
(2010) 02 DEL CK 0106
In the Delhi High Court
Case No : Criminal A. 315 of 2009

Surinder Kumar Sharma

APPELLANT

Vs

The State (Govt. of NCT)

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0106

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : A.J. Bhambani, Nisha Bhambani and Lakshita Sethi, for the Appellant; Jaideep Malik, APP and Amit Chadha, for the Respondent

Judgement

V.K. Jain, J.—This is an appeal against the Judgment dated 7th November, 2008 and Order on Sentence dated 11th November, 2008, whereby the appellant was convicted u/s 307 of IPC and was sentenced to undergo RI for 5 years and to pay fine of Rs. 1,000/- or to undergo RI for six months in default.

2. On 23rd October, 2006, on receipt of copy of DD No. 28-A, SI Mange Ram of Police Station Prasad Nagar went to house No. 16/1615 E, Arya Samaj Road, Bapa Nagar, where he came to know that the injured had been taken by PCR van to Lady Harding Hospital. When he went to the hospital, the injured Rekha was unfit for statement. Later on, she was declared fit for statement, but she being under treatment, was not in a position to give her statement. The Investigating Officer, thereupon, recorded the statement of her son Rahul, who was present in the hospital. Rahul informed that on that day, at about 6.45 pm, when he was present in his house alongwith his mother Rekha and his sister Meenakshi, the appellant, who is his step-father, started abusing his mother Rekha, after taking liquor. When his mother objected to his quarrelling on a festival day, the appellant started strangulating her. He, however, got his mother rescued from the appellant. Thereafter, the appellant brought out a hammer and gave 3-4 blows on the head of his mother as result of which, she became unconscious. The appellant, thereafter, ran away from the house.

3. The injured Smt. Rekha came in the witness box as PW-3 and stated that after separating from her husband, she had re-married the appellant Surinder Kumar Sharma in the year 2000 and was residing with him as his wife. One child Ridhav Sharma was also born from her marriage with the appellant. She further stated that the appellant was unemployed and had a number of vices such as liquor addiction and she was managing the household expenses by doing a private job. The rental income used to be spent by the appellant on purchasing liquor. She further stated that the appellant used to misbehave with her and give beating to her as well as to her son under influence of liquor. Even the elder brother, mother and sister-in-law and nephew of the appellant also used to misuse with her and beat her up.

4. As regards the occurrence, which took place on 23rd October, 2006, she stated that on that day, the appellant, his elder brother and wife of his elder brother were sitting in the outer room and discussing something about her. Her mother-in-law, brother-in-law and sister-in-law were saying to the appellant that either she should be left or killed. She went there and enquired as to how they would kill her. Her mother-in-law caught hold of her hair and slapped her. When her children Rahul and Meenakshi tried to save her, they also were given beating. The appellant asked his daughter Meenakshi to write, as per her dictation, on a piece of paper. He then picked a glass bottle and hit on her forehead. When her children tried to save her, they were beaten up by the family members of the appellant. Thereafter, the appellant chewed the ring finger of her left hand. Her daughter Meenakshi asked Rahul to rush to police officials. The appellant then brought a hammer from somewhere and gave a blow with that on her head. He did not resist despite Meenakshi asking him not to do so. She, thereafter, became unconscious.

5. The complainant Rahul, son of the appellant, came in the witness box as PW-2 and stated that on 23rd October, 2006, his grandmother, his uncle and aunt were talking to the appellant in loud voice and his grandmother and uncle were saying that if Rekha is killed, they would get the appellant married with the sister of his sister-in-law. On hearing this, his mother went to that room. After some time, he heard the shriek of his mother. When he rushed to that room, he found his grandmother holding the hair of her mother. They were abusing his mother, who had been surrounded by them. When he tried to save her, he and his sister were assaulted by his uncle and aunt. They, however, somehow saved themselves and took her mother to the nearby room. The appellant then picked a glass bottle and gave a blow on the head of his mother. He also tried to hit his sister Meenakshi with the broken bottle and when his mother tried to save Meenakshi, the appellant gave a tooth bite to his mother. The appellant also tried to throttle the neck of his mother with his leg. When his sister tried to inform the police, her mobile phone was snatched by the appellant. At the instance of his mother, he informed the Police Control Room. When he came back, he found his mother lying in a pool of blood. In the meantime, Chand, son of his maternal uncle, came there with his friend and all of them took his mother to hospital in PCR van.

