

(2012) 03 DEL CK 0541

In the Delhi High Court

Case No : Criminal Appeal 1498 of 2011

State (N.C.T. of Delhi)

APPELLANT

Vs

Ram Dayal @ Lamboo and Another

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2012) 4 AD 603

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

Bench : Division Bench

Advocate : Richa Kapoor, app, for the Appellant; Mohd. Fahad, Advocate with Mr. Dewan Singh, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The present appeal is preferred by the State against the judgement dated 28.02.2011 of the Ld.Addl.Sessions Judge in SC No. 41/2010 whereby the Respondents/accused were acquitted of the charges of committing offences punishable under Sections 302/120B/34 IPC. The prosecution alleged that on 30.12.2005 information was received through wireless, by police post East Uttam Nagar that a woman had been stabbed at RZB-36A, Pratap Garden. The SHO reached the spot and found that three or four police personnel from the concerned police post were there. He also saw the body of a woman lying by the side of a mat; it had a sharp cut on the neck and there were other injury marks on the body. The statement of PW-12 Master Rockin, the deceased's son, was recorded, in which he alleged that at about 9.30 or 10.00 A.M. he was playing with other children and was sitting in the gali. At that time, his father (who deposed during the trial as PW-10) and three others, to whom the accused Ram Dayal was known, went to his house and his mother (the deceased), after washing the clothes, went inside. He stated that Ram Dayal had brought liquor with him and asked his younger sister to bring some snacks and gave her Rs. 3/-. PW-12 claimed that he saw Ram Dayal and his companions leaving the

house; he also stated that they had bolted the house from outside and ran away from the spot. On opening the door, boy saw his mother in a pool of blood. His father i.e. PW-10 was lying unconscious in a drunken state. On the basis of this information, the police conducted investigation, seized material exhibits and proceeded to arrest the accused. They were charged with committing the offences made out against them. They denied their guilt and claimed trial. During the Trial Court's proceeding, the prosecution relied on the testimonies of thirty witnesses and various exhibits on record.

2. The testimonies of PW-8, PW-10 and PW-12 were pressed into service primarily by the prosecution. PW-8 was a shop keeper; his evidence was brought on record to support PW-12's statement of having seen the accused fleeing the spot with two or three people. PW-8, however, only partially supported the prosecution and vaguely mentioned about having seen three people running away. He could not identify them. There was no clear identification by PW-8 since the Trial Court described some contradictions between his previous statement u/s 161 Cr.P.C. and the testimony in Court. Also this witness had identified the accused Ram Dayal in the police station.

3. PW-9 had deposed to receiving a telephone call about the murder of his sister and to later reaching there. He found the dead body. He was not a material witness. PW-10 also deposed that Ram Dayal and two companions had gone to his place and consumed liquor. The deceased was washing clothes on the roof; when she came down he asked her to cook meals and she showed her readiness to cook. According to PW-10 Ram Dayal started misbehaving with his wife and closed the door from inside. PW-10 also alleged that Ram Dayal had caught hold of him and thrown him down and inflicted knife blows in the abdomen of the deceased. This witness was extensively cross-examined. PW-12 also deposed during the trial.

4. After considering all these materials, the Trial Court was of the opinion that the prosecution was unable to prove the Respondents' guilt. The Trial Court's principal reasoning is to be found in the following extracts of its judgment:

38. Coming to the eye witness account given by PW10 Dhan Pal, the husband of the deceased, who was admittedly found in an unconscious state lying towards the feet of the deceased lady, his wife, and he was to be removed to the hospital in a PCR van where he had allegedly regained his consciousness at about 3 p.m as per his own answer in his cross examination and as per deposition of PW27 ASI Harbir Singh, who was the In charge of PCR van and he was the first person to reach the spot at about 12.20 p.m, he found the PW10 Dhan Pal under the influence of liquor and removed him to the DDU hospital and admitted there at 12.50 p.m. The said facts were further corroborated by the MLC Ex.PW4/A which mentions that smell of alcohol was present in breathing and the speech of Dhan Pal was slurred and gait - in coordinate. From the said evidence we do not know as to when PW10 became unconscious, whether before the murder of his wife or subsequent to the murder of his wife, although PW10 has claimed in his

deposition that at the time of occurrence he was under the influence of liquor and was physically weak also and as such could not save his wife particularly when he had been caught hold of by one of the companions of Ram Dayal and after the accused Ram Dayal and his two companions ran away from the house and he came to his wife and looking at her he became unconscious. Although the said fact of becoming unconscious after looking at his wife was confronted with his previous statement Ex.PW10/DA where it was not found so recorded and what was recorded therein was that witness became unconscious being under influence of liquor. If he saw the incident and he was weak and was being caught hold of by alleged another person/companion of accused Ram Dayal, he did not even try to raise the alarm so that the same can be heard across the said small room where the alleged incident happened. The MLC mentions that there was no injury found on the person of PW10 Dhan Pal which gives an inference that he did not take up any struggle of any kind against the act of alleged culprits. If he was under the influence of liquor to such an extent that he even became unconscious and for the sake of arguments only, believing it to be true that he was at all present at the spot, it is difficult to swallow as to how such a drunk person, who was allegedly found unconscious, could observe the facts so as to be an eye witness of an offence of murder. Thus, a well established doubt has been created by the said unconsciousness of the PW10.

