

(1999) 10 DEL CK 0046
In the Delhi High Court
Case No : Criminal A. No. 202/98

Sajjad Ali Khan @ Sanjay @ Sajjan

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 304

Citation : (2000) 1 AD 50 : (1999) 82 DLT 521 : (1999) 51 DRJ 678

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Mr. M.P. Singh and Mr. Buddy A. Ranganadhan, for the Appellant; Mr. M.S. Butalia, for the Respondent

Judgement

M.S.A. Siddiqui, J.—This appeal is directed against the judgment and order dated 4.5.1998 passed by the Additional Sessions Judge in S.C. No. 25/91 convicting the appellant u/s 304 IPC and sentencing him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 3000/-.

2. Shorn of verbiage, the prosecution case is that Om Prakash (PW-1) was residing in a servant quarter of Kothi No.16, which was allotted to the appellant's father. On 31.5.1990, at about 9.45 p.m. the deceased Sher Singh accompanied by Bishambhar Singh (PW-2) entered the said Kothi through the main gate and at that time they were drunk. Incensed by this, the appellant started beating the deceased Sher Singh. It is the prosecution case that the appellant gave a fist blow on the temple as a result whereof the deceased fell down on the manhole sewer and sustained the fatal injury. Immediately after the alleged incident, the appellant called the police to the spot. Thereupon one Assistant Sub-Inspector of Police Station Parliament Street came to the spot and arrested Bishambhar Singh (PW-2). On the next morning i.e. on 1.6.1990, Sher Singh was removed to the hospital by Murari and Jagroop, where he was medically examined by Dr. R.K. Mehta (PW- 13) vide injury memo Ex. PW-13/A. On examination, Dr. R.K. Mehta (PW-13) referred Sher Singh to Surgical

Emergency department of the hospital. On 6.6.1990, Sher Singh succumbed to the head injury. On 2.6.1990, SI Mohanlal (PW-14) inspected the spot and recorded the statement of Om Prakash (PW-1) and sent it to the police station for registration of FIR. On 6.6.1990, SI Mohanlal (PW-14), after receiving message about the death of Sher Singh, proceeded to the hospital and held inquest proceeding and sent the dead body for post-mortem examination. On 7.6.1990, Dr. L.T. Ramani (PW-11) conducted autopsy over the dead body and opined that the death was due to coma resulting from the head injury vide post-mortem report Ex. PW-11/A. On completion of the investigation, the appellant was charge-sheeted for the offence punishable u/s 304 IPC.

3. The defense put forth by the appellant was a denial of the prosecution allegation. On an assessment of the evidence, the learned Addl. Sessions Judge accepted the prosecution case and convicted the appellant as already indicated.

4. Learned counsel for the appellant vehemently argued that Om Prakash (PW-1) and Bishambhar Singh (Pw-2) are interested witnesses, that they did not witness the alleged incident and the learned Addl. Sessions Judge committed serious error in relying upon their untrustworthy testimony to base the conviction. He further contended that as per the DD entry Ex. PW-12/B one Assistant Sub-Inspector of the Police Station Parliament Street, on receiving a telephonic message from the appellant, came to the spot and found the deceased Sher Singh lying on the cot but none of the said witnesses informed him about the alleged incident. The Assistant Sub-Inspector did not even make any attempt to remove the injured to the hospital. He also submitted that the said DD entry further shows that the Assistant Sub-Inspector arrested Bishambhar Singh (Pw-2) and took him to the police station. According to the learned counsel, none of the said witnesses lodged a report at the police station about the alleged incident. On the contrary, on 2.6.1990, when S.I. Mohanlal (PW-14) came to the spot, he recorded the statement of Om Prakash (PW-1), on the basis of which the FIR was registered at the police station. Thus, there was sufficient opportunity to embellish the facts and the FIR was filed after due deliberation. The aforesaid circumstances, according to the learned counsel for the appellant, are sufficient to demolish the evidence of Om Prakash (PW-1) and Bishambhar Singh (PW-2).

