(2009) 08 DEL CK 0379

Delhi High Court

Case No: Criminal A. No. 62 of 1996

Amiruddin	APPELLANT
Vs	
State (Delhi Administration)	RESPONDENT

Date of Decision: Aug. 26, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304

Citation: (2010) 1 ILR Delhi 267

Hon'ble Judges: Sanjay Kishan Kaul, J; Ajit Bharihoke, J

Bench: Division Bench

Advocate: Praveen Marahatta, for the Appellant; Sunil Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Kishan Kaul, J.

A movie was going on in the Neelkanth Community Centre in the afternoon of 12.01.1991. Ashok Kumar and Manoj Kumar were watching the movie. One Zahid was also watching the movie and had some altercation with Ashok Kumar (PW-5) and a blow was delivered by Zahid on the nose of Manoj Kumar. Manoj Kumar left the Community Centre leaving behind Ashok Kumar (PW-5) and while going to his house met Raju (PW-1), Ghanshyam (PW-3), Chanderpal (PW-4), Mukesh Kumar (PW-15) and one Rajender (deceased) and told them about the incident. All these persons went to the Community Centre and the matter was apparently sorted out. The said persons were thereafter returning back when at about 3.45 p.m., the appellant (the brother of Zahid) came from behind and struck Rajender at his back with a knife. A PCR van came to the site and ASI Dev Dutt (PW-16) removed the deceased to the hospital where he was declared brought dead at 4.25 p.m.

2. The appellant was subsequently apprehended and charged with the offence of murder u/s 302 of the Indian Penal Code, 1860 (for short, IPC). The appellant pleaded not guilty and after trial in terms of the judgment dated 23.03.1996 was

held guilty for the offence u/s 302 of the IPC and sentenced to undergo life imprisonment and pay a fine of Rs. 1,000/- in default of which, he was to further undergo RI for six months. This has resulted in the present appeal. It may be noticed at the inception itself that the case of the prosecution is really based on ocular evidence and the eye-witnesses have deposed in favour of the prosecution. The trial court has found that the prosecution failed to prove recovery of weapon of offence on account of the fact that the post-mortem report showed that the injury could not have been caused by the knife recovered. However, in view of the direct evidence available, non-recovery of weapon was held to be not material and the contradictions, discrepancies and improvements in the statements of the witnesses were found to be of a minor nature, which did not go to the root of the matter.

3. The prosecution examined 23 witnesses, but the entire case revolves around the testimony of 6 witnesses, who are stated to have witnessed the crime. These are PW-1, PW-3, PW-4, PW-5, PW-10 and PW-15. Apart from them, PW-16 is the ASI, who took the deceased to the hospital while PW-22 is the doctor who carried out the post-mortem. The testimony of PW-1 relates the facts as setout hereinbefore, which resulted in the incident. The appellant is stated to have taken out chura saying, "yeh roj roj ki larai khatam kar deta hoon" and stabbed the victim in the back whereafter he ran away along with the chura (knife). The PCR van came thereafter and the victim was taken to All India Institute of Medical Sciences (AIIMS). The said witness also deposed that he knew the accused earlier and that the appellant and the deceased earlier had disputes over some petty matter. This witness has also stated that he went to the hospital in the PCR and his statement was recorded by the police. The testimony of PW-3 is almost identical. The only difference in the testimony of PW-4 is that while stabbing, the appellant is stated to have said, "roz roz ke jhagre ko hamesha ke liya khatam kar deta hoon". PW-4 states that he went to the hospital with PW-15 on 13.01.1991 and S.I. Lal Chand, PW-23 asked them to accompany him to the house of the appellant. The appellant was not found whereafter they went to the house of one Nizam in Kalu Sarai. The appellant was apprehended on the pointing of the said PW-4 and thereafter disclosed that the knife had been kept by him at the house of one Feroz at Hauz Khas. The disclosure statement Ex. PW-4/B was recorded and thereafter the appellant, PW-4, PW-15 were taken to Hauz Khas from where the recovery of the knife took place, which was sealed in a parcel. The draftsman visited the site on 21.02.1991 and took measurement and rough notes on the site being pointing by PW-4. The scaled site-plan (Ex. PW-6/A) was prepared in his office on 11.03.1991.

4. PW-5, Ashok Kumar, has deposed on the similar lines and he took the deceased to the hospital in the PCR and also got admitted in the hospital for his injuries. PW-10 has supported the incident as also PW-15 has further deposed that they could not apprehend the appellant at site and that he had accompanied PW-4.

