
(2013) 10 DEL CK 0155
In the Delhi High Court
Case No : Criminal A. 417 of 1999

Pramod

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2013) 4 JCC 2823

Hon'ble Judges : Kailash Gambhir, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : V.K. Malik and Mr. Aman Khan and Mr. Rajeev Chauhan, for the Appellant; Richa Kapoor, APP, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The appellant is aggrieved by the impugned judgment dated 12.08.1999 and the order of sentence dated 13.08.1999 vide which he had been convicted u/s 302 of the IPC; he had been sentenced to undergo imprisonment for life as also to pay a fine of Rs. 5,000/- and in default of payment of fine to undergo RI for a period of six months. The appellant is in appeal against the aforementioned finding. The version of the prosecution is that on 22.09.1982, the appellant along with the co-accused Ram Narayan (since expired) in a moving DTC bus had fired two shots upon the deceased Baldev Singh pursuant to which he succumbed to his injuries and had died. This was in conspiracy with six other persons.

2. Charge-sheet was filed against eight persons u/s 302 /34 /120-B of the IPC. Ram Narayan and Dula Ram have since expired; Rajinder Singh was declared a proclaimed offender. Four other persons were acquitted. The appellant alone was convicted.

3. DD No. 9-A (Ex. PW-10/A) had been recorded in the local police station

Najafgarh. This was on the information given by Satbir Singh (PW-10), conductor of bus No. DHP-3600 who while travelling on route No. 822 at Bakar Garh had witnessed the incident. The incident was to the effect that two persons in the aforementioned moving bus had fired upon another. The victim had succumbed to his injuries on the spot.

4. Ex. PW-10/A was assigned to SI Bhim Singh (PW-31) who along with constable Jag Ram (PW-12), constable Vijender and constable Aman Kumar reached the spot i.e. Dhasa Road, near Bakar Garh mod. The statement of the eye-witnesses Sube Singh (PW-4) (Ex. PW-4/A) was recorded. The rukka was sent on this statement at about 11:05 AM pursuant to which the FIR was registered by SI Jagat Singh (PW-21) (Ex. PW-21/A).

5. The version of the prosecution was unfolded in this statement i.e. Ex. PW-4/A. The deceased Baldev Singh was his cousin. He along with Baldev Singh, Banni Singh (PW-5) and Chotu Ram (PW-17) had on 22.09.1982 boarded the bus from Isapur for Delhi; this was bus No. DHP-3600; at Qazi Pur bus stand, the appellant Pramod and co-accused Ram Narayan (since expired) also boarded the bus. Pramod is the brother of Chand Pradhan; Chand Pradhan had inimical terms towards his deceased brother. Differences were not only because of political rivalry as both of them were opposing one another in municipal elections but also in Consolidation Proceedings, Chand Pradhan had managed to get a plot in the abadi belonging to the deceased. About three years ago, Chand Pradhan had been arrested on the complaint of the deceased. A few months before this occurrence, a person by the name of Baljit had been murdered where Chand Pradhan was an accused. The witnesses of the prosecution in that case used to sit with the deceased and because of the closeness of those witnesses with the deceased, Chand Pradhan was sure that he would not be able to win them over. Further deposition of PW-4 is that when bus started from Bakar Garh and had covered only a short distance, PW-4 heard Pramod that they should kill Baldev Singh who was sitting behind them in the bus; thereupon the appellant took out a pistol and fired twice on the deceased who died. The bus stopped. Two other persons Vedpal and Rajinder came on a motor-cycle and the appellant and Ram Narayan fled from the bus on that motorcycle threatening all other occupants of the bus that if anybody would follow them, they would be done to death.

