
(2012) 10 DEL CK 0246

In the Delhi High Court

Case No : Criminal Appeal No's. 257 and 296 of 2012

Bablu and Others

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 10 AD 199 : (2012) 4 JCC 3136

Hon'ble Judges : Sanjiv Khanna, J;S.P. Garg, J

Bench : Division Bench

Advocate : K.D. Rao, Mr. K. Seshachary, Ms. Sukun Chandela and Mr. Sumeet Verma, for the Appellant; Richa Kapoor, APP for the State, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—Bablu and Pankaj Kumar Gupta have challenged their conviction vide judgment dated 6th August, 2011 for having committed murder of Pappu on 17th January, 2010, at about 11.00 P.M., on the pavement of main road Najafgarh, in front of Metro Pillar No. 564, New Mahavir Nagar, Najafgarh, Delhi. The two appellants have been sentenced to life imprisonment u/s 302 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short). They have been directed to pay fine of Rs. 2,000/- each, in default of which, they have to undergo simple imprisonment for a period of one month. The prosecution case is premised upon the statement of alleged eye witness Satpal (PW-4) who, in his examination-in-chief, stated that he was employed as a watchman at Kamal Tent House, New Mahavir Nagar, Tilak Nagar. On 17th January, 2010, at about 8.00 P.M., he came to attend his duty and was warming himself by burning wood. At about 11.00 P.M. Pankaj and Bablu, who were employed in the tent house, joined him and started warming themselves. They also had liquor. Thereafter, he went on a round, as a part of his duty, and when he returned he saw that the appellants-Pankaj and Bablu were quarrelling and abusing Pappu. The appellant-Pankaj dashed Pappu to the ground and caught him. Meanwhile, appellant Bablu

hit Pappu on his head twice, with a big stone. According to PW-4, the quarrel occurred over a money dispute. Before hitting Pappu, the appellant Bablu had said that he would finish him. Thereafter, the appellants ran away. Satpal (PW-4) avers that he informed his son about the alleged incident and his son called the owner of the Kamal Tent House. Police came to the spot and recorded his statement (Exhibit PW-4/A) which bears his signatures. Subsequently, on 19th January, 2010 at 2.00 P.M. and 4.30 P.M. respectively, the two appellants Bablu and Pankaj were arrested, after being identified by PW-4, who is also a signatory to the arrest memos (Exhibits PW-4/B and PW-4/D, respectively).

2. Learned counsel for the appellants has submitted that PW-4 was not an eye witness and consequently his version should not be accepted and has been wrongly believed by the trial court. Various inconsistencies in PW-4's statement and the statement of ASI Gurcharan Singh (PW-21) and Constable Charanjeet Singh (PW-14) have been pointed out. It is submitted that according to PW-21 and PW-14 when they reached the spot of occurrence, on 17/18 January, 2010, they could not locate any eye witness and this is in stark contrast to PW 4's version who claims to be at the spot when the police arrived.

3. We have considered the appellants' contentions and heard the learned Additional Public Prosecutor whether PW-4 was an eye witness or not and we are inclined to accept appellants' contention for the reasons set out below.

4. In the present case, the police swung into action after information was received at Police Control Room on 17th October, 2010 at 2136 hours (vide Exhibit PW-16/A), that near Pillar No. 564, New Mahavir Nagar, Tilak Nagar, one person was lying unconscious. The call was made by Kapil Batra from telephone no. 9818019341. The PCR van reached the crime spot and recorded, at 2359 hours, that one dead male body was found. What is to be noticed is that name of the person is not mentioned anywhere in Exhibit PW-16/A. Neither did the informer, i.e., Kapil Batra (PW-6) give the deceased's name. The PCR van and the police officers remained present at the crime spot till at least 1.13 hours on 18th January, 2010. On the basis of information given by the PCR van, DD entry No. 40A dated 17th January, "2010 (Exhibit PW-1/A) was recorded at about 11.40 P.M. The said entry again does not mention the person's name who was found unconscious at the said spot.

