
(2009) 03 DEL CK 0110
In the Delhi High Court
Case No : Criminal A. 115 of 2001

Birbal and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0110

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

Bench : Division Bench

Advocate : Mohit Mathur, for the Appellant; Richa Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The appellants along with Pramod and Sunil were apprehended by the police for the offence of forming a rioting group armed with knives and murdering Moti Lal as also the offence of attempting to murder Ram Dhan.

2. Appellant Birbal is the husband of appellant Om Wati. Raju is the eldest child born to them. Two other co-accused, namely Pramod and Sunil are the younger sons of Birbal and Om Wati. Being minor at the time when the offence was committed they were sent for trial before the Juvenile Court.

3. Thus, in the instant appeal we are concerned with Birbal, his wife Om Wati and their son Raju.

4. For record, we may note that Sunil died during the pendency of trial before the Juvenile Court. Pramod has been convicted and has been lodged in the special home for a period of 3 years.

5. Vide impugned judgment and order dated 29.1.2001, the appellants have been convicted for the offence of murdering Moti Lal. They have been convicted for the offence punishable u/s 307 IPC, as also Sections 147, 148 and 149 IPC.

6. Needless to state, the maximum sentence awarded on the appellants is for the offence of having murdered Moti Lal. The sentences have been directed to run concurrently. Thus, the concern in the appeal is for the offence punishable u/s 302 IPC since the appellants have been admitted to bail after they had undergone the sentence of imprisonment for the other offences.

7. However, we would be noticing all the facts for the reason, if it would stand, the conviction would impinge upon the character of the appellants.

8. Briefly stated, case of the prosecution was that Late Sh. Moti Lal used to object to the activities of Birbal, who as per Moti Lal, used to sell hooch from his shop in the locality under the garb of running a sweat meat shop. That on 16.6.1995, when Moti Lal accompanied by his sons Ram Dhan and Rohtash as also his daughter-in-law (wife of Ram Dhan) Ms. Laxmi were returning to their jhuggi at around 10:00 PM and had crossed the shop of one Banney Ali, appellant Om Wati exhorted her husband and her sons who were armed with knives to teach Moti Lal a lesson; she shouted "ye samaj ke sudharak aa rahe hain, maro koi bachne na paye." At that, Birbal and his sons started inflicting knife blows on the various body parts of Moti Lal. He fell down. When Laxmi attempted to intervene, Om Wati caught Laxmi and Raju stabbed Laxmi. When Ram Dhan intervened he was also stabbed by Birbal and Pramod. When Rohtash intervened to save his father, brother and sister-in-law he was given fist blows. Thereafter, all the accused persons ran away.

9. Moti Lal was declared brought dead at the hospital. MLC Ex.PW-10/A of Laxmi records a stab injury on her scapular region. MLC Ex.PW-10/B of Ram Dhan records two incised wound of 3 cm each in the abdomen piercing till the colon. MLC of deceased Moti Lal records various stab wounds. The injuries stand clearly and explicitly enumerated in his post-mortem report Ex.PW-1/A. He suffered as many as 15 injuries as under:

1. Abrasion 3 x 1 cms on top of head in mid line.
2. Incise 4.5 x 1 cm into subcutaneous tissue prs. Horizontal on right side face 1 cm below right eye.
3. Incised wound 3.5 x 1 cm into subcutaneous tissue deep present on left upper limb.
4. Multiple abrasions in an area 7 x 4 cms present on front of right knee and adjacent leg.
5. Abrasion 10 x 3 cms present on upper left leg.
6. Incised wounds 2 in number and 4 x 0.5 cms each, super facial place in 10 x 0.5 cms area on upper most outer front of left thigh.
7. Incised wound 4 x 0.8 cms into subcutaneous tissue deep on inner aspect left hand, 2 cms distal to the wrist bones near the thumb area.