5. In view of the aforesaid contentions of the learned counsel for the appellant, I think it appropriate to examine the evidence of Om Prakash (PW-1) and Bishambhar Singh (PW-2) on whose evidence the conviction of the appellant is based. Undisputedly, both the witnesses are related to the deceased Sher Singh and so they fall within the category of interested witness. It is well settled that evidence of an interested witness cannot be equated with that of a tainted witness or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any such infirmity as such, but the courts require as a rule of prudence, not as a rule of law that the evidence of such witness should be subjected to a careful scrutiny

and accepted with caution. Once that approach is made and the Court is satisfied that the evidence of an interested witness has a ring of truth, such evidence could be relied upon even without corroboration Hari Obula Reddy and Others Vs. The State of Andhra Pradesh, ; Sarwan Singh and Others Vs. State of Punjab, ; State of Punjab Vs. Wassan Singh and Others, ; State of Bihar Vs. Radha Krishna Singh and Others, .

6. It is undisputed that Om Prakash (PW-1) was residing in a servant quarter of Kothi No. 16 allotted to the appellant's father. Bishambhar Singh (PW-2) testified that on the night in question at about 9.45, he accompanied by the deceased Sher Singh came to the said Kothi to meet Om Prakash (PW-1). It is also undisputed that they had secured their entry through the main gate of the said Kothi. It has also come in the evidence of Bishambhar Singh (PW-1) that they had also consumed liquor. According to this witness, the appellant having objected to their entry through the main gate of the Kothi, started beating the deceased Sher Singh. During the alleged assault on the deceased, Om Prakash (PW-1) came to the spot. There-after, the appellant gave a fist blow on the temple of the deceased as a result whereof he fell down on the manhole sewer and became unconscious. Om Prakash (PW-1) also swears to the same effect. Om Prakash (PW-1) deposed that the alleged incident was also witnessed by Jagdish (PW-6) and Mangal. Bishambhar Singh (PW-2) has also stated about the presence of Jagdish (PW-6) at the time of the alleged incident. Admittedly, Jagdish (PW-6) was also residing in one of the servant quarters of the said Kothi and so his presence on the spot cannot be doubted. Surprisingly, Jagdish (PW-6) has not supported the prosecution case and so he has been declared hostile by the prosecution. The mere fact that the witness has been declared hostile by the prosecution does not make him an unreliable witness so as to exclude his evidence from consideration altogether. Shri Rabindra Kumar Dey Vs. State of Orissa, . Nothing has been elicited in the cross examination of Jagdish (PW-6) to show or suggest that he had an axe to grind against the complainant party or was intimately connected with the welfare of the appellant. Jagdish (PW-6) testified that at the relevant time, on hearing some noise, he came to the spot and saw a crowd near the compound and at that time the appellant was having conversation with one Raju.

7. Thus, the evidence of Jagdish (PW-6) shows that at the relevant time a scene was created at the spot. As noticed earlier, both the deceased and Bishambhar Singh (PW-2) had consumed liquor. Bishambhar Singh (PW-2) has stated in his evidence that on a telephonic message from the appellant, the police arrived at the spot and took him to the Police Station. Om Parkash (PW-1) also confirms the said statement of Bishambhar Singh (PW-2). Had it been a fact that the appellant had assaulted the deceased, he would not have committed the mistake of calling the police to spot and inviting trouble for himself. Here arises an interesting question as to what actually compelled the appellant to call the police to the spot and further why Bishambhar Singh (PW-2) was arrested by the police. The DD entry dated 31.5.1990 (Ex. PW-12/B) provides answers to the

