Jitesh@ Tie Vs. State

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Court : Delhi

Decided On : Feb-26-2014

Judge : V. K. Jain

Appellant : Jitesh@ Tie

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision:

26. 02.2014 + JITESH@ TIE Crl. Appeal No.89/2010 .Appellant Through: Mr. Anurag Jain, Adv. Versus STATE Through: .Respondent Mr. Feroz Khan Ghazi, APP. CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT
V.K.JAIN, J.

(Oral) On 19th December, 2008, Vinod, son of Tilkheshwar Rai, aged about 35 years was admitted in Jai Prakash Narayan Hospital in injured condition, having been taken by his brother Baij Nath. The information in this regard was given by Duty Constable in JPN Hospital to the Police Station and was recorded there vide DD No.5A. Copy of the DD was given to SI Bihari Lal of the said Police Station for investigation. When the Investigating Officer reached the Hospital, he found Vinod admitted there and recorded his statement. The injured Vinod told the

Investigating Officer that he was a rickshaw puller and on that date at about 4.30 A.M., when he was taking tea sitting on a bench with his cousin Baij Nath, a young boy came there and asked him to sit on that bench. When the complainant said that they also were taking tea, the aforesaid young boy got angry, caught him by neck, slapped him saying that his name was Jitesh and everybody was scared of him. Jitesh then took out a knife and gave a blow on the right side of the chest of the injured as a result of which, he fell down and was taken by his cousin brother to the JPN Hospital.

2. The appellant was chargesheeted under Section 307 of IPC for attempting to murder of Vinod. He having pleaded not guilty of charge, as many as eight witnesses were examined by the prosecution.

3. The complainant came in the witness box as PW3 and stated that on 19th of the month in winter, when he along with his brother Baij Nath was taking tea in at a tea shop in Himat Garh, the appellant came there and asked him to get up. He, however, did not get up. Thereafter, when he started moving along with his rickshaw, the appellant caught hold of him and stabbed him with his knife. The witness further stated that he, therefore, raised alarm and was taken by Baij Nath to the Hospital where he got consciousness after two days.

4. Baij Nath, cousin brother of the appellant, came in the witness box as PW2 and stated that on the 19 th of the month, when he was present with Vinod who was taking tea at Himat Garh at Lal Tea shop, the appellant came there, slapped Vinod and made him get up from the table where he was taking tea. He further stated that when Vinod asked the appellant to let him finish the tea, the appellant got angry, caught hold of him and stabbed him with his knife in his chest. Baij Nath took Vinod to the Hospital in his autorickshaw. He further stated that on next date, the appellant was apprehended by the Police on being pointed out by him and he was interrogated by the Police. During interrogation, he stated that he could get the knife recovered and on the next day, he got recovered knife from bushes near Temple at Malkhana in Himat Garh. The witness identified his signatures on the statement Ex.PW-D/2 and also identified the knife which was used for causing injuries to the complainant.

5. PW7 Dr.Baljit has proved the MLC of the injured Ex.PW-5/B, which is in the hand of another Doctor, namely, Dr. Prabhat. PW5 SI Bihari Lal is the Investigating Officer of this case. He, inter alia, stated that on 21st December, 2008, the appellant was arrested from near Ram Lila Ground. He further stated that Baij Nath was with him at that time. He also stated that during his Police remand, he (appellant) made a disclosure statement. PW7A Dr. Amit Singhal proved the MLC of the appellant.

6. In his statement under Section 313 of Cr.P.C., the appellant denied the allegations against him and claimed to be innocent.

7. The learned counsel for the appellant has assailed the judgment of the trial court primarily on the following grounds:(i) the cross-examination of PW2 Baij Nath would reveal that he had not actually witnessed the incident. (ii) the prosecution has failed to establish that it was the appellant Jitesh who gave knife blow to the injured Vinod.