6. PW-4 Meenakshi is the daughter of the injured. She has corroborated the testimony of PW-2 and PW-3 and stated that the appellant had assaulted her mother and had tried to strangle her by pressing her neck with cross legs. The appellant took out one bottle of liquor from the lower portion of table where liquor bottles have been kept and gave a blow on the forehead of her mother who started bleeding. The appellant also threatened to kill her, whereupon her mother tried to save her. The appellant then chewed a finger of her left hand. Her brother Rahul informed the police from STD booth. The appellant picked up a hammer and gave three blows on the head of her mother. She telephoned her cousin Jai Prakash who came to their house with his friend and her mother was taken to hospital.

7. PW-5 Head Constable Kartar Singh stated that on that day, he went to house No. 16/1615 E, Arya Samaj Road, Bapa Nagar and found a lady lying there in injured condition. She was taken to hospital in PCR van. PW-6 Constable Subhash has stated that on 24th October, 2006, the appellant, who was in custody, produced a hammer lying underneath a table and the hammer was seized vide Memo Ex. PW-6/C. The witness also identified the hammer which was seized by them. PW-9 SI Mange Ram is the IO of the case. According to him, the appellant had got a hammer recovered underneath lying in his house.

8. In his statement u/s 313 Cr.P.C., the appellant denied having married PW-3 Rekha Sharma. He, however, admitted that Rekha has two children from her previous marriage and that she was residing with him. He also admitted that Ridhav Sharma is his son from Rekha and that he used to take liquor though he claimed that he used to take a small quantity in the evening. He, however, denied rest of the allegations against him and claimed that Rekha wanted to usurp his property and, therefore, had implicated him in a false case.

9. DW-1 Pooja is the daughter of the appellant from his first marriage. She has stated that Rekha was brought to the house, by the appellant, after the death of her mother Sunita. She further stated that Rekha sustained injury while searching the key, when something fell on her head from the top of almirah. She also stated that the appellant then took Rekha to hospital. According to her, Rekha used to quarrel with him even prior to this incident and used to ask him to transfer the property in her name. She also stated that the behaviour of Rekha towards her was not good.

10. In order to succeed the prosecution was required to prove (i) that the death of Rekha was attempted, (ii) that her death was attempted to be caused by or in consequence of the act of the appellant and (iii) that such act was done with the intention of causing death or that it was done with the intention of causing such bodily injuries as the appellant knew to be likely to cause death or were sufficient in the ordinary course of nature to cause death. Although the nature of injury may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances. What the court has to see is whether the act, irrespective of its result, was done

with the intention or knowledge and under the circumstances mentioned in the section. The intention of the assailants can be gathered from the motive for the crime, nature of weapon used, number of blows given by him, severity of blow and the parts of the body where the injuries are inflicted and other surrounding circumstances, if any. The language of the section makes it clear that even if mere hurt is caused by an act which is done with such intention or knowledge and under such circumstances, that if by that act death is caused, the offender would be guilty of murder, this section will apply. This section itself provides a punishment of 10 years for doing an act which amounts to an attempt to murder even though the act causes no hurt to anyone, but the offender is liable to the heavier punishment of imprisonment for life, if the injury is actually inflicted. If the intention of the accused to inflict injuries sufficient enough to cause death is established from the nature of the injuries and other circumstantial evidence, it cannot be said that there was no evidence that the injuries caused were known to be accused to be likely to cause death.

11. It is an admitted fact that the relations between the appellant and the injured were far from cordial. The injured claims to be the second wife of the appellant, whereas the case of the appellant, is that he did not marry her and only had illicit relations with her, though admittedly he has one child from his relationship with the injured. Even DW-1, who is the daughter of the appellant from his first wife, has stated that the injured used to quarrel with the appellant even prior to this incident and used to ask him to transfer property in her name. She also claims that the behaviour of the injured towards her also was not good. Therefore, the appellant had motive to attempt murder of the injured, on account of strain relationship between parties and the injured continuing to live in the house of the mother of the appellant along with children from her first marriage.

