

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18.04.2012

Decided on: 04.05.2012

+ **CRL.A. 1356/2011, Crl. M. (Bail) 1910/2011**

KARAN VERMA Appellant
Through : Ms. Anu Narula, Advocate with Ms. Nitasha
Gupta and Ms. Sarita, Advocates.

versus

STATE GOVT. OF NCT OF DELHI Respondent
Through : Mr. Sanjay Lao, APP.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

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1. This appeal challenges the judgment dated 30.03.2011 in SC No.55/2009 whereby the Learned Additional Sessions Judge (Rohini) convicted the appellant, Karan Verma, for the offence of murder under Section 302, IPC. It also impugns the order of sentence dated 08.04.2011 awarded to the appellant, by which he was sentenced to undergo imprisonment for life and imposed a fine of ₹10,000/- in default of which an additional six months of imprisonment had to be served by him.

2. The prosecution case was that on 18.10.2006, at about 10:07 PM (Ex. PW-13/A) information regarding a quarrel and the removing of the

injured to a hospital was received by the police, i.e. PS Samaipur Badli, on telephone. On reaching the spot, the police learnt that the injured was one Suresh who had allegedly been hit with a flat iron rod (a broken shocker of a vehicle) and had been removed to BJRM Hospital. SI Mohd. Nabi, therefore, went to BJRM hospital and found the injured Suresh there. The doctor told the police that Suresh was unfit to give a statement. Sometime later he was declared dead. A brother of the deceased Suresh, Harbans Chand (PW-1), who was at the hospital told SI Mohd. Nabi (PW-13) that the Appellant Karan had inflicted the injury on the head of his brother when he was passing from in front of Karan's house. He stated that the accused used "*Gadi ki Loha Kamani*" (shocker iron strip of a car) to inflict the injury. Based on the statement of PW-1 Harbans, the intimation (*rukka*) was prepared, and the FIR was registered. Subsequently, the appellant was arrested.

3. On completion of investigation, a final report was filed before the Metropolitan Magistrate. The case was committed to trial before the Court of Sessions. The appellant was charged for committing the offence punishable under Section 302, IPC. He pleaded not guilty and claimed trial. During the trial, the prosecution examined 18 witnesses, besides other materials, such as the documentary evidence and reports of the forensic laboratory, the post mortem report, etc. The Trial Court, after considering the overall effect of the materials on record, convicted the accused for the offence charged and passed the order on sentence, in the manner described previously.

4. During the trial, the main circumstance relied upon by the Learned ASJ was the eye-witness testimony of PW-1 Harbans Chand as well as the testimony of PW-2. It was held that the lodging of the FIR and the recording of the statement of the material witnesses, as well as recovery of the murder weapon, pursuant to the disclosure statement made by the accused, after his arrest, were incriminating circumstances that had been duly proved by the prosecution. The Trial Court also held that the nature of injuries found on the deceased were of the kind spoken to by PW-1 and corroborated by the post mortem report.

5. Counsel for the appellant argued that PW-1's testimony contains material contradictions which render it untrustworthy. It was highlighted, in this regard that in the examination-in-chief, this witness stated that his statement under Section 161, Cr.PC was recorded at the hospital. Yet, in his cross examination, he admitted that this statement was recorded at the police station. This contradicted the deposition of PW-13 who deposed to having recorded the Section 161 Cr.PC statement of PW-1 at the hospital. Further, argued counsel, PW-1 deposed that the said statement was recorded at the police station. Counsel argued that the discrepancy is vital as it shows that the FIR was ante-timed and manipulated .

6. It was submitted that the landlady who allegedly stood behind the appellant at the time of the incident was not examined. Similarly, the shop keeper who informed the police about the incident was not examined; he told the police that the deceased had been taken to a hospital. Raju, at whose house the appellant was allegedly arrested, was not joined in the proceedings, nor examined. It was submitted that the omission to examine

these seemingly independent witnesses, on the one hand, and reliance on the testimony of relatives and interested witnesses, on the other, was fatal to the prosecution. It was emphasized further, that though, according to the testimony of PW-1 and PW-2, several individuals had gathered at the spot immediately after the incident, none of such public persons were examined to prove either the involvement of the appellant in the crime, or the presence of PW-1 at the scene during the incident.