5. ASI Gurcharan Singh (PW-21) reached the spot, after DD entry No. 40-A (Exhibit PW-1/A) was recorded in Police Station, Tilak Marg, at 11.40 P.M. He has averred that a dead male body was found in blood with injuries on the head and the face. Three stones were lying near the dead body, out of which two stones had blood marks. An empty liquor bottle and two empty glasses were lying at some distance. Evidence was collected from the spot. In his examination-in-chief, PW-21 has stated that, on enquiry, one eye witness, namely, Satpal Singh (PW-4) met him and revealed that he saw the occurrence. However, it is noticeable that PW-4's statement (Exhibit PW-4/A) was recorded, on 18th January, 2010 at 8.30 P.M. Pursuant to the said statement, FIR No. 10/2010 was

recorded at Police Station, Tilak Nagar, at 8.45 P.M. PW-21, in his cross-examination, has stated as under:-

On 17.1.2010, I reached on the spot at 11.50 pm and stayed there till 10.00 am next day, At about 6.00 am public persons came out and were present on the spot and before this time no public persons was seen on the spot on around the spot. We tried to search public person on the spot, when we reached there but despite our best effort no public person found there. Even the Watchman patrolling the lanes of the locality were not present there. The owner of the shop Kamal Tent House came on the spot in the morning at about 6.00 am. His statement was not recorded. He did not tell anything about this case. He also did not tell about any other person who can be acquainted with the facts of this case. We returned from the spot at about 10.00 am. The dead body of the deceased was sent to the DDU mortuary after 2-3 hours of our reaching on the spot. Thereafter, at about 10.00 am all of us came back to PS Tilak Nagar. Thereafter, on the same day at about 5.00 pm we reached at the spot. Since we have not recorded our arrival in the PS at 10.00/11.00 am so we did not record our departure from the PS at about 5.00 pm for the spot. We found the eye witness Satpal near Mother Dairy booth situated at Mahavir Nagar and this booth was at a distance of about 200 mtrs. We came to know about this person during our investigation. We came to know about this eye witness through secret informer, so I cannot tell the name of that person. I did not inquire from the secret informer as to how he came to know about the eye witness having seen the incident. On inquiry, the eye witness told me that he was on patrolling and did not come forward to tell us about the incident out of fear. From the police officials, who were on patrolling duty in this area, we could not come to know about the Watchman present in the said locality. From the Mother Dairy booth the PW Satpal was brought on this spot and there his statement was recorded by me in my own handwriting. Before sending the Rukka to the PS, I discussed with SHO S.D. Dahiya PS Tilak Nagar, regarding the eye witness and his statement and he instructed me to record the Tehrir and sent the Rukka and did not send any Sr. officer at the spot. IO of this case Inspector Ramesh Singh came on this spot alongwith FIR and Asal Tehrir at about 10.00 pm. He also stayed there for a very long time but I cannot tell the probable duration of his stay on the spot.

6. Constable Charanjeet Singh (PW-14) visited the spot with PW-21. This was noticed after DD entry No. 40A (Exhibit PW-1/A) was recorded. In his examination-in-chief, he described what he saw at the spot but he has not indicated presence or statement by any eye witness. He has stated that he had taken the dead body to DDU Hospital and deposited the same in the mortuary of the DDU Hospital but, in his application made to DDU Hospital, the name and other parental details of the deceased was not mentioned. Thus, PW-14 was not aware of the said particulars/details. PW-14 had, thereafter, remained there at the mortuary. In his cross-examination, PW-14 stated as under:

On the day of the incident, I along with other police officials left the police station

after 12.00 midnight and reached on the spot in between 12.15-12.30 am. When we reached on the spot, nobody was present there. Patrolling party reached on the spot after about 15-20 minutes of our reaching on the spot. The patrolling party remained on the spot for some time and left the spot after the arrival of crime team however crime team stayed on the spot for longer time. I exactly do not remember the period of stay of the crime team on the spot as I had already gone with the dead body to the mortuary. I left the spot with the dead body of the deceased at about 01.15 am for DDU hospital and did not come back on the spot. During my stay on the spot, no public person came over there. However the watchman was interrogated in my presence by the IO on the spot on the same day. The watchman was not able to tell anything and stated that he had not witnessed anything. His statement was not recorded by the IO before me. I do not remember the name of that watchman as he was very much perturbed and disturbed. The watchman was quite slim and was having darkish complexion. The watchman however admitted that he used to remain on duty in that area throughout the night and it appeared as if he was aware of the incident but was not disclosing the facts.