12. A perusal of the MLC of Rekha Ex.PW.7/A would show that the following injuries were found on her person when she was examined in Lady Hardinge Medical College on 23rd October 2006:

- (i) CLW on left temporal region 1cm x 0.5 cm.
- (ii) CLW on frontal region of scalp V. shaped 3 cm x 0.5 cm.
- (iii) Abrasion on forehead 0.5 x 0.2 cm.
- (iv) Abrasion on right ring finger d/t teeth bite.

13. This is not the case of the appellant that there was some quarrel all of a sudden between him and Rekha on that day, and the injuries caused by him to Rekha were result of that sudden and unexpected quarrel. It has come in the testimony of PW-2 Rahul and PW-4 Meenakshi, son and daughter respectively of the injured, that the appellant had tried to strangle their mother, using his leg for this purpose. This indicates intention of the appellant to commit murder of Rekha by strangulation. The appellant also used a bottle of liquor lying in the

house for causing injuries on the forehead of Rekha. He then chewed one finger of the right hand of Rekha. This was followed by the appellant picking up the hammer and giving two blows on the head of Rekha. The acts of the appellant in continuing to cause injuries to Rekha despite intervention of her children, by strangulation, using liquor bottle and then with a hammer leave very little doubt that since the appellant was fed up with the disputes and quarrels, which he had with Rekha, he had decided to finish her life on that day. The fact and circumstances of the case indicate that had the children of Rekha not intervened in the matter and had her son not gone to call the police, to the knowledge of the appellant, he would not have stopped at giving two hammer blows to Rekha and would in all probabilities have killed her on that day. It was only on account of intervention of her children that Rekha could be saved from more fatal injuries at the hands of the appellant on that day.

14. The appellant despite his being either husband or live-in partner of Rekha used hammer, which is a deadly weapon, for causing injuries to her. Use of hammer for causing injuries was preceded by an attempt to strangle her and causing injuries using a bottle of liquor. Therefore, nature of the weapon used by the appellant coupled with attempted strangulation of Rekha also shows that he intended to cause death of Rekha or atleast intended to cause such injuries, which he knew to be likely to cause her death, or which, in ordinary course of nature, would have been sufficient to cause her death. This inference finds strong support from the part chosen by the appellant to cause injuries to Rekha. He first caused injury with a bottle on the forehead of Rekha and then he gave two hammer blows on her head, which is a vital part of her body. It can hardly be disputes that causing injuries on head with weapon such as a hammer is likely to cause death. Rekha, who had become unconscious on account of the hammer blows given to her, might even have succumbed to the injury sustained by her, had she not been immediately taken to hospital either by her relatives or by police officials, who arrived on the spot in a PCR van. Therefore, the only reasonable inference which can be drawn from the facts and circumstances of this case is that the appellant had attempted to commit murder of Rekha on the date this incident took place.

15. It is true that in her statement u/s 161 of Code of Criminal Procedure Rekha did not implicate her mother-in-law, brother-in-law and sister-in-law and their son, which she did when she was examined in the Court, but that by itself, cannot be a ground to disbelieve the testimony of Rekha in toto, particularly when her testimony finds corroboration not only from the deposition of her children, but also from the injuries sustained by her. It is quite possible that on account of strained relationship, which Rekha admittedly had with her in-laws, who are residing in the same house in which she is residing, she decided to implicate them as well. But, it would not be appropriate to reject her testimony as a whole on this count alone, when it is quite possible to separate that part of her testimony which finds corroboration from the injuries sustained by her and other facts and circumstances of the case.

