
(2011) 05 DEL CK 0177

In the Delhi High Court

Case No : Criminal Appeal 2 of 2011 and Criminal M. (Bail) 1 of 2011

Ram Babu

APPELLANT

Vs

State (Govt. of NCT) of Delhi

RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2011) 3 Crimes 105

Hon'ble Judges : S. Ravindra Bhat, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Sumeet Verma, for DHCLSC, for the Appellant; Lovkesh Sawhney, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The Appellant (hereafter called "Ram Babu") impugns a judgment and order dated 28.07.2010 in S.C. No. 218/2007 whereby he was convicted of the offence punishable u/s 302 and 307 IPC. For the offence u/s 302 IPC, the Appellant was sentenced to undergo imprisonment for life with a fine of Rs. 3,000, in default of which he was to further undergo Simple Imprisonment for 2 months. For the offence u/s 307 IPC, the Appellant was sentenced to Rigorous Imprisonment for 7 years with a fine of Rs. 2,000, in default of which he was to undergo Simple Imprisonment for two months.

2. The case of the prosecution is that, on the night intervening 10/11.08.2005 at about 12:30 AM, a D.D. No. 5B (Ex.PW17/C) was received at PS Sultan Puri regarding a stabbing incident at Inder Enclave. On the basis of the DD entry, ASI Chandan Singh reached Inder Enclave, Phase II, Sultan Puri. He found there that the injured had already been removed to Sanjay Gandhi Memorial Hospital (hereafter called "SGM Hospital"); ASI Chandan Singh went to the hospital and obtained the MLC of the injured. In the hospital he recorded the statement of one injured, namely, Ram Iqbal, Ex.PW2/A. Ram Iqbal stated that he knew Ram Babu (the Appellant) as he was his brother. The Appellant used to reside with

Ram Iqbal and he (the Appellant) used to ply a cycle rickshaw. Ram Iqbal stated that 2 months prior to the incident the Appellant had moved out of his house and on 10.08.2005 at about 06:00 PM, the Appellant had asked his wife Shobha (wife of Ram Iqbal, deceased) to accompany him to which she refused upon which the Appellant threatened that he would finish her and her family; this incident was narrated to Ram Iqbal by his wife when he returned home at 09:00 PM. Thereafter, at about 12:00 AM in the night, while they were sleeping, the Appellant entered their house and assaulted the deceased (wife of Ram Iqbal) and inflicted various knife blows on her body. On hearing the deceased raise an alarm, Ram Iqbal and his son Dalip tried to save her but the Appellant gave knife blows to them as well; thereafter he ran away.

3. On the basis of Ram Iqbal's statement, a rukka was prepared by ASI Chandan Singh and was sent to the police station; an FIR bearing No. 1226/05 was registered at PS Sultan Puri. ASI Chandan Singh got called the crime team and got the spot photographed and inspected. Thereafter, D.D. No. 26B was received from SGM Hospital regarding the death of injured Shobha upon which ASI Chandan Singh obtained the death summary of the deceased and added Section 302 IPC in the case. Inspector Meer Singh sent the body for post mortem examination and after obtaining the post mortem report Ex.PW11/A handed over the body to the relatives. Subsequently, on 21.08.2005 on the basis of secret information, the Appellant was arrested from H. No. 60, Prakash Vihar, Karawal Nagar Ex.PW12/C. The Appellant made a disclosure statement regarding his involvement in the case -Ex.PW12/B and on 22.08.2005, he pointed out the place where he had thrown the weapon of offence i.e. knife; the memo is recorded as Ex.PW12/F. A charge was framed against the Appellant u/s 302 and 307 IPC. The Appellant pleaded not guilty and claimed trial.

4. The prosecution, in support of its case, examined 24 witnesses. There are three material witnesses, who are eye witnesses, PW-2 Ram Iqbal (deceased's husband), PW-3 Chandini (deceased's daughter) and PW-4 Dalip (deceased's son). The prosecution has primarily relied upon the testimony of PW-2 Ram Iqbal to prove its case. He (PW-2) deposed that the Appellant was like his brother as they were from the same village and he used to reside with him (PW-2). About two months before the incident the Appellant started living separately. On 10.08.2005 at about 09:30 PM when PW-2 returned home, his wife (the deceased) told him that the Appellant had asked her to go out with him and when she refused to accompany him, he (the Appellant) threatened her and told her that he would destroy her and her family. PW-2 further deposed that thereafter they slept at about 11:00PM. At about 12:00AM the Appellant came to their house armed with a knife and started giving knife blows to his wife; his son got a knife blow on the neck and he (PW-2) got knife blows on both his hands and on the left side of the stomach. When an alarm was raised by his wife, his daughter turned on the light; thereafter the Appellant fled from the spot. He further deposed that a neighbour called the police and all three of them i.e. his wife, himself and his son were taken to SGM Hospital. His statement was

recorded at the hospital.