5. Dr. M.S. Sagar, PW-22, conducted the post-mortem. An ante-mortem stab wound was found on the left side of the back, which was opined to have caused the hemorrhagic shock and the injury was caused by a sharp-edged weapon. The wound had been inflicted with such force that the sharp-edged weapon had pierced through the left lower lung. The said witness, however, opined that the injury found on the dead-body of the deceased was unlikely to be caused with the knife Ex. P-1.

6. Learned Counsel for the appellant sought to contend that no reliance could have been placed on the testimony of PW-1, PW-4 and PW-5 to establish the motive and that once the prosecution came with some evidence to establish motive, it became the duty of the prosecution to prove the same. Learned Counsel in this behalf relied upon the observations in The State of Uttar Pradesh Vs. Hari Prasad and Others, . We, however, fail to appreciate as to how this judgment would come to the aid of the appellant since the ratio of the judgment is that it cannot be said that even if witnesses are truthful, the prosecution must fail for the reason that the motive of the crime is difficult to find. A motive is often indicated to heighten the probability that the offence was committed by the person who was impelled by that motive, but if the crime is alleged to have been committed for a particular motive, it is relevant to inquire whether the pattern of the crime fits in with the alleged motive. Similarly the observations in Ram Gopal Vs. State of Maharashtra, , the acquittal was on account of the fact that neither the motive nor the administration of poison, which caused the death, was proved.

7. On the other hand, learned Counsel for the respondent has relied upon the observations in Molu and Others Vs. State of Haryana, to support the plea that where direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. It has been observed that sometimes motive is clear and can be proved, while at other times, the motive is shrouded in mystery and it is very difficult to locate the same. So long as the evidence of the eye- witness is creditworthy and is believed by the Court, the presence of motive or not wholly becomes irrelevant.

8. It is not in dispute that the appellant is the brother of Zahid with whom the dispute occurred and though the dispute was sorted out, the appellant stabbed the deceased. The case is based on ocular evidence and though the background of some minor disputes between the appellant and the deceased has been mentioned as a possible motive, the aspect of motive really is not of any great significance if the ocular evidence can establish the commission of the crime. The ocular evidence is of 6 witnesses, who witnessed the crime. The testimony of these witnesses is consistent insofar as the description of the manner of the commission of the crime is concerned as also the identification of the appellant. All these witnesses have deposed that they saw the appellant coming from behind and stabbing the deceased with the knife. The appellant has been identified as the assailant, who inflicted the knife wound on the deceased by all these witnesses.

9. Learned Counsel for the appellant sought to cast a shadow on the deposition of these witnesses by contending that there were a number of other persons present at site while the investigating officer chose to examine only those persons, who are deeply connected with the family of the deceased and, thus, these witnesses cannot be said to be independent witnesses. This aspect has been succinctly dealt with in para 19 of the impugned judgment. It has rightly been found that only PW-4, Chanderpal, is the uncle of the deceased, while the other witnesses were not related to the deceased. The mere fact that the other witnesses were of the brotherhood of the deceased and knew both the deceased and the appellant was no ground to discredit the testimony of these witnesses. These witnesses have been by and large consistent in their deposition and such deposition cannot be ignored. The trial court was justified in relying on such testimony for the purpose of conviction of the appellant.

10. The challenge laid by learned Counsel for the appellant to the place of the incident is also similarly misplaced. The place of the incident is clearly identified and the site-plan was drawn, which stands proved. The location has also been discussed and merely because PW-5 and PW-15 had stated that the blood had fallen on metal road, while PW-10 had stated that the blood had fallen on the grass would not make a difference as both are in proximity to the place of the incident. There was an area of park as well as the road and, thus, as rightly observed by the trial court, blood could have fallen at both the places. There is no animosity attributed to any of these witnesses, who were all living in the area and by the sequence of events related were naturally present at the site. The testimony of these witnesses evokes full confidence.

11. Another aspect of challenge to the impugned judgment is that the conduct of the witnesses was not in the natural course and, thus, there is a doubt that they were present at the site. It is alleged that no effort was made to apprehend the appellant even though six of them were present. It is alleged that the PCR van should not have found the deceased unattended. The claim of the witnesses that they accompanied the injured in the PCR van is sought to be belied by the fact that no blood came on the body or clothes of the eye-witnesses and that the testimony of PW- 16 showed that only one public man accompanied to the injured at the hospital. Thus, the manner of removal of the deceased is said to be shrouded with suspicion.

