

State Vs. Aamir Khan

State Vs. Aamir Khan

SooperKanoon Citation : sooperkanoon.com/977981

Court : Delhi

Decided On : Jul-08-2013

Judge : G. S. Sistani

Appellant : State

Respondent : Aamir Khan

Judgement :

\$~01. * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 126/2013 %
Judgment dated 08.07.2013 STATE Through : Petitioner Mr.Rajesh Mahajan,
Adv. along with SI Bharat Singh, P.S. Gandhi Nagar, Delhi. versus AAMIR KHAN
..... Respondent Through CORAM: HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE G.P. MITTAL G.S. SISTANI, J (ORAL)
CRL.M.A.NO.3049/2013.

1. This is an application filed by the petitioner/State seeking condonation of delay in filing the present leave to appeal.

2. Heard. For the reasons stated in the application, the same is allowed. Delay in filing the present leave to appeal is condoned.

3. Application stands disposed of. CRL.L.P. 126/2013 4. By the present Criminal Leave Petition, filed under Section 378 of the Code of Criminal Procedure, the State seeks leave to appeal against the judgment dated 25.1.2012, passed by the Additional Sessions Judge in Session Case No.35/2009, on the ground that the

impugned judgment dated 25.1.2012 is contrary to the law and facts.

5. Mr.Mahajan, learned counsel for the petitioner, submits that the trial Court has failed to appreciate the evidence on record and wrongly arrived at a conclusion to pass the impugned order by which the respondent has been acquitted. Counsel further submits that there was sufficient evidence and material placed on record to bring home the offence under Section 302 IPC against the respondent. In support of his submission, strong reliance has been placed by Mr.Mahajan on the evidence of PW-7, Mohd.Kasim (brother of the deceased), who was stated to be an eyewitness to the murder which took place in the intervening night of 11.2.2009.

6. Learned counsel for the petitioner submits that the trial court has wrongly come to the conclusion that PW-7, Mohd.Kasim, was not a reliable witness on account of his conduct. Counsel further submits that it is not unusual for different persons to react in a different manner and there can be no straitjacket formula with regard to reaction of an individual. It is contended by counsel for the petitioner that PW-7 had deposed that after he saw the quarrel between the deceased, Parvez, and the respondent, PW7 hid himself behind a Maruti car in Gali no.4 and remained there for one and a half hours. It is urged by Mr.Mahajan that PW-7 was petrified and frightened that he would meet the same fate as his brother, who was murdered. Since there was nothing unusual in the conduct of PW-7 the trial court was not justified in not relying on the evidence of eye-witness, PW-7. Thus, the conclusion reached by the trial court is incorrect and erroneous.

7. Strong reliance has also been placed by Mr.Mahajan, learned counsel for the petitioner, on the evidence of PW-2, Rohit, who had last seen the deceased and the respondent quarrelling with each other. It is contended by Mr.Mahajan that PW-2 was a seller of betels, cigarettes, biris, etc. on a platform outside the shop of Dr.A.K. Azad, situated in House no.5345, Gali No.7, Old Seelampur, Delhi. It is contended that PW-2 had deposed that he had seen the deceased and the respondent quarrelling with each other, and, thus, he is an extremely important witness to prove the occurrence.

8. Another submission of Mr.Mahajan, learned counsel for the petitioner, is that the blood stained clothes of the respondent were sent for examination and it was found that the clothes of the accused had blood group O which is also the blood group of the deceased and this is also an important circumstance, which has not been considered by the trial court favourably. Another argument which has been raised by Mr.Mahajan is that the medical examination of the respondent, which was carried out soon after his arrest, shows fresh injuries on his body, which remained unexplained.

9. We have heard learned counsel for the petitioner, considered his submissions and also carefully examined the judgment dated 25.1.2012 rendered by the trial court. The prosecution has based its entire case on the testimony of PW-7, who happens, to be the real brother of the deceased.

10. In the case of Rana Pratap v. State of Haryana, reported at (1983) 3 SCC 327.it has been laid down that there is no straitjacket formula with regard to reaction of a person who witnesses a murder. It has also been held that different persons react differently - while someone may shout and scream the other may become speechless. To this extent the submission of Mr.Mahajan has force, however, in the present case the trial court has rightly come to the conclusion that the evidence of PW-7 does not repose any confidence.