6. In his cross-examination, PW-4 has admitted that he was a constable in the police for the last 11-12 years. He has further admitted that in a murder case of Baljit, his brother Rohtash is a witness; he has not appeared as a witness in any other case. He has admitted that the conductor of the bus had gone to make a complaint to the police after the occurrence had taken place. He admitted that after the deceased had been fired upon, he did not go near him or touch him. He did not follow the accused as they had managed to escape. His clothes did not receive any blood stains. He denied the suggestion that he was not present at the spot or that he is deposing falsely.

7. Another eye-witness to the incident was Banni Singh (PW-5). He has also

deposed on the same lines as PW-4. He has deposed that he along with Sube Singh (PW-4) and the deceased Baldev Singh had boarded the bus from Isapur for Delhi; near Bakar Garh, the co-accused Ram Narayan told the appellant (Pramod) that Baldev Singh was sitting behind them in the bus and they should kill him; Pramod thereupon took out a pistol and fired twice at the backside of the head of the deceased; both Ram Narayan and Pramod had threatened that if anybody tried to catch hold of them, they would be done to death; there was commotion in the bus. It stopped. Meanwhile, a motor-cycle came; Ved Pal and Rajinder were sitting on that motor-cycle; Ram Narayan and the appellant Pramod had managed to flee away; the bus was taken into possession. PW-5 was subjected to a lengthy cross-examination. He stuck to his stand that there were two fire shots from the pistol of the appellant; after the passengers had got down, he along with PW-4 also got down; Baldev Singh was lying dead in the vehicle. He did not touch him. He has also admitted that the bus tickets had slipped from his hand and he does not know where they were.

8. Both these eye-witnesses accounts i.e. the testimonies of PW-4 and PW-5 had been relied upon by the trial Judge to nail the accused. That apart the trial Judge had also noted that the incident had occurred on 22.09.1982 but the appellant Pramod had absconded from the scene of crime; he was declared a proclaimed offender and he was finally arrested only on 06.04.1983 which was pursuant to a disclosure statement made by the appellant in another FIR u/s 25 of the Arms Act where he was arrested on 19.12.1983 and had disclosed his role in the present crime. The trial Judge had noted that this act of abscondence on the part of the appellant also leads the Court to draw an adverse inference against him.

9. The post-mortem on the victim was conducted by Dr. Bharat Singh (PW-6) on 23.09.1982. External and internal injuries were noted on the victim. Following three external injuries read as under:-

1. "One irregular lacerated wound over the occipital area of skull mainly on the right half size 4"x2"x?. There was tattooing at the margin of the wound but no evidence of burning of skull hair. Clotted blood was present on the surface of the wound as well on the surrounding area. No foreign material was present in the surface of the wound.

2. Four rounded punctured wound on the nape of neck situated very close of each other 2" below injury no. 1 Size of each wound was 2/10". Margins were inverted and abraded. There was no burning of hair. Tattooing was present in this area. These wounds were going deep in the tissues of the neck.

3. Abrasions all over the left lateral side of the chest and abdomen in an area of 18"x4" brown in colour. There was abrasion in the form of small patches and even pink point.

10. Cause of death was opined as due to coma resulting from the aforementioned injuries. All the injuries were ante-mortem. Injuries no. 1 & 2 were caused by fire arm such as short gun fired from a close range and were wounds of entry.

Injury No. 3 was possible by fall on the hard surface. Injuries No. 1 & 2 were sufficient to cause death in ordinary course of nature.

11. Further investigation included the recovery of the motor-cycle from the front of the house of the appellant; it was a stolen vehicle. However the trial Court did not believe the version of the prosecution that this vehicle was connected with the crime. The CFSL had examined the blood stained debris and exploded pieces of bomb which had been recovered from the spot as also the cartridges of the desi katta. Trial Judge did not connect them with the crime. The trial Court had also disbelieved the theory of conspiracy which had been set up by the prosecution about the role of other accused persons having hatched a conspiracy to commit the murder of Baldev Singh.

12. Since on the aforementioned counts, the trial Judge has not placed any reliance and there is no counter appeal by the State, it would not be necessary to detail that part of the evidence.

