(2011) 11 DEL CK 0079

Delhi High Court

Case No: Criminal Appeal No. 560 of 2011

Madan Lal @ Manohar @ Motta	APPELLANT
Vs	
State	RESPONDENT

Date of Decision: Nov. 3, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 304, 304I, 326

Citation: (2011) 10 AD 372 : (2011) 184 DLT 160 : (2012) 2 ILR Delhi 58 : (2012) 1 JCC 37

Hon'ble Judges: S. Ravindra Bhat, J; Pratibha Rani, J

Bench: Division Bench

Advocate: Inderjit Singh Mehra, for the Appellant; Sanjay Lao, APP, for the Respondent

Final Decision: Allowed

Judgement

Mr. Justice S. Ravindra Bhat

1. This appeal challenges a judgment and order of the learned Additional Sessions Judge dated 13.10.2010 in S.C. 82/2007. The Appellant (hereafter called "Madan Lal") was convicted for committing the offence punishable u/s 304 Part-I IPC, and directed to undergo life imprisonment and also pay Rs. 5,000/- as fine.

2. The prosecution case was that one Kishan, lived in the Ground Floor portion of T-396, Gali No. 15, Factory Road, Neem Wala Chowk, Nabi Karim, Delhi. It was alleged that P.W.-14, who was on patrolling duty in Neem Wala Chowk, was informed by P.W.-2 around 04.00 AM in the morning on 20.03.2007 that Kishan had been stabbed by Madan Lal with a knife and that was lying in a room. It was further stated that P.W.-14 and P.W.-2 went to the premises where he found Kishan lying in a seriously injured condition in a room on the Ground Floor. Both, i.e. P.W.-2 and P.W.-14 took the victim in a three-wheeler to Lady Harding Hospital. Kishan was declared "brought dead" - a fact sought to be established by the MLC (Ex. P.W.-18/A).

Having regard to these facts, a Daily Diary No. 7-A entry (Ex. P.W.-5/A) was recorded, which formed the basis of the FIR, and investigated. P.W.-10 and P.W.-15, both policemen, reached the hospital and recorded the statement of P.W.-2, u/s 161 Cr.PC (placed on the record) as Ex. P.W.-2/A. P.W.-2 stated that the deceased Kishan was a smack addict whose place used to be frequently visited by other addicts. He also stated about hearing a noise around 03.00 AM on 20.03.2007 from the street near his house (he used to live on the First Floor of the same premises as the deceased, who was his brother). P.W.-2 further claimed to have witnessed the deceased and the appellant quarrelling (both were smack addicts) with each other; he tried to intervene; but the Appellant had a knife in his hand with which he attacked the deceased and inflicted a knife injury on his left thigh and then fled the spot. P.W.-2 claims to have given a chase to the Appellant but without success and thereafter returned to Neem Wala Chowk and recounted the episode to P.W.-14.

3. After conclusion of investigation, the Appellant, who had, in the meanwhile been arrested, was charged with commission of the crime. He pleaded not guilty and claimed trial. The prosecution relied on the testimony of 18 witnesses, including P.W.-2, the deceased''s brother as well as P.W.-3, his (P.W.-2''s wife). In addition, the prosecution relied on the testimonies of P.W.''s-10, 11, 14 and 15 as well as the testimony of the doctor, who conducted the Postmortem proceeding, i.e. P.W.-18. After considering these and other materials placed on the record, the Trial Court held the Appellant guilty of committing the offence punishable u/s 304 Part-I IPC and sentenced him in the manner described previously in this judgment.