7. Learned Counsel urged that the alleged weapon of offence was not shown to the doctor for his subsequent opinion. Importantly, no finger prints of the appellant were lifted from or found on the iron strip (*kamani*), the alleged murder weapon. It was also submitted that the said alleged weapon was recovered from an open place accessible to all, and could not, by itself be linked or connected with the appellant, to establish his criminal responsibility.

8. It was urged next that the omission of the appellant's name in Ex.PW-13/A (report DD No.98) as the suspect, is also a doubtful circumstance which highlights grave prosecution inadequacy. Counsel submits that the role of the appellant as the attacker is not proved, because PW-13, SI Mohd. Nabi, in his cross examination stated, "It was only the Harbans Lal who had stated to me that accused could be Karan Verma who might have assaulted deceased Suresh due to previous enmity but nobody at the spot had named accused Karan Verma before me". Counsel for the appellant therefore argued that the name of the appellant was got involved by PW-13 Harbans as an afterthought, and that he had no role in the crime.

9. Learned counsel for the appellant relied on the Charge sheet and the arrest memo of the accused (Ex.PW-11/A) both of which showed the address of the accused as somewhere in Uttar Pradesh (UP) to contend that he was not a resident of the colony where the incident took place. Apart from the testimony of the interested witness, there was no independent corroboration of whether the appellant indeed lived in Delhi, what he did, and how the deceased, and his family members knew him. Thus the allegation that the deceased was attacked with a “*kamani*” when he was passing by the appellant’s room was patently false and in any case was not proved by the prosecution.

10. The learned APP for the State, argued that the findings of the Trial Court do not suffer from any infirmity calling for interference. It was submitted that the *rukka* itself noted the name of the accused. Similarly, the special report under Section 157, Cr.PC was given to the magistrate within reasonable time. It was argued that PW-1 Harbans deposed that whilst returning from work at around 9:30 PM on 18.10.2006, he was walking behind his brother. The latter was a little ahead of him on his cycle. PW-1’s version was to the effect that when Suresh was passing the accused’s room he shouted “*Abe salle ruk*” and came out with a *kamani* in his hand. He deposed that at the time, the landlady of the house was standing behind the accused. Furthermore, according to PW-1 Harbans, before he could raise an alarm, Karan hit the deceased’s head with the *kamani* and ran away. On seeing this, PW-1 went to attend to his injured brother and started crying. Hearing the cries of PW-1, his other brother, PW-2 Mukesh, rushed out to the spot from the terrace of his house, where he had been standing. PW-1

and PW-2 together took the deceased to the hospital where he was declared brought dead.

11. It was urged on behalf of the state that the testimony of PW-1 was corroborated by PW-2, who stated that upon hearing the cries for help, he went out, and saw that the deceased had been attacked. The APP urged that the discrepancy about whether the statement of PW-1 was recorded at the hospital or at the police station, is inconsequential and a minor one, which should not drive the court to discard his testimony, which otherwise supported the prosecution version in material particulars. It was submitted that as a matter of law, the appellant could not urge that a relative is *per se* a partisan witness, whose deposition cannot be accepted. Unless the accused can establish reasonably that the witness, who is also a relative, was inimical to the deceased, his testimony cannot be ignored or treated differently from any other prosecution witness or eyewitness who has seen the incident.

12. The learned APP argued that so far as the submission regarding the omission to connect the *kamani* through blood on the weapon goes, that is not a fatal infirmity. It was emphasized that the doctor in fact had agreed to the suggestion that the *kamani* could have been the murder weapon, which importantly established the prosecution allegations.