16. As noted by the Hon''ble Supreme Court in *Sohrab and Another Vs. The State of Madhya Pradesh*, , one hardly comes across a witness whose evidence does not contain a grain of untruth or who does not resort to exaggeration, embroidery or embellishment. It is for the Court to separate the grain from the chaff and then believe that part of the evidence which is found to be true and correct. Some exaggeration or embellishment may be attributed to over anxiety leading to the witness giving an exaggerated account of the incident witnessed by him or sometimes it can be a deliberate attempt to over embellishment. If the core part of the testimony of a witness inspires confidence and can be safely acted upon, his testimony need not be rejected even if some other part of his testimony is not proved to be correct. It was held by the Hon''ble Supreme Court in *Gangadhar Behera and Others Vs. State of Orissa*, that even if major portion of the evidence is found deficient, the conviction can be based on the residual evidence, if it is otherwise sufficient to prove the guilt attributed to him. Even if a part of the testimony of a witness appears to be untrue or false, that by itself does not destroy his testimony from beginning till end. It is only where the Court does not find it possible to separate truth from falsehood on account of grain and chaff being inextricably mixed up that the Court has to discard the entire testimony of the witness in toto.

17. In *State of U. P. Vs. Shanker*, , it was held by Hon''ble Supreme Court that the mere fact that the witness had not told the truth in regard to a peripheral matter would not justify a rejection of his evidence. It was reminded that time and again the Court had pointed out that in this country, it is rare to come across the testimony of a witness which does not have a fringe or embroidery of untruth although his evidence may be true in the main.

18. In *Bhagwan Tana Patil Vs. The State of Maharashtra*, , the Hon''ble Supreme Court held that the maxim *falsus in uno falsus in omnibus* is not to be blindly invoked in appearing evidence adduced in our Courts where witness seldom tell the whole truth but often resort to exaggeration embellishment and padding up to support of however, true in the gain. It is the function of the Court to disengage the truth from falsehood and to accept what it finds to be true and reject the rest. It is only where truth and falsehood are inextricably mixed up polluting the beyond and refinement the entire fabric of the narration given by witness that the Court might be justified in rejecting his evidence in toto. The same view was taken in *Laxman and Others Vs. The State of Maharashtra*, , where the Hon''ble Court held that the witness cannot be branded as liars in toto and their testimony rejected outright even if parts of their statement are demonstrably incorrect or doubtful. It was observed that an astute Judge can separate the grain of acceptable truth from the chaff of exaggeration and improbabilities, which cannot be safely or prudently accepted and acted upon. In *Rai Singh Vs. The State of Haryana*, , the Hon''ble Supreme Court held that in each case the Court has to appraise the evidence to see to what extent it is worthy of acceptance and merely because in one respect the court considers it unsafe to rely on the testimony of a witness it does not necessarily follow as a

matter of law, that it must be discarded in all other respects as well. The Court has to sift the evidence with care in each case and on full consideration of all the relevant material circumstances to come to a decision, which part of the testimony of the witness to accept, and which to reject.

19. In *Molu and Others Vs. State of Haryana*, , the Hon"ble Supreme Court reiterated that the Court should make every effort to disengage the truth from the falsehood and to sift the grain from the chaff rather than take the easy course of rejecting the entire prosecution case merely because there are some embellishments.

20. It has not been disputes by the appellant that Rekha had sustained the injuries which were found on her person, when she was examined in the hospital on 23rd October 2006. The plea taken by the appellant, as disclosed by suggestion given to the witness and the deposition of DW-1, is that when Rekha was searching keys, something fall on her from the top of the almirah and that was the reason for her getting injured. The defence taken by the appellant does not inspire confidence. In fact in his statement u/s 313 of Cr.P.C., no such plea was taken by the appellant. DW-1, who claims to be eye-witness of some articles lying on the top of almirah falling on Rekha, could not even tell the Court as to what were the articles that had fallen on the head of Rekha and had injured her. Moreover, the nature of the injured sustained by Rekha also shows that these injuries could not have come on account of something falling on her head. Even if a hammer falls on the head on a person from the top of an almirah, that would not cause serious injuries, such as those sustained by Rekha. The difference between the top of an almirah and the head of a person not being much, falling of hammer, from almirah, on the head, can cause only minor injury and not serious injuries such as those found on the person of Rekha. Even if the hammer falls on the head of a person from the top of an almirah, it would cause only one injury at the place where it hits the head, whereas Rekha had one clean lacerated wound on her left temporal region and other lacerated wound on the frontal region of her scalp. Moreover, Rekha had injuries not only on her temporal region and frontal region of the scalp, she had injuries on her forehead as well and even her ring finger of the right hand had tooth bite on it. There is no explanation for these injuries. The appellant himself had some injury in his hand, when he was examined in hospital. If he was sleeping when Rekha sustained injury on account of something falling on her head from the top of almirah, as claimed by DW-1, there is no explanation for the injury to the appellant. On the other hand, it has come in the testimony of PWs, that he may have sustained injury, when he used a bottle of liquor, to cause injury to Rekha. Even otherwise had Rekha sustained injuries on account of something falling on head from the top of the almirah, the injured and both her children would not have gone to the extent of implicating the appellant in a serious case of attempt to murder, which resulted in the appellant remaining behind the bars for more than two years.