12. It must be noticed that there is no consistent manner in which a person may react to the scene of the crime. In this behalf, it would be useful to reproduce the observations made by the Supreme Court in Rana Partap and Others Vs. State of Haryana, in para 6 as under:

6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the

comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

(emphasis supplied)

13. In our view, thus, nothing much would turn on the manner of reaction of the witnesses to the incident of stabbing. In fact, one of the witnesses did say that an endeavour was made to run after the appellant, but he disappeared quickly.

14. The aspect of name of all the persons being recorded, who accompanied the deceased or who may have come immediately to the hospital, has been rightly emphasized by learned Counsel for the State by submitting that it is not the name of all the persons, which has to be noticed in the MLC in normal routine and once the deceased is accompanied by a police officer, the noting of his name would suffice.

15. It is no doubt true that the knife, which has been recovered, could not be co-related to the crime as the doctor, who carried out the post-mortem, has opined that the wound in question could not have been inflicted by that knife, but then the recovery of knife was at the behest of the appellant and he may have led the I.O. to a different knife to create doubt in the prosecution.

16. We have already noticed that the present case is one based on ocular evidence and, thus, the conviction can be based on an eye-witness account as has been done by the trial court even if the knife could not be co-related to the wound. We draw strength from the observations made by the Supreme Court in Dharam Pal and others Vs. State of U.P., where it has been observed that possibly, the accused could have used some other weapon and even if there is a wrong description of the weapon, that would not discredit the evidence of the eye-witnesses. To the same effect are the observations in Pradumansinh Kalubha Vs. State of Gujarat, .

17. The last aspect urged by learned Counsel for the appellant is that the present case, in any event, does not fall within Section 302 of the IPC, but at best could fall under Part II of Section 304 of the IPC. It was urged that there was no animosity between the appellant and the deceased, the incident took place all of a sudden when the appellant inflicted the single injury and that too on a non-vital part of the body at the back. It was also urged that the appellant was about 19 years of age at that time and is now married and has minor children. This position has arisen because the appellant was enlarged on bail and sentence was suspended by the Order dated 02.08.1999 since he had already served a number of years. The

appellant was, however, re-arrested as he chose not to appear for hearing of the appeal in July, 2009 and has thereafter been in custody.

18. The medical evidence shows the extent of the wound. If the medical evidence is examined, it would show that the gravity of injury was such that the knife pierced deep into the lungs from the back which resulted in the death within a few minutes. The utterance of the appellant before inflicting the knife also shows that the intent was to cause death of the deceased. The deposition of PW-22, Dr. Sagar, shows that the injury sustained by the deceased was sufficient to cause death in the ordinary course of nature.

19. We must also notice that it was not something, which happened on the spur of the moment. The incident actually occurred with the brother of the appellant and the issue was sorted out. The parties were going back when the appellant appeared and for no provocative reason at all, which could be related to any immediate action, inflicted wound with such force and with such intention as to cause death.

20. Learned Counsel for the respondent has pointed out that in a recent judgment in Mohd. Asif Vs. State of Uttaranchal, , the injury had been inflicted on the back and the request to convert the sentence from u/s 302 of the IPC to Section 304 of the IPC was declined as the intent had to be gathered from all the facts and circumstances of each case.

21. Learned Counsel for the appellant, on the other hand, relied upon the following judgments:

(i) State of Andhra Pradesh Vs. Rayavarapu Punnayya and Another, ;

(ii) Jagrup Singh Vs. State of Haryana, ; and

(iii) Jagtar Singh Vs. State of Punjab, . These judgments are on their own facts. In State of Andhra Pradesh v. R. Punnayya's case (supra), the general principles governing prosecution for cases of murder or culpable homicide not amounting to murder have been discussed succinctly, but turning on their own facts. In Jagrup Singh's case (supra), the assault was held to be in the heat of the moment and without being premeditation. In Jagtar Singh's case (supra), the injury was held to be inflicted on the spur of the moment and to an extent on the deceased's provocation in a sudden and chance quarrel and, thus, in the facts and circumstances of the case, it was held that the conviction u/s 302 of the IPC was not proper.

22. It is no doubt true that the family position of the appellant is different from what it was earlier, but then that by itself can be no reason since the option before the Court to award any lesser punishment does not exist once the case falls within the purview of Section 302 of the IPC.

23. We, thus, conclude that no infirmity can be found with the impugned judgment and the conviction of the appellant is in accordance with law and facts of the case. The appeal is dismissed and the appellant to serve the remaining sentence.