
(2009) 02 DEL CK 0290

Delhi High Court

Case No: Criminal A. 105 of 2008

Ibrahim

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Feb. 19, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 392, 394

Hon'ble Judges: Pradeep Nandrajog, J; Aruna Suresh, J

Bench: Division Bench

Advocate: K.B. Andley, K.K. Tyagi and Iftekhar Ahmed, for the Appellant; Pawan Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Criminal law was set into motion when pursuant to a wireless information DD No. 32B, Ex.PW-1/A, was recorded by Const. Randhir Singh PW-1, at 11.40 AM on 02.03.2002 at PS Sultan Puri to the effect that a husband and wife are quarreling in a house bearing Municipal No. F-2/322, Sultan Puri, Delhi.

2. ASI Puran Chand PW-22, was handed over a copy of the DD Entry. Accompanied by Const Jagdish PW-16, he reached the spot where both met Aakash PW-2, who told them that a lady named Baby (hereinafter referred to as the "Deceased") who was living as a tenant in a room on the first floor of the property was being beaten by a man named Ibrahim and that he had locked Ibrahim inside the room by bolting the door from outside.

3. ASI Puran Chand PW-22, and Const. Jagdish PW-16, along with Aakash PW-2, reached the first floor of the property and what happened thereafter is recorded in the endorsement (tehrir) Ex.PW-22/C made by ASI Puran Chand PW-22, which reads as under:

Respected Duty Officer PS Sultan Puri Delhi it is humbly submitted that after receiving a copy of DD No. 32B I ASI accompanied with Const. Jagdish No. 2743/NW reached the spot where a crowd was gathered. Aakash who was present at the spot told me that one Ibrahim is beating his aunt in the room of the tenant in the first floor of the property and that he had locked Ibrahim in the said room by bolting the door from outside. When I ASI along with Aakash reached the first floor and opened the door I saw that a lady named Baby who was soaked in blood was lying dead on the ground and the goods present in the room were lying in a scattered condition. Aakash had told me that the name of the lady was Baby. A boy named Ibrahim whose hands were smeared with blood was found standing near the lady. I ASI conducted the personal search of Ibrahim whereupon a small jewellery pouch was found in the right pocket of his pant. The jewellery pouch was opened and one pair of gold earrings, three pairs of silver anklets, one pair of toe ring and one pair of silver coin on which Om was inscribed were found in the said pouch. At that time Jagdish who had just arrived at the spot identified the jewellery articles found in the pouch as belonging to him. The said jewellery articles were kept back in the pouch and pouch was kept in a cloth pulanda. The said pulanda was sealed and seized as an evidence by the police. Thereafter the statement of Aakash was recorded and on basis of said statement and circumstances found at the spot Ibrahim is found guilty of committing offences punishable u/s 394 and 392 of Indian Penal Code. The said endorsement is being handed over to Const. Jagdish No. 2743/N for registration of FIR. The FIR be registered and case be entrusted to SHO for further investigation. The photographer and crime team be sent to the spot for investigation. Arrival at the spot: 02.03.2002 at around 11.30 AM Place of occurrence: Room inside the first floor of F2/322 Time of departure of Endorsement: 02.03.2002 at 1.30 PM. (Translated Version)

4. The endorsement aforementioned on basis whereof the FIR was registered was preceded by ASI Puran Chand PW-22, recording the statement Ex.PW-2/A of Aakash, the gist whereof is that Aakash along with his brother Anurag and a friend were present on the ground floor of his house on the date of the incident. That at around 11.30 AM he went to the first floor where Jagdish with his family was residing as a tenant and found that the door of the room of the tenant was locked from inside and very loud voices were coming from inside. He peeped inside the room from the keyhole of the door and saw that Ibrahim, whom he had seen earlier on one occasion and was known to him, had thrown their tenant Baby on the floor; was sitting on her body holding her neck, and that the abdomen of Baby was soaked in blood. He bolted the door of the room from outside and came downstairs. That on coming downstairs he told everything to his brother Anurag who raised an alarm at which lot of people gathered around their house and somebody from the crowd also informed the police.