said questions. It reveals that at the relevant time a telephonic message was received from the Kothi No.16 that some of the occupants of the servants quarters, under the influence of liquor, are quarrelling with each other and after receiving the said message, a police party led by one Assistant Sub-Inspector proceeded to the spot. The DD entry dated 31.5.1990 (Ex. PW-12/C) shows that at the relevant time, Bishambhar Singh (PW-2), under the influence of liquor was found using filthy abuses and so he was arrested under Sections 93/97 of the Delhi Police Act. It cannot be doubted that the said Assistant Sub-Inspector was the first police officer, who reached the spot immediately after the alleged incident. He must have acquired first hand information about the genesis of the alleged incident. He must have made inquiries from the deceased Sher Singh as it has come in the evidence of Om Prakash (PW-1) that when the police came to the spot, he was giving water to the deceased Sher Singh. It has also come in the evidence of Om Prakash (PW-1) and Bishambhar Singh (PW-2) that none of them had told the Assistant Sub-Inspector about the alleged assault on the deceased Sher Singh. If the incident had taken place in the manner spoken to by Om Prakash (PW-1) and Bishambhar Singh (PW-2), one would normally expect them to inform the Assistant Sub-Inspector, who came to the spot immediately after the alleged incident. Strangely enough, even after his arrest on the spot, Bishambhar Singh (PW-2) did not inform the Assistant Sub-Inspector about the alleged incident. Thus, the conduct of both these witnesses in not informing the Assistant Sub-Inspector about the alleged incident knocks the bottom out of the prosecution case. That apart, had the Assistant Sub-Inspector noticed any injury on the deceased, he would not have failed to remove him to the hospital. For reasons best known to the prosecution, the said Assistant Sub-Inspector was not produced in the witness box and his non-production in the witness box gives rise to an adverse inference against the prosecution case. In this context, evidence of Jagdish (P.W-6) assumes importance and it cannot be excluded from consideration altogether on the sole ground that he was declared hostile by the prosecution. The evidence of Jagdish (P.W-6) that the incident did not take place in the manner spoken to by Om Prakash (PW-1) and Bishambhar Singh (PW-2) also finds ample confirmation from the surrounding circumstances of the case.

8. Another eye witness Mangal was not examined by the prosecution. Both the witnesses namely Om Prakash (P.W-1) and Bishambhar Singh (P.W-2) want us to believe that at the relevant time the appellant had given severe beating to the deceased Sher Singh. Om Prakash (P.W-1) deposed that the appellant continued to beat Sher Singh even after his fall on the ground but Bishambar Singh (P.W-2) has contradicted him on this point. If the aforesaid statements of these witnesses are believed then Sher Singh must have received more than one injury on his person. It is significant to mention that Dr. R.K. Metha (PW-13), who had examined the deceased on 1.6.1990, found only one contusion over his left cheek. The medical examination report (Ex. PW-13/A) of Dr. R. K. Mehta (PW-13) records "alleged history of consumption of alcohol and fall", Dr. L. T. R. Ramani (PW-11), who conducted autopsy over the dead body vide report (Ex.

P.W.11/A), opined that the injuries sustained by the deceased could have been caused by a fall on the ground , Undisputedly, the deceased was drunk at the time he sustained the alleged injury. As noticed earlier , the DD entry (Ex. PW-12/B) reveals that at the relevant time some of the occupants of servant quarters of Kothi No.16, under influence of liquor, were quarrelling with each other. Admittedly, at that time, Bishambhar Singh (PW-2) was with the deceased Sher Singh and immediately after the alleged incident he was arrested by the Assistant Sub- Inspector. In this view of the matter, possibility of the deceased having fallen on the ground due to heavy intoxication could not be ruled out. As noticed earlier, Dr. L.T.R. Ramani (PW-11) has opined that the injuries sustained by the deceased could have been caused by a fall on the ground.

9. It needs to be highlighted that when the deceased Sher Singh was being allegedly assaulted by the appellant neither Om Prakash (PW-1) nor Bishambhar Singh (PW-2) attempted to save him. None of them even shouted for help. As noticed earlier when the Assistant Sub-Inspector came to the spot, none of them informed him about the alleged assaulted on Sher Singh. They did not offer any Explanation whatsoever about their silence in this regard. Neither they removed the deceased to the hospital after the alleged incident nor they lodged the report at the police station. It is of course true that different persons re-acts differently in different situation and no hard and fast rule can be laid down as to their behavior but the conduct of these witnesses in neither raising an alarm to attract other persons nor taking any steps after the incident like taking the injured (deceased) to the hospital or not informing the police rob efficacy of their evidence.

