

[Non-Reportable]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 723 OF 2010

Rajinder

.....Appellant

Versus

State (NCT of Delhi) & Anr.

....Respondents

J U D G M E N T

HARJIT SINGH BEDI, J.

This appeal arises out of the following facts:

1. At about 3 p.m. on 25th of August 1993, Murari Lal PW-1 along with his wife Saroj had gone to the crockery shop of his brothers Gobind and Ashok PW-5 bearing No.2649, Shadipur Main Bazar. He parked his scooter near the shop and then asked his uncle Jagdish, who was present at his shop very close by, as to why his sons had abused Saroj. This enquiry annoyed Jagdish and he picked up a lathi and attempted to assault Saroj. Murari Lal thereupon intervened to save his wife but in the

meantime

2

Rajinder and Dharambir, sons of Jagdish, came rushing to that place carrying a scissor and a knife respectively. Dharambir thereupon gave knife blows to Murari Lal in the abdomen whereafter he fell down on the ground. Gobind raised an alarm and tried to save Murari Lal from further injury. Rajinder and Dharambir, however, attacked Gobind with their weapons and on receiving the injuries he too fell on the ground. This incident was seen by PW-2 Anil Kumar, PW-3 Saroj Bala and PW-5 Ashok Kumar. Gobind and Murari were immediately removed to the Ram Manohar Lohia Hospital. It appears that information was received in Police Station Patel Nagar about a quarrel having taken place in Shop No.2666 in the Shadipur Main Market. This information was recorded in the daily diary register on which Sub-Inspector Shiv Kumar along with other police officials reached the place of incident and found that the injured had already been removed to the hospital. The Sub-Inspector thereupon went to the hospital and collected

the medio-legal

3

report with respect to the injuries of Murari Lal and also the information that Gobind had been brought dead to the hospital. The Sub-Inspector also made an enquiry as to the fitness of Murari Lal and after the doctor had certified as to his fitness, his statement was recorded and on its basis the FIR was duly registered. In the FIR it was mentioned that the complainant and the accused parties were very closely related and had shared a common business at one time, but they had fallen out in a very nasty manner at a later stage. On the completion of the investigation, a charge sheet was filed against Jagdish and his sons Dharambir and Rajinder for offences punishable under Sections 302/34 and 307/34 of the IPC and they were duly charged under those provisions and were brought to trial.

2. The prosecution relied on the evidence of Murari Lal, Anil Kumar, Saroj and Ashok Kumar the eye witnesses to the incident, as also on the medical evidence. In their statements recorded under Section 313 of the Cr.P.C. the

accused

4

pleaded their innocence and denied all the allegations leveled against them. Rajinder claimed that he was in the house of his in-laws with his wife as it was the day of Rakhi whereas Dharambir claimed that he was at a Patel Nagar Park with some students in connection with their studies. No defence evidence was however led by the accused in support of their pleas of alibi. Jagdish took the plea that in fact PW-1 Murari Lal and the deceased had dragged him from his shop due to which he had sustained injuries and his shirt had got blood stained on that account and that he had been saved from further harm by the crowd that had collected at the site and that the injuries suffered by PW Murari Lal and the deceased may have been caused by someone from that crowd.

3. The trial court in its judgment dated 30th May 1994 held that the prosecution story had been proved beyond doubt in the light of the eye witness account, the medical evidence as well as the fact that the first information

report had been

5

lodged within a very short time. It was found that in the light of the doctor's evidence the injuries could have been caused by the scissor and the knife that Dharambir and Rajinder were said to be carrying and as the death was clearly homicidal, the involvement of all the three accused was spelt out beyond doubt, more particularly as no evidence had been produced by the accused to prove their explicit defence. It was also observed that Jagdish had not been subjected to a medical examination and there was no evidence of any injury to him whereas the plea of alibi had not been supported by any witness and had remained confined only to the statements under Section 313 of the Cr.P.C. of the two accused Dharambir and Rajinder. The trial court accordingly convicted the accused for the offences charged and awarded a sentence of life imprisonment for the offence of murder and also 7 years RI on the charge of attempt to murder; both the sentences to run concurrently. The matter was thereafter taken in appeal to the High Court and the High

Court, while

6

confirming the conviction and sentence of Dharambir and Rajinder, has allowed the appeal of Jagdish holding that though his presence had been proved yet he did not share the common intention with his co-accused as he had allegedly picked up a lathi from the spot, but had not used it. Jagdish was accordingly acquitted. The present appeal has been filed by Dharambir and Rajinder alone.

4. Mr. R.S. Sodhi, the learned senior counsel for the appellants has raised two primary submissions before us. He has first submitted that it appeared that the place of incident had been changed inasmuch that the accused had been charged for having committed the murder outside shop No. 2649 which belonged to the accused party whereas the finding of the court was that the incident had taken place outside shop No. 2666 which belonged to the complainant party and this taken with the fact that the injuries on the person of Jagdish had not been explained by the prosecution, the entire prosecution story appeared to be a concoction. He has

also submitted

7

that Rajinder who had been armed with a pair of scissors had apparently caused no injury to the deceased as the medical evidence did not support the story and as such his case was on the same footing as Jagdish who had been acquitted.

