
(2013) 10 DEL CK 0476
In the Delhi High Court
Case No : Criminal Appeal 229 of 2003

Raj Kumar

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 34, 342

Citation : (2013) 10 DEL CK 0476

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : K.B. Andley and Mr. M. Shamikh, for the Appellant; M.N. Dudeja, APP., for the Respondent

Final Decision : Allowed

Judgement

S.P. Garg, J.—Raj Kumar (the appellant/A-1), Anil @ Gopi (A-2), Naresh Kumar @ Nippi (A-3) and Lalita (A-4) were arrested in case FIR No. 415/96 PS Vivek Vihar and sent for trial for committing offences under Sections 342/304/34 IPC on the allegations that on 15.11.1996 at about 08.00 A.M. at House No. 107, Old Tejab Mil, Shahdara, they in furtherance of common intention gave beatings to Vivek with hockey, kicks and fists blows after wrongfully confining him. Vivek succumbed to the injuries on 19.11.1996. The police machinery was set in motion when Daily Diary (DD) No. 83B (Ex. PW-11/A) was recorded at PS Krishna Nagar at 07.45 P.M. on receiving information that a boy who was severely beaten was lying in serious condition in a gali in front of B-23, Jagatpuri, Sarwaria Medical Centre. The investigation was assigned to HC Rajbir Singh who with Constable went to the spot and came to know that the injured had already been taken to SDN Hospital. He collected the MLC of injured Vivek and was informed that the patient had been taken to Monga Nursing Home, Krishna Nagar. The investigation was taken over by ASI Rajinder Singh who went to Monga Nursing Home, Krishna Nagar. Since Vivek was unconscious, the Investigating Officer recorded Madan Lal's statement (Ex. PW-1/A) and lodged

First Information Report. On 16.11.1996, Raj Kumar (A-1) was arrested and pursuant to his disclosure statement a broken bat used to beat Vivek was recovered. Post-mortem examination of the body was conducted. Statements of the witnesses conversant with the facts were recorded. During the course of investigation, A-2 to A-4 were arrested. After completion of investigation, a charge-sheet was submitted in the Court. The prosecution examined nineteen witnesses. In their 313 statements, A-1 to A-4 pleaded false implication. The Trial Court, by the impugned judgment, acquitted A-2 and A-3 of the charges. A-1 was held guilty for committing offence punishable u/s 304 part-II IPC and sentenced to undergo RI for three years with fine Rs. 10,000/-. A-4 was convicted u/s 342 IPC and directed to pay fine of Rs. 1,000/-. It is apt to note that State did not challenge acquittal of A-2 and A-3 and conviction of A-4 u/s 342 IPC only. It appears that A-4 has opted not to prefer appeal. Conviction of A-1 is based primarily on the statement of PW-1 (Madan Lal), deceased's father who recorded statement (Ex. PW-1/A). The occurrence took place at about 08.00 A.M. on 15.11.1996. The inordinate delay in lodging First Information Report with the police on 16.11.1996 at 12.50 A.M. has not been explained. FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. In the case of Jai Prakash Singh Vs. State of Bihar and Another etc., the Supreme Court held:

The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

2. In his statement (Ex. PW-1/A), Madan Lal disclosed that at about 11.00 A.M. his neighbour Sawan informed him at his shop that Vivek was detained by girl's uncle and mother in their house when he had gone to deliver a letter to her and asked him to go to make him understand. When he went to spot with Sawan, he found that Vivek had been detained in a room in the house after giving beatings. A-1 and his two associates whose names were ascertained Gopi (A-2) and Nippi (A-3) aged 22/23 caused beatings to Vivek with hockey, legs and fists blows. He

