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Delhi High Court

Case No: Criminal Appeal 163 of 1998

Ashok Kumar		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: Feb. 23, 2012

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 24, 25, 26, 27
- Penal Code, 1860 (IPC) - Section 302, 307, 460

Citation: (2012) 3 AD 776 : (2012) 3 JCC 1618

Hon'ble Judges: S.P. Garg, J; S. Ravindra Bhat, J

Bench: Division Bench

Advocate: Madhav Khurana, Amicus Curiae, for the Appellant; Sanjay Lao, APP., for the Respondent

Final Decision: Dismissed

Judgement

S.P.GARG, J.

The present appeal has been preferred by the Appellant Ashok Kumar against the judgment dated 22.01.1998 and order on sentence dated 27.01.1998 of the Ld.ASJ in SC No. 159/1994 by which he was convicted for committing the offences punishable under Sections 302/307 IPC and was sentenced to undergo imprisonment for life with fine of 500/-.Briefly stated the prosecution case is that on 10.11.1991, Daily Diary Entry (DD) No. 5. was recorded at police post JPN Hospital at 7.00 A.M. by Const. Raghuvinder Singh on getting wireless message from a lady Const. Urmila regarding the apprehension of a thief at 175, Rouse Avenue Road, DDU Marg, Delhi. Investigation of the case was assigned to ASI Shamim Akhtar who reached the spot Insp.Mazhar Hussain posted as SHO, PS IP Estate along with his staff also reached the spot. There they found that PW Satyavan and PW Vinod had caught hold of the accused who had injuries on his head and hands, in the

open ground of the kothi. On coming to know that two injured persons had already been taken to JPN Hospital in a PCR van, Insp.Mazhar Hussain reached there. One of the injured, S.P. Goel, had already been declared dead by the doctor. Insp.Mazhar Hussain collected the MLC of the other injured Radha Goel, and once she was declared fit for statement, he recorded her statement, Ex.PW-1/A. She disclosed to the IO thus:

I alongwith my husband Sh. S.P. Goel and daughter Kumari Girija (Tinu) aged 12 years live at the address given above. My son Manvender, aged 20 years, who is a student of Chartered Accountancy, has gone to Kanpur for some work. In the rear portion of our house there are two servant quarters in which live Satyavan Singh Rawat and Budhi Singh with their families. Last night on 9.11.91 at about 11 PM we slept in our rooms. Today, on 10.11.91, in the morning at about 6 AM we woke up after the sleep. My husband Sh. S.P. Goel went to the bath room. All of a sudden I heard his shrieks. I also rushed towards the bath room. I saw that the person present, whose name and address after enquiry came to be known as Ashok Kumar s/o Raj Baldev Joshi r/o H.No. 1115, Gali Gande Wall, Namak Mandi, Amritsar, Punjab, was giving blows to my husband with a chura held in his right hand. Within my sight Ashok gave several blows on the neck and other parts of the body of my husband. On seeing this I raised an alarm and when I tried to rescue my husband Ashok Kumar started giving me blows with the same chura which landed on my right arm, neck and head. In the meantime my husband tried to stagger out but fell down there itself. His body got soaked with blood. On hearing all this noise my daughter Girija came there whom I asked to rush and call the servants. In the meantime Satyavan had arrived there on hearing the noise who also saw Ashok Kumar attacking me and my husband. He challenged Ashok Kumar. When Ashok Kumar also tried to attack Satyavan, Satyavan grappled with him. When Ashok Kumar tried to release himself and escape Vinod Kumar, who is a relation of Satyavan, gave a danda blow on the head of Ashok Kumar and in this manner Satyavan and Vinod Kumar overpowered Ashok Kumar. After a little while police arrived there who brought us to the hospital, Ashok Kumar armed with a chura tres-passed into our house and attacked my husband and me as a result of which my husband has died and I have received injuries. Heard the statement. It is correct

2. IO made an endorsement on the statement and sent the rukka for registering the case under Sections 460/302/307 IPC and u/s 27 Arms Act. On returning to the spot, the IO got the place of occurrence photographed; he lifted blood samples; seized the lathi with which the accused had been hit; seized the dagger produced by PW Satyavan; seized the blood stained clothes of PW Satyavan and that of the accused, and the dagger recovered from his search. On reaching at mortuary, he conducted inquest proceedings and sent the body for post-mortem. Dr. S.K. Khanna conducted the post-mortem on 10.11.1991 and detected eighteen external injuries on the body.

