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Vijay Pal Vs State of Delhi

Criminal Appeal No. 980/2010

Court: Delhi High Court

Date of Decision: July 30, 2014

Acts Referred:
Arms Act, 1959 â€" Section 27#Criminal Procedure Code, 1973 (CrPC) â€" Section 313, 428#Penal Code, 1860 (IPC) â€" Section 302, 449, 506

Hon'ble Judges: V. Kameswar Rao, J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: M.L. Yadav, Advocate for the Appellant; Rajat Katyal, APP, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Sanjiv Khanna, J.
Appellant-Vijay Pal has been convicted u/s 302 of the Indian Penal Code, 1860 (IPC, for short) by the impugned

judgment dated 20th July, 2010, for murder of Geeta. Appellant has also been convicted under Sections 449 and 506 IPC and Section 27 of the

Arms Act, 1959. By order on sentence dated 22nd July, 2010, the appellant has been sentenced to life imprisonment with fine of Rs.5,000/- for

the offences u/s 302 as well as 449 IPC. For the offence u/s 506 IPC, the appellant has been sentenced to Rigorous Imprisonment for two years

with fine of Rs.5,000/- and for the offence u/s 27 of the Arms Act the appellant has been sentenced to Rigorous Imprisonment for seven year with

fine of Rs.5,000/-. The sentences are to run concurrently and benefit of Section 428 Cr.P.C. has been granted. In default of payment of fine, the

appellant has to undergo Rigorous Imprisonment for six months on each count.

2. By the impugned judgment, the trial court had acquitted Karan @ Gaura and Satish, who were also tried. We record that the State has not

preferred any appeal against their acquittal and the decision to this extent has attained finality.

3. In short and brief, the case of the prosecution is that the appellant-Vijay Pal had shot with a desi katta (firearm) and killed Geeta at about 01:30

hours on 18th October, 2007 in Jhuggi No. A-103, Jailorwala Bagh, Ashok Vihar Phase-II, Delhi, in the presence of her husband Suresh (PW3).

4. At the outset, we notice and record that the appellant has not questioned that Geeta had died unnatural and homicidal death as a result of a

bullet injury. The said fact even otherwise has been duly proved and established beyond doubt from the testimony of Dr. K. Goel (PW-12), who

had conducted the post-mortem on the body of Geeta and had found one lacerated punctured wound with inverted margins of the size 2.4 cm x

1.1 cm oval shape with contused abrasions at margin with blackening around it. Marked tattooing was seen all over left face, left forehead and

nose and around the mouth and over right side of the face near the nose and the mouth. Post-mortem report records and Dr. K. Goel (PW-12)

has deposed about the entry wound of the fire arm and stated that no external injury, i.e., exit wound was seen upon examination. On exploration,

it was observed that the deceased had suffered comminuted fracture on the left side of maxilla with multiple broken teeth inside oral cavity and the

injury tract led towards cervical column. One bullet was found embedded between the second and third cervical vertebrae in left lateral. The injury

had caused massive bruising and clots around and upto the depth of the canal. Spinal cord was extensively lacerated. A bullet was recovered and

sealed. The firearm injury and spinal injury were sufficient to cause death in the ordinary course of nature. The post-mortem report was marked

Exhibit PW-12/A. It may be noted that the dead body was received in the mortuary as deposed by PW-12 on 18th October, 2007 at 8.15 A.M.

5. There is other material/evidence to show that the deceased had died a homicidal death as a result of fire arm injury at about 1.30 A.M. in Jhuggi

No. A-103, Jailorwala Bagh, Ashok Vihar Phase-II, Delhi, but we are not separately elucidating and referring to the said evidence in the above

paragraph to avoid prolixity and repetition.

6. In order to show and establish that the appellant was the perpetrator of the crime, prosecution primarily relies upon oral testimony of purported

eyewitness Suresh (PW-3), husband of Geeta. In order to appreciate his testimony, we shall be also referring to the statements of police officers

Hukam Singh (PW-7), Satish Kumar (PW-2) and Inspector Bahadur Singh (PW-15). In addition, we will be referring to the forensic report

Exhibit PW14/A given by Puneet Puri (PW-14) relating to the weapon of offence and the bullet recovered from the body of Geeta.