7. The mobile Crime Team Report (Exhibit PW-8/A) shows that they had visited the crime spot, on 17th January, 2010 at 12.40 A.M., and had remained there till 1.10 A.M. The Report (Exhibit PW-8/A) does not mention the name of the deceased and does not indicate that any eye witness was found at the spot. The Investigating Officer was advised to do the needful. The Crime Team Report took only photographs at the spot.

8. It is, therefore, clear from the aforesaid evidence that when the police officers, namely, PW-21, PW-14 and the crime team reached the spot, they did not find any eye witness. In fact, they did not even know the deceased's name. No public person could be found and cause of the injuries could not be ascertained. No one was suspected for possibly causing the injuries. As per PW-14, a watchman was interrogated, at the spot itself, and no information could be ascertained. PW-14's statement indicates that the statement made by the watchman (PW-4) was debatable and some suspicion was raised. The police suspected the watchman's (PW-4) involvement. This appears to be correct. PW-4, the alleged eye witness in his cross-examination has admitted as under:

...Thereafter I saw the police arriving at the spot. Police parsons came in the Govt. vehicle. On enquiry, I narrated the incident witnessed by me. Police recorded my statement on the same day at 12.00 midnight while sitting inside Kamal Tent House. In my statement, I narrated each and everything witnessed by me. Police took me to the police station. Police released me at about 10.00 am after two days of my detention in the police station. I was detained in the canteen situated inside the police station. During the period, police did not allow me to go anywhere and I was allowed to leave the police station for the first time on 20.01.2010. All the papers shown to me today were got signed by the police in the police station. Some papers were got signed by the police at Kamal Tent

House office. Again said. No paper was got signed in the police station or office of Kamal tent house and all the papers were got prepared and signed at the spot of occurrence. Since I did not read those papers, I cannot say what was written in those papers. I do not know what was recorded by the police in my statement Ex.PW4/A. Police has read over my statement to me. I was told by the police what was written in my statement. The owner of Kamal tent house had come to the police station when I was there.

9. We may note that the Public Prosecutor did not re-examine PW-.4 after the aforesaid statement was made in the cross-examination by him.

10. From the statement of PW-4, in the cross-examination, it is noticeable that he was detained by the police for two days. He was detained, in a canteen, inside the police station and was not allowed to leave: According to PW-4, his version or statement was recorded on 17th January, 2010 at 12.00 midnight when he had met the police officers, at the crime spot. This factum is completely controverted and is contrary to the official records, that is the Crime Team Report (Exhibit PW-8/A) and the application made to DDL) Hospital for deposit of body in the mortuary. It is contrary to statements of PW21 and PW14. As noticed above, the Rukka on the statement of Satpal Singh (Ex. PW-4/A and PW-21/B) was recorded and sent to the Police Station, on 18th January, 2010 at 8.30 P.M. and thereafter, the FIR (Exhibit PW-2/A) was recorded at 8.45 P.M. Thus there is substantial delay in recording of the FIR, which is not explained and in the present case casts doubt whether PW4 was actually an eye witness.

11. We may now refer to the statement of Sudhir Singh S/o Satpal (PW-3) who claims to have informed about the said occurrence to the owner of Kamal Tent House, from his mobile number. PW-3 has stated that his father, watchman Satpal (PW-4) had come to him and informed that two boys killed a boy and ran away. PW-4 did not name the boys. He, thereupon, made a call to Kapil, Kamal Tent House's owner. He was declared hostile and in cross-examination, by the Additional Public Prosecutor, stated that his father Satpal woke him at 11.30 PM on 17.01.2010, and told him that Bablu and Pankaj had run away after killing Pappu. Thereupon, he made a call to Kamal on his mobile number. In his cross-examination, he has stated that he went to the spot and found the deceased lying in front of Kamal Tent House. After five minutes, the police arrived at the spot. His father was already present. Relevant portion of his cross-examination reads as under:-

On that day I had gone to work at Hari Nagar and returned home at about 8 P.M. My father Satpal was also residing with me at DMS Booth. The Booth where I reside and the place of occurrence is about 15 shops away from each other. After informing me about this incident my father returned on his duty. I went to see the deceased lying in front of Kamal Tent House after about 5 minutes of the arrival of the police at the spot. The police reached the spot at about 11.30 P.M. to 12 midnight. My father was already present on the spot when the police arrived there. The police stayed there for hardly about 10-15 minutes. The police

picked up the deceased and took my father with them. I did not enquire from police persons who took away my father and the deceased as to where they are going. Police did not do any writing work there, before taking away the deceased and my father from the spot. Next day in the evening on 18.01.10 one police person came to my place and I accompanied the police person on my asking. I was made to sit in the PS for one night. My father was also made to sit in the PS with me. After one night I was allowed to leave the PS but my father remained there and returned only in the evening on 19.01.10, My father immediately left for our native village and he did not inform me anything.

