
(2014) 02 DEL CK 0245
In the Delhi High Court
Case No : Criminal A. 24 of 2011

Bhola Shanker and Others

APPELLANT

Vs

The State (N.C.T. of Delhi)

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 304 308 323 34

Citation : (2014) 02 DEL CK 0245

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Neha Gupta, for the Appellant; M.N. Dudeja, APP, for the Respondent

Final Decision : Allowed

Judgement

S.P. Garg, J.—Bhola Shanker (A-1) and Sher Singh (A-2) impugn a judgment dated 29.11.2010 of learned Addl. Sessions Judge in Sessions Case No. 221/2008 arising out of FIR No. 1039/2007 PS Sultan Puri by which they were convicted u/s 304 part-II IPC. By an order on sentence dated 01.12.2010, they were awarded RI for five years with fine Rs. 5,000/-, each. Allegations against the appellants in the charge-sheet were that on 25.06.2007 at about 03.00 P.M. at Jhandewala park, P-1 Block jhuggi, Sultan Puri, they in furtherance of common intention inflicted injuries to Kailash Singh. The police machinery was set in motion when Daily Diary (DD) No. 51B (Ex. PW-12/A) was recorded at PS Sultan Puri at 03.50 P.M. after getting information of a "quarrel" at the spot. The investigation was assigned to HC Hattu Ram who with Const. Shashi Kumar went to the spot and came to know that the victims had already been taken by Police Control Room (PCR) to Sanjay Gandhi Memorial Hospital. After recording Dropti's statement (Ex. PW-2/A), he lodged First Information Report under Sections 323/308/34 IPC. Kailash Singh succumbed to the injuries on 02.07.2007 and Daily Diary (DD) No. 25B (Ex. PW-13/A) was recorded. Section 304 IPC was added in the FIR. During the course of investigation, statements of

the witnesses conversant with the facts were recorded. The accused persons were arrested and pursuant to A-1's disclosure statement crime weapon i.e. danda was recovered at his instance from his house. After completion of investigation, a charge-sheet was filed against the appellants; they were duly charged and brought to trial. The prosecution examined nineteen witnesses to establish their guilt. In 313 statements, the accused persons pleaded false implication. On appreciating the entire evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held both the appellants perpetrators of the crime mentioned previously. Being aggrieved and dissatisfied, they have preferred the appeal.

2. I have heard the learned counsel for the parties and have examined the record. Kailash Singh, Dropti and Ravi suffered injuries in the occurrence and were medically examined at Sanjay Gandhi Memorial Hospital. PW-1 (Dr. Binay Kumar) medically examined Kailash Singh and prepared MLC (Ex. PW-1/A) on 26.06.2007. As per his testimony, the patient was "fit for statement". No explanation was offered by the Investigating Officer as to why the First Information Report was not lodged after recording his statement. MLC (Ex. PW-1/A) records an endorsement "unfit for statement". However, it is unclear as to who had declared him "unfit for statement" or when Kailash Singh came to senses during stay at the hospital. The name of the doctor who had declared him "unfit for statement" and the time when he was so declared do not find mention in the MLC. Rather it records that the patient was "conscious" when medically examined. MLCs (Ex. PW-10/J of Dropti) and (Ex. PW-10/K of Ravi) were prepared by Dr. Arun who was not examined. PW-10 (Dr. Manoj Dhingra) who conducted post-mortem examination on the body of Kailash Singh proved the said MLCs. The appellants were not charged for inflicting injuries to Dropti and Ravi.

3. Dropti, deceased's wife, in her statement (Ex. PW-2/A) recorded at the first instance soon after the occurrence in the hospital implicated only A-1 for inflicting a danda blow on the head of her husband Kailash Singh. She further disclosed that when she and her son Ravi intervened to rescue Kailash Singh, they were beaten and injured by the appellants. She further stated that the occurrence took place on 25.06.2007 when she had gone to her sister Somwati (A-1's wife) to enquire about the whereabouts of her son Hemraj and she started hurling abuses at her to which she objected. At that juncture, her husband (A-1) and son (A-2) arrived at the spot and started beating her. On her raising an alarm, her husband Kailash and son Ravi came for her rescue. On that, A-1 and A-2 brought dandas. She made telephone call at 100 from PCO. While appearing as PW-2, in her Court statement, she made vital/major improvements and deviated from her earlier version given to the police. In her Court statement, she gave an entirely different version as to how the confrontation had taken place and who were the assailants. She deposed that on the day of occurrence, when she was going to the market to purchase a "mutki", A-1 (her sister's husband) met her. When she was talking with him, Meena (A-1's daughter)