7. Suresh (PW-3), it has been correctly submitted, did oscillate in his court deposition and the question is whether a part of Court deposition can

be relied to sustain appellant''s conviction? In his examination-in-chief PW3 has stated that he and his wife used to sell fruits in trains and on the

fateful night appellant-Vijay Pal along with two others had called out to his wife Geeta as ""bhabhi"". Thereafter, appellant-Vijay Pal and others

started quarrelling with her. Geeta asked them to leave the spot. He along with his wife moved to Jhuggi No. A-103, to avoid any altercation, but

the appellant and others followed them. It is apparent that Suresh and Geeta, as per deposition of PW3, were residing in a different jhuggi and not

in Jhuggi No. A-103. This fact was accepted by the appellant-Vijay Pal as is clear from the cross-examination and the questions put on behalf of

appellant-Vijay Pal, wherein PW-3 has accepted that he and his wife were initially in Jhuggi No. 52. PW3 has deposed that the appellant with

others had then warned Geeta that they would return to kill her. PW-3 in his examination-in-chief testified that the appellant had fired at his wife

and the bullet had hit her on the left cheek. PW-3 was threatened and warned. However, PW3 made a phone call to the police. Police came to

Jhuggi No. A-103, where PW3 narrated the facts, which were recorded in Exhibit PW- 3/A. Said statement was signed by PW-3 at point X.

Blood samples and other evidence like blanket, shawl etc. were taken into possession and Geeta"s body was removed to Jagjivan Ram Hospital,

Jahangirpur for post- mortem and subsequently handed over to Suresh (PW-3). Suresh (PW-3) identified various articles/material, which were

seized from the spot and were marked Exhibits P-1 to P-6.

8. However, in the examination-in-chief Suresh (PW-3) had deposed

My wife has already died. I have small children and there is no certainty of my wife (sic life), therefore, I request the court that accused persons

may be pardoned.

9. Learned counsel for the appellant, however, has drawn our attention to cross-examination of PW-3 wherein he accepted that the appellant and

other accused persons had not quarrelled with him or his wife prior to the incident, but the quarrel had taken place as the appellant and others had

woken up Geeta by calling out bhabhi-bhabhi in spite of the fact that the door of the jhuggi was closed. The appellant and others came to Jhuggi

No. A-103, ten minutes after they had left Jhuggi No. 52. Our attention was also drawn to cross-examination after re-examination by the

Additional Public Prosecutor wherein PW-3 has stated that it was correct that due to darkness he could not see who had fired at his wife. It was

highlighted that PW3 did not affirm and support the version given by him in the examination-in-chief. Thus, we have two contradictory versions by

PW3.

10. At this stage and before we examine and opine on the so-called contradiction in the testimony of PW-3 as to whether the appellant had fired

the weapon, we would like to refer to the cross-examination of PW-3 on another aspect. PW-3 has stated that Jhuggi No. A-103 belonged to

one Jaggi, who was not present at the time of the occurrence but came subsequently and the said Jaggi used to sell liquor in the locality and that he

(PW3), used to keep stock of liquor belonging to Jaggi because he was scared of him (Jaggi). Even in his own house, he used to keep liquor. PW-

3 also accepted as correct that he used to take liquor with appellant-Vijay Pal and others in Jhuggi No. A-103.

11. PW-3 was re-examined by the Additional Public Prosecutor after he had oscillated by making reference to Jaggi etc. in his cross-examination

and, PW3, in his re-examination by the Additional Public Prosecutor had again categorically asserted that he had seen appellant-Vijay Pal firing at

his wife. The appellant along with others were shouting before they came to Jhuggi No. A-103 and he had identified the voice. Electricity

connection had been installed in Jhuggi No. A-103. But as recorded above, on cross-examination on behalf of Vijay Pal, PW-3 had contradicted

himself and stated that due to darkness he could not see who had fired at his wife.