5. The statement Ex.PW-2/A on which the endorsement Ex.PW-22/C was made by ASI Puran Chand was forwarded at 1.30 P.M. through Const. Jagdish PW-16, to the

police station for registration of a FIR. HC Surender Singh PW-6, recorded DD No. 16A, Ex.PW-6/A, to the effect that he has received endorsement Ex.PW-22/C from Const. Jagdish at 1.50 P.M. on 02.03.2002. Thereafter PW-6, registered the FIR Ex.PW-6/B, being No. 200/2002 under Sections 394/302 IPC. On registration of the FIR, PW-6 recorded another DD No. 17A, Ex.PW-6/C, to the effect that he had completed registration of the FIR at 2.40 PM on 02.03.2002. The said FIR was handed over to Manohar Singh, PW- 21, who at the relevant time was posted as SHO of Police Station Sultan Puri, for further investigation. On receipt of the information about the happening of the incident, Manohar Singh PW-21, accompanied with Const.Sahib Singh PW-14, also reached the spot.

6. As recorded in the tehrir Ex.PW-22/C the appellant Ibrahim was apprehended at the spot, as the needle of suspicion strongly pointed towards him. In fact, if the tehrir is correct, the appellant was caught red-handed. As recorded in the tehrir the personal search of the appellant resulted in the recoveries as recorded in the tehrir. Further, disclosure statement Ex.PW-14/B of the appellant resulted in the recovery of a knife and a clutch wire from the room at the time of the arrest.

7. Investigating at the spot and as recorded in the tehrir the pouch containing the jewellery recovered from the pocket of the appellant was seized vide seizure Ex.PW-22/A. Cotton soaked with blood was seized vide seizure Ex.PW-21/D. Sample control earth was seized vide seizure memo Ex.PW-21/E. Blood stained earth was seized vide memo Ex.PW-21/F. A stereo and a speaker were seized vide Ex.PW-21/G.

8. Const. Chunni Lal (Photographer) PW-3 and Const. R.N. Rawat (Finger Print Expert) PW-8, from the crime team were summoned. 9 photographs, Ex.PW-3/1 to Ex.PW-3/8 (one photograph could not be developed), negatives whereof are Ex.PW-3/P1 to Ex.PW-3/P9 were taken. PW-8 lifted one chance print from the iron box found at the spot and opined vide his report, Ex.PW-8/A, that the chance print found on the iron box is identical with the right middle finger impression mark SI on the finger impression slip of the appellant.

9. Since the deceased was found dead at the spot, her body was sent to the mortuary where Dr. Komal Singh PW-13, conducted the post-mortem on 04.03.2002 and gave his report, Ex.PW-13/A, which recorded that six external injuries were found on the person of the deceased; that the cause of death was asphyxia produced by constricting force over the neck subsequent to the severe pressure induced by a ligature (clutch wire) which was sufficient to cause death in the ordinary course of nature. He handed over the blood stained clothes of the deceased and a blood sample of the deceased on a gauze to the police. On the same date i.e. 04.03.2002 the knife and clutch wire recovered at the spot were sent to him for opinion regarding the weapon used in commission of the offence. Vide report Ex.PW-13/B it was opined that the said clutch wire could have been used to strangle the deceased as the strangulation mark found over neck stimulate the clutch wire mark. It was further opined that the injuries Nos. (3) and (4) found on the

person of the deceased are possible to have been inflicted with the said knife.

10. The seized material was sent to the Forensic Science Laboratory for forensic examination. Vide FSL reports Ex.PW- 20/A-1, Ex.PW-20/A-2 and Ex.PW-20/A-3 human blood of "B" group was found on the blood sample cotton and clothes of the deceased. The report further stated that the knife and clutch wire recovered from the spot were stained with human blood but the blood group could not be determined.

11. Needless to state, the appellant was sent for trial. The charges were framed against the appellant for having committed offences punishable u/s 394/302 IPC.

12. At the trial, apart from examining the police officers associated with the registration of the FIR and the investigation, as also the doctor who conducted the post-mortem of the deceased; Aakash was examined as PW-2. Anurag, brother of Aakash was examined as PW-4. Dharmender, friend of Aakash was examined as PW-5. Surender Kumar, a resident in the neighborhood of the deceased was examined as PW-7. Jagdish Parsad, husband of the deceased was examined as PW-9. Shakuntla, an acquaintance of the deceased was examined as PW-12.

13. Aakash PW-2, did not support the case of the prosecution and turned hostile. He resiled from his earlier statement recorded by the police. He deposed that on the date of the incident he had gone upstairs to make a request for lowering the volume of the music but did not see anything there. That he had given no statement to the police but the police had obtained his signatures on a blank piece of paper on the date of the incident. That Jagdish, husband of the deceased was not present at the spot when the police officers reached the spot.

