

Suresh Vs. State

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Court : Delhi

Decided On : Jan-13-2014

Judge : Indermeet Kaur

Appellant : Suresh

Respondent : State

Judgement :

R-3B * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Judgment:13.01.2014 + CRL.A5812000 SURESH Through: Appellant Mr.Yogesh Chaudhary, Advocate. Versus STATE Through: Respondent Ms.Fizani Hussain, APP. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(Oral) 1 The present appeal has been directed against the impugned judgment and order of sentence dated 17.8.2000 and 19.8.2000 whereby the appellant had been convicted under Sections 307 and 354 of the IPC as also under Section 27 of the Arms Act. He had been sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.100/- in default of payment of fine to undergo rigorous imprisonment for one month under Section 27 of the Arms Act; for the offence under Section 307 of the IPC he had been sentenced to undergo rigorous imprisonment for one year and to a fine of Rs.500/- in default of payment of fine to undergo rigorous imprisonment for three months and for the offence under Section 354 IPC he had been sentenced to undergo rigorous imprisonment

for six months. All the sentenced were to run concurrently. 2 The FIR was registered on the statement of Budh Ram (PW-11). As per his version on the fateful day i.e. on 21.4.1989 at about 8.30 P.m. while his sister Geeta (PW-1) had gone to fetch water accused Suresh met her there; he caught hold of her, embraced her and tried to kiss her. PW-1 shouted. Their neighbour brother Mangey Ram (PW-2), Munni Lal (PW-3), Hakum Chand (PW-4) reached there. PW-11 was also present. Accused left the spot threatening the complainant party that he would return. After about 15 minutes i.e. at about 8.45 p.m. when all the aforementioned persons were standing outside the house of Khushi Ram the accused came to the spot armed with pistol and fired on the complainant party. The firing hit PW-11 on his right shoulder; he got injured. The injuries were grievous in nature. MLC of Budh Ram was prepared by Dr.P.K.Suneja (PW-17). It was proved as Ex.PW-13/A which was prepared by PW-17 whose signature and hand writing were identified by the Record Clerk PW-13. Dr.P.K.Suneja was also examined as PW-17. He deposed that oval shape wound of size 1 c.m. x 0.5 c.m. noted in the MLC Ex.PW-13/A was the result of a bullet injury. The accused was apprehended at the spot. Police was informed by PW-3. His personal search was taken by constable Bhim Sain (PW-10) and he was formally arrested. Constable Raj Pal (PW-14) was the Investigating Officer under the Arms Act. He seized the pistol from PW-3 which had been produced before him; it was found to be in a working order; it contained one live and one empty cartridge. Sketch of the pistol Ex.PW-2/A was prepared. The pistol and the cartridges were sealed in separate pullandas and taken into possession vide memo Ex.PW-2/B. 3 This was the gist of the version of the prosecution. 4 In the statement of the accused recorded under Section 313 Cr.P.C. he pleaded innocence. His explanation was that injured Budh Ram used to deal in heroin and when this was objected to by the accused he was told by Budh Ram that he would be taught a lesson; PW-1 had deposed against him at the behest of Budh Ram. 5 No evidence was, however, led in defence. 6 On behalf of the appellant, arguments have been addressed in detail. It is pointed out that apart from PW-1 all other witnesses i.e. PW-2, PW-3, PW-4 and PW-11 have not supported the version of the prosecution; they were declared hostile by the public prosecutor. No reliance can be placed upon such conflicting versions. Attention has been drawn to their versions wherein all of them except PW-11 have

