

(2009) 07 DEL CK 0121
In the Delhi High Court
Case No : Criminal Appeal No. 53 of 2001

Sita Ram

APPELLANT

Vs

The State (NCT) of Delhi

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 6
Penal Code, 1860 (IPC) — Section 300, 302

Citation : (2009) 07 DEL CK 0121

Hon'ble Judges : Pradeep Nandrajog, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : M.L. Yadav, for the Appellant; Pawan Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The involvement of the police for purpose of registration and investigation of the instant case commenced, when at 8:55 PM on 15.2.1995, DD Entry No. 22-B was recorded by the duty officer at PS Sarai Rohilla about a quarrel in a jhuggi abutting clinic of Dr.Rajiv at Shahzada Bagh, Sarai Rohilla.

2. HC Jagan Nath and Const. Rameshwar went to the spot and were soon followed by the SHO and 2 other police personnel.

3. The SHO, Inspector Ran Singh PW-22, found Vishwa Nath PW-7, at the spot and recorded his statement Ex.PW-7/A. He went to Hindu Rao Hospital where the injured had been removed to and learnt that the injured had died. He i.e. Inspector Ran Singh made an endorsement Ex.PW-22/A beneath the statement Ex.PW-7/A directing the duty officer to register an FIR. Since it was disclosed by PW-7 in his statement that the appellant had inflicted knife blows on the person of the deceased and since the forward movement of the investigating officer to the hospital where the deceased was removed resulted in further information that the deceased had died, it was directed in the endorsement that case be

registered for an offence punishable u/s 302 IPC.

4. As recorded in the endorsement Ex.PW-22/A, the same was forwarded to the police station at 11:10 PM evidenced by DD No. 28-A. The FIR was registered at 11:20 PM.

5. It is apparent that there is no time lag between the receipt of information at the police station about the incident and registration of an FIR pursuant thereto, keeping into account the time which would be taken for the police personnel to reach the spot where the crime was committed and record the statement of Vishwanath and thereafter proceed to the hospital where the injured was admitted and obtain the MLC of the injured.

6. From the place where the offence was committed i.e. the jhuggi at Daya Basti, Inspector Ran Singh collected blood stained soil and earth control as recorded in the seizure memo Ex.PW-7/B and Ex.PW-7/C. He prepared the site plan Ex.PW-22/B with the assistance of Vishwa Nath PW-7, recording therein the spot where the deceased had been stabbed and the spot wherefrom PW-7 had witnessed the crime. A photographer Const.Subhash Chand PW-15 was summoned who took 8 photographs of the scene of the crime being Ex.PW-15/1 to Ex.PW-15/8.

7. The person who was injured was named Sri Ram. He was removed in a PCR Van by HC Islammudin to Hindu Rao Hospital where he was declared brought dead. The dead body of the deceased was seized by Inspector Ran Singh and sent to the mortuary of Hindu Rao Hospital where Dr. C.B. Dabas PW-18 conducted the post-mortem and prepared the post-mortem report.

8. We note that Dr. C.B. Dabas PW-18 has deposed in Court on 31.7.2000 and has stated that he conducted the post-mortem of the deceased, but unfortunately the post-mortem report was not formally got proved and the effect thereof is that the injuries which were noted on the person of the deceased have to be culled out with reference to the deposition of the witness, who we note, was not subjected to any cross examination by learned Counsel for the accused in spite of opportunity granted. We may note that in the impugned judgment, the learned Trial Judge has referred to the post-mortem report as Ex.PW-18/A, but we find that the original post-mortem report in the Trial Court Record has not been assigned any exhibit mark. Even in the testimony of Dr. C.B. Aggarwal, we find no mention to any such report being exhibited.

9. In his deposition Dr. C.B. Dabas stated that the post-mortem of the deceased conducted by him revealed to him four injuries, two of which i.e. injury No. three and four were fatal and were sufficient to cause death in the ordinary course.

The four injuries were as under:

1. Incised wound over bridge of nose.
2. Incised wound over left side of nose.

3. A stab wound in the epigastric region on front of abdomen.

4. A stab wound on left side iliacfossa on front of abdomen.

10. He deposed, and as recorded in the post-mortem report (though not proved), that the stab wounds pertaining to injury No. 3 and 4 had cut the small intestines as also the interior venacava and the abdominal aorta.