4. The appellant''s counsel argued that the reliance placed on the testimony of two interested witnesses, i.e. P.W.-2 and P.W. -3, who were relatives of the deceased, himself a smack addict, was incorrect. In the absence of any corroborative material, the Court ought not to have readily accepted their version. It was submitted that the manner in which the crime was described by P.W. -2, i.e. a quarrel in the early hours of the morning, between the smack addicts, was highly improbable and at any rate, his testimony could not be believed. Learned counsel submitted that the cross-examination of P.W.-2 revealed that other smack victims used to routinely prowl in the area. In these background of circumstances, the possibility of P.W.-2, a married man living upstairs with his family, going-down, merely on hearing a quarrel was extremely remote. Furthermore, submitted the counsel, the witness had clearly deposed that there was no light in the vicinity of the spot where the incident is alleged to have occurred. In these circumstances, the claim by P.W.-2 that he was an eye-witness, was improbable.

5. It was also argued that even though the deceased was P.W. -2''s brother, the latter did not, by his own admission, make any effort to save him. Yet, after the stabbing incident, despite being unarmed, P.W.-2 claimed to have given a chase to the appellant. These established that the witness was highly unreliable. Learned counsel also highlighted that the testimony of P.W.-3 about having witnessed the

incident cannot be believed. She claimed having heard the incident even when P.W.-2, her husband was asleep; she did not, however, wake him up. She in fact did not witness the incident, but admittedly claimed to have seen the quarrel from the balcony of the second floor despite admitting that there was no light in the vicinity of the area. She even claimed that other neighbours were watching the incident; the prosecution, however, intentionally made no effort to join such natural witnesses in the proceeding, because they would have been independent and would have stated the truth.

6. Having regard to these circumstances, submitted the counsel, the Court could not rule-out the possibility of manipulation by the police, who were confronted with a blind murder and decided to rope in the appellant.

7. Learned counsel made the alternative submission that even if the prosecution story in this case were held to have been entirely correct, about the attack, the injury upon the deceased and his death, the Trial Court fell into error in returning the conviction u/s 304 Part-I IPC. At best, argued the counsel, the facts proved establish commission of a crime punishable u/s 326 IPC, as a grievous injury on a non-fatal area, i.e. the leg was inflicted with the help of a dangerous weapon, such as a knife. Furthermore, submitted the counsel, the sentence imposed, i.e. life imprisonment was too harsh and disproportionate.

8. Before considering the submissions made on behalf of the appellant, it would be useful to extract the Trial Court observations regarding the result of the Postmortem as well as the report. The same reads as follows:

"xxx xxx xxx

11. The dead body was sent for postmortem examination to mortuary of the hospital on 21.03.2007. The post-mortem examination was conducted by Dr. Rajiv Sharma, who prepared report (Ex. POW-16/A). As per postmortem examination report, the dead body was found having the following external injuries:

A stab wound, wedge shape, clean cut margins, undermined lower margins, 3 cm x 0.5 cm x 9 cm, muscle deep, obliquely placed over the anterior aspect of left thigh. The upper end of the stab wound was blunt and was laterally present and was about 20 cm below the mid-inguinal point. The lower end of the stab wound was acutely pointed and medially present about 13 cm above the superior margin of patella (knee bone). Extravasation of blood was seen all over the margins and in the underneath subcutaneous tissue and blood oozing out of wound was seen grossly."

12. On internal examination of the dead body the following injury corresponding the external injury no. 1 was found:

"All the muscles over anterior and medial compartment of left upper thigh were clean cut through and through, femoral vessels were completely transected, gross hemorrhage was seen in the soft tissues and about 100 ml of clotted blood was seen

accumulated over medial aspect of left upper thigh. Cut ends of muscle and vessels showing extra vassination of blood."

13. In the opinion of the autopsy doctor, the death had occurred due to shock and hemorrhage as a result of stab wound on the left lower limb. The external injury no. 1 with its corresponding internal injuries, in the opinion of autopsy doctor were sufficient to cause death in ordinary course of nature

xxx xxx xxx

9. From the narration of facts, it is evident that P.W.-14 was informed about the incident at around 04.00 AM or so; Ex. 18/A, the MLC produced in the case, shows that the deceased was taken to the hospital at 04.45 AM in the morning and declared "Brought Dead". The earliest police record (D.D. No. 7A, i.e. Ex. P.W. -5/A) is timed at 04.55 AM. These facts, the Trial Court, noticed, were not contested; no cross-examination of witnesses who deposed to the events, was undertaken.