5. PW-3 Chandini (deceased's daughter and of PW-2) deposed that on the night intervening 10/11.08.2005, she was sleeping in her house; at about 11:30 PM she heard the cries of her mother (the deceased) to which she woke up and saw the Appellant inflicting knife blows on her mother. She further deposed that her brother (PW-4) and father (PW-2) tried to save her mother but the Appellant gave knife blows to them as well. The Appellant ran away from the spot after the incident and her brother, father and mother were taken to the hospital. She deposed having made a statement to the police in the morning of 11.08.2005. In her cross-examination she admitted that she was sleeping next to her mother and that the lights were switched off at the time of the incident; her brother (PW-4) switched on the lights after the incident and the Appellant ran away on the lights being switched on.

6. PW-4 Dalip (son of PW-2 and deceased) deposed that on the night intervening 10/11.08.2005, the entire family was sleeping in their house and at about 11:30 PM he heard the cries of his mother and woke up; the lights were already switched on. He further deposed that he saw the Appellant inflicting knife injuries on his mother and the Appellant also gave him and his father knife blows when they tried to save the deceased. The Appellant escaped from the spot with the knife after the incident and they were taken to SGM Hospital where they were medically examined. He stated that his statement was recorded by the police in the morning of 11.08.2005 at the hospital. In his cross-examination he states that at the time of the incident the lights were switched off and he switched on the lights of the room after the incident; the Appellant ran away on the lights being switched on.

7. The Appellant's counsel submitted that the testimonies of the three eye witnesses cannot be relied upon as they are "related" witnesses. Furthermore, the testimonies are self contradictory and there are material contradictions and discrepancies between the three versions. The Learned Counsel pointed out that PW-2 in his deposition stated that the room lights were switched off at the time of stabbing but later his daughter PW-3 switched on the light whereas PW-3 in her deposition stated that the lights were switched off at the time of the incident but her brother PW-4 switched on the lights after the incident. PW-4 in his examination-in-chief stated that he woke up and found the lights of his house on but in his cross examination stated that the lights were switched off at the time of the incident and that he switched them on after the incident. Therefore submitted the counsel for the Appellant, these contradictions and discrepancies in the testimonies of alleged eyewitnesses are material, because they went into the root of a vital circumstance, i.e. the adequacy of light in the premises to enable identification of the assailant. The contradictions were therefore, fatal to the case of the prosecution and the Appellant should be entitled to the benefit of doubt.

8. The Appellant's counsel submitted that the deceased, PW-2 and PW-4 were

admitted to SGM Hospital on 11.08.2005 at about 01:00 AM. In the MLC's of the deceased (Ex.PW9/A), PW-2 (Ex.PW9/C) and PW-4 (Ex.PW9/B), the alleged history is recorded as that of physical assault. There is no mention of the Appellant on any of the MLC's. The fact that there are no other witnesses to the incident, the absence of the Appellant's name and manner of attack described in the MLC gives rise to a doubt regarding the Appellant's involvement and hence the benefit of doubt should be given to him. It was further argued that the deceased could have died due to a quarrel between the husband and wife (the cause of which may be the Appellant) and therefore the Appellant was falsely implicated in the case by the family members.

9. It was further submitted by the Appellant's counsel that as per the MLC of the deceased (Ex.PW-9/A), there were 5 CLW's i.e. Contused Lacerated Wounds on the body of the deceased. As per Modi's Medical Jurisprudence and Toxicology, 22Edition (at page 341), Contused Lacerated Wounds are wounds caused by blunt weapons/blows from blunt objects. Therefore the counsel urged that it is unbelievable that the Appellant stabbed the deceased with a knife (the knife has not been recovered) as such knife blows would not cause "Contused" Lacerated Wounds. It was further urged that neither PW-9(Doctor who prepared the MLC) nor PW-11 (Doctor who prepared the post mortem report) opined in their depositions nor reports that the five injuries on the body of the deceased could have been caused by a knife. Therefore the benefit of doubt should be given to the Appellant and the Trial Court erred in convicting him.

