

Ashok Kumar Vs. State

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SooperKanoon Citation : sooperkanoon.com/1131763

Court : Delhi

Decided On : Mar-05-2014

Judge : Indermeet Kaur

Appellant : Ashok Kumar

Respondent : State

Judgement :

\$~R-35 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:

28. 02.2014. Judgment delivered on:

05. 03.2014 CRL.A. 123/2006 ASHOK KUMAR Through Appellant Ms.Seema Gulati and Mr. Pawan Sharma, Advs. versus STATE Through Respondent Ms.Fizani Husain, APP. INDERMEET KAUR, J.

1 Appellant Ashok Kumar is aggrieved by the impugned judgment and order of sentence dated 14.02.2006 and 16.02.2006 respectively wherein he had been convicted under Sections 307 and 326 of the Indian Penal Code (IPC) and had been sentenced to undergo RI for 7 years and to pay a fine of Rs.1,000/- in default of payment of fine to undergo SI for 2 months for the offence punishable under Section 307 IPC; for the offence punishable under Section 326 IPC he had been sentenced to undergo RI for 5 years and to pay a fine of Rs.1,000/- in default of payment of fine to undergo SI for two months. Sentences were to run concurrently.

Benefit of Section 428 Cr.P.C. had been granted. 2 Record shows that charge sheet had been filed against three accused including the present appellant, Ravi Dutt and Anand Kumar; of whom both Ravi Dutt and Anand Kumar were acquitted. Ravi Dutt was the father of the present appellant and Anand Kumar was his cousin. 3 Incident is dated 11.6.1994, it had occurred at about 7.30 p.m. DD No.43B (Ex.PW-7/A) was recorded at 8.05 p.m. in the local police station giving intimation that a quarrel was going on at the spot i.e. crossing of Bhoomika Pooja Sthal (Tyagi Mohalla, Chattarpur). This DD was marked to SI Bansidhar (PW-7) who along with constable Shanker Lal reached the spot, where they learnt that the injured had been removed to the AIIMS hospital. On reaching the hospital, statement of the injured Jitender Tyagi (PW-1) (Ex.PW-1/A) was recorded. As per his version, on the fateful day, he had gone to visit his grandmother at village Chattarpur and on his way back to home when he reached near Punia Pooja Sthan near the chaupal of the village, he saw Ashok Kumar; on seeing him, the appellant got enraged and started abusing him; he attacked him with a knife; injuries were suffered on his left hand, back, shoulder and on his head. Meanwhile, his brother Sushil (PW-2) who was coming from opposite direction to call PW-1 also reached there. The appellant was accompanied by Ravi Dutt and Anand; all the accused persons were known to him. Appellant gave knife blows to PW-2 on his stomach, thigh and on his waist; he suffered injuries; they were both removed to the hospital. 4 It was on this statement that the present FIR No.146/1994 was registered. Statement of the second injured Sushil (PW-2) was also recorded. Their MLCs Ex.PW-6/A and Ex.PW-6/B were proved through the technician of the AIIMS hospital. MLC of PW-2 (Sushil) was proved as Ex.PW-6/A. Injuries noted on his person read as under:

1. Deep Clean incised wound 1 long at back in midline at T6 - T7 level 2. Other superficial clean incised wound 1-1/2 long at 10th -11th rib level at L posterior axillary line.

3. 1 long clean incised wound at R thigh medial aspect 2 below inguinal ligament.

4. long clean incised wound at abdomen just above medial aspect of inguinal ligament. They were opined as grievous and sharp. 5 This opinion on the injuries

of PW-2 were given by Dr.T. Milo, a doctor from the AIIMS hospital who had been summoned pursuant to an application filed by the prosecution under Section 311 of the Cr. P.C. Ex.PW-6/B is the MLC of Jitender. His injuries were simple in nature. The CFSL report was taken on record as Ex.PX. The blood stained knife had been sent for opinion; it could not opine as to whether the blood group on the knife was of human or of animal origin; however this report was relied upon by the trial judge to hold that the cut mark on the shirt of PW-2 (Sushil) were probably caused by this knife. Santosh Singh (PW-5) was also examined by the prosecution; he was projected as an eye-witness. Trial court has, however, disbelieved his version. 6 On the basis of the aforementioned evidence collected by the prosecution, the accused was convicted. The other two accused persons namely Ravi Dutt and Anand who had been charged under Sections 307/34 IPC had however, been acquitted. 7 In the statement of accused recorded under Section 313 Cr. P.C. he pleaded innocence. It was stated that this is a false case; parties were inimical towards each other and this was the reason that they have been falsely roped in. 8 In defence two witnesses were produced; they were neighbors living in the same vicinity. Both have in the same tone deposed that when they had reached the spot they saw the injured i.e. PW-1 and PW2 bleeding and lying on the ground; the injured had disclosed that somebody had hit them but since it was dark they could not recognize that man. This is the version of DW-1 (Amrik Singh). DW-2 (Sugriv) has stated that when PW-1 had seen Ashok and Ravi Dutt at the spot and they started abusing them and had caused these injuries upon them. 9 On behalf of the appellant, arguments have been addressed in detail by Ms.Seema Gulati, Advocate. It is pointed out that the incident had allegedly occurred at 7.30 p.m. but the FIR had been registered at 10.40 p.m. i.e. after an unexplained delay of three hours. Attention has been drawn to DD No.43B. Submission being that this was recorded at 8.05 p.m. at which time it was noted that quarrel was going on. It is pointed out that the trial judge has rightly noted that PW-5 was not a reliable witness and was not present at the spot. Further submission being that the defence had moved an application under Section 311 Cr.P.C. to recall PW-5 as PW-5 in his deposition had admitted that he had given a false statement on oath in court but this application of the appellant was dismissed by the Sessions Judge and thereafter by the High Court. Further submission in this