12. We have already quoted statement made by PW-3 in his examination-in-chief to the effect that his wife died and he had small children and his

life was uncertain, accordingly, PW-3 had prayed that the appellant and others may be pardoned. We are inclined to accept and believe statement

of Suresh (PW-3) to the effect that appellant-Vijay Pal had fired and killed Geeta, which was emphatically affirmed by him in categorical terms in

examination-in-chief and then again in the re- examination by the Public Prosecutor. It is apparent that PW-3 did try to somehow soften the blow

and help the appellant as is clear from the cross- examination after the examination-in-chief and after re-examination by the Public Prosecutor. Our

reason is that PW-3, it is apparent, was under pressure to resile and exonerate the appellant. Possibly, he feared for his life and, therefore, had

gone to the extent of stating that the appellant killer of Geeta, his wife, may be pardoned even when he had himself implicated him as the person,

who had fired and killed Geeta. We find that the version given by PW-3 in his examination-in-chief is the true and correct rendition of facts, which

duly stands corroborated from the testimonies of the police officers, Hukam Singh (PW-7), Satish Kumar (PW-2) and Inspector Bahadur Singh

(PW-15).

13. A witness who makes two inconsistent statements, it can be urged is unreliable, but there can be instances where the court can rely upon the

earlier or verifiable statement if the same is true and the witness has falsely resiled to protect the perpetrator. For this, there should be intrinsic

circumstances and/or corroborative circumstances or materials which support and enables the court to draw the inference that the first or part

statement is true and correct. In Crl. Appeal No. 434/2011 titled Gopal @ Titu & Anr. Vs. State one of us (Sanjiv Khanna, J.) had made the

following observations:

2. At the outset we delineate that in the present case crucial witnesses have either partly or wholly turned hostile. There are some contradictions or

omissions which also need to be considered upon. Due to these considerations, ""see through"" examination, of the witnesses'' statements and

evidence garnered, is required in the present case. We have referred to contemporaneous documentary records in form of DD entries/FIR, call

data records etc. We have postulated the statement of witnesses with the contemporaneous record to reach an ineluctable conclusion. At this

stage, we record that evidence of hostile witnesses, to the extent it is truthful and reliable, remains admissible and it is open to the Court, depending

upon the facts of each case, to rely upon dependable and acceptable part of the statement made by a hostile witness, as is reiterated in

Rameshbhai Mohanbhai Koli and Others Vs. State of Gujarat, :

16. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to

treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but

the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide Bhagwan Singh Vs. The

State of Haryana, , Shri Rabindra Kumar Dey Vs. State of Orissa, , Syad Akbar Vs. State of Karnataka, and Khujji alias Surendra Tiwari Vs.

State of Madhya Pradesh,)

17. In State of U.P. Vs. Ramesh Prasad Misra and another, this Court held that evidence of a hostile witness would not be totally rejected if

spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is

consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde

Vs. State of Maharashtra, , Gagan Kanojia and Another Vs. State of Punjab, , Radha Mohan Singh v. State of U.P. [(2006) 2 SCC 450 : (2006)

1 SCC (Cri) 661 : AIR 2006 SC 951] , Sarvesh Narain Shukla Vs. Daroga Singh and Others, and Subbu Singh Vs. State by Public Prosecutor, .

