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

Sahil Vs. State

Sahil Vs. State

SooperKanoon Citation : sooperkanoon.com/1136585

Court : Delhi

Decided On : Apr-02-2014

Judge : S. P. Garg

Appellant : Sahil

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : March 24, 2014 DECIDED ON : April 02, 2014 + CRL.A. 1356/2012 SAHIL Through : ..... Appellant Ms.Anita Abraham, Advocate. Versus STATE Through : ..... Respondent Mr.M.N.Dudeja, APP. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Sahil (the appellant) questions the legality and correctness of a judgment dated 01.08.2012 of learned Additional Sessions Judge-FTC (Central) in Sessions Case No.48/10 arising out of FIR No.107/10 registered at Police Station Ranjeet Nagar by which he was convicted under Sections 393/394/398 IPC and 27 Arms Act. By an order on sentence dated 08.08.2012, he was awarded RI for seven years with fine `2,500/- under Section 393 IPC; RI for seven years with fine `2,500/under Section 394 IPC; RI for seven years under Section 398 IPC and RI for three years with fine `1,000/- under Section 27 Arms Act. All the sentences were to operate concurrently.

2. Allegations against the appellant-Sahil, as revealed in the charge-sheet, were that on 05.06.2010 at about 09.30 p.m. opposite house No.3266, Ranjeet Nagar, he and his associates (not arrested) attempted to rob complainant-Ajay Kumar of laptop at pistol point. In the process of committing robbery, he voluntarily caused hurt to complainants sonAmit. The police machinery came into motion when information about the occurrence was conveyed and recorded by a Daily Diary (DD) No.28A (Ex.PW-12/A) at 09.45 p.m.at police station Ranjit Nagar. The investigation was assigned to HC Gyan Parkash who with Ct.Virender and Ct.Rakesh went to the spot. Subsequently, ASI Rajender Singh also joined them. Ajay handed over the custody of the appellant, who was lying unconscious at the spot, to the Investigating Officer along with the pistol recovered from him. The victims and the appellant were sent for medical examination. After recording complainants statement (Ex.PW1/A), the Investigating Officer lodged First Information Report. Statements of witnesses conversant with the facts were recorded. The exhibits were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was filed against the appellant in the court; he was duly charged and brought to trial. The prosecution examined 13 witnesses to substantiate the charges and to establish the guilt of the appellant. In 313 statement, the appellant pleaded false implication and denied complicity in the crime. The trial resulted in his conviction as aforesaid. It is relevant to note that the appellant was acquitted of the charges under Section 25 Arms Act in the absence of sanction under Section 39 Arms Act and the State did not challenge the said acquittal.

3. I have heard the learned counsel for the parties and have examined the file. 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 testimony of interested witnesses without independent corroboration. No public person present at the spot, who had allegedly given beatings to the appellant, was associated in the investigation. She emphasized that Section 398 IPC was not attracted and proved as the pistol allegedly recovered from the appellants possession was empty and did not have any cartridge. It was not used by him to commit robbery. The prosecution witnesses have made vital improvements in their deposition regarding the exact number of assailants and the motor-cycles on

which they had arrived at the spot. She forcefully argued that it was a case of mere quarrel and the appellant was falsely implicated in this case. Learned APP urged that the impugned judgment is based upon the cogent and reliable testimonies of the complainant and his son who had no prior animosity to falsely implicate.

4. The occurrence took place at around 09.30 p.m. Daily Dairy (DD No.28/A) was recorded at Police Station Ranjit Nagar at 09.45 p.m. regarding the incident. It was informed that an individual having a gun was quarrelling at House No.3266, Ranjeet Nagar. Both the victims-Amit and appellant were taken to Dr. Ram Manohar Lohia hospital for medical examination. Sahils MLC (Ex.PW-11/A) records the arrival time at the hospital as 10.45 p.m. It confirms his presence at the spot. PW-1 (Ajay Kumar) and PW-2 (Amit) were taken to Dr.Ram Manohar Lohia hospital and their MLCs (Ex.PW-6/B and Ex.PW-6/A respectively) record the arrival time at 11.55 p.m. After recording complainants statement (Ex.PW-1/A), the investigating officer lodged First Information Report at about 01.40 A.M. by endorsement/rukka (Ex.PW-13/A). Apparently, there was no inordinate delay in lodging the First Information Report. In the complaint, Ajay Kumar gave detailed account of the occurrence and disclosed as to how and under what circumstances the appellant and his associates attempted to rob them of their laptop lying on the rear seat of the car when they had arrived near their House No.3266, Ranjeet Nagar. He also informed that in the process, the assailant with the butt of the pistol caused hurt to his son. The associates of the appellant succeeded to flee the spot. In his court statement as PW-1, Ajay Kumar proved the version given to the police at the first instance without major variations. He identified Sahil as one of the assailants who had arrived on a motorcycle and had pointed a pistol at him. Due to fear, PW-1 (Ajay Kumar) went to his house. The appellant attempted to pick up the bag containing laptop, documents and some cash kept on the rear seat of the car. He also caused hurt to Amit with the butt of the pistol. PW-1 caught hold of the appellant when he had put his neck inside the car to pick the laptop. He was given beatings by the public. His associates with the help of weapons like knife and pistols threatened the public and succeeded to flee the spot. On arrival of the police, the pistol (Ex.P-1) was handed over along with the custody of the appellant. In the cross-examination, the witness admitted that all the accused persons were

