
(2011) 09 DEL CK 0123
In the Delhi High Court
Case No : Criminal A. No. 701 of 2009

Pappu

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 185 DLT 640

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Ajay Verma, for the Appellant; Richa Kapur, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—The present appeal is directed against the judgment dated 27th April, 2009 passed by the learned Addl. Sessions Judge, Delhi arising out of FIR No. 464/07 u/s 302 Indian Penal Code Police station Timar Pur wherein Appellant has been convicted for the offence punishable u/s 302 Indian Penal Code. The appeal is also directed against the order of sentence dated 30th April, 2009 wherein Appellant has been sentenced to undergo life imprisonment and to pay a fine of Rs. 5000/- and in default of payment of fine to undergo simple imprisonment for six months.

2. The case of the prosecution is as under:

On 19th August, 2007, DD No. 4A Ex. PW-12/A was recorded at Police Station Timar Pur on receipt of information given by PCR (Police Control Room) that a dead body of a woman was found lying at Timar Pur Gole Chhatri Wala Park, Ram Leela Ground. Thereupon SI Rakesh Kumar PW-12 along with Constable Vinod Kumar reached the spot where Shobha PW-1, daughter of deceased was present who made a statement Ex.PW 1/A alleging therein that deceased Asha was her mother. On 18th August, 2007 about 8.30 am, her mother and step father Pappu

i.e., Appellant had come to her house. Her mother Asha had given her one pazeb for selling it in the market and she had sold the same for Rs. 350/- and gave the money to her mother, out of which her mother gave Rs. 50/- to her for purchasing vegetables. She alleged that her mother and step father Pappu used to quarrel as Pappu used to doubt the character of her mother. On that day also, they had quarreled but she had pacified them. At about 10 pm, Appellant came from outside and was drunk. Due to paucity of space in her jhuggi (hut), her mother and Appellant Pappu went to Chatriwala Park to sleep on a chabutra (platform). Complainant Shobha PW-1 had served food to them in the park and at that time, Appellant Pappu was quarreling with her mother Asha and told her that he had been tolerating her bad character for many days and that he would not tolerate it further. Complainant PW1 pacified them and thereafter came back to her jhuggi. At about 1.30 am, someone from the neighbourhood informed her that her step father had killed her mother. Thereafter she ran to the park and saw her mother lying dead on the chabutra and Appellant Pappu was there and he was saying that he had killed her because of her dirty habits. SI Rakesh Kumar PW-12 attested her statement Ex.PW1/A at point "A" and prepared the ruqqa and sent the same to the Police Station through Constable Vinod. On the basis of her statement Ex.PW 1/A, FIR No. 464/07 Ex.PW3/A u/s 302 Indian Penal Code was registered. In the meantime, Inspector K.S. Rawat PW-15 had also arrived at the spot. Crime team also reached there and inspected the spot and took photographs. Appellant was present at the spot and he was apprehended at the instance of Shobha PW-1. After interrogation, he was arrested vide arrest memo Ex.PW-1/E. His personal search was conducted vide memo Ex.PW 1/F. Appellant also made a disclosure statement Ex.PW-1/G. One Chunni Ex.P-1 from the spot was got recovered by the Appellant which was seized by the IO (Investigating Officer) vide seizure memo Ex.PW-1/C after completing necessary formalities in this regard. The other articles lying at the spot i.e., dari, green coloured bed sheet, one pair of hawai chappals stated to be of deceased were seized by the IO after completing necessary formalities. The dead body was sent to the mortuary. Postmortem examination of deceased was got done. After completion of necessary investigation, a challan was filed before the learned M.M. Thereafter the case was committed to the Sessions court where the charge was framed against Appellant for having committed the offence punishable u/s 302 Indian Penal Code. Appellant pleaded not guilty and claimed trial.

3. The prosecution, in all, had examined 15 witnesses. Out of which, the material witnesses are Shobha PW-1, Reena PW-2, Satish Kumar, PW-5, Rajesh Gupta PW-6 and Rajesh @ Santi PW-9. Shobha PW-1 is the daughter of the deceased. Rajesh @ Santi PW-9 is the husband of Shobha PW-1, Reena PW-2, Satish Kumar, PW-5 and Rajesh Gupta PW-6 are all residents of that area. The remaining testimonies relate to police and medical evidence.

4. Incriminating evidence was put to the Appellant in his statement u/s 313 Code of Criminal Procedure wherein he admitted having gone to the house of Shobha

PW-1 with deceased on 18th August, 2007 at 8.30 am. He also admitted that he was arrested at the spot on 19th August, 2007. He has denied the remaining incriminating evidence against him and stated that he is an innocent person. No evidence was led in defence.