13. In the statement of the appellant recorded u/s 313 of the Cr. PC., he has pleaded innocence; he has stated that he has been falsely implicated in the present case. No evidence was however led in defence.

14. The trial Judge as noted supra had relied upon the aforementioned versions of PW-4 and PW-5 to nail the accused. The trial Judge had also noted that PW-17 although an eye-witness had turned hostile yet in one portion of his testimony he had admitted that he had heard the name of Pramod at the time when the incident was taking place, he had relied upon his version to that extent. The act of abscondence on the part of the appellant was another adverse circumstance against him.

15. On behalf of the appellant arguments had been addressed in detail and in length. Written submissions and thereafter additional submissions have also been filed. The whole thrust of the argument of the learned counsel for the appellant is on the presence of PW-4 & PW-5 on the spot. Submission being that neither PW-4 and neither PW-5 were present at the spot. They have been set up as witnesses by the prosecution only to solve a blind case. Submission being that even as per the version of the prosecution, both PW-4 and PW-5 were related to the deceased and had they been present at the spot their priority would have been to rush the victim to the hospital; they would have in fact rushed to the police station in the first instance and not waited for the bus conductor to inform the police. The version of the son Jai Pal (PW-3) and wife Sara (PW-22) of the victim also eliminate the presence of PW-4 & PW-5. Attention has been drawn to their versions; submission being that nowhere in the statement of PW-3 and PW-22 have they stated that they had met either PW-4 or PW-5 at the spot when as per the case of the prosecution both PW-3 and PW-22 had reached the spot immediately after the occurrence. In fact PW-22 in her cross-examination had stated that she could not remember the persons who were present at the spot; this by itself dislodges the version of the prosecution as admittedly PW-4 and

PW-5 being related to PW-22, it would be impossible to imagine that PW-22 had not noted the presence of their cousin at the spot. PW-17 had also turned hostile; he has not supported the version of the prosecution. Attention has also been drawn to the statement of SI Bhim Singh (PW-31) who was the first person in the investigating team who had reached the spot; submission being that he had also not noted the presence of PW-4 & PW-5; PW-5 has been roped in only to corroborate the unreliable version of PW-4. The entire case set up by the prosecution is false. The contradictions between the versions of the aforementioned witnesses cannot be reconciled. To support his submission reliance has been placed upon several judgment of the Apex Court i.e. Rishi Pal and etc. Vs. The State, Mahesh Chander Vs. Delhi Administration, Din Dayal Vs. Raj Kumar @ Raju and Others, Siddanki Ram Reddy Vs. State of Andhra Pradesh, Narendra Singh and Another Vs. State of M.P., Pages 655 Harbhej Singh Vs. State of Punjab, Ram Ashrit Ram and Others Vs. State of Bihar, , Toran Singh Vs. State of Madhya Pradesh, Badruddin Rukonddim Karpude and Others Vs. State of Maharashtra, Dr. Sunil Kumar Sambhudayal Gupta and Others Vs. State of Maharashtra, Randhir Singh Vs. State, , Suraj Mal Vs. State (Delhi Administration), , Subhash Vs. State of Haryana, , A. Shankar Vs. State of Karnataka, Ram Kumar Pandey Vs. State of Madhya Pradesh, The gist of the submission being that where the testimony of the alleged eye-witness is suspicious which is also evident from his conduct and where the said eye-witnesses are related to the victim yet no attempt is made by them either to apprehend the accused or to take the injured to the hospital, this conduct would qualify nothing but as highly unnatural and such a strange conduct belies their presence at the spot giving a benefit of doubt to the appellant. Submission being that in this case, if the versions of the eyewitnesses are excluded, there is no other evidence to nail the appellant. Further submission being that PW-4 in his statement before the police had named Mehar Singh as an injured but neither the statement of Mehar Singh was recorded nor was he medically examined. PW-10 had also stated that 2-3 persons had been injured; there is thus no explanation for the non-examination of Mehar Singh. On all counts the appellant is entitled to a benefit of doubt and a consequent acquittal.