5. The learned counsel for the State of Delhi has, however, supported the judgments of the courts below.
6. We have heard the learned counsel for the parties and considered the submissions very carefully. It is true that in the charge framed against the three accused on the 12th of February 1992, the allegation was that the murder had been committed in Shop No.2649, Main Bazar Shadipur. The charge aforesaid had its basis in the scaled plan Ex.PW9/A prepared by PW-9 Inspector Devinder Singh, Draftsman, Crime Branch, Delhi on the pointing out of PWs. Anil Kumar, Ashok and Saroj. The Inspector also deposed that the scaled plan was 2 cm. to 1 mtr. The aforesaid eye witnesses, however (one of them Murari Lal being injured) have been very categorical that

the incident

8

had taken place in the shop of Jagdish which was Shop No.2666 where Murari Lal had gone along with his wife to remonstrate as to why he was abusing the ladies of the family. It appears, however, from the evidence, and it has been so found by the trial court and the High Court, that the defence could not take advantage of this apparent discordance as no question was put to them on this score in their cross-examination. It is significant that no question was even put to Sub-Inspector Shiv Kumar who had sent the Ruqa that the incident had taken place outside Shop No.2649 whereas the eye witnesses' account was that it had happened outside Shop No.2666. We are of the opinion that this omission was not an oversight and even the facts show that no advantage can be taken by the defence on account of the conflicting addresses. A perusal of the scaled plan Ex.PW9/A along with the statement of PW-9 Inspector Devinder Singh would reveal that the distance between Shop No.2649 and 2666 was only 10 to 12 feet in a very

crowded market

9

and in this view of the matter the incident had taken place virtually in between both the shops. As a corollary to the above, the plea of the defence that the injuries to Jagdish (since acquitted) had not been explained by the prosecution really destroys the substratum of the defence version. In his statement recorded under Section 313 of the Cr.P.C. Jagdish had stated that he had been dragged by the complainant party from his shop to Shop No.2649 and injuries had been caused to him by Murari Lal and others and that he had been saved by the crowd that had collected at that site and that the injuries to Murari Lal and the deceased had been caused by someone from that crowd. Admittedly, no evidence to that effect has been produced by the defence and save for the ipse dixit of Jagdish, there is no basis for this story. Undoubtedly, PW-18 G.L. Mehta, the Investigating Officer admitted in his cross-examination that in the case diary, there was a reference to some injuries having been suffered by Jagdish and that his medical examination

had been 10

carried out. It is significant however that Jagdish had not claimed at the initial stage that he had received any injury much less a serious one at the hands of the deceased or Murari Lal or even during the various occasions when he had been produced before the Magistrates' Court for remand or other purposes. We are, therefore, of the opinion that the first argument raised by Mr. Sodhi has no merit.

7. We have also examined his second argument with respect to the role attributed to Rajinder who is alleged to have been armed with a pair of scissors. For this argument Mr. Sodhi has placed reliance on the statement of PW-11 Dr. Tarun Gupta, the emergency doctor and PW-12 Dr. L.K.Birwah, who had conducted the autopsy on the dead body. Dr. Gupta in the MLC Ex.PW11/B observed that Gobind had been brought dead to the hospital and that the dead body had three lacerated wounds on the left angle of the chest wall but when cross-examined, he was unable to say whether the wounds had been caused by

one or more

11

weapons or as to the kind of the weapon that had been used. Dr. L.K.Birwah too found three incised wounds on the dead body. They are re-produced herein below:

1. One vertically placed incised wound on left angle of chest of size 2.3 x 1.2 cm into query deep. This injury was 12 cm below the left anterior axillary fold.

2. One incised wound 4 cm. lateral and posterior to the injury No.1 and 10 cm below the posterior axillary fold placed almost vertically of size 2.6 cm x 1.5 cm into query; both the angles of the wound were acutely cut.

3. One incised wound on the back of left arm just below the posterior axillary fold placed obliquely vertical the lateral margin of the wound showed one small projection whereas the medical border showed slight swelling of size 4 cm x 1.5 cm into query. After exploration of this injury it had two bifurcated cuts at a distance of approximately 1 cm."

The underlined portion would indicate that as this injury had two bifurcated cuts, it could have been caused with a pair of scissors as the blades opened up in the course of their travel through the body. In his cross-examination, the doctor was categorical that the injuries had been caused by a sharp weapon which could be single edged or double edged, but he admitted that he could not say with certainty if they had been caused by one weapon or more than one weapon. It is also significant that PW-3 Saroj deposed that Rajinder had stabbed Gobind on

Crl. Appeal
No.723/2010

the left back side of

12

the shoulder and he had been holding the scissor by its two handles and had stabbed the deceased with the cutting portion. We are, therefore, of the opinion that this argument too lacks merit. We, accordingly, dismiss the appeal.

.....**J.**
(Harjit Singh Bedi)

.....**J.**
(Gyan Sudha Misra)

New Delhi,
Dated: August 12, 2011