was made to execute a compromise and thereafter, came back to his shop. After some time, Vivek was left at his residence. Due to the injuries Vivek became unconscious and his condition deteriorated. He made telephone call at No. 100 and Vivek was taken to SDN Hospital. From there, he shifted him to Monga Nursing Home. Apparently, the complainant did not claim A-4's presence at the spot and did not assign any overt act to her. Madan Lal did not offer any reason for not reporting the incident to the police soon after coming to know at about 11.00 A.M., that his son Vivek was severely beaten by the assailants and the beatings were given to him in his presence in the house. It is unclear why Madan Lal did not intervene to restrain the assailants to give beatings to his son. His conduct is quite unnatural and unreasonable as from the spot he did not take Vivek with him to his shop or residence or hospital. He left Vivek at the spot/house where he was allegedly confined and beaten, and conveniently returned to his shop without lodging any complaint with the police. While appearing as PW-1 in the Court, Madan Lal made vital improvements and introduced new facts which did not find mention in statement (Ex. PW-1/A). In his Court statement, he disclosed that one "Puppy" had come to his shop at 8 or 8.30 A.M. and he had gone with him to the spot on his scooter. Puppy is Sawan's son. He did not depose that Sawan had informed him about the incident and he had accompanied him to the spot. Sawan was not examined during investigation and was not produced in the Court as a witness. He further came up with a new plea that one lady (A-4) was present in the house and he saw A-1 and A-4 beating Vivek with a bat. Other two accused persons (A-2 and A-3) gave slaps and beatings to Vivek and he was unable to speak and became unconscious. He returned to the shop after being threatened by A-1. The accused persons left Vivek at the shop later on and he admitted his son Vivek in the hospital where he was declared "dead" by the doctors. This version given for the first time is inconsistent with the statement (Ex. PW-1/A). The complainant, deceased's father is not imagined not to intervene and to restrain the accused persons to inflict severe beatings to Vivek. He did not raise any alarm and left the boy inside the house without ensuring his protection from beating. He did not bother about the wellbeing of the child. This conduct makes his presence at the spot highly doubtful. It is also not clear when Vivek was left at the complainant's shop by whom and in what physical condition. Delay in taking the child to hospital in such a precarious condition is unexplained. PW-1 (Madan Lal) did not disclose at what time he took the injured/victim to the hospital and if so from where i.e. house or shop. PW-2 (Lalit Kumar), his cousin, has contradicted him and claimed that when he returned from office to his house that day, his cousin (Vivek) was unconscious and was taken by him to hospital after informing police at No. 100. In the cross-examination, he disclosed that he saw Vivek at 06.30 P.M. at his house which was at a distance of 3 or 4 houses. He further stated that none else had accompanied him at that time when he admitted Vivek at the hospital. He elaborated that first he took Vivek to SDN Hospital and from there he was shifted to Monga Nursing Home, Krishna Nagar. MLC (Ex. PW-15/A) records that Vivek was taken to SDN Hospital, Shahdara at 08.30 P.M. by HC Hans Raj of PCR. It

further contains an endorsement at 10.15 P.M. whereby Madan Lal shifted Vivek to a private hospital at his own responsibility. MLC at Monga Nursing Home, mark "X" & "Y" reveals that Vivek was admitted there at 02.00 A.M. on 16.11.1996. The prosecution witnesses have given divergent statements as to from which place Vivek was taken to hospital i.e. whether from the house of the accused persons, shop/house of the complainant or from the street in front of B-23, Jagatpuri, Sarwaria Medical Centre.

3. Complainant in his Court statement did not identify bat (Ex. P1) allegedly recovered at the instance of A-1 with which Vivek was beaten. Learned Addl. Public Prosecutor after seeking Court's permission cross-examined him on various facts. He denied the suggestion that the bat produced before the Court was recovered at the instance of A-1. Madan Lal was unable to tell the exact location of the house where he had gone and the beatings were given to the deceased. He further stated that he remained in the room for half or quarter to one hour and after about two hours Vivek was brought to his house in an unconscious condition. He again give another version that he saw A-1 who left Vivek on a two wheeler scooter on the backside of his shop. He was confronted with statement (Ex. PW-1/DA) on various facts. No visible injuries were seen on the body of Vivek. The complainant was shown document (Ex. PW-1/DA) and he admitted his signatures thereon at point "A". However, he was unable to disclose as to who had written it and where it was executed. Ex. PW-1/DA records the statement of deceased Vivek where he admitted his guilt and promised not to tease the girl. Similarly, Madan Lal put endorsement after the victim had given the promise in Ex. PW-1/DA. There was no occasion to leave the child at the house thereafter. On the same set of evidence, A-2 and A-3 were acquitted by the Trial Court. PW-7 (HC Hans Raj of PCR) deposed that he received a call of quarrel at 10 or 10.30 P.M. He was declared hostile and was cross-examined by Addl. Public Prosecutor. In the cross-examination, he denied the suggestion that the call was received at 07.40 P.M. There were 20 or 25 persons gathered at the spot but no independent public witness was examined. He gave a contradictory statement that the father of the victim had accompanied them in the PCR. PW-9 (Const. Om Prakash) revealed that complainant's statement was recorded at his house No. 107, Old Tejab Mohalla at 12.30 A.M. The investigation carried out is highly defective and is full of loopholes and cannot be accepted and trusted to base conviction. The prosecution witnesses have given altogether divergent versions and have contradicted each other on material facts. Presence of the complainant at the spot has not been established, positively. The delay in lodging the FIR is unexplainable. Conduct of the prosecution witnesses including that of the complainant is highly unreasonable and unnatural and is not in accord with acceptable human behaviour. His testimony becomes questionable and cannot be treated as so trustworthy and un-impeachable to record a conviction. Acquittal of co-accused on similar evidence makes the prosecution case weak. The appellant deserves benefit of doubt. The impugned judgment cannot be sustained and is set aside. In the result, the appeal is allowed. Conviction and sentence passed by

learned Addl. Sessions Judge are hereby set aside. The appellant is acquitted of the charge. Bail bond and surety bond stand discharged. Trial Court record be sent back forthwith.