14. Anurag PW-4, brother of Aakash, also did not support the case of the prosecution and turned hostile. He deposed that on the date of the incident his brother Aakash had gone upstairs and had returned downstairs in a perplexed condition due to which he and one Dharmender who was also present in their house raised an alarm. He denied that on returning from the first floor Aakash had told him that the appellant was beating the deceased or that he had locked the appellant inside the room by bolting the door from outside.

15. Dharmender PW-5, friend of Aakash, also did not support the case of the prosecution and turned hostile. He deposed that on the date of the incident he was present in the house of Aakash but had left the house when he heard loud voices coming from the first floor of the house. He also denied that on returning from the first floor Aakash had told him that the appellant was beating the deceased or that the deceased was lying on the floor or that she was bleeding.

16. Surender Kumar PW-7, who was a resident in the neighbourhood of the deceased deposed that the initial information that a husband and wife are quarreling in the house bearing Municipal No. F-2/322, Sultan Puri, Delhi based

whereon DD No. 32B Ex.PW-1/A was recorded by the police was given by him. He further deposed that he had not come out of his house to inquire about the matter as he was suffering from cancer.

17. Jagdish Parsad PW-9, husband of the deceased deposed that the jewellery pouch containing the jewellery articles of the deceased was recovered by the police from the pocket of the pant of the appellant in his presence. That the police had recovered clutch wire and knife from the spot at the instance of the appellant in his presence.

18. Shakuntala PW-12, an acquaintance of the deceased deposed that she had identified the dead body of the deceased on the date of the incident. She further deposed that Jagdish, husband of the deceased was present at the spot during the conduct of investigation by the police officials.

19. In his statement recorded u/s 313 CrPC the appellant denied everything. He stated that the police officials have falsely implicated him in connivance with Jagdish Parsad, husband of the deceased who is the real culprit. He further stated that at around 1.00 P.M. on 02.03.2002 he had gone to the spot on his own where the police arrested him and falsely implicated him. When questioned about the presence of his fingerprints on the iron box lying on the spot he replied that the police had asked him to lift the said iron box because of which his fingerprints got imprinted on the box.

20. On behalf of the appellant, one Rabia who was the sister of the deceased and one Sadiq Hussain who was the son of the deceased from her first marriage were examined as DW-1 and DW-2 respectively. They both deposed that the relations between the deceased and her husband Jagdish Parsad were strained and that Jagdish Parsad used to harass the deceased.

21. Holding that the prosecution has been able to establish the chain of circumstances which unerringly connect the appellant to the crime of murder of the deceased with a view to commit robbery, vide judgment dated 15.12.2007 and order dated 18.12.2007 the learned Trial Judge has convicted the appellant of committing offences punishable under Sections 394/302 IPC and has sentenced him to undergo imprisonment for life.

22. At the hearing of the appeal, Sh.K.B.Andley learned senior counsel for the appellant submitted as under:

A That the case of prosecution against the appellant has fallen like a house of cards, inasmuch as Aakash PW-2, who was the key witness of the prosecution did not support the case of the prosecution at the trial.

B The second submission advanced was that as per the prosecution the appellant was found sitting on the blood soaked body of the deceased and that the hands of the appellant were smeared with blood. Counsel urged that if this was so, the

clothes of the appellant must have also been stained with blood. But, strangely enough, the police officers conducting the investigation neither seized the blood stained clothes of the appellant nor took the imprints of the hands of the appellant on a piece of paper. Counsel urged that the failure on part of the police to collect the best evidence available to nail the appellant is fatal to the case of the prosecution. Going a step further, the counsel reversed the said argument by contending that the fact that best available evidence has not been collected by the prosecution raises a big question mark on the availability of the said evidence. According to the counsel, the fact that neither the blood stained clothes of the appellant were seized nor the imprints of the hands of the appellant were taken, establishes that neither the clothes of the appellant were blood stained nor were his hands smeared with blood which in turn evidences that the appellant was not present at the spot at the time of the arrival of the police officers.

C Third submission urged was, with reference to the reports of the Forensic Science Laboratory Ex.PW-20/A-1, Ex.PW- 20/A-2 and Ex.PW-20/A-3 which record that human blood was detected on the knife and the clutch wire recovered from the spot but blood group could not be determined. Learned Counsel urged that the prosecution had placed much emphasis on the presence of human blood on knife and clutch wire allegedly recovered from the spot at the instance of the appellant to connect appellant with the commission of the offence. Counsel urged that mere presence of human blood on said items, without there being determination of the blood group, is not sufficient to link the appellant with the use of said items.

