

(2015) 11 DEL CK 0217
In the Delhi High Court
Case No : Criminal Appeal No. 653/2001

Parsuram Pandey and Others

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 207, 313, 374
Penal Code, 1860 (IPC) — Section 307, 323, 34

Citation : (2015) 153 DRJ 263

Hon'ble Judges : Suresh Kait, J.

Bench : Single Bench

Advocate : Manish Vashisht, Sameer Vashishth and Jeevan Kr. Singh,
Advocates, for the Appellant; Ravi Nayak, APP, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.—By way of the present appeal filed under Section 374 Cr.P.C. appellants challenged the judgment dated 10.08.2001, whereby they were held guilty for the offences punishable under Sections 307 /323 /34 IPC.

2. Further challenged the order on sentence dated 13.08.2001, whereby the appellants were sentenced to undergo RI for 5 years for the offences punishable under Sections 307 /34 IPC with fine of Rs. 1,000/- each and in default of fine, they were further directed to undergo SI for a period of two months. The appellants were further sentenced to undergo RI for six months for the offences punishable under Sections 323 /34 IPC with fine of Rs. 500/- each and in default of fine, they were further directed to undergo SI for a period of one month. Both the sentences were directed to run concurrently.

3. The facts of the present case in brief are that on 29.04.1997 one Rajkumar Pandey (hereinafter referred to as complainant) lodged a report with the Police Station - Ambedkar Nagar which culminated into FIR No. 361/1997 that at about 7.30 pm on the same day when he had gone to purchase some vegetables, appellants along with one Kameshwar Tiwari came to his house and asked about

him from his wife Laxmi Devi and daughter Sushma and gave beatings to them with fist and kick blows. Subsequently, on the same night at about 10.30 PM when the complainant along with his wife, daughter and brother-in-law Bijender Tiwari were sitting outside his house, appellants along with Kameshwar Tiwari and another person again came there and asked him to vacate the premises and said Kameshwar Tiwari and another person caught hold of the complainant and said that they would get the premises vacated from him on that very day. Thereafter, appellant Parsu Ram Pandey allegedly took out a revolver from his pocket and fired twice on him, which hit the complainant on his abdomen and chest. When his wife tried to intervene, appellant Parsu Ram Pandey also alleged to have fired a bullet at her, which had hit her right side knee and when the brother of the complainant namely Dalip came at the spot, appellant Babban Pandey alleged to have given him a blow on his left hand with an iron pipe, due to which he sustained injuries. Thereafter police came into action and all the injured persons were medically examined. Statements of the witnesses were recorded and the accused persons were arrested. On the disclosure statement of appellant Parsu Ram Pandey, a Katta along with fired cartridge was recovered near his house. Thereafter, police filed the chargesheet under Sections 307 /323 /34 IPC against the appellants, whereas accused Kameshwar Tiwari was placed in column no. 2 and was not sent for trial.

4. After complying with the provisions of Section 207 Cr.P.C. Id. M.M. committed the case to Sessions Court and charges under Sections 307 /323 /34 IPC were framed against the appellants, to which they pleaded not guilty and claimed trial.

5. To prove the case, prosecution has examined 16 witnesses in total. Thereafter, statements of the appellants under Section 313 Cr.P.C. were recorded. However, no defence evidence was led by the appellants.

6. Id. Counsel appearing on behalf of the appellants submitted that there are material contradictions in the version of the complainant in the chargesheet that on the date of alleged incident at about 10.30 PM, accused Kameshwar Tiwari along with other person came to his house with the appellants and both of them caught hold of him and challenged that they would get the premises vacated from him and attacked him and his family members with an intention to murder them. Whereas in their depositions before the Court, PW1 Rajkumar Pandey (complainant herein), his wife PW2 Mrs. Laxmi Devi and his daughter PW4 Sushma deposed about the involvement of Kameshwar Tiwari in the incident which took place at 7.30 PM, however, none of them named accused Kameshwar Tiwari in the incident which took place at 10.30 PM, though his name has been specifically ascribed in the said incident.