5. The learned Addl. Sessions Judge relying on the "last seen" evidence of Shobha PW-1 of having seen the deceased in the company of Appellant on 18th August, 2007 at 10 pm, the extra judicial confession made by Appellant as deposed by Shobha PW-1, Reena PW-2 and Rajesh Gupta PW-6, medical evidence, motive of Appellant and Appellant having been apprehended at the spot, convicted the Appellant for the offence u/s 302 Indian Penal Code.

6. It is contended that evidence of Shobha PW-1 is not believable as she is an interested witness being the daughter of the deceased. It is contended that even the evidence of Rajesh Gupta PW-6 is also not believable as his conduct is unnatural. It is contended that in his evidence he has stated that on 19th August, 2007 at about 1 am he was going from Chatriwala Park, Ram Leela Ground where he saw a body of women lying on the Chabutra and a red coloured chunni Ex. P-1 was tied around her neck and the Appellant who was also present was shouting that she was a woman of a loose character and he had killed her. Thereafter, he went to fetch ice bricks and returned at about 5 am and by that time, the body had been removed. The police made enquiries and he made a statement to the police. It is contended that the conduct of the aforesaid witness is very unnatural as after having seen the dead body, he did not inform the police and rather left the spot and thereafter came back at 5 am and on enquiry by police made a statement to the police. It is contended that seeing his conduct he is not a believable witness.

7. It is further contended that alleged neighbour who had allegedly informed Shobha PW-1 about the murder of her mother has not been examined by the police. As such the same creates a dent in the prosecution case. It is further contended that though the material witnesses of the prosecution case Shobha PW-1, Reena PW-2, Satish Kumar, PW-5, Rajesh Gupta PW-6 and Rajesh @ Santi PW-9 have all deposed having been present at the spot immediately after the occurrence and having seen the Appellant shouting that he had killed his wife, none of the aforesaid PWs have deposed having seen each other at the spot, as such, their evidence is not believable. It is further contended that Appellant had sent a letter before the trial court stating his defence in the matter and the same has not been considered by the learned trial court in the impugned judgment. It is contended that if the defence of the Appellant is considered, the same creates a doubt in the prosecution case and in that event the Appellant deserves to be given benefit of doubt and be acquitted in the present case.

8. Learned APP has argued that in the PCR information Ex.PW-11/A, it is recorded that Appellant Pappu was present at the spot. In his statement u/s 313 Code of Criminal Procedure, he admits having gone to the house of Shobha PW01 with deceased on 18.08.2007 at 8.30 am. He has also admitted his arrest

on 19.08.2007 in the early hour of the day at the spot. It is contended that the material evidence of PW-1, 2, 6 & 9 is not demolished in the cross-examination. It is further contended that there is nothing on record to show that deceased was getting any pension, as such the defence raised by the Appellant vide undated letter sent to learned trial court is not believable.

9. We have heard learned amicus curiae for Appellant and learned APP for State.

10. As regards the "last seen" evidence, Shobha PW-1 has categorically deposed that her mother Smt. Asha and Appellant Pappu had come to her house on 18th August, at 8.30 am. She has also deposed that Appellant Pappu was her step father who used to suspect the fidelity of her mother Asha. She has also deposed that her mother had given her one pazeb for selling it in the market. She had sold the same for Rs. 350/-, out of which her mother gave Rs. 50/- for purchase of vegetables and she has prepared food for them. Due to paucity of space in her jhuggi, her mother told that they would stay in the chabutra in the park which was near her jhuggi. They both went to the park and at about 10 pm, she had gone to serve them food and also gave them one "chadar" and "dari". She further deposed that when she went to serve them food at 10 pm, they were quarreling and she pacified them and came back. She has deposed that at that time in the park, two more persons were present. She has denied the suggestion that those persons had killed her mother. Her material deposition is not demolished in cross-examination. Appellant Pappu has also admitted having gone to the house of Shobha PW-1 on 18th August, 2007 at 8.30 am. Her material deposition of having gone to the park at 10 pm and seeing the Appellant shouting to her mother and having seen the Appellant in the company of her mother at 10 pm is not demolished in cross-examination.

11. As per evidence of Shobha PW-1, she had served dinner to her mother and the Appellant in the park at 10 pm and at that time, Appellant was quarreling with her mother and was saying that he had seen her sleeping with another man and had shouted "Aaj Ya to tu rehegi ya mai hi rahunga". She pacified them and returned to her jhuggi. She has further deposed that at about 1.30 am, a neighbour woke her up and informed that the Appellant had killed her mother. She went to the spot and saw the dead body of her mother and heard the Appellant saying that he had killed her for her wrong habits. Her material deposition is in consonance with her statement to the police i.e., Ex.PW-1/A. Appellant has also admitted in his statement u/s 313 Code of Criminal Procedure that he was apprehended at the spot at the instance of Shobha PW-1 shortly after the incident.

