

Arvind Kumar Vs. State (Nct of Delhi)

Arvind Kumar Vs. State (Nct of Delhi)

SooperKanoon Citation : sooperkanoon.com/1128557

Court : Delhi

Decided On : Feb-21-2014

Judge : S. P. Garg

Appellant : Arvind Kumar

Respondent : State (Nct of Delhi)

Judgement :

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

20. h FEBRUARY, 2014 DECIDED ON :

21. t FEBRUARY, 2014 + CRL.A. 445/2011 ARVIND KUMAR Through :
Appellant Mr.Govind Narayan Kaushik, Advocate with Mr.S.P.Verma, Advocate.
VERSUS STATE (NCT OF DELHI) Through : Respondent Mr.Lovkesh
Sawhney, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Arvind Kumar (the appellant) is aggrieved by a judgment dated 18.01.2011 in Sessions Case No.66/09 arising out of FIR No.958/04 PS Uttam Nagar by which he was convicted for committing offence punishable under Section 307 IPC and by an order on sentence dated 19.01.2011, was awarded RI for seven years with fine ` 10,000/-.

2. Allegations as described in the charge-sheet were that on 05.11.2004 at about 06.30 A.M., Old Palam Road, in front of Prince Electrical, Kakrola, Uttam Nagar,

Delhi, the appellant - Arvind Kumar inflicted injuries to Shadab by firing at him with a country-made pistol. The Investigating Officer, after recording Shoaib Zameers statement (Ex.PW-7/A), lodged First Information Report. On 06.11.2004, the accused was apprehended and pursuant to his disclosure statement, country-made pistol with cartridges was recovered from his residence. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the accused; he was duly charged and brought to trial. In 313 statement, he denied complicity in the crime and alleged false implication as he had intervened in an altercation between the victim and his neighbour Shambhu. He did not prefer to examine any witness in defence. The trial resulted in his conviction as aforesaid.

3. Appellants counsel 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 testimonies of interested witnesses without independent corroboration. The accused had no intention to murder the victim as only single shot was fired though he had allegedly more cartridges in his possession. Recovery of the country-made pistol at his instance is suspect and he was acquitted under Sections 25/27 Arms Act by the Court. Learned Addl. Public Prosecutor urged that lapse on the part of the Investigating Officer to obtain sanction under Section 39 of the Arms Act led to his acquittal under Sections 25/27 Arms Act. The injuries sustained by the victim were dangerous in nature.

4. In statement (Ex.PW-7/A) which formed the basis of registration of First Information Report victims brother - Shoaib Zameer gave detailed account of the occurrence. He described as to how and under what circumstances, the accused Arvind Kumar who was coming from the opposite side on a bicycle signalled his brother - Shadab driving motorcycle bearing No.DL-1SP-1866 on which he was sitting as pillion to stop and fired on his chest and inflicted injuries to him. The occurrence took place at about 06.30 A.M. when the victim and his brother - Shoaib Zameer were going to their duties on the motorcycle. Daily Diary (DD) No.44 (Ex.PW-5/A) was recorded at 06.40 A.M. on getting information that an individual has been shot. Another Daily Diary (DD) No.45 (Ex.PW-5/B) was recorded at 07.20 A.M. when Duty Const. Yashpal from DDU hospital informed