7. Id. Counsel further submits that there are material contradictions in the statements relating to fire shot injury on PW2 Laxmi Devi as PW1 and PW4 stated that appellant Parsuram Pandey fired on her leg which hit her right leg knee. Whereas, as per the deposition of PW2 herself appellant Babban Pandey fired at her leg. However, Dr. Asif Iqbal Hussain of All India Institute of Medical

Sciences, who was examined as PW16, deposed that there was no entry or exit wound on the right knee of PW2 and as per MLC Ex.PW16/A simple injury was caused upon her by some blunt object.

8. So far as the injuries caused upon PW4 Sushma, daughter of complainant are concerned, PW1 in his examination-in-chief stated that a knife blow was given to her daughter in the incident which took place at 9.30 PM, as a result of which her three fingers were chopped. However, in his cross-examination, he deposed that his daughter received some injuries in the incident which took place at 7.30 PM. Thereafter, she was taken to a hospital and got her bandaged. But he could not tell the name of the hospital. As per the deposition of PW2, knife injury was caused to her daughter by appellant Parsuram Pandey. In her examination-in-chief, PW4 herself stated that on the date of alleged incident at about 7.30 PM, she received knife injuries on her left hand while saving her mother from the knife attack of appellant Parsuram Pandey. However, Dr. Ajay Kr. Sinha, Medical CMO of AIIMS Hospital deposed that injuries were simple in nature. There was no chopping of fingers. But he could not tell, by what object whether sharp or blunt injuries were caused.

9. Ld. Counsel further submitted that there are material contradictions in the place of occurrence, place of recovery of weapon and ballistic opinion as it was alleged in the chargesheet that on the date of incident at about 10.30 PM, PW1, PW2, PW4 and PW15 Bijender Tiwari were sitting outside the house of the complainant as there was no electricity. Whereas PW2 stated that her husband was shot outside the house, while she was inside the house at that time, however, PW4 stated that the entire incident happened inside the house.

10. Ld. Counsel submitted that as per the prosecution, appellant Parsuram Pandey led to the recovery of fire-arm vide Ex.PW13/A. But the recovery is doubtful for the reason that PW2 deposed that at the time of running away from the place of occurrence appellant had thrown away the revolver, which was recovered by the police later on. Police had also recovered the bullets from the spot. Moreover, PW4 deposed that the bullets were recovered from the spot, whereas the revolver was recovered from the dustbin lying in the Gali. The alleged recovery of the revolver was made on 23.05.1997. As per the prosecution, the revolver was wrapped in the checked shape cloth but no cloth was recovered or produced. Moreover, no finger prints of the appellant either on the revolver or the cloth was found. No site plan of recovery of weapon was prepared. No material has been placed on record to show that the same fire arm was used in the incident which was recovered. There was no mark of bullet with the injury mark.

11. Ld. Counsel further submitted that recovery of weapon is also doubtful for the reason that it has come in the evidence of PW1 that he knew the house of Parsuram Pandey at Sangam Vihar, New Delhi. But no explanation has been given by PW14, Investigating Officer of the case as to what he did till 22.05.1997 when the appellant Parsuram Pandey surrendered in the Court and what stopped

him in raising or searching his house before the alleged recovery of the revolver was made.

12. To strengthen his arguments, Id. Counsel has relied upon a case of Sumersinh Umedsinh Rajput @ Sumersinh Vs. State of Gujarat, wherein the Hon"ble Supreme Court observed as under:

7. Dr. Deepak Kumar examined himself as PW-5. He in his evidence proved the medical report. In his deposition for all intent and purport, he conceded the deficiencies in the prosecution case vis-A -vis the report prepared by him, stating;

It is true that I have written history in certificate, that history was recorded in Yaadi. If vest has hole then shirt worn on that should have hole on it or if Bushirt is torn then shirt also should have hole on it or Bushirt worn is found torn.

It is true that looking at trouser. I say that one circle is made on it with pencil. That is not torn with bullet. It is true that looking at the trouser I say that, it is not entry cut. It is true that if vest has hole then two holes should have found, one is entry and other exit hole. Otherwise, in case of scratch, vest is found in similar torn manner.

It is true that I have not mentioned fire arm's marks. It is true that if any injury is caused with fire arm or bullet then the edge has burn mark. In present case no burn injury is found. It is true that if shooter fires from point blank range then black colour is found near wound. When I saw injury of patient, it did not have such black mark on that. Shirt had black mark. It is true that scratch mark can occur due to rubbing on rough substance.