11. Needless to state it was deposed to by him, as recorded in the unproved MLC, that injury No. 3 had traversed 12 cms deep and injury No. 4 had traversed 10.5 cms deep.

12. During course of investigation, the police recorded statements of Ram Bharat PW-1, Ram Narayan PW-5 and Shiv Narayan PW-6 who were the residents of the jhuggi cluster and told the police that they had witnessed the incident. They named the appellant as the assailant of the deceased.

13. Thus, in all, the police claimed to have had four eye witnesses being PW-1, PW-5, PW-6 and PW-7.

14. At the trial, PW-1 Ram Bharat, deposed that he was resident of Jhuggi No. 232-A, Daya Basti and on the day of the incident he was sitting outside the jhuggi along with Hari Ram, Shiv Narayan and Ram Narayan. Vishwa Nath PW-7, who is his uncle came there. One Rajender and the deceased were also present. They requested him to permit them to stay in his jhuggi. He told them to sit in the jhuggi and left for purchasing vegetables as it was getting dark. When he returned he saw people running and he also ran away.

15. PW-1 resiled from his statement recorded by the investigating officer u/s 161 Cr.P.C. He was confronted with his statement and he denied having ever told the investigating officer that he saw the appellant stab the deceased Sri Ram.

16. Ram Narayan PW-5 deposed that he was a resident of Jhuggi No. 231-A which was owned by his brother and on the day of the incident when he was cooking meals, a villager came to him and handed over a letter to be delivered to Vishwa Nath PW-7. That Vishwa Nath and the deceased Sri Ram came to him and took the letter and went to the house of Ram Bharat. On some matter, a quarrel took place between Sri Ram and Vishwa Nath on one side and the appellant on the other side. Appellant Sita Ram came out shouting that he will do away with the life of Sri Ram. Deceased was leaving the spot but was caught from his collar by the appellant. The deceased turned towards the appellant and the appellant stabbed him with a knife on his abdomen twice.

17. Relevant would it be to note that during cross examination PW-5, while clarifying on the issue, stated that he had not seen what had happened inside the jhuggi and had only heard noises of quarrel coming from within the jhuggi.

18. Shiv Narayan PW-6 deposed that he was present in his jhuggi No. 231-A, Daya Basti on 15.2.1995. That what happened inside the jhuggi where the stab took place was not known to him. Pertaining to what he had seen and heard he

deposed:

Accused Sita Ram present in Court today came out of his house and threatened Sri Ram who was accompanying Viswa Nath. I heard that accused ask deceased Sri Ram as to in what capacity he was asking him to vacate the jhuggi. Then the quarrel took place between the accused Sita Ram and deceased Sri Ram. I only saw when deceased Sri Ram fell down on the ground. When the people who gathered there started lifted Sri Ram they said that Sri Ram was stabbed by accused Sita Ram.

19. Vishwa Nath PW-7 supported the prosecution and deposed facts which have formed the basis of the FIR i.e. his statement Ex.PW-7/A. He deposed that when he was speaking with the deceased Sri Ram, the accused demanded that Sri Ram should go and bring liquor and upon refusal, caught hold of the hand of Sri Ram and started twisting his arm. Immediately thereafter he took out a knife and inflicted knife blows on the left and right side of the abdomen of Sri Ram saying that he i.e. the accused will kill Sri Ram. That he tied a muffler on the abdomen of Sri Ram and immediately contacted the police. The PCR Van came and took the injured Sri Ram to the hospital. He stayed back and when the investigating officer came gave his statement Ex.PW-7/A.

20. Vide impugned judgment and order dated 4.11.2000, the learned Trial Judge has held that from the testimony of PW-1, PW-5, PW-6 and PW-7 it was apparent that PW-7 was an eye witness. That PW-5 and PW-6 corroborated the presence of each other and the presence of PW-7 as also the deceased and the accused at the place where the crime was committed. Holding that nothing was brought out to discredit the testimony of PW-7, with reference to the post-mortem report and the testimony of Dr. C.B. Dabas; noting the injuries recorded during the post-mortem of the deceased, learned Trial Judge has returned a finding that the evidence establishes that the appellant, with the intention of causing bodily injury which were caused on the person of the deceased, acted to do so, and the injuries caused being opined to be sufficient in the ordinary course of nature to cause death, has committed the offence of murder.