stated that Budh Ram had sustained injuries on his left shoulder whereas the medical evidence is to the effect that it was on the right shoulder of Budh Ram that he had sustained a bullet injury. It is pointed out that the accused had been falsely implicated. On the point of sentence it is stated that the sentence is too harsh and the sentence of three years for the offence under Section 27 of the Arms Act clearly calls for an interference. 7 Arguments have been refuted by the learned public prosecutor. It is pointed out that the order of sentence has already shown leniency and for the offence under Section 307 of the IPC only one year rigorous imprisonment has been imposed. On no count does the impugned order of conviction or order of the sentence call for interference. 8 Star witness of the prosecution is PW-1. She is Geeta. She is the sister of P-11. She was the witness who was examined in the first instance. She has fully supported the case of the prosecution both in her examination-in-chief as also in her cross-examination. She deposed that on the fateful day i.e. on 21.4.1989 when she had gone to fetch water from the hand pump accused came after her; after he had had water, he hold of her, embraced and tried to kiss her; she shouted whereupon PW-2, PW-3 and PW-4 reached the spot. Accused went away and after some time he again came back at the place of occurrence. He was armed with a pistol; he fired upon PW-2, PW-3, PW-4 and PW-11. PW-11 sustained injuries on his left shoulder. 9 In her cross-examination, she admitted the police reached the spot after sometime. In her one paragraph cross-examination nothing has been elicited which could dislodge her this version. 10 PW-2 was Mangey Ram. He had fully supported the version of the prosecution in his examination-in-chief. His cross-examination was deferred, it was conducted 8 years later. At that stage he had resiled from his earlier statement. He thereafter gave evasive answers. He denied the suggestion that he was deposing falsely as he was won over by the accused. 11 PW-3 (later on inadvertently cross-examined as PW-7) also supported the version of the prosecution in his examination-in-chief. This was in October, 1990. His cross-examination was recorded in 1999; at this stage he did not support the version of the prosecution and had resiled from his earlier statement. 12 So also PW-4 who was initially supportive of the version of the prosecution in his examination-in-chief which has been conducted in 1990 but in 1999 when he appeared for his cross-examination he has resiled from his earlier statement. 13 PW-11 was the injured

Budh Ram. He spoke of a quarrel which took place 4-5 years ago but did not name or identify the accused. This witness has been examined in the year 1999. He, however, admitted that he had sustained injury on his right shoulder and had been medically examined. 24 Trite it is to say that law on hostile witness is clear. If a hostile witness has toed the line of the prosecution and has supported his statement recorded under Section 161 Cr.P.C. in his examination-in-chief and if when cross-examined several years later (as is in this case where the witnesses had been examined 8 years after their examination was recorded) it largely appears to be a case where the witnesses have been won over. It is not their stand that they did not come into the witness box when their examination-in-chief was recorded. In fact there appeared to be ample evidence before the trial judge to have proceeded against the said witnesses under Section 340 Cr.P.C. for making false statement on oaths. Admittedly one of the two statements i.e. either the statement in the examination-in-chief or the statement in the crossexamination was correct and one was false. 25 It is also not that the testimony of a hostile witness is washed off completely. To the extent it is supportive of the version of the prosecution, it can be relied upon. In (2012) 4 SCC327Bhajju @ Karan Singh v.State the Apex Court has held as follows:

We may notice, at this stage that the court can even take into consideration the part of the statement of a hostile witness which supports the case of the prosecution. Therefore, it cannot be said that whenever prosecution witnesses are declared hostile, it must prove fatal to the case of the prosecution.

26 Be that as it may, even presuming that the statement of PW-2, PW-3, PW-4 and PW-11 are to be ignored; testimony of PW-1 who was the victim of the charge under Section 354 IPC is clear and categorical. She has been coherent and credible in her version. It is also not in dispute that the investigation was set into motion by the prosecution on the statement of PW-11. The rukka was sent on this statement of PW-11. The medical evidence which is the injury on the right shoulder of PW-11 also shows that it was a result of a bullet injury. The pistol was handed over by Mange Ram (PW-3) to the Investigating Officer. This had been recovered on the spot. Accused had also been apprehended at the spot. 27 Eye witness account of PW-1 coupled with the medical evidence of PW-11 i.e. his MLC

Ex. PW-13/A as also the recovery of the pistol which was seized vide memo Ex.PW-2/B clearly shows that the offences for which appellant has been convicted call for no interference. The accused has been rightly convicted for the offence under Section 307, 354 of the IPC as also for having used an unlicensed weapon for which he has been convicted under Section 27 of the Arms Act. 28 The appellant is presently on bail. His nominal roll has been called. This shows that he has already undergone incarceration for a period of one month and 12 days. The fact that he is married and has got a family to support is noted. His wife is also present in the court; he has two children. He is pleading for mercy. 29 Keeping in view the fact that the offence relates to the year 1989 and the date since when the appellant had been enlarged on bail he has not misused this process of law; it is a fit case for reduction of his sentence. The maximum sentence imposed by the impugned judgment is 3 years for the offence under Section 27 of the Arms Act. The sentence is reduced to one year rigorous imprisonment. The court has been informed that the fine amount has been paid. Other sentence of one year rigorous imprisonment imposed under Section 307 of the IPC and six months rigorous imprisonment for the offence under Section 354 IPC do not call for interference. All these sentences are to run concurrently. 30 Appellant is taken into custody to suffer the remaining sentence. 31 Appeal is disposed of in the above terms. INDERMEET KAUR, J JANUARY13 2014 ndn

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