
(2014) 09 DEL CK 0077

Delhi High Court

Case No: Crl. A. 1170/2012

Robin

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision: Sept. 8, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 307

Citation: (2014) 4 JCC 2520

Hon'ble Judges: Pradeep Nandrajog, J; Mukta Gupta, J

Bench: Division Bench

Advocate: M.L. Yadav, Advocate for the Appellant; Aashaa Tiwari, APP, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Mukta Gupta, J.

Robin @ Bablu is convicted for the murder of Munna Singh by gunshot injuries vide the impugned judgment dated August 08, 2012 and vide order on sentence dated August 17, 2012 he has been directed to undergo imprisonment for life and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo Rigorous Imprisonment for six months. The fine if recovered shall be paid as compensation to the family of the deceased.

2. Learned counsel for Robin @ Bablu assails the prosecution case on the ground that there is no recovery of weapon of offence at the instance of the appellant. The evidence of PW-2 Renu Saini is not reliable as she herself has stated that Munna Singh had never met Robin @ Bablu personally earlier. Renu Saini further admitted that she washed the blood stained floor of the house with her petticoat and the defence of the appellant has not been considered.

3. The prosecution case rests on the testimony of Renu Saini PW-2 to whom the deceased reached immediately after receiving the gunshot injuries and made the

dying declaration. Finding the deceased injured she woke up her son Ashish who took him to the hospital resulting in preparing of MLC Ex.PW-3/A. On admission of Munna Singh to the hospital information was sent to the Police Station Prashant Vihar which was recorded as DD No.11. ASI Ishwar Singh along with Constable Jal Raj reached Dr.Baba Saheb Ambedkar Hospital, obtained the MLC of Munna Singh son of Shankar Singh, resident of A-1/342, Sector-17, Rohini, Delhi and recorded the statement of the Renu Saini Singh. Renu Saini stated that she was residing at A-1/342, Sector-17, Rohini along with her son Ashish, his wife Mamta, daughter Bhavna and younger son Chintan. She was a house wife and had taken divorce from her husband around 1½ years ago. Munna Singh used to stay as tenant in her earlier house at Sector-24, Rohini due to which their relations strengthen and he used to come to their house very often. She had relations with Munna Singh who used to look after her children. Munna Singh's wife and children used to live at Sector-23, Rohini. Her daughter Bhavna had relations with one Robin resident of Swaroop Nagar which she did not like. She told this fact to Munna Singh. On September 11, 2008 her daughter wanted to talk to Robin which she did not permit. Munna Singh who was also present at their house scolded Bhavna not to speak to Robin. Around 9.00-9.30 PM Bhavna bolted the door of the house from outside and went away. They got the bolt opened from a passerby. After some time Bhavna returned and when they asked why she had run away and why she had come back, Bhavna replied that she had spoken to Robin who has stated that he will come the next day and see that everything is set right. On the next day in the morning at around 6.30 AM her younger son had gone to throw garbage in the dustbin when he saw Robin roaming around their house. He informed this fact to Renu. When she asked Bhavna about it Bhavna stated that she had no concern with it. Thereafter at around 8.00 AM Munna Singh who had stayed in the night at their house was cleaning his Maruti car. At that time they heard fire shots when they came out they saw Munna catching hold of his stomach and stated that Robin has fired at him. Munna entered the house and lie down. Renu woke up her son Ashish and with him brought Munna Singh in the Maruti Car to the hospital where he was admitted. Renu deposed in sync with her statement recorded on the basis of which FIR was registered.

4. The version of Renu is further corroborated by her younger son Chintan who appeared as PW-4 and deposed that on September 11, 2008 his sister Bhavna went outside the house at around 9.00-9.30 PM and bolted the house form outside which they got opened from passerby. After some time Bhavna came back. Their mother scolded her to which she stated that she had talked with Robin@ Bablu who had said that he would come the next day and settle the issue permanently (kal akar sub thik kar dega). On the next morning, around 6.30-7.00 AM he went outside to throw the garbage, he noticed Robin @ Bablu roaming in the gali and on seeing him, he hid himself. He came back and told this fact to his mother. When his mother asked Bhavna about the presence of Robin @ Bablu in the gali she did not say anything.