16. Submissions have been refuted by the learned public prosecutor. Submission being that the testimony of PW-4 cannot be brushed aside; he is a cogent and coherent witness. It is pointed that the rukka had been sent in all promptness; the incident had been reported at about 09:55 AM; rukka had been sent at 11:05 AM, possibility of manipulation is excluded. Versions of PW-4 and PW-5 were credible; so also that part of the testimony of PW-17 upon which reliance has been rightly placed upon by the trial Judge. Submission being that although the conspiracy aspect against the accused is dis-believed, yet the motive of crime has been spelt out in the version of PW-4.

17. Record has been perused. We have appreciated the submissions of the learned counsel for the parties.

18. DD No. 9-A was the first information given by the bus conductor (PW-12) of the fateful bus giving information that an incident of firing had taken place in bus No. DHP 3600. This information was received in the local police station at 09:55 AM. Investigation was entrusted to PW-31 who along with PW-12 reached the spot. PW-31 and PW-12 have both given corroborative versions on this point. As per the testimony of PW-31, when he reached the spot i.e. Dhasa Road, near Bakargarh mod, he met an eye-witness Satbir Singh. He recorded his statement Ex. PW-4/A. Ex. PW-4/A was the version which has been noted in detail supra. PW-4 had disclosed about an earlier enmity which was prevailing between the deceased Baldev Singh (who was his cousin) and Chand Pradhan (the brother-in-law of the appellant). In the moving bus at the extortion of Ram Narayan, the appellant took out a pistol and fired twice on the backside of the head of the deceased; the deceased succumbed to his injuries. There was panic and chaos in the bus. The accused i.e. the appellant and Ram Narayan managed to flee on a motorcycle which was being driven by co-accused Vedpal and Rajinder was the pillion rider. While escaping from the scene, the appellant along with his co-accused had warned the passengers that if anybody would follow them, they would be done to death.

19. The rukka was dispatched on this statement of PW-4 at 11:05 AM pursuant to which the FIR was registered. This documented version of PW-4 and the promptness with which rukka was sent i.e. within one hour from the time of incident, excludes all possibility of a manipulation or a falsity of the case as has been vehemently argued by the learned counsel for the appellant.

20. The Courts have time and again reiterated that the FIR which is the first information of the incident and which has been registered and recorded at the earliest and without any undue delay, inspires confidence. Such timely information lends credibility to the version of the prosecution.

21. This statement was also signed by PW-4. There is thus no reason whatsoever to accept the argument of the learned counsel for the appellant that PW-4 was in fact not present at the spot.

22. That apart, the testimony of PW-4 inspires confidence. Merely because he is a cousin of the victim would in no manner dislodge his version. His version has been coherent and cogent. He has detailed the manner of the incident which as noted supra was recorded with all promptness when PW-31 met PW-4 at the spot.

23. Merely because PW-31 did not record the statement of the second eye-witness i.e. PW-5 would again not be sufficient to discredit the version of the second eye-witness. PW-5 was also related to the victim. All along, both PW-4 and PW-5 have stated that they along with PW-17 and the deceased had boarded the aforementioned bus from Isapur for Delhi; Ram Narayan and the appellant had boarded the bus at Qazipur Bus stand. When the bus reached near Bakar Garh at the extortion of Ram Narayan, the appellant fired twice on the victim who had died. PW-5 has reiterated and corroborated the version of PW-4 that this had

caused commotion in the bus. The bus stopped. A motor-cycle had come in the meanwhile which was being driven by Vedpal and Rajinder was its pillion rider; Ram Narayan and the appellant managed to escape on that motor-cycle. He has also been consistent and corroborative on the point that the appellant and the co-accused had threatened that if anybody tried to catch hold of them, they would be done to death.