came and hit her with her fist on her mouth and broke her teeth. When she enquired from A-1 the whereabouts of her son, Seema, Pinki, Kamlesh, Somwati and Sher Singh (A-2) arrived at the spot and started beating her. Somwati (A-1's wife) hit her on the head with a stone due to which she got 13 stitches. Her neighbour Saroj raised an alarm and her daughter Pushpa, husband Kailash Singh and son Ravi came there to save her. In the meanwhile, Gopal also came there. Then all of them i.e. Bhola (A-1), Sher Singh (A-2), Seema, Pinki, Kamlesh, Somwati, Gopal and Meena started beating her daughter and husband. Her daughter lied on her father to save him. Gopal caught hold of the hands of her husband and A-1 hit him with a "danda" as a result of which he (Kailash Singh) received injuries on his head and fell down. A-2 also hit him with a rod on his head, chest and other parts of the body. Her husband became unconscious and was taken to Sanjay Gandhi Memorial Hospital by PCR where he expired after eight days. She further deposed that Ravi was hit with a danda on his head by A-2. Police recorded her statement (Ex. PW-2/A). In the cross-examination, she disclosed that her statement was recorded by the police on the same day. She was confronted with her statement (Ex. PW-2/A) on the facts which were narrated for the first time in the Court and did not find mention in her previous statement (Ex. PW-2/A). She did not offer any reasonable explanation for the omissions to record all these facts in her initial statement (Ex. PW-2/A). She denied the suggestion that on the day of occurrence, her husband was heavily drunk and sustained injuries due to fall.

4. The investigating agency during investigation did not find involvement of any other assailant besides the appellants. Somwati was put in column No. 2 of the charge-sheet and the Trial Court did not take cognizance against her for committing any offence. In her statement (Ex. PW-2/A), the complainant did not attribute any role to Kamlesh, Seema, Gopal, Pinki and Meena. She even did not allege their presence at the crime scene. Only for the first time in her deposition during trial, she came up with a new version that A-2 hit her husband on his head, chest, etc. with an iron rod. She also implicated Seema, Pinki, etc. for causing injuries to her daughter and husband. Apparently, the complainant did not present true facts and attempted to implicate all the family members. The medical evidence is at variance. In the MLC (Ex. PW-10/J), there is no mention that the patient Dropti had broken her teeth or got 13 stitches due to the injuries on her head. MLC (Ex. PW-10/J) records that the injuries sustained by her (Dropti) were "simple" in nature. Only one CLW on forehead 2.5 x 0.5 x 0.5 was found on her body and she was discharged after first aid. Pushpa was not taken for medical examination and belies her statement that she was also injured in the occurrence. PW-3 (Ravi), Dropti's son, has given inconsistent and conflicting statement regarding the role played by the appellants. In his Court statement, he deposed that on 26.06.2007, her mother Dropti was about to leave for market at about 03.00 P.M. when she enquired from A-1 about his elder brother Hemraj, A-1 and A-2 grabbed her and started beating. On hearing her cries, he came out of the house and saw both of them beating her mother. He and his father Kailash