D The fourth submission urged was, with reference to DD No. 32B, Ex.PW-1/A, that a wireless information has been received to the effect that a husband and wife are quarreling in a house bearing Municipal No. F-2/322, Sultan Puri, Delhi. Learned Counsel urged that the said fact when linked with the testimonies of defence witnesses that the relations between the deceased and her husband were strained and that the husband of the deceased used to harass her, strongly points to the fact that the husband could be a suspect and that the police officers have falsely implicated the appellant to shield the husband of the deceased. Learned Counsel urged that the accused has been prejudiced on account of the police not conducting a fair investigation.

E The fifth submission urged was that there is a material contradiction between the testimonies of the husband of the deceased and police officers conducting the investigation regarding the place from where the knife was recovered, inasmuch as the husband of the deceased PW-9, deposed that the knife was recovered from a place which was between the wall and the box, while the police officers namely ASI Puran Chand PW-22, SI Manohar Singh PW-21 and Const. Sahib Singh PW-14, deposed that the knife was lying on top of a box.

F The last submission urged was that the arrest memo Ex.PW-21/H showed that the appellant was arrested at 6.00 PM on 2.3.2002. Learned Counsel urged that if the

appellant was arrested at 6.00 PM, where was the question of the appellant being inside the room at 11.50 AM when the police came to the spot and where was the question of the police recovering the jewellery pouch containing the jewellery of the deceased from the pocket of the appellant at around 12.00 noon.

23. Before dealing with the contentions urged and as noted above, the salient features of the case of the prosecution and the evidence brought on record may be briefly noted.

24. The appellant was found present at the spot near the body of the deceased when the police officials had reached there. The appellant confessed to his crime and got recovered one knife and a clutch wire in the presence of Jagdish Parsad PW-9. A jewellery pouch containing the jewellery articles of the deceased was recovered by the police from the pocket of the pant of the appellant. The doctor who conducted the post-mortem of the deceased opined that it is possible that the knife and clutch wire recovered at the instance of the appellant were used to murder the deceased. The knife and clutch wire recovered at the instance of the appellant were found to be stained with human blood. The chance print lifted from a box lying at the spot matched with the fingerprints of the appellant. ASI Puran Chand PW-22 and Const. Jagdish PW-16 were cross-examined at length but nothing has been brought to discredit their testimonies that the appellant was found present at the spot when they had reached there. Nothing has been brought out in the cross-examination of Jagdish Parsad PW-9, save and except the discrepancy vis-a-vis the place of recovery of the knife. (With which we shall be dealing shortly herein after). Nothing has been shown to us to discredit the testimony of Shakuntla PW-12, whose testimony brings out that the Jagdish Parsad PW-9, arrived at the spot when the police had started conducting the investigation.

25. As regards the first submission advanced by the learned Counsel for the appellant, it would be apposite to refer to the following observations of the Supreme Court in the decision reported as [Sheikh Zakir Vs. State of Bihar](#), :

It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a Court from finding an accused guilty if there is otherwise acceptable evidence in support of the prosecution. In the instant case, both the Trial Court and the High Court have believed evidence of the prosecutrix and the evidence of the other prosecution witnesses who had been examined at the trial.

26. In the decision reported as *Bhola Ram Khushwaha v. State of M.P.* AIR 2001 SC 229 the Supreme Court has held that the fact of an independent witness turning hostile is not in itself a ground to acquit the accused.

27. In view of the dictum laid down by the Supreme Court in the afore-noted two decisions, we have no hesitation in holding that merely because Aakash PW-2, had turned hostile and did not support the case of the prosecution does not entitle the appellant to be acquitted when there is overwhelming material on the record

establishing the guilt of the appellant.

28. There is yet another aspect of the matter. Though Aakash has totally denied everything, his brother Anurag PW-4 has categorically deposed that when Aakash came down he was in a perplexed condition. Why would Aakash be perplexed if he had seen nothing. Obviously, Aakash had seen something which had perplexed him. The same had to be his seeing Baby being attacked by the appellant. In any case whether Aakash deposed in favour of the prosecution or not is irrelevant for the reason the police could not have connived anything for the reason the information about the crime was received by the police at 11.40 AM. The tehrir Ex.PW-22/C was dispatched at 1.30 PM. In less than two hours, it is inconceivable that the police hatched a conspiracy to fabricate the evidence against the appellant. It has to be noted that for all practical purposes the investigation was wrapped up by 1.30 PM and was documented in the tehrir Ex.PW- 22/C.