18. In C. Muniappan and Others Vs. State of Tamil Nadu, this Court, after considering all the earlier decisions on this point, summarised the law

applicable to the case of hostile witnesses as under: (SCC pp. 596-97, paras 83-85)

83. ... the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the

prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been

taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been

pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be

disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the

court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be

attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution''s

witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are

bound to occur in the statements of witnesses. (Vide Sohrab and Another Vs. The State of Madhya Pradesh, , State of U.P. Vs. M.K. Anthony, ,

Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, , State of Rajasthan Vs. Om Prakash, , Prithu @ Prithi Chand and Another Vs. State of

H.P., , State of U.P. Vs. Santosh Kumar, and State rep. by Inspector of Police Vs. Saravanan and Another,)

14. Thus, accepting there were hostile and opposing statements, we have examined the statement of Suresh (PW3) and then tried to ascribe

whether the correct version or truth is veritable on the basis of his deposition to ascertain and sustain the conviction of the appellant. The present

case is one where it is possible to separate truth from untruth, exaggeration and improvement from what is true and correct, after exercising due

care and caution because of other corroborating circumstances and evidences which have been referred to below. Suresh (PW3) certainly can be

classified as oscillating and not wholly reliable or unreliable. PW3 is a witnesses falling in the third category carved out by the Supreme Court in

Vadivelu Thevar Vs. The State of Madras, , and therefore, we have to circumspect and look for reliable direct and circumstantial evidence to

corroborate to authenticate and endorse the true and correct version of his testimony. Suresh (PW3) was not a chance witness whose presence at

the spot was unnatural and unbecoming. His presence with his wife, deceased Geeta, late at night past the midnight hour was natural and normal.

15. Conviction of an accused can be sustained even on evidence of a single eye-witness if the evidence given by the said witness is credible or the

implication made by the said witness when read with other corroborative evidence and material, conclusively makes out a watertight case against

the accused. As noticed below, there is sufficient corroborative evidence against the appellant Vijay Pal, when we read and examine the truthful

part of the version and deposition of Suresh (PW3), along with the corroborative evidence referred and mentioned below.

16. Constable Satish Kumar (PW-2) and Hukam Singh (PW-7) were first to reach the place of occurrence, i.e., Jhuggi No. A-103 on 18th

October, 2007 at about 3 A.M. after receiving a call that a woman had been shot at the said location. PW-2 has mentioned that soon thereafter,

Inspector Bahadur Singh (PW-15) reached and on the statement (Ex.PW3/A) made by Suresh (PW-3), Inspector Bahadur Singh prepared the

rukka and PW-2 (Constable Satish Kumar) took the rukka (Ex.PW15/A) from the spot to the Police Station for the purpose of registration of the

FIR (Ex.PW4/D). Suresh (PW-3) was found and was present at the spot, by the said police officers. Constable Hukam Singh (PW-7) has

similarly deposed on recording of the statement of Suresh (PW-3), the tehrir and registration of FIR. PW7 had reached the spot at about 3 A.M.

Inspector Bahadur Singh (PW-15) has stated that at 3:05 A.M. on 18th October, 2007, he learnt about contents of DD entry No. 6A and

reached at the location/jhuggi, where Geeta lying dead in a cot with blood all over. Suresh (PW-3) was present and on the basis of his statement

(Exhibit PW-3/A), tehrir (Exhibit PW-15/A) was prepared and the FIR was registered. The FIR (Exhibit PW-4/D) was registered at 5.15 hours

on 18th October, 2007. The FIR specifically named the appellant Vijay Pal as a perpetrator, who had fired and had inflicted the fatal gun shot

injury. Interestingly, Suresh (PW-3) was not controverted and questioned and it was not suggested that PW-3 did not know appellant- Vijay Pal.

Appellant-Vijay Pal in his statement u/s 313 Cr.P.C. had stated that on the date of incident, Jaggi, a liquor vendor had picked up quarrel with him

and at his instance he had been implicated in this false case. Thus from the beginning and at the first instance, Suresh (PW3) had specifically and

without hesitation named the appellant Vijay Pal, as the person who fired the shot.

17. As noticed above, a bullet was recovered during the post-mortem procedure by Dr. K. Goel (PW-12) from the body of the deceased. There

was no exit wound.

