

Anil @ Bittoo Vs. State

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Court : Delhi

Decided On : Dec-19-2013

Judge : S. P. Garg

Appellant : Anil @ Bittoo

Respondent : State

Judgement :

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

03. d DECEMBER, 2013 DECIDED ON :

19. h DECEMBER, 2013 + CRL.A. 597/2000 ANIL @ BITTOO Through :
....Appellant Ms.Inderjeet Sidhu, Advocate with Mr.Ram Kumar, Advocate. versus
.Respondent STATE Through : Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR.
JUSTICE S.P.GARG S.P.GARG, J.

1. Anil @ Bittoo (the appellant) questions the correctness and legality of a judgment dated 19.09.2000 of learned Addl. Sessions Judge in Sessions Case No.603/96 arising out of FIR No.441/93 PS Ashok Vihar whereby he was held guilty for committing offence under Section 307 IPC and by an order dated 23.09.2000 awarded RI for three and a half years with fine ` 1,500/-.

2. Allegations against the appellant were that on 20.12.1993 at about 08.50 P.M. in a gali outside House No.J-II/41, Wazirpur, JJ Colony, Delhi, he and his

associates Rangila, Tika Ram and Pawan Kumar (since acquitted) inflicted injuries to Mane Ram and Raj Rani. First Information Report was lodged after recording Raj Rani's statement (Ex.PW-1/A) on 20.12.1993. During the course of investigation, statements of the witnesses conversant with the facts were recorded; the accused persons were arrested. After completion of investigation, a charge-sheet was filed against all of them in the Court; they were duly charged and brought to trial. The prosecution examined nine witnesses to establish the charges. In their 313 statements, the accused persons pleaded false implication and denied their complicity in the crime. DW-1 (Lallu Kishore) appeared in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant perpetrator of the crime under Section 307 IPC. It is relevant to note that other accused facing trial were acquitted of the charges and the State did not opt to challenge their acquittal.

3. I have heard the learned counsel for the parties and have examined the record. Injuries sustained by the victim Mane Ram are not under challenge. The appellants' contention is that he was not the author of the injuries. The prosecution examined PW-1 (Raj Rani), the complainant, who proved the version given to the police at the first instance in her statement (Ex.PW-1/A) whereby specific role was attributed and assigned to Anil @ Bittoo for inflicting injuries with a knife to Mane Ram. In her Court statement, she categorically named Anil @ Bittoo who was armed with a double edged knife and inflicted several knife blows on the stomach and chest of Mane Ram. PW-2 (Mane Ram) is the crucial witness who also in his Court statement implicated Anil @ Bittoo for causing injuries with a double edged weapon on his chest and abdominal region. After the injuries caused to him, he became unconscious and was taken to Hindu Rao Hospital. Both these witnesses were cross-examined at length but no material discrepancies emerged in their cross-examination to disbelieve their version. Ocular testimony has been corroborated by PW-7 (Dr.G.K.Tandon) who medically examined Mane Ram on 20.12.1993 at 09.30 P.M. and found following injuries on his person :

1. An incised wound on the right lumbar region long.

2. An incised wound on the left side of umbilical region 1 and quarter (1 1/9) long.
3. An incised wound on the right epigastrium region x quarter.
4. An incised wound on the right side of the chest near nipple 1 x quarter.
5. An incised wound on the left little finger.

4. In the MLC (Ex.PW-7/A) prepared by PW-7 (Dr.G.K.Tandon), the nature of injuries were opined as grievous which could have endangered life of the patient in ordinary course of nature. In his 313 statement, the appellant did not give plausible explanation to the incriminating circumstances appearing against him. The defence taken was not proved. The victim is not expected to let the real culprit go scot free and to falsely name the appellant as perpetrator of the crime in the absence of prior animosity. The occurrence took place on a trivial issue. The parties were distantly related to each other and lived in the same vicinity. Earlier, a dispute had arisen among the ladies which was resolved / pacified due to the intervention of the neighbours.

5. During the course of arguments, the complainant appeared in the Court and the appellant filed on record certain papers to show that the matter was settled with the victim Mane Ram. Though, the offence under Section 307 IPC is non-compoundable, the factum of settlement by the complainant can be considered to ascertain the quantum of sentence to be awarded. It does not exonerate the crime committed by the appellant. It is true that co accused Rangila, Tika Ram and Pawan Kumar were given benefit of doubt and were acquitted by the Trial Court for the reasons mentioned in the impugned judgment. The acquittal of the co-accused persons itself is not enough to give benefit of doubt to the appellant when there is specific and definite evidence, ocular as well as medical against him without any material discrepancies.

6. Counsel on instructions adopted an alternative argument to take lenient view as the petitioner had remained incarcerated for some duration before enlargement on bail and the matter has since been settled with the complainant and compromise deed has been placed on record. The incident pertains to the year 1993. The

appellant has suffered ordeal of the trial / appeal for about twenty years. He is not a previous convict and is not involved in any other criminal case. Both the parties were distantly related to each other and lived in neighbourhood. There was no previous history of enmity among them and the incident took place on a trivial issue due to a quarrel among the ladies earlier in the morning. The complainant with his free consent has settled the dispute with the appellant and has opted to forgive him. Considering all these mitigating circumstances, the period already suffered by the appellant in custody is taken as the substantive sentence. Other terms and conditions of the sentence order are left undisturbed.

7. The appellant shall deposit compensation of ` 50,000/- in the Trial Court within fifteen days besides depositing unpaid fine (if any) and the compensation will be released to the victim - Mane Ram after due notice.

8. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. (S.P.GARG) JUDGE DECEMBER19 2013/tr

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