10. Another curious feature which casts a speck on the evidence of Om Prakash (PW-1) and Bishambhar Singh (PW-2) is that according to them on 1.6.1990, at about 5.50 A.M. Sher Singh, was taken to the hospital by one Murari. SI Mohan lal (PW 14) deposed that on 1.6.90, he received an information from the R.M.L. Hospital about admission of the deceased in the hospital and he, Therefore, proceeded to the hospital. Since the deceased was unfit for making any statement, he recorded the statements of Murari and Leelaram. On, that day, he did not record the statements of Om Prakash (PW-1) and Bishambhar Singh (PW-2). Admittedly, Bishambhar Singh (PW-2) was at the police station but he did not inform the police about the alleged incident. It is significant to mention that on 1.6.1990, even after recording the statements of Murari and Leelaram, the SI Mohan Lal (PW 14) did not inspect the spot. This circumstance inevitably leads to an inference that on 1.6.90 nobody informed the police about the alleged assault on the deceased. It was on 2.6.90, when SI Mohan Lal (PW 14) came to the spot and recorded the statement of Om Prakash (PW 1), he came to know about the alleged incident and on the basis of the said statement he prepared the rukka (Ex PW 5/A) and sent it to the police station for registration of the FIR. No Explanation , whatsoever, has been offered by the prosecution about the delay in lodging the said FIR. This circumstances to a great extent probabilities the case of the defense that the FIR was lodged after due

deliberation. It is also significant to mention that there is nothing on the record to show that a copy of the said FIR was sent to the Magistrate concerned. Special report is required to be sent forthwith to the Magistrate u/s 157 of the Code of Criminal Procedure. It has to be submitted through the Superior Officer, who may give to the Investigating Officer such direction as he may think fit, and then transmit the same without delay to the Magistrate u/s 158 Cr. P.C. Punjab Police Rule No. 24.5 also requires that copy of the FIR shall be sent to the Magistrate immediately. Delay, if any, in sending the special report would no doubt be a factor to show subsequent deliberation. However, unless deliberation is established, non sending or delay in sending the special report to the Magistrate would not be a ground for rejecting the prosecution case.

11. In Mehraj Singh Vs. State of M.P. 1994 S.C.C. (Cri.) 1390, it was held that the object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed. Delay in lodging the FIR often results in embellishments, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether FIR was lodged at the time it is alleged to have been recorded the Courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report by the Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless of course the prosecution can offer a satisfactory Explanation for the delay in dispatching or receipt of the copy of the FIR by the concerned Magistrate. However, there is no evidence to show that a copy of the FIR was even sent to the concerned Magistrate. This circumstance also robs the efficacy of the statements of the Om Prakash (PW -1) and Bishambhar Singh (PW-2). As demonstrated above, the conduct of the witnesses not being in consonance with normal dispositions of prudent human-beings, corroboration thus becomes a necessity or imminent,. No such corroboration is forthcoming in the case in hand. Taking broad view of the matter, particularly various infirmities noted herein before, it would not be safe to act upon the testimony of Om Prakash (PW.1) and Bishambhar Singh (PW. 2). Learned Additional Session Judge has obviously not kept the aforesaid infirmities in view while dealing with the evidence of the said witnesses.

12. Thus, the network constituted by the circumstances, mentioned above leaves a gap of varied dimensions through which the appellant can get out with equal facility. I am, Therefore, constrained to observe that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. In my opinion, the learned Additional Sessions Judge has committed a grave error in relaying upon he testimony of Om Prakash (pw-1) and Bishambhar Singh (PW-2) and convicting the appellant on the basis thereof for the offence punishable u/s 304(II) IPC.

13. In the result, the appeal is allowed and the convicting of the appellant for the offence u/s 304(II) I.P.C. and the sentence imposed upon him for that offence is set aside and the appellant is acquitted of the said offence. His bail bonds are discharged. Fine, if paid, shall be refunded to the appellant.