18. As per the prosecution version, Satish, who has been acquitted by the trial court was apprehended and arrested vide memo Exhibit PW-7/A

on 18th October, 2007 at 6 P.M. Karan @ Gaura was arrested on 19th October, 2007 at 5.30 P.M. vide arrest memo Exhibit PW-10/A and the

appellant-Vijay Pal was arrested on 13th November, 2007 at about 4 P.M. vide arrest memo Exhibit PW-10/E. Thus, the appellant-Vijay Pal

was arrested, nearly 25 days after the occurrence and was the last one to be arrested. PW-15 Inspector Bahadur Singh (Investigating Officer) has

deposed that upon interrogation appellant-Vijay Pal had made a disclosure statement (Exhibit PW-10/G) on 13th November, 2007 itself and then

had led them to Holambi Kalan Railway Station, from where he had taken out a desi katta from the bushes near the railway line and a telephone

pole. The katta had one used shell of cartridge. Sketch of the said katta (Exhibit PW- 10/H) was prepared. Deshi katta was taken into possession

after taking measurements etc. vide seizure memo (Exhibit PW-10/I). Site plan Exhibit (PW-10/J) as to the place of recovery was also prepared.

Identical statement of the said recovery etc. has been made by Constable Sudhir Kumar (PW-10), who was present with PW-15 at that time. Till

13th November, 2007 the weapon of offence involved in the occurrence was untraced and was unknown. Satish and Karan @ Gaura, who were

arrested on 18th and 19th October, 2007, apparently had no knowledge and did not make any disclosure statement resulting in recovery of the

weapon of offence. The weapon of offence was recovered after arrest of the appellant Vijay Pal and his disclosure statement lead to the recovery.

Thereupon, the bullet which had been recovered from the body of the deceased by Dr. K. Goel (PW-12) along with the weapon of offence and

the empty cartridge were sent for forensic examination. The said examination was conducted by Puneet Puri (PW-14), Senior Scientific Assistant,

Ballistics, FSL Rohini. His report is marked Exhibit PW-14/A. PW-14 in his report as well as in his court deposition has stated that he had

received two sealed parcels one with the seal of BS and the other with the seal of KGBJRM Hospital mortuary. The first parcel had a country

made pistol of .315 inch bore and one 8 mm/.315 inch cartridge. The second parcel had one deformed bullet marked Exhibit EB1. The country

made pistol was found to be in working order and test fire was conducted by using two 8 mm/.315 inch cartridge from the lab stock. The

recovered test fired bullets were marked TB1 and TB2. On microscopic examination of the deformed bullet Exhibit EB1, it was found that the

marks correspond to the test fired bullets TB1 and TB2. The test fired cartridge TC1 and the deformed bullet Exhibit EB1 were ammunition under

the Arms Act. Marks on the test fired cartridges marked TC1 and TC2 matched with the empty cartridge Exhibit EC1, found in the country made

pistol F1. PW-14 and the FSL report Exhibit PW-14/A prove beyond doubt that the bullet found in the body of the deceased Geeta was fired

from the pistol F1, which was recovered pursuant to the disclosure statement made by Vijay Pal marked Exhibit PW-10/G, which had resulted in

recovery of the said pistol vide memo Exhibit PW-10/I. This country made pistol F1, it has been established, was used to fire the bullet Exhibit

EB1, to kill Geeta.

19. In view of the aforesaid discussion, we accept the prosecution version by relying upon the examination in chief of Suresh (PW3) that appellant

Vijay Pal had fired and killed his wife Geeta. The said version mentioned in the complaint (Ex. PW3/A) which formed basis of the FIR (Ex.

PW4/D) stands duly corroborated with the subsequent recovery of the weapon of offence i.e. desi katta (F1) after disclosure statement (Ex.

PW10/G). The recovery was made on 13th November, 2007 after the appellant was arrested on the same day at about 4.00 PM. Bullet (EB1)

recovered from the body of the deceased had the same marking as the test fired bullets (TB1 & TB2).

20. The conviction of the appellant u/s 302 as well as 449 IPC is, therefore, upheld. The conviction of the appellant u/s 506 IPC and Section 27 of

the Arms Act, 1959 is also upheld. We do not also see any reason to interfere in the order of sentence or modify the same. The appeal is

accordingly dismissed.