8. Incised wound 5.5 x 0.5 cms on palm of left hand.
9. Obliquely placed incised stabbed wound 3 x 1.5 cms into chest cavity deep present on left lower front of chest 10 cms below and 2 cms outer to left nipple, 12 cms to the left of mid line, the lower inner angle being 102 cms above left heel. Both angles were acute and both margins were clean cut.
10. Incised stabbed wound obliquely placed 3.2 x 1.8 cms into abdominal cavity deep present on left upper front of abdomen, the lower inner angle being 8 cms below and 1.5 cms outer to the lower angle of injury No. 9, 14 cms to the left of mid line and 94 cms above the left heel. Both angles acute both margins clean cut subcutaneous fat protruding through the wounds.
11. Incised wound 3 x 0.5 cms into subcutaneous deep present on lower back of abdomen, just right to mid line.
12. Incised wounds 5 x 1 into 2.5 cms present on upper outer left buttock.
13. Incised stabbed wound obliquely place 2.8 x 0.5 x 5.6 cms, present on inner aspect mid part of left buttock. Both angles acute and both margins clean cut.
14. Incised stabbed wound horizontally placed 3.6 x 1.8 x 7.4 cms present on inner aspect lower left buttock .3 cms directly below injury No. 13. Both angles acute both margins clean cut.
15. Incised stabbed wound horizontally placed, 3 x 1 x 4.8 cms present on upper inner back of left thigh, 3.5 cms directly below injury No. 14. Both angle acute and both margins clean cut.
10. The post-mortem report opines that death was due to haemorrhage and shock consequent upon stab injuries to spleen and lung vide injury No. 9 and 10; that all injuries were ante mortem; that injuries No. 1, 4 and 5 were caused by a blunt object and injuries No. 2, 3, 6, 7, 8, 11 and 12 were caused by a sharp edged weapon and that injuries No. 9, 10, 13, 14 and 15 were caused by a double edged cutting weapon; and that injuries No. 9 and 10 were sufficient in the ordinary course of nature to cause death.
11. At the trial Banney Ali, PW-12, did not support the case of the prosecution in that refused to identify the appellants as also co-accused Pramod and Sunil as the assailants. He supported the case of the prosecution that Moti Lal died outside his shop; but stated that he had closed the shop at 9:30 PM and noticed a crowd having gathered outside the shop. He stated that he ran away. He stated that he did not know anything about the case.
12. Needless to state the case of the prosecution hinged upon the testimony of Rohtash and Ram Dhan, the two sons of Moti Lal as also on the testimony of Laxmi, the daughter-in-law of Moti Lal.
13. We note that no weapon of offence could be recovered by the police.
14. Rohtash PW-9 deposed that he, his brothers and his parents were residing at

jhuggi/house bearing No. 534, Tej pal Baghichi, Kela Devi Mandir, Jamuna Pushta since the last about 10-12 years. We note that he deposed on 12.7.1996. He deposed that Birbal and his three sons as also his wife were residents of the same area and Birbal used to sell liquor disguising his trade as if he was running a sweat shop. That his father used to object to said activities of Birbal and Birbal and his sons used to threaten his father that if he interferes, he would be done to death. That on 16.6.1995, he i.e. Rohtash, along with his father Moti Lal, his sister-in-law Laxmi and his brother Ram Dhan were returning from Chandni Chowk and were proceeding towards their house on foot. It was about 10:00 PM. When they reached the shop of Banney Ali all accused persons were standing and accused Om Wati shouted "ye samaj ke sudharak aa rahe hain, maro koi bachne na paye".

15. The moment she uttered these words, Birbal and his sons who were armed with knives attacked his father and inflicted knife blows on his head, hips, stomach, back, chest, foot etc. His father fell down on the ground and was dragged by Birbal. That when Laxmi tried to save his father, Om Wati caught hold of Laxmi who was stabbed thereupon by Sunil and Pramod. He deposed that Ram Dhan, his brother, was attacked by Birbal and Raju and that he received injuries on the left side of his stomach, on the back. That his sister-in-law Laxmi received injury on her back near the shoulder and on the hand. That he raised an alarm. Before fleeing the accused assaulted him and gave him fist blows.

