
(2011) 11 DEL CK 0247
In the Delhi High Court
Case No : Criminal A. No. 1082 of 2011

State	Vs	APPELLANT
Ram Palat		RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 1 ILR Delhi 406

Hon'ble Judges : S. Ravindra Bhat, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Richa Kapoor, app, for the Appellant; Aparbal Singh, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The State appeals by leave, against the judgment and order of the learned Addl. Sessions Judge dated 05.11.2009,

whereby the respondent (hereinafter referred to variously as the accused or Ram Palat), was acquitted of the charges of having committed the

offence punishable u/s 302 IPC. The prosecution's allegations briefly were that Ram Palat was a driver of the phat-phat sewa and was earning a

meager livelihood from that. His wife Urmila (deceased) used to urge him to take proper employment so that they could better their lives; Ram

Palat, however, was allegedly unwilling to do so. This was the cause of frequent marital discord and quarrels between the couple. The prosecution

further alleged that on 15.09.2008 at around 2:00 PM Urmila asked Ram Palat whether she could take up an employment; he allegedly lost

control, lifted a club and started assaulting her on her head. She sustained serious injuries and started bleeding. Her daughter (PW-9) raised an

alarm and informed Urmila's brother Sanjay Kumar (PW-2) on the telephone about the incident. The latter informed the PCR van which resulted in Urmila being taken to GTB hospital. The prosecution further alleged that Urmila had told Sanjay (PW-2), in the course of their journey to the hospital, about the incident and clearly implicated Ram Palat. This, according to the prosecution was also recorded in the MLC (Ex.PW-19/A) which mentioned ""alleged history of assault by husband"". The MLC was prepared at 3:20 PM on the day of incident i.e. 15.09.2008. Urmila apparently did not regain consciousness and subsequently died at 6:00 pm on the same day.

2. The police, on the basis of information and statements recorded registered an FIR, conducted investigation and arrested the accused Ram Palat.

He was charged for having committed the offence of murder. He entered the plea of not guilty and claimed trial. During the course of proceedings

before the Trial Court, the prosecution relied upon the testimonies of 20 witnesses besides other documentary evidence including the MLC, post

mortem report, disclosure statements and recovery memos etc. After considering all these, the Trial Court held that the prosecution was unable to

bring home Ram Palat's guilt and accordingly acquitted him.

3. It is urged by learned Addl. Public Prosecutor for the State that though PW-2 and PW-9 did not support the prosecution's version during the

trial and instead chose to depose that Urmila slipped and fell down the stairs and thereby sustained the injuries, the Trial Court did not attach much

importance to certain very significant circumstances. Elaborating on this submission, Ms. Richa Kapur, learned APP urged that the testimony of

PW-10, if read along with MLC (Ex.PW-19/A), categorically pointed to homicidal death on account of beatings by the husband. This was

narrated within a short span to PW-2 who deposed about the same. Learned counsel also relied upon, what she termed as a very strong

circumstance, i.e. that there was no reason for the relatives of Urmila to have informed the police and seek their assistance to take her to the

hospital. This would have happened only if the injuries were sustained on account of an attack as it did in this case.

4. Learned counsel also submitted that the opinion of the doctor who conducted the postmortem (PW-6), as stated in the report (Ex.PW-6/A)

found not less than 6 serious injuries; the doctor also stated that the death could have been caused as a result of injuries sustained on account of club blows. She subsequently pointed out the deposition of PW-6, who stated that some injuries such as fracture on the parietal region were the result of the deceased being clubbed by the accused. Learned counsel submitted that even though close relatives of Urmila as well as accused did not support the prosecution's story, the circumstances were sufficient enough to record a conviction, which the Trial Court failed to do. Counsel urged that the impugned judgment, therefore, has to be set aside, as it has led to manifest failure of justice.

5. The respondent/accused's case which found favour with the Trial Court was the conflicting evidence which emerged from the record. PW-2 and PW-9, who were the star prosecution witnesses, did not support its case. On the other hand, the prosecution's heavy or total reliance upon the testimony of PW-10 to explain the injuries, could not be upheld, once its own case was undermined by other witnesses.

6. The parameters which apply to the High Court when it appreciates the evidence with a view to consider whether the findings of acquittal by the Trial Court are to be upset, are well settled. It is only where the reasoning in the impugned judgment discloses compelling or substantial reasons that the High Court interferes as a duty or right to entirely re-appreciate the evidence. Again, however, the High Court's re-appreciation of evidence cannot result in upsetting an acquittal merely because another view is possible to convict the accused, so long as the view favoured by the Trial Court, is reasonable or plausible. Mere existence of another view on re-appreciation of evidence would not entitle the High Court to record the conviction after reversal of the acquittal.

7. In this case, the star prosecution witnesses i.e. PW-2 and PW-9 have entirely turned hostile. Both of them have corroborated each other as to the nature of injuries and as to how it took place i.e. the deceased slipped and fell down the stairs and sustained fatal injuries. This was despite prosecution seeking and being permitted to cross-examine them. Therefore, one line of prosecution witnesses have favoured the story which can be a plausible explanation for the death of the deceased i.e. it was not homicidal but accidental. As against this, PW-10 has deposed that he took

up the injured along with PW-2 (her brother) to the hospital where she mentioned that she was beaten by Ram Palat. This was sought to be corroborated by an external circumstance, i.e., the MLC (Ex.PW-19/A) which recorded the alleged history of assault by the husband. Now a close look at Ex.PW-19/A would reveal that the deceased was unfit to make a statement. This, in turn, would mean that recording or making endorsement on the MLC was in fact on account of the statement of PW-10.

8. Having at one stage noticed that there are two plausible views, this Court cannot help wondering if how mere recording of statement by PW-10

which gets reflected in an endorsement would elevate the nature of his testimony (if it is weighed and balanced with the other evidence which has

appeared on the record.) So far, therefore, what emerges is that there is conflicting evidence about the nature of injuries sustained by the deceased.

One set of witnesses -the deceased's close relatives state that the injuries were caused accidentally, whereas PW-10, a police officer stated that

they were the result of homicidal attack.

9. In these circumstances, the Trial Court would have been justified to acquit the respondent Ram Palat. So far as the submission with regard to

the medical evidence is concerned, we notice that PW-6, the postmortem doctor deposed in the cross-examination as follows:

Injuries referred to above can result on account of fall from stairs, but underline fractures can be a result of blunt force impact to the head.

Lacerated wounds referred above can be caused by a club. Bruise referred above cannot be a result of grappling. The wounds referred above

were not the result from fall from the stairs.

10. Undoubtedly, before this part of the evidence, the doctor did list out the nature of injuries which were 11 serious wounds. However, in the

end, she deposed that the injuries could have been the result of a fall from the stairs and the fracture could be the result of blunt force impact on the

head and she did state that lacerated wounds could be caused by a club. At best, this testimony, in the opinion of this Court, is suggestive but

nowhere conclusive; by itself it could not have implicated respondent Ram Palat.

11. Having regard to all these circumstances and on careful scrutiny of the Trial Court records as well as the findings of the Trial Court, we are of

the opinion that the impugned judgment does not call for any interference having

regard to a fair application of standards which the High Court as an Appellate Court has to follow while re-appreciating the evidence and returning its own finding. For the foregoing reasons, the appeal is devoid of merit and is dismissed.