13. The first intimation, by phone (Ex. PW-13/A) was received by the police at 10-07 PM. The MLC (Ex. PW-3/A) shows that the injured was taken to hospital at 10-15 PM, by his brother Mukesh PW-2. The *rukka* was prepared at 11-15 PM (Ex. PW-1/A). The FIR was registered by PS Samaipur Badli at 11-30 PM (Ex. PW-4/A).

14. PW-1 narrated the sequence of events, in his examination in chief during the trial. He categorically implicated the accused/Appellant as the assailant who hit the deceased on the head. During cross-examination, PW-1 was confronted with the fact about the presence of the land lady at the spot behind the accused. This fact was not recorded in his statement under section 161, Cr.PC to the police. In response, the witness deposed that the land lady was present behind the accused at the time of the incident. During his cross examination, he further deposed that there had been light at the spot at the time of the incident, that the accused must have taken around two minutes in coming out of his house and hitting the deceased, Suresh on the head, and that many persons gathered at the spot after his brother Suresh was hit and had started bleeding. He deposed that there used to be quarrels between the accused and his brother with regard to loud playing of the music by the accused.

15. PW-2 in his testimony corroborated his brother's testimony to the extent that he stated that at about the same time, when he had been standing at his house's terrace/roof, he heard his brother Harban's noise saying "*Bachao Bachao*". Upon hearing this, he went downstairs and saw that Suresh was bleeding from his head, and Harbans was also present there. He testified that they made a call to the PCR and after that took their brother to the hospital. In the cross examination, he described that he saw the accused, and also what he was wearing; he admitted to not seeing the *kamani* in his (the accused's) hands.

16. The Trial Court, in the impugned judgment, noted that to the extent the section 161, Cr.PC statement of PW-1 recorded by the police did not

specify the presence of the land lady behind the accused at the time of the incident, while the same is stated by PW-1 at trial, there was some infirmity. He, however, concluded that the infirmity was not a serious one and did not render the testimony of PW-1 unbelievable. In reaching this inference, he took support from the facts that PW-2 corroborated his brother's version in part, and that PW-18, Dr. V.K. Jha opined that the death had been caused due to blunt traumatic injuries (thus, giving credibility to PW-1's version that injury was caused using a *kamani*, which is like a blunt iron rod). The recovery of the *kamani* at the instance of the appellant was another incriminating circumstance that the prosecution sought to prove. However, since the recovery had been made from a vacant land in the area which was apparently accessible to all, the recovery was not held to be proved against the accused. Therefore, the most significant incriminating circumstance against the appellant which led to his conviction was the eye witness account of PW-1.

17. On an overall consideration of the materials on record, we are of the opinion that the Trial Court's conclusion that the recovery have not been proved as against the appellant, is sound. The *kamani* was recovered from an open plot, which was accessible to general public, and secondly, no blood stains and/or finger prints were found on the said *kamani* which connected it to the accused.

18. As regards the oral testimony, which was the prosecution's mainstay, which led to the Appellant's conviction, this Court is of the opinion that the State's position that relatives' testimony, in cases where they are witnesses to an incident, cannot be brushed aside. At the same time, the circumstances

of each case have to be carefully kept in mind, and wherever the evidence points to some animosity or hostility between the deceased or the victim and the accused, the Court has to be circumspect in its approach. In the light of these settled principles, the Court proceeds to examine the testimony of PW-1.

19. In his deposition in the Court, during cross examination, at one instance, PW-1 stated that his brother Suresh was walking 20-25 metres ahead of him, while later during his cross-examination, he stated the distance between him and the place where accused hit Suresh was about 10-15 metres. He stated that it took about two and a half minutes to reach his injured brother, from where he was standing. Thus the distance deposed by him was either 10-15 or 20-25 metres. In either case, 2 and a half minutes is too long a time taken to cover either distance, especially in a situation where one's brother is grievously injured in one's presence in the circumstances deposed to by the witness. In the examination-in-chief, the witness stated that he had noticed his brother going ahead of him on cycle. During his cross examination, he deposed that his brother who was ahead of him, was not cycling, but was walking with the cycle. In the cross examination, he stated that

“it is incorrect to suggest that there is only one vacant plot between Balaji sweets and Karan's room”.