wearing full mask helmets. Injuries were caused to his son on forehead. He was first taken to a private hospital i.e.Kailash Nursing Home and thereafter he was taken to Dr.Ram Manohar Lohia hospital for medical examination. Someone from the public had informed the police at 100. The witness deposed that he had seen the pistol at the spot and also at the police station. He denied the suggestion that the accused was not present at the spot or was falsely implicated in the case. Scanning the testimony of this witness, reveals that despite lengthy and searching cross-examination, no material discrepancies could be elicited to discard the version narrated by him. No ulterior motive was assigned to him to falsely rope in an innocent. Presence of the witness was not denied in the cross-examination. No suggestion was put to the witness as to how and under what circumstances, the appellant who had sustained injuries on his body was apprehended outside his house. The appellant did not give any specific reasons to remain present near his house without any particular purpose. PW-2 (Amit-the victim) fully corroborated PW-1 on all material facts and identified the appellant-Sahil as one of the assailants who had attempted to commit robbery and in the process caused hurt on his forehead with the butt of the pistol. In the cross-examination, he was confronted with certain facts with his statement (Ex.PW2/DA) under Section 161 Cr.P.C. He reasserted that he had seen the pistol at the place of occurrence as well as in the police station. He also denied the suggestion that the accused was no present at the place of occurrence. Again, no infirmity has emerged in the cross-examination to discard his statement. Ocular testimony is in consonance with the medical evidence. MLCs (Ex.PW-6/A and Ex.PW6/B) reveal that both Amit and Ajay were medically examined on 05.06.2010 by PW-6 (Dr.Shekhar Yadav). The appellant was also taken to RML hospital and was examined by PW-11 (Dr.Ranjit Singh) by MLC (Ex.PW-11/A). The appellant did not give plausible explanation to the incriminating circumstances in 313 statement. He took inconsistent and conflicting defence and alleged that on that day, he was going on his motor-cycle which struck the car of the complainant and a quarrel ensued between him and the complainants-Ajay and Amit. He sustained injuries on his hand, forehead and behind his ear in the said quarrel. The appellant, however, did not examine any witness to prove the defence taken by him for the first time in his statement under Section 313. No such suggestion was put to PW-1 and PW-2 in

the cross-examination. Rather the suggestion put to them was that the accused was not present at the spot and was falsely implicated. The accused did not disclose the number of motor-cycle which had allegedly struck against the car of the complainant. No such motor-cycle was recovered from the spot. The defence was out-rightly rejected for valid reasons by the trial court.

5. Non-examination of independent public witness is inconsequential as PW-1 and PW-2 have categorically identified and proved the specific role played by the accused in the incident. It is not the prosecution case that the incident was witnessed by any such public persons who subsequently gathered at the spot on hearing the commotion. The prosecution has proved on record FSL report (Ex.PW-13/D) which showed that the pistol recovered from the accused was in working order. It is true that subsequently when the pistol was unloaded, it was found empty. It has come on record that the appellant was not alone at the time of commission of the crime and his associates succeeded to flee the spot. They were also allegedly armed with various weapons. Simply because the pistol (Ex.P-1) recovered from the accused was empty at the relevant time, it cannot be said that it was not a deadly one particularly when Sahil was convicted under Section 27 of the Arms Act for using a weapon unauthorisedly without licence in violation of provisions of Arms Act. It was a US made pistol. Minor discrepancies and improvements highlighted by the appellants counsel do not affect the basic structure of the prosecution case. The victims were not aware that the deadly weapon with which the appellant was armed was loaded or not. Butt of this weapon was used to cause hurt to the victim-Amit. For the purposes of Section 398 IPC, mere possession of the deadly weapon is sufficient. I find no substance in the plea that Section 398 IPC is not attracted and proved. Minimum sentence prescribed under Section 398 IPC cannot be modified or altered. Nominal roll dated 06.11.2012 reveals involvement of the appellant in four other such cases. The sentence order is left undisturbed except that default sentence for non-payment of fine under Section 393/394 IPC will be fifteen days (15 days) and ten days (10 days) under Section 27 Arms Act.

6. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith along with a copy of this order. (S.P.GARG) JUDGE April 02, 2014

sa

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