3. The accused was arrested and pursuant to the disclosure statement, he led the police to a shop at Gurdwara Sis Ganj from where he had purchased two daggers. During the course of investigation, 10 sent the exhibits to CFSL and collected its report. He recorded

the statements of the concerned witnesses conversant with the facts. On completion of investigation, the accused was charge-sheeted for committing the aforesaid offences and was duly charged and brought to trial.

4. To prove the charges, the prosecution examined twenty nine witnesses. In the statement u/s 313 Cr.P.C., the accused denied his hand in the crime and pleaded that he was falsely implicated in this case. He tendered statement marked "A" for consideration.

5. After appraisal of the evidence and considering the rival contentions of the parties, the Trial Court convicted the accused for committing the offences punishable under Sections 302/307 IPC while acquitting him of the charge u/s 27 Arms Act. Aggrieved by the said orders, the Appellant has filed the appeal.

6. The Learned Counsel for the Appellant has assailed the findings of the Trial Court and strongly urged that it did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses. The Trial Court, the counsel urged, had conveniently ignored major contradictions, discrepancies and improvements made by the material witnesses. The prosecution failed to explain the inordinate delay in lodging the FIR. The information was received by a lady Const. Urmila (PW-20) posted at PCR at about 7.00 A.M. There was, thus, no occasion to record the FIR Ex.PW-10/A at 10.20 A.M. It further failed to prove when the special report was delivered to the area Magistrate. PW-2 Girja Goel, daughter of the deceased did not witness the occurrence and her deposition that she rushed to call PW Satyavan was contrary to the statement of PW Satyavan who reached on his own in 15-20 minutes. PW-1 Radha Goel in the cross-examination admitted that when she reached the bath room, her husband had already fallen on the ground and was unconscious. The Trial Court''s finding about her claim of witnessing the incident was without any basis. The Counsel further urged that in her statement, the witness disclosed that the accused had stabbed her ten times, but only four injuries were detected in her MLC Ex.PW-13/B. The PWs have given inconsistent versions as to how the chura got bent. No recovery was made pursuant to the disclosure statement recorded by PW-28 Insp.Mahipal on 18.11.1991. It is not certain who informed the police and no informant was examined. Injuries on the accused remained unexplained. Finger Prints lifted from the spot were not placed on record. PW-11 and PW-13 are not consistent about the injuries sustained by the deceased.

7. The Counsel further submitted that even if the prosecution version is taken at face value, ingredients of ''murder'' are not at all made out as the accused had no intention to murder any one in the house. In his confessional statement, he categorically explained the circumstances forcing him to enter the house for taking shelter on that chilly night. The Counsel relied on the authority ''Madaiah vs. State by Yelandur Police'' reported in 1992 CRI.L.J. 502 (Karnataka High Court) to buttress his argument that the confession made before the police officer by an accused can be used by him for his own benefit. The Evidence Act does not preclude an accused from relying upon his own confession. The

bar u/s 25/26 Evidence Act is meant for the prosecution and not the accused.

8. The Ld.APP supported the judgment urging that it does not call for any interference. The accused was apprehended at the spot itself after commission of the crime. He failed to explain the purpose of his entering inside a dwelling house armed with a deadly weapon, at unearthly hours. The intention to murder was apparent as, on being detected in the bath room, he heartlessly stabbed S.P. Goel repeatedly and injured his vital organs with the dagger. When PW-1 Radha Goel intervened to save her husband, he did not even spare her and attempted to murder her by inflicting several injuries. PW-3 Vinod Kumar had to hit him with a lathi to overpower him. His version of events was a false and unrealistic story that had been concocted by him to save himself from conviction, so urged the APP. He exhorted this Court to appreciate that the confession of the accused before the police has no evidentiary value u/s 27 Indian Evidence Act, and that the PWs have given consistent version of the incident.