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9. We must also notice that the injury received by the complainant was allegedly caused to his loin. How such a simple injury could be caused from a shot fired from a fire- arm is open to question. So far as the report of the Forensic Science Laboratory is concerned, the clothes had not been identified as belonging to the injured. It may also be recorded that two bullets were sent to the Forensic Science Laboratory, although the specific case of the prosecution is that only one shot was fired. Two bullet holes were, therefore, not possible to be caused, one in the trouser and other in the waist, by one shot of fire. It has not been disclosed as to wherefrom the bullet was recovered. The Mazhar witnesses did not say that any bullet was recovered from the place of occurrence in their presence.

10. According to PW-8, he came to know about the firing on hearing of sound of fire. He had immediately put his finger in the trigger of the revolver and caught the appellant from his wrist. If the finger of the complainant himself was on the trigger of the revolver, it is difficult to believe that the appellant was responsible for the act complained of. According to him, seizure took place at the place of occurrence but panch witnesses contradicted him as according to them, they were made to sign the seizure list only at the police station. In his statement

before the investigating officer under Section 161 of the Code of Criminal Procedure, PW-8 stated:

three persons were there in Spacio but they all started running in the farm by opening the doors of the vehicle and as the driver of the vehicle was sitting on the stirring (sic for steering) wheel, we along with police personnel get down from our mobile van and approach to catch the driver of Spacio

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14. Even assuming that PW-8 received a fire arm injury which in the facts and circumstances of the case does not appear to be plausible, having regard to the positive evidence of the prosecution as has been stated by PW-4 Neelabhai it seems certain that a scuffle had ensued. A case of Section 307 of the Indian Penal Code, therefore, has not been made out. The ingredients of Section 307 are:

- (i) an intention of or knowledge relating to commission of murder; and
- (ii) the doing of an act towards it."

13. Further relied upon Mahendra Pratap Singh Vs. State of Uttar Pradesh, wherein the Hon"ble Supreme Court observed as under:

"49.It appears that the prosecution has suppressed the genesis of the incident. PW Matin Khan, driver of the bus owned by PWs 4 and 9, clearly deposed that Shambhu Dayal Chaurasia handed over the rifle, the alleged weapon of offence to the Police Station Lalitpur. It is the evidence of PW Head Constable, Sukhram Singh that the rifle and cartridges were handed over to him by PW Vimal Kumar Tiwari.

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53.The prosecution has failed to prove that the same weapon of offence was sent to the ballistic expert which allegedly was handed over by PW Vimal Kumar Tiwari or Shambhu Dayal Chaurasia to the Head Constable in the police station. The contentions of the learned counsel appearing for the State that such type of minor discrepancy has to be ignored from consideration cannot be accepted.

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14. Id. Counsel further submitted that in view of the contradictory statements made by the witnesses, it is established that the appellants are falsely implicated in this case and in such eventuality, the Id. Trial Court ought to have acquitted the appellants.

15. To strengthen his arguments, Id. Counsel has relied upon a case of State of U.P. Vs. Siya Ram and Another, , wherein the Hon"ble Supreme Court held as under:

"We have heard the learned Counsel for the parties and have gone through the record. We are not inclined to interfere in the acquittal of Siya Ram for the reasons recorded by the High Court, as the propensity to implicate falsely is not uncommon in India. We however do agree with Mr. Das that the reduction in the sentence in case of Jiya Lal to already undergone was somewhat inadequate but as prosecution had been initiated in the year 1988, we are not inclined to interfere on the term of imprisonment. We, however, direct that the fine be increased to Rs. 25,000/- in all and in default of payment of fine the appellant Jiya Lal shall undergo 2 years R.I. The fine will be paid within three months from now to Banshi Lal, the injured and if Banshi Lal is not available, to his legal representatives."

16. It has been argued by the Id. Counsel for the appellants that case of the prosecution is based on the solitary testimony of interested witnesses and no independent witness has joined the present case. Therefore, the testimony of ocular witnesses is unreliable.

17. On the other hand, Id. APP appearing on behalf of the State submitted that from the statements of the ocular witnesses it stands proved on record that appellants came to the house of the complainant and fired at him and his wife as a result of which they sustained injuries. Therefore, the case of the prosecution is proved on record.

