

Deepak Vs. State

Deepak Vs. State

SooperKanoon Citation : sooperkanoon.com/1099332

Court : Delhi

Decided On : Dec-03-2013

Judge : S. P. Garg

Appellant : Deepak

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

12. h NOVEMBER, 2013 DECIDED ON :

03. d DECEMBER, 2013 + CRL.A. 149/2000 DEEPAK Through :Appellant Mr.Nitin Dahiya, Advocate. versus .Respondent STATE Through : Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Deepak impugns a judgment dated 25.01.2000 of learned Addl. Sessions Judge in Sessions Case No.10/98 arising out of FIR No.95/97 PS Model Town whereby he was convicted under Sections 307, 394 read with Section 397 IPC and by an order dated 27.01.2000, awarded RI for seven years with fine ` 10,000/- under Section 307 IPC; RI for seven years with fine ` 10,000/- under Section 397 IPC. Both the sentences were to operate concurrently.

2. The case of the prosecution as projected in the charge-sheet was that on 28.01.1997 at about 08.15 A.M. at B-412, Lal Bagh, Aakash Tailors, GTK Road,

Delhi, Deepak and his companion Pankaj in furtherance of common intention inflicted injuries to Man Singh by a knife and deprived Madan Lal of ` 800/- after stabbing him. The police machinery came into motion when Daily Diary (DD) No.5A was recorded at PS Model Town at 09.20 A.M. on getting information from duty constable Rattan Pal informing admission of Man Singh and Madan Lal in Hindu Rao Hospital. The Investigating Officer lodged First Information Report after recording Madan Lals statement (Ex.PW-1/A). During investigation, efforts were made to find out the culprits in vain. Subsequently, Deepak was arrested in FIR No.187/91, PS Sulatanpuri and was taken into custody in this case (he was earlier Proclaimed Offender). Pankaj could not be apprehended and arrested. After completion of investigation, Deepak was duly charged and brought to trial. The prosecution examined twelve witnesses and produced medical evidence. In 313 statement, the appellant pleaded false implication. After considering the rival contentions of the parties and appreciating the evidence on record, the Trial Court, by the impugned judgment, convicted Deepak giving rise to the filing of the present appeal.

3. I have heard learned counsel for the parties and have examined the record. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimony of PW1 (Madan Lal), who resiled from the Court statement in the crossexamination. The appellant was not charged under Section 392 IPC and conviction under Section 397 IPC is unsustainable in the absence of nonrecovery of crime weapon. Learned Addl. Public Prosecutor urged that both the victims have fully supported the prosecution and their testimony has been corroborated by medical evidence.

4. Madan Lal and Man Singh were taken to the Hindu Rao Hospital by Babu Lal from the spot. PW-3 (Babu Lal), Man Singhs father, rushed to the spot on hearing a noise and found both Man Singh and Madan Lal lying there with stab injuries. When he enquired from them as to who had inflicted the injuries, Man Singh disclosed that Deepak and Pankaj had given knife blows to them. This assertion remained unchallenged in the cross-examination. MLCs Ex.PW-6/A (of Man Singh) and Ex.PW-6/B (of Madan Lal) record arrival time of the patients at 08.55