10. With this background, it would be necessary to consider the Appellant''s submissions. The grievance that the conviction is based on relatives'' testimony (i.e. depositions of P.W.-2 and P.W.-3) cannot be taken to its extremity. It was held nearly four decades ago, by the Supreme Court (see Darya Singh and Others Vs. State of Punjab,) that the testimony of such witnesses cannot be rejected, but has to be scrutinized with care. Further, if there are no other witnesses, or others do not step forward to depose about the crime, the Court cannot reject such eyewitnesses'' testimonies merely because they are related to the deceased. Ultimately, the Court has to see what they say, applying the test of credibility.

11. The combined testimonies of P.W.-2 and P.W.-3 show that in the early hours of the morning, there was some commotion in their neighbourhood. The deceased was P.W.-2''s brother, and lived in the ground floor of the premises where they resided; apparently the commotion or disturbance awoke P.W.-3, who asked her husband, P.W.-2 to go down and see what was happening. He did so, and saw the Appellant quarrelling with the deceased. He (P.W.-2) clearly said that the Appellant took out his knife and attacked the deceased. Such being the case, P.W.-2 could not be faulted for not trying to save his brother; either the appellant was too quick for him (after all, there was only one knife blow) or he was fearful at that stage. Nonetheless, he mustered some courage to chase the appellant when he fled the spot. He could not nab him; P.W.-2 apparently then went in search of some help, chanced upon P.W.-14, and told him about the attack. Both returned to the spot; the injured had been taken inside by then, from where he was taken to the hospital.

12. The testimony of P.W.-3 in a sense complements that of P.W.-2; though she did not see the attack itself, she appears to have witnessed its immediate aftermath when P.W.-2 separated the deceased from the Appellant; this part of the evidence was not disputed. P.W.-3 also deposed to helping in bring the injured inside the premises, and having been told (by him) that the Appellant was his attacker. This

was treated by the Trial Court as a dying declaration.

13. So far as the Appellant''s submission regarding insufficient light is concerned, this court notices that in the cross-examination, both P.W.-2 and P.W.-3 agreed that the local authorities had not installed street lights. But at the same time, both volunteered that there was sufficient light, in the neighborhood. In any case, P.W.-2 actually saw the appellant, who was a neighbor. Therefore, this argument is insubstantial.

14. This Court is unpersuaded by the argument that motive was not sufficiently proved. Motive assumes considerable significance when the prosecution banks on circumstantial evidence. Motive is usually locked in the mind of the offender, and is difficult to prove at the best of times; actions, which reveal motive are key to their existence. In cases where ocular evidence is forthcoming, absence of motive or absence of proof of motive is an insignificant factor.

15. Having regard to the above discussion, we are of the opinion that the findings of the Trial Court do not call for interference. In this context, the Court is unpersuaded by the Appellant''s submission that the conviction ought to have been u/s 326 IPC. While the Appellant no doubt used a weapon described under that provision, he had every intention of inflicting the injury that he did. That injury, in the ordinary course of nature would have caused death - and indeed caused death. The injuries mentioned in the post-mortem report and the time when the victim breathed his last are so proximate as to leave no room for doubt in our mind that the conviction recorded u/s 304-I IPC, in this case, was justified.

16. Our findings and observations, are however, not dispositive of the appeal. We notice that the Trial Court has sentenced the Appellant to life imprisonment. Having regard to the nature of the injury, which was a solitary knife blow on a non-vital part of the body, the sentence appears to be harsh and disproportionate. We are of the opinion that ends of justice would be met if the sentence is altered to rigorous imprisonment for seven years.

17. In the light of the above discussion, the Appeal succeeds to the extent that instead of life imprisonment, the Appellant''s sentence is reduced to seven years'' imprisonment. The other sentence is left undisturbed. The Appeal is allowed to the above extent.