

Shahid Vs. the State

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Court : Delhi

Decided On : Mar-13-2014

Judge : S. P. Garg

Appellant : Shahid

Respondent : The State

Judgement :

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

7. h MARCH, 2014 DECIDED ON :

13. h MARCH, 2014 + CRL.A.144/2012 & CRL.M.B.No.350/2014 SHAHID
Appellant Through : Mr.Mohd.Shamikh, Advocate. Versus THE STATE
Respondent Through : Mr.Lovkesh Sawhney, APP. CORAM: HON'BLE MR.
JUSTICE S.P.GARG S.P.GARG, J.

1. Shahid (the appellant), Mohd.Imran @ Kanchi, Mohd.Ali @ Babbu, Mohd. Furkan and Kamran @ Chhotu were suspects in case FIR No.367/2008 PS Khajuri Khas, Delhi. Allegations against them were that on 27.12.2008 at about 02.30 A.M. at C-186, Gali No.15, Khajuri Khas, Delhi, they committed dacoity and deprived the complainant - Kartar Singh of ` 52,000/- and two gold chains at pistol point. The police machinery swung into action when information was conveyed regarding the incident and Daily Diary (DD) No.33A (Mark-14/PA) was recorded on 27.12.2008 at PS Khajuri Khas. The investigation was assigned to SI Rajender

Singh who with Const. Brijpal went to the spot. Complainant - Kartar Singh, owner of the house, produced A-1 along with one desi katta (country-made pistol) and four empty cartridges. The Investigating Officer lodged First Information Report after recording Kartar Singh's statement (Ex.PW-1/A). Joginder Singh who had sustained gunshot injuries on hand was taken to GTB hospital and medically examined. Statements of the witnesses conversant with the facts were recorded. During investigation, A-2 to A-5 were apprehended and arrested. Some recoveries were effected from their possession. After completion of investigation, a charge-sheet was submitted against all of them in the Court; they were duly charged and brought to trial. The prosecution examined eighteen witnesses to bring home the charges. The accused persons denied their complicity in the crime and pleaded false implication. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held A-1 alone to be the perpetrator of the crime and acquitted A-2 to A-5 of all the charges. It is significant to note that State did not challenge their acquittal. Being aggrieved and unsatisfied, the appellant has preferred the appeal.

2. I have heard the learned counsel for the parties and have examined the record. The occurrence took place at around 02.30 A.M. on the night intervening 26/27.12.2008. Daily Diary (DD) No.33A (Mark14/PA) was recorded at 02.40 A.M. Victim Joginder was taken to GTB hospital and MLC (Ex.PW-8/A) records the arrival time of the patient at 03.20 A.M. He was admitted by ASI Ikramuddin of PCR. The First Information Report was lodged after recording complainant's statement at 06.00 A.M. Apparently, there was no delay in lodging the report with the police and the First Information Report was registered in promptitude. In the statement (Ex.PW-1/A), Kartar Singh gave vivid description of the incident and disclosed how the assailants four in number robbed ` 52,000/- and two gold chains from the almirah in the house by using country-made pistols. He also disclosed that one of the assailants A-1 was caught at the spot and a country-made pistol was recovered from his possession. Complainant had no extraneous consideration to fake the incident of robbery at his residence at odd hours particularly when PW-4 (Joginder Singh) had suffered gunshot injuries and was taken to GTB Hospital from the spot. PW-8 (Dr.Ravinder Singh) proved the MLC (Ex.PW-8/A) prepared by Dr.P.K.Gupta which noticed extensive lacerated injury over left little finger. A-1

was apprehended at the spot whereas his associates succeeded to flee the spot. They attempted to get A-1 released and fired at the inmates of the house while retreating from the spot. A-1 has not denied his apprehension at the spot at the relevant time and admitted it in 313 statement. He, however, did not give plausible explanation for his presence at the spot at odd hours. In 313 statement, he alleged that on the day of incident, he had gone to meet one muslim lady who resided in the adjoining house of the place of occurrence and when he was coming out of her house, due to mistake, he was apprehended by the complainant. A-1 did not give detailed particulars of the muslim lady to whom he had gone to see. She was not examined in defence to substantiate his version. A-1 did not explain the purpose of her visit to the muslim lady at odd hours. In the cross-examination of PW-1 (Kartar Singh), no such plea was set up. Rather an inconsistent suggestion was put that A-1 was crossing the road on the said date and time and went to the spot after hearing hue and cry. The defence inspires no confidence and deserves outright rejection particularly when A-1 was identified by the complainant as one of the assailants who committed robbery at the house.