Chintan further stated that after sometime Munna Singh went outside from the house in the gali to clean the car. Robin @ Bablu came running there and fired at Munna Singh and ran away. Munna Singh rushed back to their house crying that Robin @ Bablu had fired on him. He was climbing up the stairs and blood was oozing out from his body. His elder brother Ashish came down and took the injured Munna Singh to the hospital.

5. Even Bhavna daughter of Renu Saini deposed in sync with Renu Saini and Chintan and regarding the fact of her being in love with Robin and her family not in favour of her meeting with him. She also deposed that on September 11, 2008 she wanted to meet Robin which was objected to by her mother, deceased Munna Singh and her brothers who were not in that favour. On the same evening at about 9.00-9.30 PM she called him from the PCO that she wanted to leave the house however, Robin stated that he would come on next day and would talk with her parents. He expressed his inability to come that time. She further deposed that on the next day morning i.e. September 12, 2008 at about 6.00-7.00 AM her brother Chintan told her mother that Robin was roaming in the gali and she thought that he had come to talk to her parents. After some time, she heard a bang of gunshot and Munna Singh was crying "Robin ne ushe goli mar di". Her brother and mother shifted Munna Singh to the hospital.

6. The testimony of Chintan has been assailed on the ground of material improvement as in his previous statement he did not say that he saw Robin firing on Munna Singh. As noted above, no doubt the testimony of Chintan to the extent it states that he saw Robin firing at Munna Singh is a material improvement and is required to be discarded however, rest of his testimony is inconsonance with his previous statement and there is no material improvement to the aspect that at around 6.00-7.00 AM on September 12, 2008 he saw Robin roaming around their house and at around 8.00 AM Munna Singh went outside to clean his car. Renu Saini, Chintan and Bhavna heard the shots and saw Munna Singh coming holding his stomach and bleeding to the stairs in the house. Munna Singh stated that he had been fired by Robin. The dying declaration so made by Munna Singh which was heard by Renu Saini, Chintan and Bhavna is required to be believed for the reason that immediately after the incident Ashish and Renu Saini took Munna Singh to the hospital in the car and statement of Renu Saini was recorded in the hospital where she names Robin. Further when Munna Singh reached the hospital, he was semi conscious thus he was certainly in a condition to make the statement heard by Renu Saini, Chintan and Bhavna immediately after the incident informing that Robin had fired a shot on him.

7. Further the site plans Ex.PW-23/A and Ex.PW-10/A show a trail of blood to the house of Renu Saini on which aspect there is no cross- examination by Robin @ Bablu. ASI Ishwar Singh PW-22 the police officer, who first reached the spot, thereafter the hospital and recorded the statement of Renu Saini has deposed that

blood was lifted from the water pipe with the help of cotton. One stone with blood lying on the corner of the Gali, one cemented brick with blood, one cemented brick without blood from the footpath, blood stained earth along with earth without blood stained and blood with the help of cotton from the room of first floor of house No.A-1/342 were also lifted. Blood stained petticoat from the dustbin kept in the bathroom was also seized as it was stated that the room was cleaned by the petticoat. The exhibits collected as mentioned above had human blood and the floor pieces and petticoat had human blood of Group-A origin which tallied with the group of blood of the deceased. This version of ASI Ishwar Singh is also corroborated by Inspector Ram Sunder, PW-23.

8. Dr.K.Goel, PW-1 who conducted the post-mortem noticed the following injuries:

"1. Lacerated punctured wound 2.5 x 1 cm over left elbow lateral aspect, margins inverted. No blackening or tattooing seen. Abraded collar present (entry wound).

2. Lacerated perforated wound with everted margins 2.5 x 1.5 cm over medical aspect of left arm about 6 cm above elbow. Both the injuries (1 & 2) are communicated to each other internally. (exit wound of injury no.10.

3. Lacerated punctured wound with inverted margins of size 1.25 cm x 1 cm over left side chest at anterior axillary line about 17 cm below axilla. Abraded collar present. No blackening or tattooing seen (entry wound).

4. Lacerated perforated wound with everted margins 1.5 x.8 cm over lateral aspect of right inguinal region. No blackening or tattooing seen. On explanation, injury no.3 entered through left 7th inter-coastal space pierced left dome of diaphragm. At multiple places suturing of intestine and bruised area seen. On further exploration, the injury tract ended at injury no.4 i.e. Exist wound.