18. I have heard Id. Counsel for the parties.

19. Prosecution has examined 5 eye witnesses. PW1 Rajkumar Pandey deposed that he was employed with one Mr. Madan, who had gone out of India and had not paid his salary for the last 3 years. Thus, he occupied a flat owned by Mr. Madan. He further deposed that on the date of incident, he had gone to the market to purchase some vegetables and in his absence, appellant Parsuram Pandey (stated to be an employee of Mr. Madan) along with accused Kameshwar Tiwari came to his house and made enquiries about him and gave kick blows to PW2 Smt. Laxmi Devi on her Stomach. When the complainant came back to his house, he saw accused Kameshwar Tiwari was raising noise. Accused asked the complainant to vacate the premises but the complainant told them that he would vacate the premises if Mr. Madan asks him to do so and that he will hand over the possession to Mr. Madan alone. On this, accused persons threatened him on the pretext that they would get the premises vacated on the same night itself and thereafter they left the house. On the same night at about 9.30 Pm appellants Parsuram Pandey and Babban Pandey along with accused Uma Shankar and 2 or 3 other persons came to his house and started giving beatings to him with an iron pipe on his left hand and appellant Parsu Ram Pandey fired at him which hit his stomach and left leg of his wife. They also gave blows to his daughter on her fingers as a result of which her fingers were chopped off. Thereafter, complainant was removed to the hospital, where his statement Ex.PW1/A was recorded. In his cross-examination, PW1 deposed that he knew appellant Parsuram Pandey for the last 5 to 6 years, who resides in Sangam Vihar, which is around 2 to 2 1/2 Kms from the place of incident.

20. PW2 Smt. Laxmi Devi corroborated the statement of PW1 Rajkumar Pandey and deposed that on the date of alleged incident at about 7.30 Pm appellant Parsuram Pandey along with accused Kameshwar Tiwari came to her house and they started giving beatings to her and appellant Parsuram Pandey gave a kick blow on her stomach and also gave a knife blow to her. As a result of which she fell down. Thereafter, they started throwing out the luggage. She further deposed that on the same day at about 10 pm appellants Parsuram Pandey and Babban Pandey along with accused Uma Shankar, Sanchit Pandey came to her house and asked her husband PW1 to vacate the premises against an amount of Rs. 10,000/-. When he refused to do so, appellants Parsuram Pandey and Babban Pandey fired at them. She stated that appellant Parsu Ram Pandey resides in Sangam Vihar which is at a distance of 4 to 5 Kms from the place of incident. However, this witness did not mention the presence of accused Kameshwar Tiwari at the time of firing and exonerated him. This witness had confronted with her previous statement where she did not mention the name of accused Uma Shankar or Sachit. She also did not mention in her previous statement that appellant Babban Pandey fired at her. She had not even stated in her statement made before the Police that appellant Parsuram Pandey had offered Rs. 10,000/- to her husband for vacating the premises.

21. PW4, Sushma, daughter of the complainant deposed the same fact and stated that in the first incident appellant Parsuram Pandey had brought out a

knife and tried to inflict an injury on her mother and when she cried, he attacked her as a result of which she sustained injuries on her left hand. Thereafter, accused Kameshwar Tiwari hit her on her left leg and appellant Babban Pandey along with other accused persons started throwing goods. As regards the incident which is alleged to have taken place at 10 PM, this witness deposed that both appellants Parsuram Pandey and Babban Pandey came to their house and started quarrelling with her father PW1 and thereafter appellant Parsuram Pandey fired at him, as a result of which, her father sustained bullet injuries on his abdomen. He also fired a bullet upon her mother, PW2, which hit her on her right knee. In her cross-examination, this witness stated that she cannot identify the other accused persons, who accompanied the appellants and admitted that there was no light in the house at the time of incident.

22. Another eye witness PW11, brother of the complainant, namely, Dalip deposed that on the day of alleged incident at about 10.30 pm he reached the place of occurrence on his scooter and saw appellant Parsuram Pandey armed with revolver and appellant Babban Pandey was jumping from the wall. Thereafter, one Chain Pandey had pushed him. According to this witness, appellant Parsuram Pandey fired at PW1, Rajkumar Pandey. Thereafter, he along with PW15, Bijender Tiwari removed PW1 to the hospital. On suggestions put to him, this witness admitted that the aforesaid incident took place due to a dispute between the complainant and Kameshwar Tiwari.

