

Ramesh Chander

Vs

State (Delhi Administration)

Criminal Appeal No. 770 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

06.08.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. The sole accused in this case is the appellant. He was tried for an offence punishable under S. 302, I. P. C. but acquitted by the trial Court. The State preferred an appeal to the High Court and a Division Bench relying on the evidence of the eye-witnesses reversed the order of acquittal and convicted him under Section 302, I.P.C. and sentenced him to undergo imprisonment for life. This appeal is preferred under Section 379, Cr. P.C. read with Section 2 of the Supreme Court (Enlargement of Criminal Jurisdiction) Act. The prosecution case is as follows:

2. The accused, the deceased and the material witnesses belong to Delhi. One Nand Kishore P.W. 18 is the elder brother of deceased Ved Prakash. They were living in a house in Hudson Lines, Kingsway Camp, Delhi and in portion of the said house, P.W. 18 was running a kirana shop. The accused used to stand by that shop and used to tease the girls passing from there by making undesirable remarks. The deceased used to check the accused from doing so. On 14-3-72 in the evening the accused passed undesirable remarks against the girls passing near the shop of P.W. 18. The deceased checked him but the accused did not desist. There was a quarrel between the two. The accused was beaten by the deceased who left saying that he would avenge the insult. The next day i.e. 15-3-72 at about 7.30 p.m. the accused came to the shop of P. W. 18 where the deceased was working and attacked with a sua, which is used for breaking ice. The accused was overpowered by Ram Lal, P. W. 7 and Amar Nath, P.W. 8 and they caught hold of him on the spot. The injured deceased was removed to Lwin Hospital by P.W. 15, one Vijay Kumar who was known to the deceased and was passing that way. Dr. Dinesh Bhargava, P. W. 20 examined the deceased and declared him dead. The Police Control Room was informed and the investigation was commenced. P.W. 17, Sub Inspector prepared the report and took the accused into custody. He kept guard at the place of occurrence. Thereafter F.I.R. was sent to the Police Station for registration of the crime. Inquest was held over the dead body and the Doctor conducted the postmortem and issued the postmortem certificate which is proved by Dr. Y. P. Rana. In the postmortem certificate five injuries were found. Injuries Nos. 1 and 2 were punctured wounds on the left side of the chest. Injury No. 5 was another punctured wound on the left thigh. On internal examination it was found that injury No. 1 had caused a hole in the side wall of pulmonary artery and had then entered the wall of Aorta., The total depth was about 8-9 cms. Injury No. 2 entered the lung. He opined that the death was due to shock and haemorrhage as a result of these injuries. The medical evidence proves beyond doubt that the injuries are serious and the death was homicidal. This aspect is not in dispute.

3. The two eye-witnesses P.Ws. 7 and 8 as per the prosecution version, stated that they saw the accused-appellant giving sua blows to the deceased and they apprehended him and handed over him to the Inspector, P.W. 26. The learned Additional Sessions Judge rejected the evidence of these eyewitnesses pointing out certain discrepancies. Some of the circumstances pointed out by him for not accepting their evidence are that Ram Lal, P.W. 7 was the uncle of the deceased and Arnar Nath, P.W. 8 was his cousin and at 7.30 p.m. P.W. 7 should have been at his shop and not near his house and P.W. 8 was not having any employment and that though they are near relations of the deceased they did not attend to the injured but continued to hold the accused. Even after many people gathered they did not care to look at the deceased and they did not even go to the hospital along with the deceased. The learned Judge also pointed out that these witnesses did not care to notice the blood on the clothes of the deceased or on the road and they could not give the time gap between the deceased falling down and his removal to the hospital. It is also commented that P.W. 15 who was going to the market and who having found that the deceased was lying with injuries took him to the hospital, did not give the names of these two witnesses and therefore, according to the learned trial judge the evidence of these two witnesses becomes doubtful. The trial Judge also pointed out certain other minor discrepancies by scrutinising their evidence in the light of the earlier statements. These are the grounds on which their evidence is rejected by the trial Court. A Division Bench of the High Court discussed the evidence of these witnesses at length and held that the reasons given by the trial Court are unsound and perverse. We have also gone through the evidence of these two witnesses. P.W. 7 Ram Lal gave the F.I.R. in which all the details are mentioned. He stated that he was present at his house at about 7.30 p.m. Hearing a row, he reached the spot. In the meanwhile P.W. 8 also reached there and both of them saw the accused attacking the deceased with sua and they caught hold of him and that some people removed the injured deceased to the Irwin Hospital. The sua which was dropped by the accused was later produced before the police. This is the simple version given in the earliest report which was given at 9.10 p.m. almost immediately. In his deposition we find the version to the same effect. In the cross-examination he also asserted that he and P.W. 8 witnessed the occurrence and both of them caught hold of the accused-appellant and handed him over to the police along with the sua. The whole of cross-examination is about some discrepancies. He further asserted in the cross-examination that P.W. 15 also came there and removed the injured to the hospital and omission in this regard in the earlier statement is very much highlighted. This witness could not give the names of the persons who gathered there. P.W. 8's evidence is consistent with that of P.W. 7 and he also denied the suggestion that the incident took place inside the shop and that they have falsely implicated the accused without having witnessed the occurrence.