29. With regard to the second submission advanced we note the decision of the Supreme Court reported as [Dhanaj Singh @ Shera and Others Vs. State of Punjab](#), wherein also the defence of the appellant-accused was predicated upon the defective investigation. While dismissing the appeal preferred by the accused, the Supreme Court observed as under:

The investigation was also stated to be defective since the gun was not sent for forensic test. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See [Karnel Singh Vs. State of M.P.](#),).

13. In [Paras Yadav and others Vs. The State of Bihar](#), it was held that if the lapse or omission is committed by the investigating agency or because of negligence there had been defective investigation the prosecution evidence is required to be examined de hors such omissions carefully to find out whether the said evidence is reliable or not and to what extent, such lapse affected the object of finding out the truth. The contaminated conduct of officials alone should not stand on the way of evaluating the evidence by the courts in finding out the truth, if the materials on record are otherwise credible and truthful; otherwise the designed mischief at the instance of biased or interested investigator would be perpetuated and justice would be denied to the complainant party, and in the process to the community at large.

14. As was observed in [Ram Bihari Yadav Vs. State of Bihar and Others](#), if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view was again re- iterated in [Amar Singh Vs. Balwinder Singh and](#)

Others, . As noted in Amar Singh's case (supra) it would have been certainly better if the firearms were sent to the forensic test laboratory for comparison. But the report of the ballistic expert would merely be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eye-witnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect credibility of the prosecution version.

30. That the police was slack in not seizing the clothes of the appellant does not mean that the incriminating evidence of clinching nature has to be ignored.

31. With regard to the third submission pertaining to non- determination of group of blood found on the knife and clutch wire recovered at the instance of the appellant suffice would it be to state that it is not an uncommon occurrence that on account of blood getting putrefied no opinion can be formed about the group of the blood. That the clutch wire was recovered from the room where the deceased was murdered and so also the knife and that too just after the crime was committed are enough circumstances to conclude that the same were the weapon of offence.

32. The fourth contention predicated on the contents of the DD entry Ex.PW-1/A that a husband and wife were quarrelling and hence there is evidence that it was Jagdish PW-9, the husband of the deceased who was quarrelling with her and thus he could be the murderer, is nothing but an imagination of learned Counsel for the appellant. As noted above the police officers and Jagdish have deposed that Jagdish reached the house after the police had entered and had apprehended the appellant. Where was the occasion for Jagdish to be the offender or the suspect?

33. The submission that there was material contradiction in the deposition of Jagdish vis-a-vis the police officers pertaining to the place where the knife was recovered, begs the question as to what is a material contradiction. Suffice would it be to state that there are bound to be some discrepancies in the narration of facts by different witnesses when they speak on details. Trivial discrepancies cannot obliterate an otherwise acceptable statement. Parrot like statements are viewed with suspicion by the courts. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal to the case, minor discrepancies or variations in the testimony are immaterial. (See the decision of the Supreme Court reported as State of Himachal Pradesh v. Lekh Raj and Anr. 1999 (9) ST 155).

34. The last submission predicated upon the time of arrest of the appellant recorded in the arrest memo Ex.PW-1/H can be dealt with reference to the defence projected by the appellant in his statement u/s 313 CrPC, and DD No. 17A Ex.PW- 6/C.

35. That the appellant was present at the spot at 1.00 PM has been admitted by him. The appellant has explained his finger prints on the box inside the room by stating that the police had asked him to lift the box. Thus, the appellant has admitted of

being inside the room. It is apparent that the appellant admits of being with the police at least by 1.00 PM. Ex.PW-22/C, the tehrir forwarded to the police station by 1.30 PM records that the appellant has been apprehended at the spot. It is obvious that the formal arrest has been made at 6.00 PM. We should not be understood that we are according our approval to what the police has done for the reason the time of arrest has to be dutifully recorded, the very moment an accused is apprehended and arrested. But, in the facts and circumstances of the instant case it makes no difference. The argument of learned Counsel that the fact of the appellant being arrested at 6.00 PM shows that everything was cooked up before, to be accepted would mean that the police had thought of falsely implicating an accused by 1.00 PM and had recorded that the accused was in their custody, when the accused was actually not in the custody of police; a highly foolish and dangerous act because if the accused was not apprehended the same day how would the police justify his not being produced before the Magistrate the next day. It is obvious that a sloppy mistake has been committed by the police.

36. In view of above discussion, we find no merits in the instant appeal. The same is accordingly dismissed.