21. It was pointed out by the learned Counsel for the appellant that in the case

sheet of Rekha the date has been changed from 27th to 29th though Rekha herself has admitted that she was discharged from the hospital on 26th or 27th of October 1996. I find that no question as regards change of date on the case sheet was put either to the Investigating Officer or to any witness from Ram Manohar Lohia hospital, where this case sheet was prepared. In the absence of any cross-examination, neither the Investigating Officer nor the Doctor had an opportunity to explain the change of date on the case sheet and, therefore, no inference on this account can be drawn against the prosecution. It would be relevant to note here that in his application dated 2nd November, to the hospital, which is available in trial court record, the Investigating Officer has written that Rekha was discharged on 29th October 2006. Also there is another endorsement on the case sheet, which is also dated 29th October 1996. The Case Sheet was produced in the Court by PW-10 Dr. Siddharth and not by injured or by the Investigating Officer. Therefore, the possibility of Rekha having been discharged only on 29th October 2006 and she not remembering the correct date of her discharge when she was examined in the Court cannot altogether be ruled out. In any case, nothing really turns on whether Rekha was discharged on 27th October 1996 or on 29th October 1996.

22. It was also pointed out by the learned Counsel for the appellant that according to PW-1 Rahul, the hammer was lying in the room and was handed over by him to the police, whereas according to police officials, the hammer was got recovered by the appellant from under the table. This is not the case of any of the eye-witness that the appellant had thrown the hammer under the table after causing injuries to Rekha. In any case, when the police officials came to the spot, they could not have missed to notice the hammer lying in the room, even if it was lying under the table, when the complainant himself had told them about use of hammer by the appellant for causing injuries to his mother Rekha. Obviously, the deposition of the police officials, to the effect that the hammer was got recovered by the appellant from under the table, is nothing but an attempt to take credit for recovery of hammer or an attempt to create additional evidence against the appellant by showing that the weapon of offence was got recovered by him while in the police custody.

23. For the reasons given in the preceding paragraphs, I see no good reason to interfere with the conviction of the appellant u/s 307 of IPC and the same is accordingly upheld. As regards sentence, it was pointed out by the learned Counsel for the appellant that since he had already spent more than two years in custody, he may not be sent back to the jail. At the time of hearing of this appeal, the injured Rekha Sharma as well as her daughter were present in the Court and they complained that after his release from jail, the appellant has continuously been quarreling with them and has given beatings to them a number of times. They had also brought written complaints made by them to the concerned police station from time to time against the appellant. The appellant ofcourse denied the complaints made against him. The conduct of the appellant in my view does not entitle him to so much leniency in the matter of sentence so

as to sentence him only to the extent of period already spent by him in jail. Taking into consideration all the facts and circumstances of the case, the appellant is sentenced to undergo R.I. for 3 years and to pay a fine of Rs. 25,000/- or to undergo S.I. for 3 months in default. Out of the fine realized from the appellant, Rs. 20,000/- be paid to injured Rekha Sharma as compensation.

Crl. A. 315/2009 stand disposed of.

One copy of this judgment be given to the appellant. Record of the trial court be sent back along with a copy of this judgment for committing the appellant to prison, to undergo the remaining part of the sentence.