4. We may mention here that the evidence of these two eye-witnesses is amply corroborated by P.W. 15. He deposed that he was going towards market in his three-wheeler scooter and he found a crowd in front of the shop of the deceased. They were saying that the accused had injured the deceased and he removed the injured deceased in his threewheeler scooter to the hospital. It can thus be seen that according to him the occurrence was in front of the shop and that several people had gathered there. So the defence suggestion that occurrence took place inside the shop and P.Ws. 7 and 8 have not witnessed the occurrence cannot be accepted. His cross-examination shows that P.W. 15 is an independent witness. His evidence establishes that the occurrence has taken place in front of the shop and that the deceased was also lying injured there.

5. Learned counsel for the appellant for the first time in this Court submitted that the prosecution has not proved that the earth at the scene of occurrence was blood-stained. Therefore, the scene of occurrence cannot be held to be in front of the shop of the deceased and therefore the evidence of the two eyewitnesses also becomes doubtful and perhaps due to suspicion of the previous quarrel

they caught hold of the accused. He also relied on some of the decisions of this Court. In *Lakshmi Singh v. State of Bihar*, (1976) 4 SCC 394: (AIR 1976 SC 2263), it is observed that failure to send blood-stained earth for chemical examination can prove fatal where the entire case hinged on fixing the situs of the assault. We have perused the judgment and there are several circumstances which created doubt in the minds of the Judges about the prosecution case. It is also observed that even the origin of the occurrence appears to be shrouded in deep mystery. Learned counsel very much placed reliance on paragraphs 14 and 17 of this judgment in this regard. No doubt in paragraph 14 it is observed that absence to send the blood-stained earth for chemical examination shows that the defence version may be true. But there were many other circumstances which were taken into consideration by this Court in allowing the appeal. It is nowhere held that the failure to establish that the earth was blood-stained by itself is a ground to doubt the scene of occurrence and discard the prosecution case on that ground though there are clinching evidence both oral and circumstantial establishing the scene of occurrence. In the instant case, P.W. 15, an independent witness deposed that he saw the injured deceased lying in front of the shop and the evidence Of P.Ws. 7 and 8 from the beginning is consistent in this regard. However, the Inspector, P.W. 26 has deposed that when he went to the scene of occurrence he found the accused having been held by these two eye-witnesses and that there were about 100 to 125 persons present near the shop. Thus all these circumstances conclusively establish that the occurrence took place in front of the shop. Therefore we find absolutely no ground to doubt the case of the prosecution regarding the place of occurrence. In any event we must point out that for the first time this point is raised before us. However, we are satisfied that there cannot be any doubt about the place of occurrence and the High Court has rightly held that evidence of the two eye-witnesses did not suffer from any infirmity worth mentioning and has rightly reversed the order of acquittal. There are no merits in this appeal. It is accordingly dismissed. Appeal dismissed.

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