
(2006) 12 DEL CK 0101
In the Delhi High Court
Case No : Criminal Appeal No. 484 of 2001

Mohd. Ali and Others

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

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

Citation : (2007) 94 DRJ 58

Hon'ble Judges : Madan B. Lokur, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Ritu Gauba, amices Curia, for the Appellant; Sunil Sharma, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Suresh, J.

1 Appellants Mohd. Ali @ Raju @ Fauji and Chhote Lal @ Mota have preferred the present appeal against the judgment dated 24th January, 2001 whereby both the Appellants were convicted u/s 302 read with Section 34 of IPC for having committed murder of Khokha on 13.03.1999 and order on sentence dated 25th January, 2001 whereby they were sentenced to undergo imprisonment for life and fine of Rs. 5,000/- each and in default one year.

2. Complainant Devanand Kumar (PW6) and Manzooria (PW13) were working at Yashpal Garage, Cycle Market, Chandni Chowk. Deceased Khokha was a rickshaw-puller in the same area. Appellants Mohd Ali and Chhote Lal were vagabonds and met their day to day requirements by extracting money from other rickshaw-pullers. It seems that on 13.03.1999 at about 5.15 PM deceased Khokha was present at Yashpal Garage when Mohd. Ali and Chhote Lal demanded money from him for taking liquor to which Khokha refused. There was a scuffle between the deceased and the Appellants. However, the complainant Devanand Kumar and Manzooria intervened and separated them.

3. At about 8.45 PM on the same night both the Appellants came to the Cycle Market and took deceased Khokha inside the parade ground. Devanand Kumar and Manzooria followed them on suspicion and saw that Chhote Lal had thrown Khokha on the ground and was sitting on him whereas Mohd. Ali was hitting Khokha, with an iron pipe, on his head repeatedly. Thereafter, Mohd. Ali lifted a heavy stone and hit Khokha on his face. Khokha stopped crying. Devanand Kumar and Manzooria ran towards the Police Post Cycle Market but on their way they met SI Sanjay Sharma, Ct. Jai Prakash and Ct. Anil Kumar who were patrolling the area. On coming to know that deceased Khokha was being hit by iron pipe and a stone, SI Sanjay Sharma reached the spot along with Devanand Kumar and Manzooria and other police staff. They saw both the Appellants dragging the deceased by his legs. Both the Appellants were apprehended at the spot after a little chase. FIR u/s 302 read with Section 34 of IPC was registered and both the Appellants were arrested. On completion of the investigation they were charge-sheeted.

4. On the basis of prima facie evidence, the learned trial court framed the following charge against both the Appellants:

CHARGE

I, P.S.Teji, Additional Sessions Judge, Delhi hereby charge you (1) Mohd. Ali @ Raju @ Fauji and (2) Chotte Lal @ Motte as under:

That on 13.3.99 at about 8.45 p.m. at Parade ground, Red Fort, you both in furtherance of your common intention committed murder of rickshaw puller named Khokha with stone and iron rod and thereby committed an offence punishable u/s 302 read with Section 34 IPC. The said offence is exclusively trial by the court of Sessions, I accordingly take the cognizance.

And I hereby direct that you be tried by this Court for the said offence.

Dt: 3.8.99 (P.S.TEJI) ADDL.SESIONS JUDGE: DELHI.

Both the Appellants pleaded not guilty and claimed trial.

5. The entire prosecution case hinges on the testimony of Devanand Kumar Gupta (PW6) who happened to be the complainant and an eye witness in this case and PW13 Manzooria, another eye witness to the incident. Both these witnesses have supported the prosecution case including the complaint Ex.PW6/A made by Devanand Kumar Gupta to the police on 13.03.1999. Both these persons also witnessed the recovery of bloodstained iron pipe and bloodstained stone which are weapons of offence used by the appellants for committing homicide of Khokha on the fateful night on 13.03.1999 at about 8.30 / 8.45 PM.

6. Learned Counsel for the Appellants has tried to highlight very trivial and minor discrepancies which have crept in the cross-examination of these witnesses. The discrepancies are in relation to approximate time when the incident took place. The fact remains both the witnesses are illiterate. They were working as

Mechanic in Yashpal Garage at Cycle Market, Chandni Chowk. The discrepancies, which have been highlighted are hardly material to demolish the prosecution case as established by these two witnesses in their testimony as PW6 and PW13 respectively. Both the witnesses have made natural and consistent statements narrating the incident which was witnessed by them.

7. Besides these two witnesses SI Sanjay Sharma (PW20) and Ct. Jai Prakash (PW16) have also corroborated the prosecution case. They saw both the Appellants Mohd. Ali and Chhote Lal dragging the body of deceased Khokha by his legs. Both the Appellants, who were known to the witnesses, were arrested at the spot.

8. Learned Counsel for the Appellants has not been able to indicate any enmity between Devanand Kumar Gupta, Manzooria and both the Appellants so as to falsely implicate them in this case.

9. SHO Inspector Raja Ram (PW19) happened to reach the spot immediately on receipt of wireless message from Police Post In-charge at about 10.30 PM. He carried out the investigation of this case, like getting the spot photographed, lifting of weapons of offence i.e. iron pipe and bloodstained stone, bloodstained earth, bloodstained earth sample, preparation of Site Plan. He also took into possession the baniyan of Chhote Lal and sweater of Mohd. Ali. Both these clothes were bloodstained. Investigation in this case was very quick with no loss of time.