3. Recovery of the country-made pistol with live cartridges from A-1s possession is however doubtful and suspect. No cogent evidence has come on record to establish that at the time of his apprehension, he was armed with any such country-made pistol and live cartridges. Prosecution witnesses have given conflicting statements in this regard. PW-1 (Kartar Singh) did not claim that he recovered the countrymade pistol and live cartridges from A-1 and handed over to the Investigating Officer. He did not claim if A-1 had put pistol at him or fired any bullet. He was confronted with the statements (Ex.PW-1/A and Ex.PW-1/DA) where there was not mention that A-1 was found in possession of a country-made pistol and four cartridges. In the crossexamination, he disclosed that A-1 was apprehended by his son Narender. PW-2 (Narender Kumar) deposed that a katta was lying at the place where his brother Joginder had hit A-1 with base-ball bat. One live cartridge was recovered from the katta which had fallen from the possession of A-1. This inconsistency has not been explained by the prosecution. He was unable to identify the katta and cartridges recovered from A-1. In the cross-examination, he categorically admitted that A-1 was not armed when he was apprehended. He also did not claim that A-1 was in possession of the country-

made pistol and the cartridges when his custody was handed over to the police. PW-3 (Raj Kumar @ Raju) completely denied to have witnessed the incident. Cross-examination by learned Addl. Public Prosecutor with the leave of the Court did not yield any fruitful result. PW-4 (Joginder Singh) stated that the assailant who had fallen was apprehended by his brother and came to know that A-1 was in possession of a country-made pistol. He was unable to identify the katta produced in the Court. PW-6 (ASI Ikramuddin) from PCR who went to the spot on getting information about the incident stated that the assailant who was apprehended by the public was being given beatings. He did not state that A-1 was in possession of any arm at that time. Since there were number of other assailants who were armed with various weapons and who succeeded to flee the spot, it cannot be inferred with certainty that the country-made pistol and live cartridges recovered in this case from the spot were in possession of A-1 or that it was used by him. In view of conflicting statements of the witnesses and contradictory versions narrated by them, conviction of A-1 under Sections 25/27 Arms Act cannot be sustained and is set aside.

4. The prosecution witnesses have given divergent version as to the total number of assailants who participated in the robbery. In the (Ex.PW-1/A) given to the police at the earliest point of time, the complainant - Kartar Singh gave the number of assailants only four. He attributed specific role to them. In his Court statement as PW-1, initially his version was that there were four assailants who entered inside his room and two of them put country-made pistols on his temple. He subsequently disclosed that there were five assailants and one of them had not entered inside the house and remained outside. The complainant did not explain as to why there was no mention of fifth assailant in his statement (Ex.PW-1/A). He did not elaborate as to when he came to know about the presence of the fifth assailant outside the house. No supplementary statement to that effect is stated to have been recorded. PW-2 (Narender Kumar) whose testimony is full of contradictions gave a contradictory statement that five assailants entered into his room and one of them pointed a country-made pistol at him and the other put the katta on the temple of his mother. He did not corroborate PW-1s version that four assailants had committed trespass and one of the assailants had remained outside the house. He was confronted with the statement (Ex.PW-2/DA) where

there was no mention that five persons had entered into the room. PW-4 (Joginder Singh) woke up on hearing the noise of his father Kartar Singh. As per his testimony, he saw 5 - 6 persons in the gallery. He was unable to identify even A-1 and pointed at Mohd. Ali, the co-accused, to have been apprehended at the spot. He was also confronted with the statement (Ex.PW-4/DA) where there was no mention that he saw 5 - 6 persons in the gallery. During investigation, on the basis of disclosure statement by A-1, the police arrested A-2 to A-5 as the associates / assailants who joined A-1 in committing dacoity. However, for the detailed reasons in the impugned judgment A-2 to A-5 were acquitted of the charges. Only A-1 who was apprehended at the spot was found guilty of committing dacoity. Since there is variance as to the exact number of assailants and their identity could not be established, it would not be safe to convict A-1 for the commission of offence of dacoity where the minimum number of assailants is required to be five. Conviction under Section 395 IPC thus cannot be sustained. PW-4 (Joginder Singh) sustained gunshot injuries when the assailants were retreating with the robbed articles. MLC (Ex.PW-8/A) is in consonance with ocular testimony. Section 394 IPC speaks of two distinct classes of persons those who actually cause hurt and those who do not but are jointly concerned with the commission of robbery. The guilty act of one is imputed to all who are joint with him. The offence proved against A-1 is under Section 394 IPC for which he is liable to be punished.

5. In the light of above discussion while convicting A-1 under Section 394 IPC, conviction under Sections 25/27 Arms Act and under Section 395 IPC is set aside. Coming to the sentence order, A-1 was awarded RI for ten years with fine ` 20,000/- under Section 395 IPC; one year with fine ` 1,000/- under Section 25 Arms Act; three years with fine ` 5,000/- under Section 27 Arms Act. All the sentences were to operate consecutively. Nominal roll dated 25.09.2013 reveals that A-1 has suffered incarceration for four years, eight months and twenty eight days besides remission for eight months and ten days as on 25.09.2013. It further reveals that he is not a previous convict though he is involved in one case ST No.219/06, FIR No.1625/05 under Sections 307/302 IPC PS Hasanpur, UP. His overall jail conduct is satisfactory. Considering all the circumstances, the sentence order is modified and A-1 is sentenced to undergo RI for seven years with fine ` 20,000/- under Section 394 IPC and failing to pay the fine to undergo SI for three

months.

6. The appeal stands disposed of in the above terms. Pending application also stands disposed of. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to Superintendent jail for information.
(S.P.GARG) JUDGE MARCH13 2014/tr

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