39. Coming to his deposition as an alleged eye witness, the deposition of PW10 is nothing but full of improvements which he has made while deposing before this court and same is evident by his cross examination wherein the facts that he stated before the police that his wife, the deceased, was washing clothes on the roof when he reached home and that accused Ram Dayal closed the door of his house from inside, the fact that the two companions of Ram Dayal caught hold of him and made him to fall on the ground, the fact that Ram Dayal inflicted a knife blow in the abdomen of his wife, the fact that his wife asked Ram Dayal and his companions to leave the house, the fact that Ram Dayal and his companions had also abused his wife and the fact that when he reached near his wife and after looking at her he became unconscious, were not found recorded in his previous statement Ex.PW10/DA. He further admitted certain facts to have deposed for the first time before the court and never mentioned the same in his previous statement to the Investigating Agency or to anyone else. The fact that his wife came down and he requested her to prepare meals was not stated by him before the police. He did not state before the police that one of the two companions of Ram Dayal caught hold of his wife and he admittedly deposed to that effect for the first time before the court. He further did not state before the police that one of the companions of Ram Dayal also inflicted knife injury on the person of his wife and admittedly he deposed this fact for the first time before the court. In the said circumstances, PW10 cannot be said to be an eye witness of the incident, as alleged by him. PW10 is further hostile to the prosecution with regard to the arrest of accused Ram Dayal which was allegedly made at his pointing out as per police official witnesses.

40. From the circumstantial evidence, if taken as true, and as per the prosecution case also, if PW10 was conscious enough to see accused Ram Dayal and his two companions killing his wife, it does not appeal to the common sense as to why the said three accused would spare him so as to be readily available for deposition before the court of law against them particularly in the case of accused Ram Dayal who was allegedly a previous known person to him and other public witnesses namely PW12 Master Rockin and PW19 Mohd. Mehroof. There may be another eventuality, as has also been the case of the prosecution, that PW10 was made to drink by the accused Ram Dayal and his companions for the natural reason that he may be under the influence of liquor to such an extent so as to become unconscious and as per prosecution case, he was also found unconscious subsequently and if it is so, then PW10 cannot be said to be an eye witness of the occurrence. PW10 may be, in the circumstances of the case, interested in killing his wife due to the alleged illicit relationship, as mentioned above and this possibility cannot be ruled out and he was in such a situation where he could have killed two birds with the same stone as he may be interested in killing his wife and conveniently he could have shifted the liability of the same on any other person including the accused. Thus, he is an interested witness both negatively and positively and his said confrontation of facts deposed before the court from his previous statement and his own admission that he did not narrate the said facts to anyone prior to his deposition before the court, creates a well founded and reasonable doubt with regard to his being an eye witness.

41. Similarly, the complainant, son of the deceased PW12 Master Rockin, was also confronted with his previous statement and one of the said confrontation I have already discussed above with regard to the motive of the offence. He was further confronted with his previous statement Ex.PW12/A where the fact that the deceased was present on the roof and spreading the washed clothes was not found recorded and the fact that accused Ram Dayal was having a quarter bottle with him when he came to his house was also not found recorded, although bringing of liquor by Ram Dayal was found recorded. He was further confronted with the fact that his sister Sapna entered the house and accused Ram Dayal gave her Rs. 5/- which was also not found recorded and similarly the fact that her sister brought Namkeen and gave Rs. 2/- to accused Ram Dayal was also not found recorded and what was recorded was that it was Rs. 3/- which was given by accused Ram Dayal to Sapna after she brought Namkeen. He admitted it as correct that Ram Dayal did not give Rs. 5/- to his sister Sapna in his presence which go to establish that he added certain facts based upon hearsay. He was further confronted with his previous statement where the fact of Ram Dayal and other persons misbehaving with his mother was not found recorded.

5. It can be gathered from the above discussion that the Trial Court was persuaded to conclude that the prosecution could not establish the accused's guilt due to variety of factors such as lack of proof of motive; unreliability of the testimony of PW-10; contradictions in the testimony of PW-8 vis-a-vis Ram Dayal

and his accomplices and serious discrepancies in the testimony of PW-12. The Court also observed that PW-10, who was concededly present, spoke many things and contradicted himself as regards the manner in which his wife was attacked by Ram Dayal.

6. We have carefully considered the submissions of the Ld. APP who argued that the Trial Court did not consider the evidence in proper perspective. According to the State, the testimony of PW-12 read together with that of PW-8 was sufficient to establish the guilt of the accused. Since PW-8 was an independent witness, the Court had no reason to disbelieve his testimony even if, deposition of PW-10 was discarded/disbelieved on the ground that he was drunk at that time.

7. The testimony of PW-10, in our opinion is thoroughly unreliable. So far as identification by PW-8 is concerned, at best what can be seen by the Court is that he observed two or three people fleeing from the spot. To reach any other conclusion would be doing violation to the record; PW-8 did not support the statement made during the investigation u/s 161 Cr.P.C., as regards identity. As regards PW-12, the Court, (as may be seen from above analysis) pointed out several discrepancies. Firstly, it was with regard to whether his sister was sent to bring snacks as alleged by him; second, was as to whether he was playing near the spot; and thirdly, because PW-19, who was an eye witness, did not support his deposition at all. It has been retreated time and again that the High Court would not normally interfere with the judgments of the Trial Court while considering appeals by the State against acquittals unless the impugned judgment reflects gross mis-appreciation of evidence or wrong application of law. We are of the opinion that the Trial Court's reasoning is sound and unexceptionable. For the above reasons, the appeal has to fail, it is accordingly dismissed.