and uphold the conviction and sentence awarded to the appellant. The appeal is disposed of. -sd(SANJIV KHANNA) JUDGE -sd(S. P. GARG) JUDGE December 03rd, 2012 kkb

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