10. Learned Counsel for the Appellants has submitted that Devanand Kumar Gupta and Manzoori are interested witnesses as they happened to be the friends of deceased Khokha . However, this argument is devoid of any merit. It is a well settled law that a witness normally is to be considered "independent" unless he has a cause, such as enmity against the accused, to wish to implicate him falsely. In Dalip Singh and Others Vs. State of Punjab, it is laid down that:

A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

In S. Sudershan Reddy and Others Vs. State of Andhra Pradesh, while relying upon Dalip Singh's case the Apex Court observed:

Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

11. In the case in hand, however, no such cause has been shown on the part of the prosecution witnesses to falsely implicate the Appellants. The independent witnesses knew the Appellants as well as the deceased as they were all working in the same area, Cycle Market, Chandni Chowk for the last number of years.

12. Learned Counsel for the Appellants has also submitted that prosecution has failed to establish motive against the Appellants for the commission of murder of deceased Khokha . In our view, the prosecution does not necessarily fail in establishing the guilt of the accused on its failure to establish the motive for the commission of the offence. The establishment of the motive is not a sine qua non for proving the prosecution version. True, that motive is one of the essentials of a crime, but it can not be said that there is no crime if there is no motive. The prosecution can not be thrown out merely because it fails to prove motive. It is one area which is very difficult to prove being a driving force/emotion inside the mind of the individual. Reference is made to State of Himachal Pradesh Vs. Jeet Singh, .

13. In Bhimappa Chandappa Hosamani and Others Vs. State of Karnataka, , it was observed:

It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution.

14. In Nathuni Yadav v. State of Bihar 1978 (9) SCC 238 it was observed:

Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Campbell struck a note of caution in R.V. Palmer (Shorthand Report at p.308 CCC May 1856) thus:

But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small

pecuniary advantage, and to drive off for a time pressing difficulties.

15. In the case before us PW13 Manzooria has stated on oath about the Appellants having demanded money from the deceased in the evening at about 5.00 / 5.30 PM for taking liquor but when he refused, there was a scuffle. The Appellants had threatened Khokha and in the night, they murdered him. Although in his examination-in-chief, Manzooria stated that he actually witnessed the murder of Khokha, in his cross-examination he stated that some person came and gave information to Devanand Kumar Gupta and to him that the accused have murdered Khokha. It was then that they went to the park and saw Khokha breathing his last. To this extent, this witness had gone back on his statement but there is no doubt that Manzooria was present when Khokha breathed his last and also saw the subsequent events of the accused dragging the body of Khokha and recovery of the weapons of offence. In any event, Devanand Kumar Gupta has fully supported the case of the prosecution and the testimony of Manzooria in conjunction with the testimony of Devanand Kumar Gupta confirms the case set out by the prosecution.

16. PW15 Dr. Komal Singh while working as CMO, Civil Hospital on 17.03.1999 had conducted postmortem on the body of deceased Khokha. On examination he found the following external injuries on the person of deceased:

1. Brush abrasion on left side spreading on whole of back tapering from lower to upper side;
2. Abrasion on the upper abdomen 1 cm x 5 mm;
3. Laceration at left eye ball (eye exceeding out of the socket);
4. Multiple fracture of the left maxilla, mandible, left parietal bone, left temporal bone.

He also found face smeared with blood.

On internal examination he found "massive subdural hemorrhage on the base of the scalp at parietal and temporal region, the scalp and the bones were crushed, blood clot was present over the neck connective and muscle tissues besides other injuries".

As per the doctor cause of death was coma due to head injury subsequent to blunt trauma made by assailants.

17. The opinion of the doctor was also obtained on 06.04.1999 if the injuries found on the person of Khokha could be caused by stone Ex.P1 and the iron pipe Ex.P2. After examining the injuries and comparing them with the weapon of offence shown to him, he opined that external injuries No. 2 and 3 could be caused by iron pipe Ex.P2 and injury No. 4 i.e. multiple fracture of the left maxilla, mandible could be caused by the stone Ex.P1.

18. We have also gone through the Forensic Science Laboratory Report Ex.PX1

and PX2. The metallic pipe is shown to have bloodstains with species of origin as "human" of AB Group. Similarly, the stone piece is found having bloodstains with species of origin as "human" of AB Group. Underwear Ex.P8 belonging to Appellant Chhote Lal, on examination was also found containing human blood of AB Group. Similarly, the sweater Ex.P10 recovered from the person of accused Mohd. Ali was found to have blood of human origin of AB Group. The blood sample of the deceased Khokha is also of AB Group. Underwear of the deceased which was also bloodstained was found to have human blood of AB Group.

19. Thus, we are convinced that the testimony of prosecution witnesses finds full corroboration from medical evidence as well as Forensic Science Expert opinion.

20. In State of U.P. Vs. M.K. Anthony, , it has been laid down that:

While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.

This principle of law was followed in Leela Ram (dead) through Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another, , it was observed that:

Trivial discrepancies ought not to obliterate an otherwise acceptable evidence

21. From the foregoing discussions we conclude that the Appellants are perpetrators of the crime and there is nothing, which casts a shadow of doubt on their involvement in the alleged offence. There is no delay in the registration of the FIR wherein the Appellants were named as the accused persons. There are no contradictions or inconsistencies in the statements of the witnesses in respect of material particulars so as to discredit the version of the prosecution. Accused persons (present Appellants) were found present at the spot dragging the deceased and were arrested there only.

22. The entire prosecution evidence unerringly goes to show the guilt of the Appellants. Therefore, we find that the trial court was right in its approach in coming to the conclusion that the Appellants are guilty of committing murder of deceased Khokha. Hence, we find no merit in the present Appeal, the same is accordingly dismissed. The judgment and order on conviction dated 24th January, 2001 and 25th January, 2001 respectively of the trial court are hereby maintained.

23. In view of the efforts put in by learned amices Curiae, we direct the State to pay him a fee of Rs. 5500/- within six weeks from today.