12. It is settled law that mere relationship is not a factor to affect the credibility of a witness so as to discard his/her testimony as being partisan. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is an allegation that a witness is interested and that his/her testimony is tainted, the same has to be established. The mere allegation that being relatives of the deceased the witnesses are likely to falsely implicate

the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not the only factor which affects credibility of a witness. A foundation has to be laid if the plea of false implication is taken. In such cases, the court has to adopt a careful approach and has to analyse the evidence to find out as to whether it is cogent and credible.

13. In *Arjun Mahto v. State of Bihar* 2008 (5) AD CrL SC 19, the Supreme Court has observed as under:

A witness is normally to be considered independent witness 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 relation 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 generalization. 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.

14. In *Vinay Kumar Rai and Another Vs. The State of Bihar*, the Supreme Court held that:

Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the 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 analyse evidence to find out whether it is cogent and credible.

In the present case, the Appellant had taken a defence through a letter sent to the learned trial court from Jail, that Shobha PW-1 was interested in getting the pension of the deceased and, as such, she had falsely implicated him. No such suggestion is given by the counsel for defence while cross-examining Shobha PW-1 in this regard. No details of alleged pension of deceased are given. We have dealt with defence of Appellant in subsequent paras of the judgment. Reading her entire evidence it can't be said that she has falsely implicated the Appellant being the daughter of deceased.

15. Apart from the evidence of Shobha PW-1, there is evidence of Reena PW-2

who is a resident of that area where the incident had taken place. She has deposed that on 18th August, 2007 at about 11.30 pm-12 mid night after taking dinner she along with her husband were roaming outside the Ram Leela Ground Park. At that time, she heard the Appellant shouting at one lady who was lying on the chabutra that he had killed her. At first she did not bother, considering that it was their personal matter but, that man was continuously shouting. She has also deposed that they had called him outside the park. He came outside and told her that he is her husband and the lady lying on the chabutra was his wife and since she had slept with someone, he had killed her with a chunni Ex. P-1. Initially, they thought that the lady was alive. The Appellant then bought some water and sprinkled it on the face of the lady but there was no movement. Thereafter, Appellant tried to untie the chunni but could not do so. After some efforts, the Appellant then untied the chunni. Thereafter, she called police from the house of one Satish PW-5 staying nearby the place of occurrence. She also identified the Appellant present in the court and the chunni Ex.P-1.

16. There is another witness Rajesh Gupta PW-6 who deposed that on the night of 19th August, 2007 at 1-2 am, he was going from Chatriwala Park, Ram Leela Ground where he saw a woman lying dead on the chabutra and a red chunni was tied around her neck and also saw the Appellant present there shouting that she was a loose character lady and, as such, he had killed her. As he was in the ice business, he went to fetch ice bricks and when he returned at about 5 am, the dead body had already been removed by the police.

17. Reading the entire evidence of Reena PW-2 and Rajesh Gupta PW-6, it may be seen that material deposition of aforesaid witnesses is not demolished in cross-examination. Both are independent witnesses. They have supported the version of Shobha, PW-1.

18. Evidence of Shobha PW-1, Reena PW-2 and Rajesh Gupta PW-6 categorically establishes that Appellant was present near the dead body and was shouting that he had killed her as she was a woman of bad character. From their evidence, the extra judicial confession made by the Appellant having killed the Appellant is clearly proved. The extra judicial confession made by the Appellant is voluntary and there is nothing on record to show that Appellant was not in a fit state mind at that time, nor has such a stand been taken by him. There is also nothing on record to show that extra judicial confession made by him was under any threat or inducement.

19. Apart from Shobha, PW-1, there are two independent witnesses, Reena PW-2 and Rajesh Gupta PW-6, who are not in any manner connected with the deceased nor have any inimical relations with the Appellant. They have categorically deposed that Appellant had stated that he had killed his wife as she was a loose character lady. The veracity of extra judicial confession is not under any doubt. The learned trial court has rightly taken the said piece of evidence in convicting the Appellant.

20. Reading the evidence of Shobha, PW-1 and that of independent witnesses Reena PW-2 and Rajesh Gupta, PW-6, it is amply clear that Appellant had a clear motive to kill his wife suspecting her loose character. Shobha, PW-1 has categorically deposed that when she had gone to serve them dinner at 10 pm, the Appellant was quarreling with her mother and was saying that he had seen her sleeping with another man and had shouted "Aaj Ya to tu rehegi ya mai hi rahunga". The above shows that he had a clear motive to kill the deceased.