context being that the PW-5 was the only independent witness to the recovery of the weapon of offence i.e. the knife and his version having been disbelieved in toto; the recovery of the knife is also liable to be disbelieved. It is pointed out that the MLCs Ex.PW-6/A and Ex.PW-6/B have not been proved as per the rules of evidence. Even in the questionnaire under Section 313 Cr.P.C., question no.15 addressed to the accused speaks of Dr.M.S.Rawat where as Mr.M.S.Rawat was only a technician; in fact the case put to the appellant in his statement under Section 313 Cr.P.C. is opposed to the version of the prosecution. On all counts the investigation is shoddy; admittedly no blood was lifted either from the spot or from the house where the injured had first gone before going to the hospital because as per their versions they were bleeding injuries. The seizure memo Ex.5/B of the knife has depicted a clean knife having been seized but when the same weapon was sent to CFSL, the CFSL had noted that it was blood stained. It is pointed out that the accused and the injured are neighbours living in the same vicinity; they are second cousins having common ancestors; this is a case of false implication as the parties are embroiled in a family dispute over property and this incident has been used by the complainant party to falsely implicate the accused. It is submitted that not only in the cross-examination of the 2 but also the defence witnesses of the appellant have created a dent in the version of the prosecution. Attention has also been drawn to the MLC of the appellant; submission being that he had also been injured in the incident. On all accounts appellant is entitled to a benefit of doubt and a consequent acquittal. 10 Arguments have been refuted by the learned public prosecutor. It is submitted that does the impugned order suffer from any infirmity. Not only are the versions of PW-1 and PW-2 coherent and consistent but their oral testimony in fact corroborates the medical evidence which emanates in Ex.PW-6/A and Ex.PW-6/B. 11 Arguments have been heard and record has been perused. 12 PW-1 is the star witness of the prosecution. He has deposed that on 11.06.1994 he had gone to visit his grandmother and on his way back while he was near Punia Pooja Sthan located near the chopal of the village, he saw appellant Ashok coming towards him; he started abusing him; thereupon he stabbed him with a knife; he suffered injuries on his left hand as also on his left shoulder; the third injury was inflicted on his head. His brother PW-2 who was coming from the opposite directions was also attacked by Ashok and his two

accomplices; all were known to PW-1. Appellant gave knife blows to PW-2 who suffered injuries on his stomach, thigh and waist. In his cross-examination it was admitted that accused and PW-1 have common ancestors; the co-accused Anand was living in their neighbourhood. He admitted that he had not given the role of Anand in his first statement (Ex.PW-1/A) as he was upset and that is why he could not give the details of the occurrence. He admitted that prior to this incident, Ashok and Ravi Dutt who were closely related to his father and had had a quarrel with him over throwing of garbage near the drain opposite to their houses. He admitted that he was discharged from the hospital in the night whereas his brother PW-2 was discharged on the following day. He was conscious when he made his first statement. He denied the suggestion that the accused persons were going to their uncle Udai Raj to complain about an earlier incident of quarrel at 05:30 PM between the parties. 13 The MLC of PW-1 has been proved as Ex.PW-6/B. Injuries were all simple. Admittedly, PW-1 was discharged from the hospital on the same day. 14 PW-2 Sushil Tyagi, the brother of PW-1 had received grievous injuries. He has on oath corroborated the version of PW-1. He admitted that he had seen Ashok attacking his brother; PW-2 was also coming from Bhoomie Pooja Sthan at that time; Ashok and Ravi Dutt were also present. All the accused persons had threatened to finish off PW-1 and PW-2. Appellant Ashok had attacked PW-2 with a knife and given him knife blows; his brother was also injured. In his lengthy cross-examination, PW-2 stuck to his stand. He admitted that earlier also, hot exchange of words taken place and 15 minutes before the incident, there was a quarrel on account of the waste which was being thrown in the nali opposite their houses. He reiterated that he remained in the hospital for 2-3 days. 15 The MLC (Ex.PW-6/A) of PW-2 has confirmed the fact that he has suffered grievous sharp injuries. Nature of injuries have been detailed supra. His X-ray report (Ex.PW-9/DA) showed no fracture. However record does not establish the version of PW-2 that he remained in the hospital for 2-3 days; the fact that his statement was recorded in terms of Ex.PW-7/DB on the same night is clear from the version of PW-7, the Investigating Officer; he was fit for statement within the next 1 hour of the incident as the Investigating Officer PW-7 had recorded statements of both PW-1 and PW-2 in the hospital and PW-7 has admitted that he remained in the hospital for 1 hour. 16 The weapon of offence i.e. the knife was seized vide memo