9. We have considered the submissions of the parties and have scrutinized the record.

10. It is desirable to highlight that the homicidal death of deceased S.P. Goel is not under challenge. Injuries sustained by PW-1 Radha Goel have also not been disputed. There is no denial that the accused was apprehended from the spot.

11. The prosecution case is based upon the eye witnesses account given by PW-1 Radha Goel and PW-2 Girja Goel. PW-1 is the deceased''s wife who also sustained injuries in the incident. In her statement Ex.PW-1/A (which formed basis of the rukka), she narrated the incident in graphic details and attributed a specific role to the accused. The incident took place at about 7.00 A.M. and PW-10 HC Ravi Dutt recorded the FIR Ex.PW-10/A on the basis of the rukka, Ex.PW-1/A. He further stated that he sent the special report through Const Vinod Kumar to the concerned area Magistrate and higher police officers. The witness was not questioned about the inordinate delay in recording the FIR. Since the rukka had been prepared soon after the incident, there was hardly any possibility of the injured witness fabricating or concocting a story to falsely implicate the accused in a short interval.

12. While appearing as PW-1, proving the version given to the police, Radha Goel testified that on 10.11.1991 her husband got up at 5.45 A.M. and she went to the kitchen to prepare tea for him. On hearing his shrieks from the bath room, she rushed there and saw the accused stabbing him with a ''chura''. On seeing her, he stabbed her too ten times resulting injuries upon her neck, ear and right hand. Her cries attracted her daughter PW-2 Girja Goel and she instructed her to call Satyavan and Vinod Kumar. These two persons, on reaching the spot, caught hold of the accused. She further deposed that the accused gave a teeth bite to Satyavan and attacked him with a chura. Vinod Kumar hit him with a danda to overpower him.

13. PW-2 Girja Goel, aged 10 years, corroborated her mother and testified that on hearing her mother''s shrieks at about 6.45 A.M. she reached the spot and saw the accused, with a chura in his hand attacking her. She also saw her father in an injured condition in the bath room. She brought Satyavan and Vinod who caught hold the accused. Vinod hit the accused with a danda causing injuries to his head.

14. PW-3 Vinod Kumar and PW-4 Satyavan supported the prosecution on all material facts and corroborated PW-1 and PW-2 in entirety.

15. Despite a searching cross-examination, the accused failed to elicit any material contradiction to discard their depositions. No ulterior motive was imputed to them for falsely implicating him. The occurrence took place inside the deceased''s house where the presence of PW-1 and PW-2 being residents was quite natural and probable. They had lost their near and dear one and were not expected to let the real culprit go scot free and to implicate an innocent person. PW-1 Radha Goel herself sustained a number of injuries with a sharp object, as depicted in MLC Ex.PW-13/B. Testimony of PW-13 Dr. Anuj K. Bhatnagar remained unchallenged on this aspect. The nature of injuries opined to be grievous by PW-29 Dr. H.L. Nag. Injuries establish her presence at the spot.

16. The evidence of an injured witness cannot be disbelieved without assigning cogent reasons. Mere contradictions/improvements on trivial matters could not render insured''s deposition untrustworthy. The law on this aspect has been detailed in the latest judgment State of Uttar Pradesh Vs. Naresh and ors. 2011 IV AD (S.C.) 20=(2011) 4 Supreme Court Cases 324 as under

27. 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- (Vide Jarnail Singh v. State of Punjab, Balraje v. State of Maharashtra and Abdul Sayeed V: State of M.P.)

17. Similarly in another case Abdul Saved Vs. State of Madhya Pradesh 2010 IX AD (S.C.) 615 = (2010) 10 Supreme Court Cases 259, Supreme Court laid down :

28. 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." [Vide Ramtagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P. (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.]