24. Testimony of PW-5 has also been dealt with in detail supra. The statement of PW-5 was recorded by the second Investigating Officer i.e. PW-26 to whom the investigation was entrusted after PW-31. He was the SHO of the police station Randhir Singh Malik and examined as PW-26. He has on oath deposed that when he reached the spot, he saw the dead body of the deceased lying in the bus. There were two gunshot injuries on the backside of his scalp. Exhibits including blood stained earth and stones lying around the spot were seized. PW-26 recorded the statement of PW-5 (Banni Singh) as also the statements of other witnesses found at the spot namely Sara (PW-22) the wife of the victim as also Jai Pal (PW-3), the son of the victim. PW-26 had also recorded the statement of Chotu Ram examined as PW-17. PW-26 has been categorical in his version; he has stated that when he reached the spot, he found PW-5 and PW-17 as also PW-3 on the spot. This witness was also subjected to a lengthy cross-examination. Nothing has been pointed out by the learned counsel for the appellant which could in any manner evidence that this testimony of PW-26 was contrary or in conflict with the testimony of any other witness.

25. The testimony of the eye-witnesses i.e. PW-4 & PW-5 is clear and cogent. There are in fact no inconsistencies which can in any manner advance the arguments of the learned counsel for the appellant. There also appear to be no improvements and none have also been pointed out. On almost all scores both PW-4 & PW-5 have been coherent. Both of them have stated that they had boarded the bus from Isapur for Delhi; when the bus had covered a short distance after starting from Bakar Garh, the co-accused Ram Narayan had extorted the appellant to kill Baldev Singh who was sitting behind in the bus; the appellant took out his pistol and fired twice at the deceased. There was commotion and chaos in the bus. All the persons in the bus were threatened that if anybody would try to intervene, they would be done to death. Both the appellant and Ram Narayan managed to escape on a motor-cycle which had come near the bus in the meanwhile which was being driven by Vedpal and the pillion rider was Rajinder.

26. PW-3 was Jai Pal, the son of the victim. His version is to the effect that he had received information about the occurrence on 22.09.1982 and on reaching the spot, he found the dead body of his father. In his cross-examination he has stated that he did not remember the name of the informant; when he reached the spot, police was not there; they arrived there five minutes later. This witness is silent upon the presence of PW-4 and PW-5 at the spot.

27. Sara (PW-22) is the wife of the victim. She had also learnt about the

occurrence and had reached the spot. She has deposed that when her husband had left the house he was alone. At the spot, she had found a crowd collected there; she could not tell the name of the persons who were present in the crowd. Vehement submission of the learned counsel for the appellant being that if PW-4 & PW-5 were present at the spot as is the version of the prosecution and they being cousins and related to PW-22, it would be difficult to imagine that PW-22 has not noted their presence in the crowd.

28. This submission of the learned counsel for the appellant is without any force. One cannot forget the fact that PW-22 is probably the closest relative of the victim; she was his widow; it is obvious that when she witnessed the blood strewn dead body of her husband, there must have been severe chaotic emotions flowing in her mind; she was in a traumatic state of mind. Keeping in view this emotional turmoil that she was facing, she may not have been in a position to relate the details of the persons who were actually present there. This was but natural. In her cross-examination she stated that when she returned from the spot, the police has already taken away the body of her husband; her testimony reflecting that the investigation was already in progress when she reached there. This was probably after the statement of PW-4 had been recorded and the rukka had been dispatched. In these circumstances, in the "crowd" which she had noted at the spot, she may not have specifically noted the presence or the absence of PW-4.

29 Thus a mere omission by PW-3 and PW-22 in not mentioning the names of the eye-witnesses will not dent the version of the prosecution. Until and unless the omission is material which would render the version of the prosecution doubtful or otherwise contradict the case of the prosecution it would not effect the convincing version of the said eye-witnesses.