8. The case of the prosecution as set out in the FIR is that the injured Vinod was sitting on Bench at the tea stall along with his cousin brother Baij Nath and both of them were taking tea when the appellant came there and asked Vinod to get up. However, when Baij Nath came in the witness box, he gave a different version of the incident and stated that it was his cousin brother Vinod, who was taking tea and he (the witness) was present nearby. He also stated that the injured was shouting that he had been stabbed with knife. He also stated that on seeing him, the appellant came towards him to attack him with the knife and thereafter, he left the tea shop taking Vinod to Hospital in his autorickshaw. However, in the FIR there is no allegation of the appellant having tried to attack Baij Nath with a knife or in any other manner. More importantly, in his cross-examination, Baij Nath stated that his house was at a distance of about five minutes walk from the place of incident and when his cousin came running towards him in injured condition, he inquired from him as to who had caused injuries to him. The aforesaid part of the cross-examination of Baij Nath reveals two things; firstly, that he was at a distance of 5 minutes walk from the place of incident and secondly that he had not seen the culprit and that is why he had asked the appellant as to who had caused injuries to

him. It is difficult to accept that from a distance, which is 5 minutes walk from the place of incident, Baij Nath could have seen the actual incident taking place. In any case, had he actually witnessed the incident, there could not be no question of his asking the injured as to who had caused the injuries. In these circumstances, the presence of Baij Nath at the time of incident is highly doubtful.

9. Now, coming to the deposition of the injured Vinod, though he claimed in his examination that the appellant was previously known to him, the FIR lodged by him gives no such indication. Had the appellant been previously known to the injured, he would certainly have stated so in his deposition Ex.PW5A. The impression which one gathers from a perusal of the statement of PW5A is that the appellant was not known to the witness but he had while slapping him proclaimed that his name was Jitesh Tai and everybody was scared of him. In fact, even the examination-in-chief of the injured gives no indication of the appellant being previously known to him.

10. The identification, for the first time, in the Court, when the accused is not previously known to the witness is an evidence of weak character which would normally require corroboration unless, there are special facts and circumstances of the case which would persuade the Court to act upon the identification of the accused, for the first time, while in the dock. The legal position with respect to identification of an accused was summarized by the Honble Supreme Court in Dana Yadav @ Dahu and Ors. Vs. State of Bihar (2002) 7 SCC295inter alia as under:

(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of accused by a witness in court. X X X (e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test

identification parade or any other evidence. The previous identification in the test identification parade is a check value to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law. (f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction. (g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.

11. In the present case, it has come in the deposition of PW-2 Baij Nath, PW-5 SI Bihari Lal and PW6 Head Constable Surya Dev that the appellant was arrested on 21st December, 2008 from near Ram Lila Ground. It has also come in their deposition when the appellant was interrogated, he made a disclosure statement Ex PW-2/D. A perusal of the disclosure statement which would show that in the said statement, the appellant, inter alia, stated that he had concealed the knife in bushes near Ramlila ground which he could get recovered. The deposition of PW2. Baij Nath also proved that one knife was actually recovered from the bushes near Ramlila Park on being pointed out by the appellant. Since the Police Officer pursuant to the disclosure statement of the appellant discovered the fact that the knife had been concealed by him in bushes near Ramlila Park, and later the knife was actually recovered from there thereby confirming the information provided by him, the disclosure statement made by the appellant to the extent he stated that he had concealed the knife in the bushes near Ramlila park is admissible in evidence under Section 27 of the Evidence Act.

12. Three possibilities arise from the disclosure statement made by the appellant, the first being that he had himself concealed the knife in the bushes, second being that he had seen someone throwing the knife there and the third being someone had informed him that the knife was lying in the bushes. Since the appellant did not tell the Court as to how he had come to know that the knife was lying in the bushes near Ramlila ground, the inference would be that he himself had thrown the said knife in the bushes meaning thereby that the appellant had come into the

possession of knife before it was thrown in the bushes.