10. The learned Counsel further urged that the Appellant was allegedly arrested on 21.08.2005 (about 10 days after the incident) on the basis of secret information received by PW-12 (Constable Sukhbir). PW-12 has deposed that he received a telephonic call from a secret informer who informed him that Ram Babu who had committed the murder of Shobha was present at House . No. 60, Prakash Vihar, Karawal Nagar. Thereafter PW-12 and PW-23 (Insp. Meer Singh) went to Prakash Vihar and arrested the Appellant. PW-23 has categorically stated "I did not record the statement of Jai Nandan who handed over the accused to us". Taking all these inadequacies and contradictions into considerations, cumulatively, submitted the learned Counsel, the court should not have recorded the Appellant's conviction, but ought to have acquitted him of the charges made against him.

11. The Learned Addl. PP submitted that the Appellant cannot make an argument that the injuries could not have been caused by a knife as nothing about the injuries has been put to the doctors in the cross examination. The Appellant has not challenged the testimony of the doctors and nowhere in their deposition have they stated the injuries could not be caused by a knife. Furthermore PW-22 Ajay Kumar Sharma (CATS ambulance) who reached the spot at 12:25 AM and removed the three injured to SGM Hospital has deposed that "all the injured were having stab injuries". The Learned Addl. PP submitted that the testimonies of PW-2, PW-3, PW-4 and PW-22 prove that there were stab injuries and that it is

possible that they were caused by a knife. It was submitted that no case of conflict between medical and ocular evidence was made out, and none exists. Resultantly the court should not be swayed by the bogey of such contradictions or conflicts. Arguing further, the learned APP urged that there was no reason for the eyewitnesses, who were injured, to falsely implicate the Appellant. In fact the two witnesses were children. The Appellant was known to them and had been treated as a close family member. Merely because they were related to the injured or were victims, cannot undermine the credibility of their depositions, in this case.

12. The above discussion reveals that there is no serious attempt to undermine the manner by which the incident was reported to the police authorities. The earliest intimation received led to the CATS unit being informed at 12:35 PM. The concerned police officer (PW-22) deposed having received the message in that regard. The FIR in this case was also recorded at the earliest point of time, after the recording of ML Cs. The three ML Cs - of the deceased, as well as PW-2 and PW-3 establish that there is corroboration about the injuries having been inflicted, and that all the injured victims were taken to the hospital. The neighbor, PW-5 Ajay Kumar has deposed to having intimated the police, from his telephone. This finds corroboration in the DD entry produced by the police during the trial.

13. First, the Appellant's contentions impeaching the eyewitness testimony of the deceased's relatives. It is true that in this case, the prosecution has proved the case entirely on the testimony of three eye witnesses; they were related to the deceased, as her husband, son, and daughter. The argument made is that such evidence is intrinsically untrustworthy, and cannot be the basis of convicting the accused.

14. Now, there is no immutable or universally applied rule that witnesses who deposed against an accused, and are related to the victim of the crime, or the deceased, are subjected to a higher threshold of acceptability of their depositions. If they happen to be natural witnesses, the court has to consider their depositions in the light of the surrounding circumstances. Unless a special feature about the deceased or victim's peculiar relationship (or with the witness) is disclosed, which should alert the court to be on its guard, the mere fact that the witnesses are related to the victim is not a relevant circumstance which should persuade the court to adopt a different approach. In *Lehna Vs. State of Haryana*, the Supreme Court while rejecting a similar contention by the convicted accused, in respect of the deceased's relatives' testimony held that even if there was some hostility between the accused and the family members of the deceased (who had deposed against the accused during the trial) that would not be a ground to reject their deposition since it is inconceivable that they would shield the actual culprit and falsely implicate an innocent person. Similarly, in *Ashok Kumar Chaudhary and Others Vs. State of Bihar*,), reviewing the previous law, held that:

In *Dalip Singh and Others Vs. State of Punjab*, this Court had the occasion to deal with the question as to whether a relative is per se an "interested" witness. Dispelling the general impression that relatives were not independent witnesses, speaking for the Court, Vivian Bose, J., observed thus:

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.