11. According to the evidence of PW-7, who is the brother of the deceased, and as noticed by the trial court, at the time of the incident, PW-7 saw the accused stabbing his brother repeatedly, he was petrified, he ran away from the spot, hid himself behind a maruti car in Gali no.4 and remained there for one and a half hours. But then there is no cogent explanation by PW-7 that after one and a half hours why he did not go to his house and inform his parents or inform the Police. According to the evidence of PW7, he was wandering about the whole night and disclosed the whole incident to his father the next morning after his father induced confidence in him to tell the truth. The trial court has found this conduct of the brother of the deceased to be unusual and also unreliable not only on account of his reaction but also on account of the fact that PW-7 had deposed that after one and a half hours he reached the spot of the incident but no one was present at the

spot, whereas the evidence of PW-8, Const. K. Shankara Sharma, and PW-17, Inspector Mangesh Tyagi, would show that after the DD Entry No.36A, was received they had reached the spot and PW-8 was left at the spot to guard the spot. In case there was any truth in the evidence of PW-7 then he would have certainly informed PW-8 and/or PW-17 or PW-8 and PW-17 would also have noticed PW-7 at the spot. At that stage also PW-7 did not inform either PW-8 or PW-17.

12. Moreover, on the fateful day although PW-7 saw his brother being stabbed yet he did not volunteer to help him, he did not seek help of others, he did not shout for help and to this extent his conduct is unacceptable. His conduct to hide behind a Maruti car for one and a half hours is possible but to say that after one and a half hours he was wandering on the street the whole night is most improbable and in case he was frightened he would seek protection of his parents in his house and not stay on the street alone. The evidence of PW-7 is also unreliable as he has deposed that after hiding when he reached the spot of the incident no one was present whereas PW-8, Const. K. Shankar Sharma, was at the spot to guard the spot.

13. The trial court has also rightly not relied on the evidence of PW-2, Rohit, who claims himself to be an eye-witness irrespective of initial quarrel, who had stated that he had seen the respondent and the deceased quarrelling with each other. The trial court has held that the evidence of PW-2 does not inspire confidence due to the following reasons, relevant portion of which reads as under: (a) PW-2 and entire prosecution case is silent about the whereabouts of Arvind with whom deceased allegedly first quarrelled when accused interfered. As per PW-2, Arvind was working in that area. Then why he could not be traced and produced as a witness in this case, the entire prosecution is silent on this aspect. His testimony could have been an important piece of evidence to complete the chain of evidence. (b) PW-2 has only stated that accused and deceased started quarrelling but what was the gravity of this quarrel is not clear from his statement.

14. The trial court had also considered the blood stains on clothes of the respondent and accepted the argument of the defence that the clothes were

planted by the Police to falsely implicate him on account of the fact that neither any public witness was joined at the time of recovery of the clothes nor is there any evidence to show that any public witness was requested to join the investigation and none agreed to join. The trial court has also considered FSL report, wherein it is nowhere mentioned that the blood group O found on the clothes of the deceased and the blood group O on the alleged shirt of the accused was the blood of the same person. This conclusion has been reached by the trial court taking into consideration that blood group O is considered to be a universal donor and is shared by large number of persons in the universe. Moreover the blood group of the appellant was not taken.

15. As per the prosecution the incident had occurred on the night intervening of 11/12.02.2009 on account of a fight between the deceased and one, Arvind, and the respondent had intervened in the matter. The trial court has also considered the fact that no effort was made to join Arvind in the investigation or to record his statement and include him in the witnesses. The trial court has also rightly considered the fact that it is unbelievable that simply because the respondent intervened in the quarrel of the deceased and the Arvind due to this reason the respondent got so enraged that he killed the brother of PW-7.

16. We are of the view that the trial court has correctly applied the law laid down in *Pramjeet Singh @ Pamma v. Uttarakhand*, reported at 2011 CRL.L.J.

663 to the facts of the present case, to consider the character and essentials to be considered while deciding a case on circumstantial evidence.

17. Accordingly, we find no infirmity in the judgment of the trial court. The acquittal recorded by the trial court is based on reason, the judgment is not perverse, and, thus, there are no grounds to grant leave to appeal. Consequently the appeal is dismissed. G.S.SISTANI, J G.P. MITTAL, J JULY msr 08, 2013

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