23. PW15, Bijender Tiwari, the other eye witness deposed that on the day of alleged incident appellants Parsuram Pandey and Babban Pandey came to the house of the complainant and asked him to vacate the house. As the latter sought time for the same, a quarrel took place between them, in which accused Kameshwar Tiwari also intervened. Thereafter, appellant Parsuram Pandey fired at him, as a result of which, he sustained injuries on his chest. When PW2, Laxmi Devi, wife of complainant intervened, she also received bullet injuries on her right thigh. As far as appellant Babban Pandey is concerned, this witness deposed that he caused injury on the hands of PW2 with an iron pipe. On suggestions put to him, this witness admitted that on the day of incident, there was no light in the locality. However, denied that the quarrel had taken place between Kameshwar Tiwari and Dalip on the one hand and complainant on the other hand.

24. PW3 HC Vijay Kumar proved that on receipt of the wireless message regarding the quarrel, a DD Entry Ex.PW3/A was recorded.

25. PW5 Dr. Ajay Kumar Sinha proved the MLC of PW4, Sushma as Ex. PW5/A opining therein that she sustained injuries with a sharp edged object.

26. PW7 Dr. Suruchi Chopra proved the X-Ray Report of PW2, Laxmi Devi and PW1 Rajkumar Pandey as Ex.PW7/A and Ex.PW7/B. There was no bone injury found in the X-Ray on the person of PW2, Laxmi Devi.

27. PW16 Dr. Asif Iqbal Hussain proved the MLCs of PW2, Laxmi Devi and

complainant prepared by Dr. Ajay Kumar Sinha as PW16/A and PW16/B. According to him, PW2, Laxmi Devi was brought to the Hospital with the alleged history of being fired at and a lacerated wound was found on her right knee. The injury was opined as simple in nature by blunt object. So far as complainant is concerned, he was brought with gunshot injury. The wounds were present on his abdomen and chest and the injuries were opined as grievous in nature. In the cross-examination, this witness deposed that on the basis of Ex.PW16/A, he has opined that the injury was caused by bullet.

28. SI Raghunath, who conducted the investigation, was examined as PW14 deposed that on receipt of information on wireless, he reached the place of occurrence where he came to know that that injured had already been removed to the hospital. Thereafter, he went to AIIMS where PW12, SI Ram Naresh was already present. He recorded the statement of complainant as Ex.PW1/A, and after making the endorsement thereon sent the same through PW9, Ct. Sat Narain for registration of the case. He also recorded the statements of PW2, Laxmi Devi and PW4, Sushma and prepared the site plan Ex.PW14/B. He further deposed that he formally arrested the appellant Parsu Ram Pandey, when he surrendered in the Court and obtained his police remand. At his instance, the revolver Ex.PW5 containing empty round Ex.PW6 was recovered from a vacant plot of land by the side of his house.

29. On the basis of evidence on record, it clearly stands established that on the given date, time and place, both the appellants went to the house of the complainant in his absence. It also stands proved on record that appellants along with other accused persons wanted the complainant to vacate the premises which was in his possession. They gave beatings to his wife and went away. It also stands proved on record that on the same day at about 10.30 PM, they both came again at the house of the complainant, who was sitting outside his house with his family members. They picked a quarrel with him and appellant Parsuram Pandey fired at complainant, which hit him on his abdomen and chest. Thus, the firing on the vital part of the body like chest in itself is sufficient to infer that appellant Parsuram Pandey had an intention to kill the complainant. Appellant Babban Pandey had accompanied appellant Parsuram Pandey on both the occasions and joined in beating PW2, Laxmi Devi and gave iron beatings to the injured persons. Therefore, he shared a common intention to kill the complainant and his family members.

30. In view of the facts recorded above and the case law relied upon by the parties, I find no merit in the instant appeal. Therefore, the judgment of conviction is confirmed.

31. The incident took place in the year 1997. More than eighteen years have already passed. The appellants faced trial for long 18 years. As per nominal roll dated 28.11.2002, the appellants have already undergone 2 1/2 years of their sentence out of total 5 years.

32. Keeping in view the sentences awarded to the appellants and the period already undergone, I set them free on the period already undergone. Since, they are on bail, their bail bonds are cancelled and sureties stand discharged.

33. The appeal stands disposed of accordingly.