

Deepak Kumar Vs. State (Delhi)

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Court : Delhi

Decided On : Mar-07-2013

Judge : S. P. Garg

Appellant : Deepak Kumar

Respondent : State (Delhi)

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

25. h February, 2013 DECIDED ON :

7. h March, 2013 + CRL.A. 232/2000 DEEPAK KUMAR Through :Appellant Mr.Mohd. Shamikh, Advocate. versus STATE (DELHI) Through : .Respondent Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant- Deepak Kumar challenges correctness of the judgment dated 25.03.2000 and order on sentence dated 27.03.2000 in Sessions Case No. 246/1997 arising out of FIR No. 280/1997 PS Kirti Nagar by which he and Vinod Kumar were convicted for committing offences punishable under Sections 342/452/307/34IPC and sentenced to undergo RI for five years with total fine ` 5,000/-.

2. On 14.07.1997 at around 05.00 P.M., Mukesh Jain, Sales- man at the shop at M/s. Sultan Chand Vimal Prakash, at I-140, Kirti Nagar was present in the shop. At that time two boys entered the shop and made enquiries from the complainant-

Mukesh Jain for nylon. He went to the rear room to bring nylon. The said two boys followed him. He was stabbed with knife. The assailants fled the spot. Daily Diary (DD) No.38B (Ex.PW-8/A) was recorded at 06.30 P.M. at Police Station Kirti Nagar on getting information that an individual has been stabbed at I-140, Kirti Nagar. The investigation was marked to SI Rajinder Singh who with constable went to the spot. Injured Mukesh Jain had already been taken to Deen Dayal Upadhyay Hospital (in short DDU Hospital). The Investigating Officer collected his MLC but he was declared unfit to make statement. Since no eye witness was available, SI Rajinder Singh lodged First Information Report vide endorsement Ex.PW-8/B over DD entry. He went to the spot; prepared site plan (Ex.PW-8/C); got the scene of incident photographed; lifted blood sample from the spot and prepared seizure memo.

3. On 16.08.1997, Daily Diary (DD) No.42B was recorded intimating that Deepak Kumar and Vinod have been arrested in case FIR No.430/1997, Police Station Moti Nagar. SI Rajinder Singh went to Police Station Moti Nagar and collected their disclosure statements. The accused was arrested. Both Deepak and Vinod declined to participate in Test Identification Proceedings. During the course of investigation, the Investigating Officer recorded statements of the witnesses conversant with the facts. On completion of investigation, a charge-sheet was submitted in the Court. The accused were duly charged and brought to trial. On appreciating the evidence and taking into consideration the contentions of both the parties, the Trial Court, by the impugned judgment held both of them guilty for the offences mentioned previously. Being aggrieved, Deepak has preferred the present appeal.

4. Learned counsel for the appellant- Deepak urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to base conviction on the sole testimony of the complainant- Mukesh Jain. PW-1 (Mukesh Jain) and PW-8 (SI Rajinder Singh), Investigating Officer gave inconsistent version as on which date and place the accused were identified by the complainant. Mukesh Jain claimed that he had identified the accused when they were being produced at Tis Hazari Court on 25.09.1997. The Investigating Officer on contrary claimed that the accused were identified by the complainant on

16.09.1997. DW-1 (Ravinder Singh Bisht) from Tihar Jail categorically deposed that on 25.09.1997 the accused was not produced at Tis Hazari Court in any case. Counsel further pointed out that no crime weapon was recovered from the accused. Statement of the complainant was recorded after inordinate delay and there is discrepancy whether it was recorded at the Police Station or at his residence. It is also not clear if landlord of the complainant was present at the time of recording his statement. Counsel emphasized that Section 34 IPC is not attracted. There was no exhortation by the accused and the complainant made vital improvement in his deposition before the Court. Learned APP urged that complainant- Mukesh Jain had no extraneous consideration to implicate the accused. Medical evidence corroborates his testimony in its entirety.

5. Daily Diary (DD) No.38B (Ex.PW-8/A) was recorded at 06.30 P.M. It records that an individual was stabbed with a knife at I-140, Kirti Nagar. The victim was taken to DDU Hospital on 14.07.1997 at 06.55 P.M. by HC Surender Kumar of PCR. Two clean lacerated wounds were noticed on his abdomen. The injuries were dangerous in nature inflicted with sharp weapon. The complainant remained admitted in DDU Hospital for ten days and was discharged on 23.07.1997. He was unfit to make statement. Apparently, the injuries were not self-inflicted. The victim had no reason to fake injuries on his body.

6. The crucial question is as to who was the author of the injuries caused to the complainant. Victims testimony is very crucial to establish the guilt of the accused. He was not acquainted with the assailants. There was no animosity with the accused. He did not name the assailants in his statement recorded on 25.07.1997 (Ex.PW-1/DA). The assailants could not be arrested in this case. On 16.08.1997, Daily Diary (DD) No.42B (Ex.PW-8/D) was recorded intimating arrest of the accused at Police Station Moti Nagar in FIR No. 430/1997. The Investigating Officer- SI Rajinder Singh came to know accuseds involvement in the incident from the disclosure statements recorded in the said case. Thereafter, he moved an application (Ex.PW-8/E) for Test Identification Parade on 19.08.1997. The accused were produced in muffled faces in the Court. The accused declined to participate in TIP Proceedings. PW-9 (Sh.A.S.Dateer), MM proved the proceedings Ex.PW-9/A and Ex.PW9/B. An adverse inference is to be drawn

against the accused for not participating in the TIP Proceedings.

