

Mohinder Singh

Vs

State (Delhi Admn.)

Criminal Appeal No. 151 of 1979

(S. R. Pandian, K. Jayachandra Reddy JJ)

08.01.1991

ORDER :-

1. This appeal is preferred by the accused challenging the correctness of the judgment made by the High Court of Delhi in Crl. Appeal No. 64/ 75 confirming the judgment of the trial Court convicting the appellant under Ss. 302 and 449, I.P.C. and sentencing him to undergo imprisonment for life under S. 302, but awarding no separate sentence for the offence u/s. 449 on the accusation that on 10 -6-74 at about 8 00 p.m. at Prem Nagar the appellant caused the death of the deceased Inder Singh by stabbing him with a knife. The facts of the case stated in brief are as follows:

2. The appellant was a driver who was having sexual relationship with the wife of the deceased Jito. On the date of the occurrence he came to the house of the appellant while the appellant and his brother PW 9 were sitting on a cot and conversing and called Jito - Jito. The deceased opened the gate and questioned the appellant as to why had come there to which the appellant replied that She had illicit relationship with Jito and therefore he would continue coming to their house. This led to an exchange of hot words between the deceased and the appellant. According to the prosecution the appellant stabbed the deceased on his left side near the chest. On receipt of the injury the deceased Inder Singh raised a hue and cry and fell inside the house which cry attracted PWs 10 and 12. PW 9 also came out of the house and saw the deceased lying with a stab injury on his chest. PWs 9, 10 and 12 attempted to apprehend the appellant but the appellant ran away from the scene of the occurrence. PW 3 who was the Sub-Inspector of Police in the Police Control Room, received a telephonic message from one Kabul Singh (not examined) intimating that one person at Patel Nagar had been stabbed. He entered this information as Exhibit PW 3 /A and passed on the information to the concerned police station. PW 1, the Head Constable of the concerned police station received the message at about 8.15 p.m. from the Control Room and prepared a report exhibit PW 1/ A and the said report was sent to the Sub-Inspector of Police, PW 17 who received the same on his way to Wellington Hospital. On receipt of the said report PW 17 went to Patel Nagar along with a constable and recorded the statement of PW 9 Teja Singh under exhibit PW 1 /B. PW 17 after holding inquest on the dead body, sent the same for post mortem examination. Dr. Bharat Singh conducted the post mortem examination of the dead body of the deceased Inder Singh on 11-6-84 and found the following external injury:

"One incised stab wound over the left side front of the chest, 3 1/2' below the left nipple placed obliquely horizontal. Size of wound was 1 X 1/4' X 1/4'. Wound was covered by blood. Tapering end of the wound was on the right side. Wound was elliptical in shape. On opening the chest cavity it was seen that the track of the

wound was directed on the right side and wound had entered the chest cavity through fifth inter-costal space and then it had cut the left lung upper (?) lower part through and through and finally, it had cut the left ventricle of the heart in the same line. Side of the cut on the heart was 1/2" X 1/4' X 1/4". Total depth of the wound was 4 1/2'. There was no disease in the heart and lungs. Left side chest cavity was full of fluid and clotted blood. Stomach contained 2 ounces of semi-digested food. Small and large intestines contained gases and faeces. Bladder contained clear urine. Liver, spleen and kidneys were normal. Skull and brain were normal. Neck tissues were normal. Trachea and hyoid bone intact".

3. After completing the investigation PW 17 laid the charge sheet against the appellant. PWs 9, 10 and 12 were the eye-witnesses of whom PWs 10 and 12 resiled from their earliest statement and as such they have been treated as hostile witnesses. PW 9 who is the brother of the deceased speaks about the entire incident. According to PW 9 while he was conversing with the deceased sitting on a cot inside the house of the appellant heard the appellant calling Jito and his brother, the deceased opening the gate. He further states that on hearing the distress cry of his brother he went to the spot and found his brother lying with injury on his chest and the appellant trying to escape from the place. PWs 9, 10 and 12 attempted to apprehend the appellant but they could not do so. The trial Court relying on the evidence of PW 9 and the circumstance namely the recovery of Ex. P/ 1 (a driving licence of the appellant) which was recovered from the scene of the occurrence, found the appellant guilty of the 'offences charged. The High Court, on appeal by the appellant, affirmed the finding of the trial Court. Hence this appeal is preferred.

4. Learned counsel appearing as amicus curiae on behalf of the appellant strenuously contended before us that the evidence of PW 9 whose testimony is highly interested cannot be accepted and that the evidence of PW 9 is not corroborated by any other material. We have gone through the impugned judgment as well as the evidence of the witnesses very meticulously. Simply because PW 9 happens to be the 'brother of the 'deceased, his evidence cannot be discarded if his testimony is otherwise acceptable. The presence of PW 9 cannot be doubted since PW 9 was present at the scene at the time when the Sub-Inspector of Police PW 17 arrived at the spot. His report Ex. PW 1 / B was recorded from PW 9 himself. In that report PW 9 has given a full version of the incident and has claimed to have been present at the time of the occurrence. On going through his evidence, we do not see any reason to discard his testimony. On the other hand, his evidence is believable and acceptable. Apart from his evidence the recovery of the driving licence Ex. P 1 recovered by the police serves as a very strong piece of circumstantial evidence corroborating the testimony of PW 9 and implicating the appellant with offence in question. The only explanation given by the defence is that since the appellant had been visiting the house of the deceased very often, he might have left his driving licence in the house of the deceased which subsequently would have been produced before police by Jito. This explanation in our opinion is far fetched and cannot be accepted because it is the positive assertion of PW 17 that Ex. P/ 1 was seized from the scene of occurrence. The medical evidence shows that the stab-wound over the left side front of the chest had gone so deep through inter costal space coming from left lung through and through, and also to the left of the heart in the same line. The death was instantaneous.

5. It is not the case of the defence that the appellant had not gone to the scene house prior to the occurrence but on the other hand it is an admitted case that the appellant used to come to the house of the deceased. Therefore, there cannot be any question of mistaken identity of the appellant.

6. For all the reasons stated above, we are in full agreement with the finding of the High Court that

it was the appellant and appellant alone who was responsible for causing the death of the deceased on the fateful night. In the result, we confirm the judgment of the High Court. and dismiss the appeal as being devoid of any merit.

Appeal dismissed

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