12. The statement of PW-3 affirms the fact that Satpal (PW-4) and Sudhir (PW-3) were detained and kept in police custody since the police suspected their involvement. It is thus clear that there is material contradiction in the statement made by PW-3 and PW-4, viz., the statements made by the crime team, PW-14 and PW-21. The statement made by PW-3 and PW-4 is to the effect that they were present at the crime spot and had met the police officers and that PW-4 had informed the police officers that he was an eye witness to the occurrence. This is, however, not supported by and is categorically denied in the statement made by PW-14 and PW-21 or the Police Control Room information (Exhibit PW-16/A). The aforesaid material contradictions and inconsistencies are extremely relevant and fundamental. Thus, presence of PW-4 at the spot or his being an eye witness becomes doubtful. It has become apparent that PW-4 was initially the prime suspect and had been detained by the police, before the appellants were arrested.

13. We may now refer to the statement of Kapil (PW-6). He has stated that, on 17th January, 2010 at about 11.30 P.M., he was informed by one Sudhir, on his mobile phone that one boy was lying unconscious on the pavement, in front of his shop and he had immediately relayed the information on No. 100. It is noticeable that in his statement he has not mentioned the name of the boy or the name of the assailant or that he had employed Satpal (PW-4) as watchman who had seen the occurrence. Neither has he stated that the appellants and the deceased were employed by him or worked with him, as labour or as a waiter.

14. It is to be noticed that no finger prints were lifted from either the liquor bottle or the glasses to match with the finger prints of the two appellants. The CFSL Report (Exhibit PW-22/G and PW-22/H) records that the deceased's blood group could not be ascertained. The CFSL Report does not show that the blood group, found on the alleged clothes recovered from the appellants, was same as the deceased's blood group.

15. We may notice here that, as per initial statement of PW-4 in the First Information Report (marked Exhibit PW-4/A), the deceased had hit Bablu with a stone. He narrates that:

Yesterday, on date 17.1.2010 at 8 pm in the night I had reported for my duty as a watchman and had lit a fire in front of Kamal Lights and Tent House, and was

warming myself in front of the fire. At approximately 11 pm at night I was joined by Pankaj and Bablu who are employed as waiters on contract with Kamal Lights and Tent House. They joined me by the fire and started drinking their liquor from a bottle (pawwa) which they had brought with them, and after a while another boy called Pappu who also works as a waiter joined us. After some time, Pankaj and Bablu started quarreling with Pappu over a money dispute, at which Pappu hit Bablu with a large stone. On being hit by the stone Bablu shouted at Pankaj saying, "Catch him we shall finish him today". Pankaj dropped Pappu to the ground and shouted to Bablu "Hit him with stones," at which Bablu hit Pappu, who was lying on the ground, twice on his head with a large stone. Pappu became unconscious and a lot of blood from his head fell on the pavement, and Bablu and Pankaj ran away. I became very afraid at this, and went and woke up my son Sudhir who was sleeping at the DMS booth and told him what had occurred. He telephoned the son of the owner of Kamal Tent House, Kapil@ Dipu, and told him that a man was lying unconscious in front on his shop, who was Pappu who had been attacked by Pankaj and Bablu.

16. However, we notice that in the arrest memo of appellant-Bablu (Exhibit PW4/B) there is no mention of any injury on appellant Bablu. There is no other record to prove that appellant Bablu had suffered any injury and no MLC of Bablu is on record. The alleged telephone call details, with regard to exchange of telephone call between PW-3 and PW-6, have not also been placed on record and proved. In view of the aforesaid position, we are inclined to accept the plea and contention of the appellants that they are entitled to benefit of doubt and the prosecution has not been able to substantiate and prove beyond doubt the allegation that the appellants had committed the offence. The appeals are accordingly allowed. The appellants will be released forthwith unless required in any other case.