13. A perusal of the report Ex.PW5/H given by Maulana Azad Medical College would show that blood was found on the knife which was recovered from the appellant and was later sent for examination. There is no explanation from the appellant as to how blood stains were found on the knife (Ex.P-1) which had in the possession before it was thrown by him in the bushes.

14. In these circumstances, it can be safely inferred that the knife recovered at the instance of the appellant was used for causing injuries to a human being and that is why blood was found on it.

15. In my view, recovery of blood stained knife from the bushes pursuant to the disclosure statement made by the appellant Jitesh, which is admissible in evidence under Section 27 of the Evidence Act is sufficient to corroborate the deposition of the complainant with respect to identity of the appellant. The prosecution thus has been able to prove that the appellant had given knife blow to the injured Vinod near his chest using a knife for the purpose. In Ganesh Lal vs. State of Rajasthan (2002) 1SCC73 recovery of blood stained axe at the instance of the accused was held to be incriminating evidence.

16. Very cogent and convincing ground would be required to discard the evidence of the injured. In Machhi Singh vs. State of Punjab 1983 Crl.L.J.1457, one witness Hakam Singh himself had sustained injuries in the course of incident in question, it was observed by Honble Supreme Court that it was difficult to believe that he would implicate the persons other than the real culprits and that the evidence of that witness alone, was sufficient to bring home the guilt the appellants even if one were to exclude from consideration, the evidence of other PWs. Identical view was taken by the Honble Supreme Court in a number of other cases including Makan Jivan &Others Vs. The State of Gujarat, AIR 1971 SC1797 Hori Lal & Another Vs. The State of U.P.

, AIR 1970 SC1969 and Jamuna Chaudhary & Others Vs. State of Bihar, AIR 1974 SC1822 17. A perusal of the MLC of Vinod is that the wound is found on the right side of the chest, the size of the wound was 6 cm x 3 cm. If a person causes injury

using a knife for the purpose at a vital part such as chest of the injured, it can be safely inferred that he intended to commit his murder and that is why he chose a vital part of the body for the purpose of causing injury to him. The appellant therefore has rightly been convicted under Section 307 of the Indian Penal Code.

18. Coming to the conviction of the appellant under Section 27 of the Arms Act, a perusal of the sketch of the knife recovered at the instance of the appellant which he used for causing injuries to the complainant (Ex.PW5/F) would show that it is a buttondar knife, the length of its blade is 10 cm whereas its width is 2.5 cm. Vide notification No.E13/203/78-Home (C) dated 17th February, 1979, the Administrator of the Union Territory of Delhi, directed that Section 4 of the Arms Act shall apply to possession and carrying of spring actuated knives, gararidar knives or buttondar knives which open or close with any of the mechanical device with a blade of 7.62 or more in length and 1.72 cms. or more in breadth. Thus, the said notification prohibits possession the of a knife of the aforesaid nature. Since the blade of the knife used by the appellant for causing injuries to the complainant was more than 7.62 in length as well as 1.72 cms. in breadth, the appellant has rightly been convicted under Section 27 of the Arms Act for using the said knife in the public place. The sentence awarded to the appellant under Section 27 of the Arms Act being the minimum sentence prescribed in the Act, there is no scope for its reduction.

19. Coming to the sentence under Section 307 of IPC though the trial court has awarded the sentence of rigorous imprisonment for a term of five years to the appellant, considering the fact that despite having been armed with a knife, the appellant chose not to give more than one blow to the injured, coupled with the fact that he is in the custody for the last more than three years, there is some scope for reduction of the sentence awarded to the appellant. In the facts and circumstances of the case, the appellant is sentenced to undergo rigorous imprisonment for four years and to pay the fine imposed by the trial court or to undergo simple imprisonment for fifteen days in default. Copy of this order be sent to Jail Superintendent. LCR be sent back along with the copy of this order. FEBRUARY26 2014/sn Crl. Appeal No.89 /2010