A.M. and 09.00 A.M., respectively. Madan Lal who had sustained injuries simple in nature was declared fit to make statement. In his statement given to the police at the first available opportunity, he gave graphic detail of the occurrence and implicated both Deepak and Pankaj for robbing ` 800/- and causing injuries to them by a knife. Since the First Information Report was lodged in promptitude by sending rukka at 01.30 P.M. after the occurrence took place at 08.15 A.M., there was least possibility of fabrication of a false story in a short interval. PW-4 (Man Singh), in Court statement fully supported the prosecution and ascribed a specific and definite role to Deepak in the incident. He testified that on 28.01.1997 at about 08.15 A.M. he had gone to the complainant Madan Lals shop where he was counting money. In the meantime, Deepak and Pankaj arrived there. Deepak snatched ` 800/- from Madan Lal and on his resistance, was stabbed on left thigh. When he intervened to save Madan Lal, Pankaj took out a knife and Deepak stabbed him on the left cheek. After the occurrence, Pankaj and Deepak fled the spot. In the crossexamination, he explained that he was working at complainants shop and had no previous grudge with the accused. He expressed ignorance if there was any prior money transaction between Deepak and Madan Lal. The accused was unable to bring out any material contradiction or discrepancy in cross-examination to disbelieve the version given by the injured eyewitness. No ulterior motive was assigned for making false statement. PW1 (Madan Lal), in examination-in-chief recorded on 01.02.1999, proved the version given to the police in the statement (Ex.PW-1/A) without any from him and also causing injuries by a knife to him and Man Singh. The appellant did not opt to cross-examine him that time. When he was recalled for cross-examination on 16.09.1999 after a lapse of 7 months, he took a somersault and denied any role to Deepak in the incident. It appears that after examination on 01.02.1999, the complainant was won over and completely resiled from the statements given to the police and in the Court. Apparently, Madan Lal did not present true facts in the crossexamination. Deepak was known to him prior to the incident for the last many years and had no occasion to falsely name him for committing robbery and causing injuries to them. He had given an eye-witness account of entire incident and FIR was lodged at his instance. Simply because in the cross-examination, the witness turned hostile and did not implicate the accused, the version given in the examination-in-chief

recorded on oath on a prior date cannot be disbelieved and discarded. The law is now well settled that merely the witness is declared hostile, whole of his evidence is not liable to be thrown away. In CrI.A.No.432/2010, Naresh Kumar vs. State decided on 04.09.2013, this Court observed :

18. 1991 Cr.L.J.

2653 (1), Khujji alias Surendra Tiwari V. State of M.P is a direct authority on the point in hand. In that case also, examination-in-chief of the witness was recorded on 16.11.76, when he identified all the assailants by name. His cross-examination commenced on 15.12.76. In that cross-examination, he stated that since the accused had their backs towards him, therefore, he could not see their faces. On the basis of that statement, it was submitted that evidence regarding identity of the accused was rendered highly doubtful and it would be hazardous to convict the appellant solely on the basis of identification of such a wavering witness. Honble High Court came to the conclusion, which was upheld by Honble Apex Court that during one month period that elapsed since the recording of his examination-in-chief, something transpired which made him shift his evidence on the question of identity to help the appellant. His statement in cross-examination on the question of identification of the appellant and his companion is a clear attempt to wriggle out of what he had stated earlier in his examination-in-chief. As such, it was observed that there was no material contradiction to doubt his testimony. It was further observed that evidence of declared hostile is not wholly effaced from record and that part of evidence, which is otherwise acceptable, can be acted upon. Reliance was placed on well settled decisions of Honble Supreme Court-Bhagwan Singh v. State of Haryana, (1976) 2 SCR921: AIR 1976 SC202 Rabinder Kumar Dev v. State of Orissa, (1976) 4 SCC233 AIR 1977 SC170 and Sayed Akbar v. State of Karnataka, (1980) 1 SCR95 AIR 1979 SC1848- Where it was held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

19. Substantially, similar view was taken in 2009 (XI) AD SC125 Alagarsamy & Ors. Vs. State by Deputy Superintendent of Police. In that case also, the witness was declared hostile at the end of his cross-examination. The examination-in-chief of witness was recorded on 02.04.01 and on the same day he was cross-examined by three defence counsels. Then only later on, on 26.06.01, when he was recalled, he was treated as hostile witness. Honble High Court commented that witness was tried to be won over, after his cross-examination and this comment was approved by Honble Apex Court and it was observed that law is not well settled that merely because witness is declared as hostile witness, whole of his evidence is not liable to be thrown away. Reference was made to Syed Akbar Vs. State of Karnataka, 1980 (1) SCC30 Rabindra Kumar Dey vs. State of Orissa, 1976 (4) SCC233 and Bhagwan Singh Vs. State of Haryana, 1976 (1) SCC389