The site plans (Ex.PW-1/B and Ex.PW-7/A) suggest that there is only one vacant plot between Balaji sweets and the accused Karan's room.

20. There was no mention in PW-1's examination in chief about the appellant loudly abusing Suresh, in his cross examination this aspect was

deposed to. Similarly, a new fact deposed only during the cross examination was that Suresh started walking faster when he saw that the appellant was coming towards him. Even though the accused had loudly abused his brother Suresh, no one else who was present at the scene has deposed they heard any such thing. The incident occurred at about 9:30 pm, two-three days before Diwali at a place quite close a sweet-shop (i.e. Balaji sweets, which, as per the site plan, was separated from the spot by just one plot). PW-1 Harbans has also stated that 20-30 persons were present at the time Suresh was removed to the hospital. It is improbable that in such a situation, no one was told by PW-1 Harbans who the attacker was; or that no one else would have witnessed the incident. According to PW-1's testimony, those persons gathered upon listening to his cries. The most natural reaction when a near relative is injured, would be to firstly, attend to the injured person, and secondly, if there are others around, get their attention towards preventing the assailant from fleeing. Since Harbans did claim that he cried, there would have been others who saw the accused running away. However, no such testimony has been brought on record.

21. The most damaging part of the prosecution version –entirely overlooked by the Trial Court was the admission by the IO, PW-13, who deposed in the court that he was told – by PW-1 – that his brother's assailant could have been the present Appellant, since they used to have some altercation at times. Now, this throws an entirely different light on the prosecution's attempt to implicate the Appellant. It is one thing for a witness to say that he saw the attack, and a wholly different thing to say that he suspected someone behind it. This doubt is vital, because in a sense the prosecution is banking almost entirely on the testimony of PW-1 to rest its

claim that he was criminally responsible. This aspect has to be also viewed with the testimony – in cross examination – of PW-2, who claimed to have come out of his house, soon after hearing the deceased cry out. He significantly stated that he saw the accused; he even described what he was wearing, and most importantly, he deposed that he did not see any kamani in the accused's hands. The testimony of this witness is very important, and has been to a great extent overlooked by the Trial Court. He intimated the police over the telephone (Ex. PW-13/A) which is a fairly detailed document; it records the time at 10-07. Had this witness's version been correct, and he had seen the accused fleeing, or even reached the spot when claimed he did, around 9:40 PM, PW-1 would not have failed to inform him about the identity of the attacker, in which event, the name of the accused would have been mentioned in the first intimation (Ex. PW-13/A) recorded about half an hour later. Furthermore, he took the injured to the hospital at 10-15 PM (Ex. PW-3/A, the MLC). Even in this document, there is no mention of attack by some known individual.

22. These discrepancies are glaring enough; apart from them, the prosecution did not attempt to in fact show where the accused lived, or what he did. The Appellant's counsel had highlighted that his address was shown to be somewhere in UP. If so, the prosecution had a duty to explain how, and under what circumstances he had come over to Delhi, where he lived, who was his employer, or even landlord, etc. We are of the opinion that all the aspects, mentioned above, cast grave doubts about the credibility of PW-1's testimony. Taken cumulatively, the discrepancies fatally undermine the prosecution case.

23. In view of the above discussion, this Court is of the opinion that the prosecution was unable to prove its allegations against the Appellant beyond reasonable doubt. The Trial Court's impugned judgment, for that reason cannot be sustained; it is accordingly set aside. The appellant is directed to be released forthwith, if not required in any other case. The appeal is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

S.P.GARG
(JUDGE)

MAY 04, 2012