21. The contention of the Appellant that none of the witnesses i.e., Shobha, PW-1, Reena, PW-2 and Rajesh Gupta PW-6 had deposed that they had seen each other at the spot, has no force. It has come in the evidence of aforesaid PWs that there was crowd at the place of occurrence. In the cross-examination, Rajesh Gupta PW-6 had deposed that he had seen Reena PW-2 in the park. Even Shobha PW-1 had deposed that two persons of her locality were standing there. In these circumstances, the contention raised has no force.

22. Reena, PW-2 and Rajesh Gupta, PW-6 had categorically deposed as to the time when the police had arrived at the spot. The conduct of Rajesh Gupta, PW-6 also cannot be said to be unnatural as the said witness had given justified reasons as to why he left the spot earlier.

23. Satish Kumar PW-5, is also resident of that area and it is from his house that Reena, PW-2 had informed the police. The said witness had also deposed that on 18th August, 2007 at about 11 pm or 12 midnight, one lady came to his house and told him that some incident had taken place and she had to telephone the police and he allowed her to make a call. Thereafter, he came out of his house and saw a number of persons gathered near a park. He saw a dead body of a lady lying at the chabutra of the park. The Appellant was present in the park. Even if he had not supported the extra judicial confession made by the Appellant that he had killed the lady as she was a woman of bad character, his remaining evidence fully supports the case of the prosecution about the presence of Appellant in the park near the dead body.

24. The learned trial court has also relied upon the evidence of Rajesh @ Santi PW-9 in convicting the Appellant though he has deposed in the same manner as deposed by his wife i.e., Shobha PW-1. Considering the evidence of Shobha, PW-1, the presence of Rajesh @ Santi PW-9 at the spot and having seen his mother-in-law lying dead in the park and Appellant shouting that he had killed her because of her habits is doubtful as Shobha, PW-1 in her cross-examination has deposed that her husband i.e., Rajesh @ Shanti PW-9 had gone to his brother's house on that night. In these circumstances, the trial court ought not to have taken his evidence into consideration. Accordingly, the evidence of Rajesh @ Santi PW-9 is ignored. By ignoring his evidence, however, the case of the prosecution is not dented in any manner.

25. The evidence of Shobha, PW-1 categorically establishes that she had seen the deceased in the company of the Appellant at 10 pm on 18th August, 2007 at

Chatriwala Park. The Appellant has not stated in his statement u/s 313 Code of Criminal Procedure as to whether he had left the company of deceased Asha at any stage. The evidence of Shobha, PW-1, Reena, PW-2 and Rajesh Gupta, PW-6 also establishes that Appellant was present at about 1 am in the park and had made extra judicial confessions of having killed the deceased as she was a woman of loose character. Even evidence of Satish Kumar PW-5 from whose house Reena PW-2 telephoned the police, shows the presence of the Appellant in the park near the dead body.

26. As per deposition of Dr. S. Lal, PW-7, the cause of death was asphyxia due to antemortem strangulation by means of ligature and the time since death is 12-18 hours. The postmortem examination was conducted on 19th August, 2007 at about 12 noon vide report Ex.PW7/A. The time since death coincides with the time stated by Shobha, PW-1 and Reena, PW-2 when they had seen the Appellant near the dead body shouting that he had killed the deceased and as per opinion Ex.PW-7/B which is proved on record by Dr. S. Lal, PW-7 the ligature mark present over the deceased"s neck could have been possibly caused by the "chunni" Ex.P-1 which had been seized by SI Rakesh Kumar PW-12 at the instance of Appellant in the presence of Shobha, PW-1. Appellant was also apprehended at the spot by the police on the pointing of Shobha, PW-1 vide arrest memo Ex.PW-1/E. There is clear evidence against him of having committed the alleged offence.

27. The learned Counsel for the Appellant has referred to a letter on record of the trial court which the Appellant had sent from jail to the learned trial court wherein he had stated that on 18th August, 2007 that he visited the house of Shobha, PW-1 along with deceased Asha where an altercation took place between deceased Asha and Shobha PW-1 and Shobha PW-1 asked silver pazebe from deceased Asha who gave the same to her and thereafter Shobha PW-1 was telling her mother that she should get her pension transferred in her name. It is contended that the said defence is not taken into consideration by the learned trial court and that Shobha, PW-1 has falsely implicated the Appellant.

28. We have gone through the reasoning given by the learned trial court in this regard. The learned trial court has considered the said stand of Appellant in para 11 of the judgment and had rejected it. However, no such suggestion was given to Shobha, PW-1 in the cross-examination. No evidence was led before the learned trial court to substantiate the stand that deceased Asha was getting any pension and after her death, Shobha, Pw-1 was entitled for the same. The learned trial court has rightly rejected the stand of Appellant.

29. In view of the above discussion, we dismiss the appeal. A copy of the judgment along with record be sent to the learned trial court.