5. PW-11 (Dr. Suresh Kr. Bansal) proved MLC Ex.PW-6/B (of victim Madan Lal) and the nature of injuries was opined simple by sharp weapon. PW-10 (Dr. P.K. Suneja) examined Man Singh vide MLC Ex.PW6/A and opined the nature of injuries as grievous caused by sharp object (Ex.PW-10/A). Both, these witnesses were not cross-examined despite an opportunity given. The accused did not deny his presence at the spot. There are no valid reasons to suspect the statements of the injured eyewitnesses which are accorded a special status in law. The fact that they got injuries in the occurrence establishes their presence at the spot. They are not expected to let the real culprits go scot free and to falsely implicate the appellant with whom there was no previous history of hostile relations. The prosecution was able to establish beyond reasonable doubt that Deepak was author of the injuries to both Madan Lal and Man Singh and snatched ₹ 800/- from the complainant. Man Singh (Madan Lal's employee) was not the target of attack. Injuries were caused to him when he intervened to save Madan Lal. No attempt was made to rob cash or other article from his possession. The appellant had no grudge or enmity to eliminate him. The injuries inflicted were not on vital organ but were on cheek and were opined grievous in nature. There is nothing on record to show as to for how much duration, Man Singh remained admitted in the hospital. No repeated blows with the weapon were inflicted on vital organs. When taken to hospital soon after the incident, Man Singh was conscious and was not admitted for any operation etc. The prosecution was, thus, not able to

prove that the appellant had intention and knowledge to cause death. The conviction under Section 307 IPC requires alternation to offence under Section 326 IPC.

6. I do not find any force in the contention raised by the counsel for the appellant that conviction with the aid of Section 397 IPC is not permissible in the absence of non-recovery of knife. It is true that the crime weapon could not be recovered during investigation. Soon after the incident, the appellant fled the spot and could not be apprehended for long and was declared Proclaimed Offender. The prosecution was, thus, not able to recover the weapon of offence at his instance. Both the victims categorically deposed about the use of knife by the offender while inflicting injuries. PW-4 (Man Singh) suffered grievous injuries by the knife used to rob the complainant by Deepak. Testimony of PW-10 (Dr.P.K.Suneja) is of utmost importance in this regard. He deposed that on local examination, the patient had incised wound over left cheek of size of 3 cm in length and it was extending to the oral cavity. The accused did not cross-examine the expert to ascertain the size and dimension of the weapon used in the incident. It cannot be inferred that the weapon used was not a deadly one in nature.

7. Appellants nominal roll on record reveals that he remained in custody for three years and fourteen days besides earning remission for three months and twenty five days as on 24.07.2001 and was enlarged on bail by an order dated 23.01.2002. Nominal roll further reveals that he was involved in another FIR No.187/91 under Section 307/147/148 IPC and 27 Arms Act PS Sultanpuri whose outcome is not clear. The incident pertains to the year 1997 and the appellant has suffered the ordeal of the trial / appeal for about sixteen years. Considering these facts and circumstances, sentence order is modified and Deepak is awarded RI for seven years with fine ` 2,000/- and failing to pay the fine to undergo SI for one month under Section 394 read with Section 397 IPC; RI for five years with fine ` 2,000/- and failing to pay the fine to undergo SI for one month under Section 326 IPC. Both the sentences shall run concurrently. The period already suffered by the appellant in custody, in this case, shall be counted and set off under Section 428 IPC. The appellant shall surrender before the Trial Court on 10th December, 2013 to serve the remaining period of substantive sentence.

8. The appeal stands disposed of in the above terms. Pending application (if any) also stands disposed of. Trial Court record be sent back forthwith with the copy of the order. (S.P.GARG) JUDGE DECEMBER03 2013/tr

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com