5. Lacerated perforated wound 1.25 x 1 cm. Over left side back of abdomen about 9 cm. left to midline back and just below coastal margins with everted margins. On exploration, injury no.5 entered into abdominal cavity, liver was found extensively lacerated and shattered. The injury tract is connected with injury no.5 & 6. The direction of the injury no.3 and 4 was from left to right and slightly above downwards. Injury no.5 & 6 were from front backwards and slightly above downwards.

There was surgically stitched laprotomy wound from epigastrium to hypogastrium."

9. Dr.K.Goel opined that all injuries were ante-mortem in nature cause by fire arm which was rifle. Range of fire arm was beyond blast effect range. Cause of death was shock and haemorrhage as a result of injuries to liver and intestine. Injuries to liver and intestine by fire arm were sufficient to cause death in ordinary course of nature individually or collectively. Mode of death was homicidal. Time of death as per hospital record was 11.30 AM on September 12, 2008 and approximately same in post-mortem calculation. Thus, the post-mortem report also corroborates the dying

declaration made by the deceased which was heard by Renu Saini, Chintan and Bhavna.

10. From the place of incident one live cartridge and one empty cartridge case were recovered, however, since there is no recovery of weapon of offence the same could not be connected to the appellant. The prosecution had also proved the intercepted conversation purported to be one made by Robin @ Bablu from mobile No.9718468907 wherein he stated "galat na samajh yar sonu bahut dikkat ho gayi wo murder sa ho gaya tha no delhi main". Though the prosecution has proved the authorisation for interception by examining Shri G.S.Patnaik PW-26, the then Home Secretary and Inspector Jagdish Prasad PW-24, who got recorded the voice sample of Robin, Dr.Rajender Singh PW-20, who proved that the intercepted voice and the voice sample of the same person, however, a perusal of the intercepted conversation shows that it was an incomplete vague version and cannot conclusively link Robin with this murder. Thus, learned Trial Court rightly rejected this evidence.

11. Learned counsel for the appellant has also sought to assail the conviction on the ground that the FIR was delivered to the Magistrate belatedly on September 15, 2008. Record reveals that the FIR was registered on the statement of Renu Saini u/s 307 IPC however, on the same day itself, i.e. on September 12, 2008 the deceased died whereafter the case was converted from Section 307 IPC to Section 302 IPC. An information in this regard along with a copy of the FIR was sent to the Magistrate on September 15, 2008 at 9.40 AM at his residence. The explanation in this regard is that 12th being a Friday and thereafter being second Saturday and Sunday the information was given to the Magistrate on September 15, 2008 in the morning itself. Though it should have been given on the same day itself i.e. September 12, 2008 however, the fact remains that the defence has not been able to bring out that the FIR was ante-time or ante- dated. Thus we find no merit in this argument.

12. In his defence Robin @ Bablu stated:

"I have been falsely implicated in the present case. The IO has procured false, manipulated evidence against me. I have been shown to the witnesses at the police station itself after my arrest in the present case. I do not know the family of the complainant. The SHO and other staff members of PS Prashant Vihar has colluded with the complainant party to save the complainant's husband who in fact was behind the murder of deceased Munna Singh. Said Munna Singh was a paramour of Renu Saini complaint. The complainant's husband had a grudge with said Munna Singh as he used to stay and sleep in the house of the complainant and due to this reason he was subjected to snide remarks and was getting bad reputation in the society. Police has also manipulated the FIR and suppressed the true facts of the case. In my life time, I have never seen Munna Singh, nor had he seen me at any point of time."

13. Though suggestions have been given with regard to the enmity and that the husband of Renu Saini did not approve her relations with Munna Singh, however the same are not material as Renu Saini has clearly stated that she had already taken divorce from her husband around 1♦ years prior to the incident.

14. In view of the dying declaration of the deceased to three witnesses which is duly corroborated, the appellant found roaming near the place of occurrence before the incident and his reply to Bhavna on the previous night, we find no merit in the appeal and the same is dismissed. The appellant will suffer the remaining sentence.

15. T.C.R. be returned.

16. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.