30. Testimony of PW-17 is also relevant. He was Chotu Ram. His statement was recorded by the second Investigating Officer i.e. PW-26. This has been so stated by PW-26. PW-17 had also boarded the bus along with PW-4 & PW-5 from Isapur for Delhi. This has been admitted by him. The entire incident has in fact been admitted by PW-17 yet he had become hostile upon the identity of the accused. On a specific question put to the witness, he admitted having heard "Parmod jaldi neeche udhro nahin to pugre jayege"; meaning thereby that Pramod was one of the persons who was involved in the incident. The name of the appellant is Pramod. To this extent alone, the trial Court has relied upon the version of PW-17.

31. The bus conductor (PW-11) was the first person to report this incident at the local police station. Since the deceased had already died PW-4 and PW-5 noting two bullet injuries on the backside of the scalp which were on the vital parts of the body, the submission of the learned counsel for the appellant that why the aforementioned person did not remove the victim to the hospital has been answered by the fact that both the eye-witnesses had noted that the victim is already dead; the two bullet injuries had been fired from a close distance on his vital

organ i.e. his head. They had noted the blood oozing out from the scalp. That apart, the police reached the spot within next 20-25 minutes. PW-31 had stated that he reached the spot at 10:15 AM. He had recorded the statement of the eye-witness PW-4 at about 10:30 AM. The rukka was dispatched at 11:05 AM and the FIR was registered with all promptitude. The medical evidence i.e. the post-mortem report (Ex. PW-6/A) is also fully corroborative of the aforementioned ocular versions.

32. The accused had remained absconded for a period of more than one year. He was arrested only on 06.04.1983 pursuant to his disclosure statement which he has made in an arm case. Abscondence by itself may not be sufficient to nail a person but it is definitely one link in the chain of circumstances establishing the guilt of the accused. It is a relevant piece of evidence as was rightly noted by the trial Judge.

33. The angle of "conspiracy" was disbelieved by the trial Court. The motive of crime was however coherently explained by PW-4. He has in the rukka itself i.e. within one hour of the incident explained that the motive of the crime was probably the dispute which was raging between Chand Pradhan (brother-in-law of the appellant) and the deceased; the reason for this was not only the political enmity but in Consolidation Proceedings, the deceased had managed to get a plot belonging to Chand Pradhan. The name of the appellant found mentioned in the first information report itself. This was an additional factor in favour of the prosecution.

34. The last argument pitched by the learned counsel for the appellant is based on the non-examination of the so-called material witness i.e. Mehar Singh whose name had emerged in the testimony of PW-4. Submission being that he was also an injured and there is no investigation qua this point. This submission of the learned counsel for the appellant has to be noted only to be rejected. PW-31 who had first reached the spot has been categorical in his version. He has stated that there were 5-7 persons present; no person in an injured condition was found when he reached there; he remained at the spot for one or 1-1/2 hour. This version cannot be disbelieved. The name of Mehar Singh even as per the appellant had emerged in the statement of PW-4 made before the police; the learned defence counsel has not questioned this witness as to why he did not name him in his deposition in court. PW-31 had also categorically deposed that no other injured person had been found. That apart even presuming that one Mehar Singh was at the spot and had received some injuries and was not medically examined would again not effect the version of the prosecution as the version of the prosecution has been fully established through the aforementioned evidence collected and discussed supra. No adverse inference can be drawn on this count.

35. On all counts, the prosecution has proved its case. The testimony of the eye-witnesses PW-4 and PW-5 coupled with the version of PW-17 who was also an eye-witness together with the medical evidence coupled with the act of

abscondence on the part of the appellant as also the enmity which has been spelt out in the version of PW-4, it was none other than the appellant who has committed the murder. Fortunately or unfortunately the other co-accused have been given benefit of doubt and they have been acquitted. The prosecution has however proved sufficient evidence to nail the present appellant. His conviction in no manner calls for any interference. Appeal is without any merit. Dismissed.