Ex.PW-5/B. Its sketch (Ex.PW-5/A) was prepared. These documents were attested by the alleged independent witness Santosh Singh examined as PW-5. His version has been disbelieved. It was rightly so as the name of PW-5 did not find mention in the first statement (Ex.PW1/A) recorded of the victim; the fact that he has been introduced as a witness later on had created a suspicion in the mind of the trial Court which had led the Court to disbelieve his statement. The seizure memo and the sketch memo of the knife have both been attested by this witness who has been disbelieved; little reliance can be placed on these documents as the other attesting witness to these documents i.e. constable Shankar Lal has also not been examined. This knife was also not sent to the doctor for expert opinion i.e. as to whether it was responsible for causing the injuries upon the persons of PW-1 or PW-2. This is a lapse on the part of the investigating agency; if the knife has been seized, there was no explanation why it was not sent to the doctor for opinion. Recovery of the knife has thus necessarily to be disbelieved. 17 Record further shows that as per the versions of PW-1 and PW-2 15 minutes prior to this incident, a quarrel had taken place between the parties over throwing of waste/garbage in the gali; parties were living in the neighbourhood; they were cousins hailing from a common ancestor. The fact that quarrel had taken place 15 minutes prior to this incident over throwing of garbage was probably the reason which had led to this occurrence. However, it appears to have taken place on the spur of the moment; it was not a pre-planned act on the part of the appellant as is evident from the fact that both PW-1 and PW-2 were coming from opposite directions when appellant Ashok accosted them; this was near the Punia Pooja Sthan; neither knew of each others plan of coming or going to the spot. In these circumstances, the argument of the learned counsel for the appellant that there was no premeditation or pre-design by the appellant to attack the victim has force. All this had happened on impulse and on the spur of the moment when the parties came face to face after the earlier incident which had occurred just 15 minutes prior to this incident. The earlier incident was also on a trivial issue i.e. throwing of garbage in the gali as the parties were living in the same neighbourhood. 18 Medical record of PW-1 shows that he has suffered simple injuries. The injuries suffered by PW-2 were grievous. The most grievous of these four injuries is an incised wound which is 1 inch long at the back in the midline 6-7 level. Apart from this injury, there is a 1 inch superficial

injury between 10th-11th rib level. There is also inch long incised wound on the abdomen. The length of these injuries do not suggest that the accused had the intention to kill the victim; the oral versions of PW-1 and PW-2 coupled with this medical record do not establish the ingredients of Section 307 of the IPC which necessary entails that the accused must have the knowledge that by his act, he could have even caused the death of the victim. This is not so in the instant case. 19 In 2003 (1) Crimes 314 (SC) Lallan Rai and Others Vs. State of Bihar where the appellant had been convicted under Section 307 of the IPC but keeping in view the nature of injuries report as also the versions of the witnesses in that case although grievous injuries had been suffered by the victim, the Apex Court had held that conviction under Section 307 of the IPC was not proper. The conviction in that case had been altered to one under Section 326 of the IPC. 20 In AIR 1993 SC1256 Pashora Singh and Another Vs. State of Punjab, the Supreme Court had an occasion to deal with a conviction which had been suffered by the appellants under Sections 307/34 of the IPC. There were two injured in that case; one injured had suffered two gandas blows and the second injured had suffered one gadasa blow. One of these injuries was on the head. It was also a case of earlier grievance between the parties. The conviction was altered from Section 307 to one under Section 326 of the IPC. 21 Accordingly, the appellant is convicted under Section 326 of the IPC. 22 The nominal roll of the appellant shows that he has suffered incarceration of 7 months. Keeping in view the fact that the offence relates to the year 1994 i.e. almost two decades old, the appellant having no other criminal background; having suffered agony of trial for almost 20 years and the appellant also not having abused the process of bail since his release; his conduct in jail also being satisfactory during the period when he was incarcerated, it would be in the fitness of things to modify the sentence. Accordingly while sustaining the conviction of the appellant under Section 326 of the IPC, he is sentenced to undergo RI for a period of 1 year. The fine of Rs.1,000/- imposed under Section 326 of the IPC by the Sessions Judge shall remain unaltered. Bail bonds of the appellant are cancelled. Surety discharged. The appellant be taken into custody to serve his remaining sentence. 23 Appeal disposed off. INDERMEET KAUR, J
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