regarding admission of Shadab due to bullet injury in injured condition by his father. MLC (Ex.PW-8/A) records the arrival time of the patient at DDU hospital at 07.15 A.M. Apparently, there was no delay in putting the police machinery into motion and the First Information Report was lodged in promptitude. In the statement (EX.PW-7/A), the appellant was specifically named for firing the shot. While appearing as PW-1, the victim fully proved the version recorded in Ex.PW-7/A and implicated the appellant for inflicting injuries to him by firing at him with a country-made pistol. In the cross-examination, the complainant admitted that the occurrence took place at a distance of about half kilometre from his house. His brother did not chase the accused or made efforts to catch hold of him. He denied the suggestion that due to his closeness with Sanjus sister, he had an altercation with him and the accused had intervened at that time. He denied the suggestion that someone else had fired at him and he could not recognise the said assailant. Needless to say, injuries sustained by the victim are not under challenge. The accused lived in the vicinity of the victim and was known to him by face. He identified and recognised him as the assailant who had fired at him. There are no sound reasons to disbelieve the version narrated by the witness who had got injuries dangerous in nature on his vital organ. He was not expected to spare the real offender and to falsely implicate an innocent one without any cogent reasons. PW-7 (Shoaib Zameer), his brother, has corroborated his testimony on all material facts. He also attributed specific role to the accused when he took out the katta from his dub and fired at his brother stating that he would not spare him. He further deposed that he took his brother to the house and from their house, he and his father took him to DDU hospital where his statement (Ex.PW-7/A) was recorded. He also proved recovery of the country-made pistol and four cartridges at the instance of the accused pursuant to his disclosure statement from his house after his arrest. In the crossexamination, no material discrepancies or contradictions could be elicited to doubt the version of the witness. PW-2 (Zameer Ahmed), victims father, was not a witness to the incident. He supported their version to the extent that he had taken the victim to DDU hospital. No ulterior motive was assigned to PW-1 and PW-7 for implicating the accused falsely. In the absence of prior ill-will or enmity, these independent witnesses had no extraneous consideration to fake the incident to falsely rope in the accused. Their testimony is

in consonance with medical evidence. PW-8 (Dr.Uday Kumar Singh) medically examined Shadab on 05.11.2004 vide MLC (Ex.PW-8/A). He was of the view that the injury was caused by a fire-arm. The details of the entry and exit wounds were mentioned in the MLC. In the cross-examination, he did not rule out that the shot was fired from short distance. PW-14 (Dr.Uday Kumar Singh) again appeared and proved opinion on MLC (Ex.PW-8/A) given by Dr.Vinod as dangerous. PW-13 (Dr.Shaifali Jain) on seeing the X-ray report (Ex.PW-13/A) informed that there was fracture of 8th and 9th ribs of left side. It has come on record that there was no previous history of hostile relations between the appellant and the victim. The prosecution could not collect evidence to find out the clear underlying motive of the appellant to fire at him. However, that does not discredit the otherwise cogent and reliable testimony of the victim and his brother - PW-7 (Shoaib Zameer). It is well settled that merely because motive is neither alleged nor proved, the same would ipso facto not affect the prosecution case. The absence of any evidence on the point of motive cannot have any such impact so as to discard the other reliable evidence available on record which un-erringly establishes the guilt of the accused.

5. Recovery of the crime weapon pursuant to the disclosure statement of the accused is another incriminating circumstance connecting him with the crime. The accused did not give plausible explanation to the incriminating circumstances appearing against him. In 313 statement, he merely alleged that he was falsely implicated as he had intervened in an altercation between the victim and one Shambhu. The accused, however, did not give detailed particulars as to when, where and in what manner the said altercation had taken place. He even did not examine Shambhu with whom the alleged altercation took place. For a minor incident regarding intervention of the appellant in any altercation, the victim is not expected to let the real culprit go scot free. The defence deserves outright rejection. Acquittal of the accused under Sections 25/27 Arms Act is of no consequence as it was due to technical reason when the Investigating Officer did not obtain mandatory sanction under Section 39 of the Arms Act. The findings of the Trial Court are based upon fair appraisal of the evidence and needs no interference. Conviction of the appellant under Section 307 IPC is sustained.

6. Nominal roll dated 11.08.2011 reveals that the appellant has suffered custody for 09 months and 01 day besides remission for 02 months and 15 days as on 10.08.2011. The custody period has since been increased to more than 03 years and 04 months. The appellant has clean antecedents and was not involved in any other criminal case. His overall jail conduct is satisfactory. There was no enmity between the parties forcing the appellant to eliminate the victim. The prosecution was unable to find out the reasons for the appellant to fire at the unarmed victim. It is informed that the appellant was aged about 25 years. His family consists of his parents, younger brother and sister. He has suffered the ordeal of the trial / appeal for 10 years. Considering these mitigating circumstances, the sentence order is modified and the substantive sentence of the appellant is reduced to 05 years. Other terms and conditions of the sentence order are left undisturbed.

7. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information. (S.P.GARG) JUDGE FEBRUARY21 2014/tr

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