7. While appearing as PW-1, Mukesh Jain without any hesitation identified the appellant as one of the assailants and attributed specific role to him. He proved the version given to the police in his statement (Ex.PW-1/DA) without any variation. He identified and recognised Deepak as the assailant who had put iron chain around his neck. Vinod had stabbed him with knife on his abdomen. He identified shirt (Ex.P1) which he was wearing at the time of incident. In the absence of any ill-will or ulterior motive, the complainant was not imagined to falsely identify Deepak. Testimony of complainant on material facts remained unchallenged and uncontroverted in the cross-examination. Ocular testimony of PW-1 is consistent with medical evidence. PW-2 (Dr.P.S.Sarangji) examined the patient. He was of the opinion that the nature of injury suffered by him was dangerous. His endorsements to that effect are Ex.PW-2/A and Ex.PW-2/B. There are no good reasons to disbelieve the opinion given by the expert witness. PW-4 (Dr.Poonam Aggarwal) also proved MLC (Ex.PW-4/A) when the victim was taken to casualty on 14.07.1997. There is no conflict between the ocular and medical evidence. The testimony of a stamped witness has its own relevance and efficacy. The fact that the witness had sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. The testimony of the injured witness is accorded a special status in law. This is a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of crime and because the witness will not want to let the actual assailant to go unpunished merely to falsely involve a third party for the commission of the offence. In the case of State of Uttar Pradesh vs.Naresh and Ors., (2011) 4 SCC 324.the Supreme Court held: The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to

implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

8. In the case of Abdul Sayed Vs.State of Madhya Pradesh, (2010) 10 SCC 259.the Supreme Court held : The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness".

9. It is true that there is inconsistency in the statement of PW-1 (Mukesh Jain) and PW-8 (SI Rajinder Singh) about the date when the complainant identified the accused in Tis Hazari Court. The discrepancy is of no consequence as the accused did not participate in the TIP Proceedings and the complainant, thereafter, identified him in the Court. The accused was arrested by the police of PS Moti Nagar in FIR No.430/1997. There was no occasion for the Investigating Officer to show him to the complainant before moving an application for TIP. Moreover, the complainant had no ulterior motive to falsely recognise the accused. There was no valid reason for the accused to decline participation in TIP proceedings.

10. In Prem Singh vs. State of Haryana, 2011 (10) SCALE 102 the Supreme Court held : XXX XXX XXX 13.The two eye-witnesses PW-11 and PW-12 have given a graphic description of the incident and have stood the test of scrutiny of cross-examination and had also stated that they could identify the assailants, but the accused had declined to participate in the test identification parade on the ground that he had been shown to the eye-witnesses in advance. In my considered view, it was not open to the accused to refuse to participate in the T.I. parade nor it was a correct legal approach for the prosecution to accept refusal of the accused to

participate in the test identification parade. If the accused-Appellant had reason to do so, specially on the plea that he had been shown to the eye-witnesses in advance, the value and admissibility of the evidence of T.I. Parade could have been assailed by the defence at the stage of trial in order to demolish the value of test identification parade. But merely on account of the objection of the accused, he could not have been permitted to decline from participating in the test identification parade from which adverse inference can surely be drawn against him at least in order to corroborate the prosecution case.

14. In the matter of *Shyam Babu v. State of Haryana* : AIR 200.SC 57.where the accused persons had refused to participate in T.I. parade, it was held that it would speak volumes, about the participation in the Commission of the crime specially if there was No. statement of the accused under Section 313 Code of Criminal Procedure that he had refused to participate in the T.I. Parade since he had been shown to the witnesses in advance. In the matter of *Munna v. State (NCT of Delhi)* : AIR 200.SC 380.(3809) as also in the *State of Haryana v. Surender*: AIR 200.SC 2312.in *Teerath Singh (D) by LR v. State 2007 (1) ALL LJ (NOR) 143 (UTR)* the Supreme Court still further had been pleased to hold that if the statement of the accused refusing to participate in T.I. Parade which was recorded in the order of the Magistrate was missing under Section 313 Code of Criminal Procedure, it was held that it was not open to the accused to contend that the statement of the witnesses made for the first time in Court identifying him should not be relied upon.

11. Complainant has offered reasonable explanation for delay in recording statement. He remained admitted in the hospital for ten days and was unfit to make statement. When he was discharged from the hospital, the Investigating Officer recorded his statement. Minor contradictions as to where his statement was recorded at Police Station or at his residence is not enough to throw away his entire version about the incident given in the Court. In *Kathi Bharat Vajsur and Anr. Vs. State of Gujarat*, AIR 201.SC 2163.the Supreme Court held :

19. This Court, in the case of *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra* : (2010) 13 SCC 657.summarized the law on material contradictions in evidence thus:

30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan.)

12. The prosecution was unable to find out motive of the accused to inflict vital injuries to the victim. It is a settled legal proposition that motive has greater significance in a case, involving circumstantial evidence but where direct evidence is available, which is worth relying upon, motive loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence cannot be discarded only by the reason of the absence of motive.

13. Both Deepak and Vinod had gone to the complainants shop and were armed with weapons. They both participated in the crime. The appellant made the victim fall on the ground and put an iron chain around his neck. They fled the spot together. They were apprehended in FIR No. 430/1997, PS Moti Nagar. It can be inferred that both shared common intention to inflict injuries to the complainant and Section 34 IPC was attracted. Conviction of the appellant is based upon proper appreciation of the evidence and no interference is called for.

14. In the light of above discussion, appeal filed by the appellant lacks merits and is dismissed. The conviction and sentence are maintained. The appellant is directed to surrender and serve the remainder of his sentence. For this purpose, he shall appear before the Trial court on 14th March, 2013. The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.

(S.P.GARG) JUDGE MARCH 07 2013 tr