29. While deciding this issue, a similar view was taken in Jamail Singh v. State of Punjab, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tube well. In Shivalingappa Kallayanappa v. State of Karnataka this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

18. PW-2 Girja Goel, a child witness who had seen the ghastly crime in the house cannot concoct a false story to spare the real perpetrator of the crime. Ocular testimony of the witnesses is entirely in consonance with medical evidence on record.

19. PW-9 Amarjit Singh is an independent public witness, who ran a shop No. 1915 at Chandni Chowk, Gurdwara Sis Ganj. He identified the accused and deposed that he purchased two daggers from him on the pretext that they were required for wearing in the marriage ceremony. He also identified the dagger Ex.P-1 (out of the two daggers purchased by him from his shop). In the absence of any previous ill-will or acquaintance, this uninterested witness is not expected to tell a lie. The accused failed to explain the purpose of purchase of such deadly weapons. The police hitherto unaware about the purchase of the weapon of offence discovered the fact only pursuant to the disclosure statement made by the accused.

20. The discrepancies, contradictions and improvements referred are trivial in nature and do not go to the root of the case to cause dent in the prosecution case. The delay in recording the FIR and its dispatch to the concerned MM is not ipso facto fatal.

21. We have examined the confessional statement Ex.PW-21/A in which the accused gave his background; the fact of his working with one Baldev Raj at Subzi Mandi, Ludhiana ;the circumstance forcing them to come to Delhi for doing business etc. He further disclosed to being mentally upset due to unemployment and on 09.11.1991 purchased two daggers from a shop at Gurdwara Sis Ganj to commit robbery and went in search of a kothi for that purpose. Finally, he succeeded in entering deceased''s bath room. He further disclosed that his purpose was to save himself from the cold and to commit robbery. When he got up next morning and wanted to escape, the deceased suddenly came there and overpowered him forcibly. In the struggle to get released, he inflicted injuries to him. The Counsel urged to consider the ''defence'' that intention was to take shelter inside the house and not to commit the murder. The accused was compelled to inflict injuries in self-defence.

22. We are not persuaded by this submission of the counsel. The confessional statement of an accused in police custody cannot be taken as gospel truth to provide a convenient escape route to an offender. He cannot be permitted to pick up a part of the confessional statement suited to him and deny the inculpatory portion. In the present case, throughout the trial, the accused denied his hand in the crime and claimed innocence. No ''defence'' was put to the prosecution witnesses that his only purpose to enter into the house was to take shelter from the cold or that he inflicted fatal injuries in self-defence.

23. It is well settled that a confessional statement before the police is not at all admissible in evidence under Sections 25 and 26 of the Evidence Act. Even ''admissions'' in one''s own favour are not admissible. In the case of ''Aghnoo Nagesia Vs. State of Bihar'' AIR 1966 SC 119, the Supreme Court held :

13. Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each

part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact i.e. some fact which by itself or along with other admitted or proved facts suggested the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

14. If proof of the confession is excluded by any provision of law such as Section 24, Section 25 and Section 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section such as Section 27 of the Evidence Act. Little substance and content would be left in Sections 24, 25 and 26 if proof of admissions of incriminating facts in a confessional statement is permitted.

18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.

19.....Some of the decided cases took the view that if a part of the report is properly severable from the strict confessional part, then the severable part could be tendered in evidence. We think that the separability test is misleading, and the entire confessional statement is hit by Section 25 and save and except as provided by Section 27 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence.

24. When no part of the confession made by an accused in custody before a Police Officer is admissible in evidence, he cannot derive any benefit of it. Only in certain circumstances the "defence" pleaded and proved can be considered on the analogy of answers give u/s 313 Cr.P.C., while appreciating the testimonies of PWs. In the light of the above circumstances, we find no substance in the appeal and the same is accordingly dismissed. We are informed that the Appellant is absconding. This file is to be transmitted to Trial Court to ensure the Appellant"s arrest to serve the remainder of the sentence awarded to him.