In *Masalti Vs. State of U.P.*, a four-Judge Bench of this Court had observed that though the evidence of an interested or partisan witness has to be weighed by the Court very carefully but it would be unreasonable to contend that evidence given by a witness should be discarded only on the ground that it is evidence of a partisan or interested witness. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.

It can be seen from the analysis in the preceding discussion that there is no hard and fast rule, mandating a stereotypical approach from the courts, and requiring rejection of testimonies of witnesses who are related to the victims of a crime. The test to be applied is always one where the court is satisfied about the credibility of the witness, and proceeding to weigh their depositions in its own terms.

15. Now, applying the above test, what has to be done is to consider whether the three eyewitnesses, who are family members of the deceased, can be considered credible and trustworthy. The three eyewitnesses all uniformly deposed about having seen the Appellant, attacking the deceased; two of them even suffered injuries. Though an attempt was made by their counsel to say that these witnesses falsely implicated him, because he had allegedly defaulted in paying back some money, or that he had asked the deceased to accompany her the previous day, to which she refused, there is no evidence on this score. The further argument that the witnesses contradicted each other about the light being switched on, or whether it was switched on after the incident, is not substantial. Here the events occurred rapidly. The incident took place in the dead of the night, when all members of the family were sleeping. The assault awoke them; naturally one or some of them woke earlier, and by the time the reaction took place, three family members had been assaulted. Aside from the fact that different people react differently, what has to be kept in mind is that the events did not occur in a frame by frame manner, to lend coherence to each witness; he or she perceived them from the position he or she were located, and from the point of time when each of them started to observe them. Naturally, the events

were blurred, and could be pieced together later; equally, though the piecing together led to a coherent picture, later, the perception of the witnesses, and the precise content of what they saw differed. However, there was clarity, and consistency in regard to the most material aspects, i.e. the identity of the assailant and how he injured the three victims. They all clearly said that he used a knife. Having regard to these, the court does not find any reason to disbelieve the version of the said three eyewitnesses, who were injured, even though they were related to the deceased.

16. The next question is the argument concerning the discrepancy between the ocular and medical evidence. It was urged on behalf of the Appellant that the post mortem report mentioned that the deceased had been inflicted with contused lacerated wounds, which could have been the result of an assault with a blunt weapon, whereas the eyewitness account was to the effect that the Appellant had wielded a knife. Here, significantly, the Appellant's counsel did not make any such submission before the trial court; no suggestion was given to the doctor, who conducted the Post mortem report. Besides, the report mentions "CLW" which has been interpreted by the Appellant's counsel to mean a "contused" lacerated wound. No doubt, the Appellant relies on extracts from Modi's Medical Jurisprudence to press home this argument. However, the record CrI.A.2/2011 & CrI.M.(Bail) 1/2011 Page 8 would reveal that no cross examination of the doctor was made on this aspect. No suggestion was given that such wounds could be caused only by blunt objects or weapons, and not by sharp edged weapons such as knife. This aspect would have assumed considerable significance had the prosecution relied on circumstantial evidence, because there has been no recovery of the murder weapon. However, this aspect pales into insignificance, in this case, because of the eyewitness accounts regarding the homicidal attack.

17. Undoubtedly, there are some judgments (Ref. Mafabhai Nagarbhai Raval Vs. State of Gujarat, and Sri Niwas Vs. Ram Bharosey and others,) where it has been held that if the oral evidence is irreconcilable with medical testimony, and the injuries found - and proved from the record -cannot correspond with what appears from the medical evidence, benefit should be given to the accused. However, in this case, the weapon of offence was not recovered; the doctor does not say that the injuries could not have been caused by a knife. During cross examination, no suggestion of the kind was put to him. Under these circumstances, the hypothesis of the wound having been caused by a blunt instrument, or weapon other than a knife cannot be accepted. Furthermore, the mere mention of the wound being "CLW" itself does not rule out the possibility of an attack with a sharp edged weapon, alleged by the prosecution in the case.

18. As far as other discrepancies are concerned, the Appellant's arguments on this score cannot also be accepted, because they are minor, and insignificant, and do not shake the eyewitness testimonies of the injured witnesses.

19. In view of the above reasons, the court is of opinion that the findings of the

Trial Court do not call for interference. The Appeal consequently fails and is, dismissed.