Singh reached the spot. A-1 gave an iron rod blow on his head near right ear. A-2 inflicted a blow to his father with a "balli" on the head. Due to iron rod blow, he fell down. A-2's sister Meena gave beatings to his elder brother Vikky with a rod. After the beating, the accused persons fled the spot. Police was called at 100. This witness was confronted with the statement (Ex. PW-3/DA) given to the police u/s 161 Cr.P.C. where he had not mentioned the facts deposed for the first time before the Court. PW-3 (Ravi) did not implicate A-1 for inflicting "danda" blow on the head of his father Kailash Singh. He also did not depose about the presence of Somwati, Kamlesh, Pinki and Seema at the spot. Ravi was medically examined vide MLC (Ex. PW-10/K) and the nature of injuries was described "simple". Vikky was not taken for medical examination and falsifies his claim that A-2's sister Meena caused injuries to him with a rod. PW-4 (Vikky) has not supported the prosecution on material aspects and has not corroborated the version narrated by PW-2 (Dropti) or PW-3 (Ravi). He merely deposed that on 25.06.2007 in between 02.30 P.M. to 04.00 P.M. he was sleeping at his house when neighbourers came, woke him up and told that his mother, father and brother Ravi were being beaten by Sher Singh, Bhopal, Meena, Suhaga and Bhola Shanker. When he went to the spot they all ran away from there. PW-4 (Vikky) did implicate any of the appellants for inflicting injuries in his presence to his father and mother. Needless to say, all the prosecution witnesses have given contradictory, inconsistent and conflicting account of the incident. Their statements do not establish beyond reasonable doubt as to who was the actual culprit who inflicted a specific blow with a specific weapon and to whom.

5. During investigation, only danda (Ex. P-1) was allegedly recovered pursuant to A-1's disclosure statement on 26.06.2007. Again, there are divergent versions on this aspect. Complainant Dropti did not depose in her examination-in-chief if "danda" (Ex. P-1) was recovered in her presence. PW-9 (Const. Daya Ram) deposed that A-1 was arrested on the pointing out of the complainant on 26.06.2007 and pursuant to his disclosure statement danda (Ex. P-1) was recovered from his house. PW-18 (ASI Devender Joshi), the Investigating Officer, disclosed that A-1 was arrested on the basis of secret information at Sultan Puri Bus Terminal. No independent witness was associated at the time of recovery of the danda (Ex. P-1) which had no specific mark of identification. No blood was detected in the FSL report on the "danda". Allegedly, it was lying inside the room by the side of the door in the house which was not in the exclusive possession of A-1. The recovery of danda (Ex. P-1) is discrepant. During investigation, no attempts were made to join any independent witness from the locality. Saroj, the complainant's neighbour, who allegedly raised alarm was not examined. Pushpa and Vickky, daughter and son of the complainant, who allegedly got injuries, were not medically examined. Pushpa was not produced as witness before the Court. The investigation carried out is highly defective and faulty.

6. Injuries sustained by the victim Kailash Singh are not under challenge. The accused persons pleaded that Kailash Singh sustained injuries due to fall as he was under the influence of liquor. There is no substance in the appellants' plea in

this regard as in the MLC (PW-1/A), Kailash was not found to have consumed liquor. It was imperative for the Investigating Officer to ascertain during investigation as to who was the actual culprit/assailant who inflicted injuries to the victim/victims. The prosecution has failed to establish the role played by each assailant to ascertain his culpability. In the instant case, both the parties were closely related to each other. Relations became strained due to missing of complainant's son Hemraj and they suspected involvement of A-1's wife Somwati in his disappearance. The complainant was not expected to let the real culprit go scot free. However, from the deposition nothing could be established as to who was the actual assailant who inflicted fatal blows on the body of the deceased. The complainant Dropti in her statement (Ex. PW-2/A) only implicated A-1 for inflicting a single danda blow on head of her husband. However, in her deposition before the Court, she named Bhola Shanker (A-1), Sher Singh (A-2), Seema, Pinki, Kamlesh, Somwati, Gopal and Meena to have inflicted injuries to her husband. She did not assign specific role to each of them. PW-3 (Ravi), her son, contradicted her and accused A-1 to have inflict injuries with an iron rod on his head. He pointed out towards A-2 to have inflicted a "balli" blow on the head of his father. PW-4 (Vikky) did not claim his presence at the spot at the time of occurrence. It is difficult to ascertain the role played by each of the assailants in the incident and the impact of the blow inflicted by any of them on the deceased. The Investigating Officer did not find involvement of Kamlesh, Seema, Pinki, Gopal and Meena. Somwati was kept in column No. 2 for which no cognizance was taken by the learned Trial Court. In these circumstances, it is highly unsafe to convict the appellants u/s 304 part-II IPC. They deserve benefit of doubt. In the result, the appeal is allowed. Conviction and sentence passed by learned Addl. Sessions Judge are set aside. The appellants be set at liberty forthwith, if not required in any other case. Pending application (if any) stands disposed of. Trial Court record be sent back forthwith. A copy of the judgment be sent to the Superintendent Jail for information.