21. Learned Counsel for the appellant urges that the conduct of PW-7 of not accompanying the deceased to the hospital is a suspicious conduct and therefore there is a serious doubt whether at all he was present with the deceased when the deceased was injured. Learned Counsel urges that as per the testimony of PW-7, the deceased was his friend. Counsel urges that the normal conduct of a friend who has seen his friend being injured would be to rush the injured friend to the hospital and not stay back at the spot waiting for the police to record his statement.

22. We are hardly impressed with the argument urged by learned Counsel for the appellant. Our reason for the same is that PW-7 did an act to remove the injured to the hospital. He did so by informing the police. The police responded by sending a PCR Van. It is not a case where PW-7 is proved to be the owner of a

vehicle which was stationed nearby. We could have appreciated the submission if there was evidence that PW-7 had means of transport to immediately remove the deceased to the hospital. That apart, how different witnesses react in different circumstances stands catalogued in various decisions and we need not make an inventory of the same. Indeed, human conduct, reaction and action, on seeing a crime, differs from person to person.

23. The conduct of PW-7 in informing the police and awaiting a PCR Van to reach the spot where the crime took place is not an unnatural conduct. We may only emphasize the fact that the place where the crime took place is a slum cluster where public transport is not easily available.

24. Though the learned Trial Judge has referred to the testimony of PW-5 and PW-6 to corroborate the presence of PW-7 as also the presence of the accused and the deceased at the place where the crime took place, but we note that the evidentiary worth of their testimony is much more.

25. From the testimony of PW-5 it is apparent that he had heard a quarrel. Since the quarrel was inside the jhuggi he may not have seen what had happened inside, but his testimony certainly establishes that the appellant had walked out of the jhuggi inside which the deceased was stabbed.

26. We may hasten to add that at one stage i.e. in para 12 of the impugned decision, the learned Trial Judge has found the testimony of PW-5 convincing and truthful vis-a-vis the earlier part of his deposition.

27. Pertaining to the testimony of PW-6, it is apparent that the only thing which he deposed not having seen is the actual act of stabbing. But, he has categorically deposed that a quarrel took place between the accused Sita Ram and deceased Sri Ram. What he states is that since a crowd had gathered, he could not witness the full acts pertaining to the quarrel and that after the appellant i.e. the accused left, he heard the people who had gathered at the spot saying, that the appellant had stabbed Sri Ram.

28. Statements made by by-standers, at the time when an act is being committed, are admissible evidence u/s 6 of the Evidence Act and hence the evidentiary value of the testimony of PW-6 is much more than what has been held to be by the learned Trial Judge.

29. From the testimony of PW-5, PW-6 and PW-7 we find corroboration to each other regarding the presence of the appellant and the deceased at the jhuggi as also the presence of the witnesses. Their testimony corroborates each other on the point that the appellant and the deceased had a quarrel. The quarrel being the demand by the appellant qua the deceased to purchase liquor and the refusal by the deceased to do so.

30. The quarrel is not of a kind where the origin is not unknown. The quarrel is not of a kind where the deceased contributed or aggravated to the same. The quarrel is a one sided quarrel, being an unreasonable demand by the appellant

and refusal to succumb thereto by the deceased.

31. It is apparent that the evidence on record establishes that when the deceased refused to purchase liquor, the appellant got infuriated and without any provocation and without anything being contributed by the deceased to aggravate the situation; to give vent to his anger or hatred, the appellant took out a knife and gave 4 blows to the person of the deceased, 2 of which have proved fatal.

32. Evidence establishes that the appellant yielded the knife intending to cause injuries on the person of the deceased. 2 of the 4 injuries have been proved to be sufficient in the ordinary course of nature to cause death.

33. Part 3 of Section 300 IPC is clearly attracted.

37. The ferocity of the blows is evidenced from the depth of the injury No. 3 and 4 and as noted hereinabove.

39. We concur with the view taken by the learned Trial Judge.

40. The appeal is dismissed.

41. Vide order dated 17.1.2006 the appellant was admitted to bail. The bail bond and surety bond are cancelled.

The appellant is directed to surrender and suffer the remaining sentence, which we note is to undergo imprisonment for life.