16. Relevant for the purposes of the disposal of the appeal, as pointed out by learned Counsel for the appellant, in his statement u/s 161 Cr.P.C. Pramod had named Raju as the one who had stabbed Laxmi. Whereas in Court, he deposed that Sunil and Pramod stabbed Laxmi.

17. Ram Dhan PW-18 also deposed on the same lines as his brother but with the difference that he deposed that when Om Wati caught Laxmi, Raju stabbed Laxmi. Rest of the deposition of the witness is the same as that of his brother.

18. Relevant for the purposes of the appeal is the fact that in his statement made to the police u/s 161 Cr.P.C. he did not name Sunil as one of the assailants of his father.

19. Laxmi PW-19 also deposed on the same lines as PW-9 save and except that even she deposed that when Om Wati caught her by her hair, Raju stabbed her.

20. We note that on being cross examined it surfaced that in her statement u/s 161 Cr.P.C. she did not disclose that Om Wati had caught her by her hair when Raju stabbed her. It may also be noted that whereas in her deposition in Court she deposed that Birbal and his sons were having knives in their hands when she saw them, in her statement u/s 161 Cr.P.C. she had stated that on the exhortation of Om Wati, Birbal and his sons Raju and Pramod took out knives and attacked her father-in-law and that she did not name Sunil in the said statement.

21. As noted hereinabove, in the instant appeal we are not concerned with the quality of evidence against Pramod and Sunil. No doubt, the possibility of Sunil being a person accompanying his parents and not participating cannot be ruled out. But, as noted by us, Sunil has died. In any case, it was for the Juvenile Court to consider said aspect of the matter.

22. What is relevant is that each of the 3 eye witnesses has consistently deposed of the time and the place as also the initiation of the attack. Each one of them has deposed about Birbal, his wife Om Wati, his 3 sons Raju, Pramod and Sunil present on the street. Each one of them has deposed to the motive i.e. the desire of the appellants to do away with Moti Lal who did not like the illegal trade carried on by Birbal. Each one of them has deposed in harmony that the attack commenced when Om Wati exhorted her husband and her sons launched the brutal attack. Each one of them has consistently deposed that Birbal and Raju assaulted Moti Lal.

23. The discrepancy of Rohtash PW-9 deposing in Court that Sunil and Pramod attacked Laxmi and the other two witnesses i.e. Laxmi and Ram Dhan deposing that Raju attacked Laxmi is neither here nor there for the reason with passage of time human memory fades. Where there are more than one assailants, the exact role of each may not be disclosed during evidence. It may be noted that when confronted, Rohtash PW-9, had to concede that in his statement recorded by the police u/s 161 Cr.P.C. he had named Raju as the one who inflicted the blows on the person of Laxmi. Thus, it is apparent that with passage of time he misstated a fact.

24. We note that the assailants of Ram Dhan have been consistently named by all the 3 eye witnesses.

25. That PW-9, PW-18 and PW-19 would have witnessed the incident finds corroboration from the fact that along with the deceased, PW-18 and PW-19 who were injured were admitted at the same hospital. This shows their presence with the deceased. As regards PW-9, we note that the FIR was recorded on his statement. He was found present in the hospital when the investigating officer, on learning about the incident, reached the place of occurrence and thereafter the hospital.

26. From the post-mortem report of the deceased, with reference to the span of the entry wound it is apparent that 4 weapons of offence were used. We say so for the reason the cut marks span 0.5 cm; 0.8 cm, 1 cm and 1.8 cm.

27. Save and except the minor/trivial inconsistency in the deposition of PW-9 and the minor variations in the deposition of the 3 witnesses vis-?-vis their statements recorded by the police u/s 161 Cr.P.C, nothing has been brought out to discredit the said witnesses.

28. Indeed, if the post-mortem report of the deceased has to be accepted, none can argue that it is not a case of a murderous assault on Moti Lal.

29. That the post-mortem, Ex.PW-1/A, is not that of deceased Moti Lal was not argued during the arguments in appeal in Court today.
30. We are satisfied with the finding returned by the learned Trial Judge.
31. We find no merits in the appeal.
32. We note that the appellants have been admitted to bail. Their bail bonds and surety bonds are hereby cancelled.