

Hunny Vs. State

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Court : Delhi

Decided On : May-05-2014

Judge : V. K. Jain

Appellant : Hunny

Respondent : State

Advocate for Pet/Ap. : Mr. S.C. Sharma, Mr. Feroz Khan Ghazi, Mr. S.C. Budhiraja, Mr. P.K. Bhardwaj

Judgement :

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

05. 05.2014 + CRL.A. 738 of 2013 RAMKARAN THR. PAROKAR SUSHILA
Appellant Through: Mr. S.C. Sharma, Adv. with Appellant in person. Versus
STATE Through: + Respondent Mr. Feroz Khan Ghazi, APP with Complainant
in person. CRL.A. 750 of 2013 HUNNY Through: Appellant Mr. S.C. Budhiraja,
Adv. with Appellant in person. Versus STATE Through: + Respondent Mr.
Feroz Khan Ghazi, APP with Complainant in person. CRL.A. 848 of 2013 GOVIND
@ GOVINDA & ANR. Appellants Through: Mr. P.K. Bhardwaj, Adv. with
Appellant in person. Versus STATE Through: Crl. A. Nos.738, 750 & 848 of 2013
..... Respondent Mr. Feroz Khan Ghazi, APP with Complainant in person. Page 1
of 10 CORAM: HON'BLE MR. JUSTICE V.K. JAIN JUDGEMENT V.K. JAIN, J.

(Oral) On 25.04.2005 at about 9.45 pm, PCR was informed that a quarrel had taken place at Pandav Nagar, Main Road. The information, when conveyed to Police Station Pandav Nagar, was recorded vide DD No.45A and a copy of the DD was given to Head Constable Ramesh Tiwari, for investigation. When the police officer reached the spot, he came to know that the injured had already been taken to DDU Hospital. No eye witness was present at the spot at that time. When he reached DDU Hospital, the injured - Mahender Kumar was found admitted there and his statement was recorded by the police officer. Mahender told the police officer that at about 9.30 pm, when he was returning from the shop to his house and reached Vishwas Clinic, Pandav Nagar, Govind @ Govinda, Ramkaran, Hunny and Varun, who were residents of Pandav Nagar and were previously known to him, met him. Ram Karan demanded money from him for taking liquor. When he refused, they started abusing him and on his protesting to the abuses, Govinda exhorted his companions to hold him whereupon Varun, Honey, caught hold of him and Ram Karan gave him blow with belt, whereas Govinda gave him saria blow, as a result of which, he sustained injuries on his head and became unconscious. On the aforesaid statement, an FIR under Section 308 of IPC was registered and all the four persons named by the complainant were charge-sheeted. The learned trial Judge charged them under Section 308 of IPC read with Section 34 thereof. They having pleaded not guilty to the charge, as many as 11 witnesses were examined by the prosecution, whereas 3 witnesses were examined in defence.

2. The complainant Mahender came in the witness box as PW1 and inter alia stated that on 25.04.2009 at about 9 pm when he was returning to his house from his shop and reached at Vishwas Clinic, Pandav Nagar, the appellants Govind @ Govinda, Ramkaran, Hunny and Varun all of whom were residents of Pandav Nagar, and were previously known to him. Govinda asked him to give money for drinking liquor and on his refusing to comply, they abused him. Govinda asked others to hold him so that a lesson could be taught to him for not giving money for liquor. Thereupon, Varun and Hunny caught hold of him whereas Ram Karan gave him belt blows, and Govinda hit him with an iron rod. He received injuries on his head between eye brows and left cheek and became unconscious. He regained consciousness while in the hospital.

3. PW2 Narender Kumar inter alia stated that on 25.4.2009, when he was present in his shop in Pandav Nagar, a boy came running and informed him that his brother was being beaten up in a quarrel opposite Vishwas Clinic. When he reached the aforesaid spot four persons namely Honey, Varun Ram Karan and Govinda all of whom were residents of Pandav Nagar and were known to him beating his brother Mahender. Govinda was having an iron rod in his hand, whereas Ram Karan was having a leather belt and they were beating his brother, who was lying on the ground. The other two accused namely Varun and Hunny were giving legs and fist blows to his brother. When he raised alarm, the accused persons ran away. He hired an autorickshaw and took his injured brother to DDU Hospital where he was medically treated.

4. PW9 Dr. Vijay examined the injured Mahender in DDU Hospital on 25.4.2009 and found that he had stitched wound over right frontal region, nasal bridge and left side of cheek. He also had fracture of right temporal bone and from the surgery side the injury was opined to be dangerous. He further stated that during radiological examination no bone injury was seen. PW10 Dr. Ajay Chourasia of DDU Hospital identified the signatures of Dr. Anurag and Dr. Gunjan on the MLC Ex.PW10/A. PW11 Dr. Dhananjay Kumar identified the signatures of Dr. Sudhinder on the X-Ray report of the injured Ex.PW11/A and stated that as per the report no bony injury was seen.

5. In their statements under Section 313 of Cr.P.C., the appellants denied the allegations against them and claimed to be innocent. DW1 Baljeet inter alia stated that on 25.4.2009, the accused Ram Karan was with him at his residence from 8:00 p.m. till 8:00 a.m. next day in connection with a jagran held at his residence. DW2 Gulshan stated that on 25.4.2009 at about 10:30 p.m., he had dropped the appellant at his residence in B-Block, Pandav Nagar. He also claimed that Hunny used to come to his mobile shop to learn mobile repairing of mobile phones. DW3 Sachin Talwar stated that on 25.4.2009, he saw Mahender coming in injured condition under the influence of liquor and found that he was not able to walk properly. He took Mahender to a nearby Bengali doctor but in the meanwhile his family members arrived there and the doctor advised them to shift Mahender to some hospital.

6. Vide impugned judgement dated 18.4.2013, all the appellants were convicted under Sections 308/34 of IPC and vide impugned Order on Sentence dated 10.5.2013, they were sentenced to undergo RI for three and a half years each under Section 308/34 of IPC. They were further sentenced to pay a fine of Rs.5,000/- each or to undergo SI for six (6) months in default of payment of fine. Being aggrieved from their conviction and sentence the appellants are before this Court by way of present appeals.

6. PW1 Mahender Kumar being the injured in this case, there is no reason to disbelieve his testimony. Being the victim of the crime, he is most unlikely to implicate an innocent person and let off the real culprit. This is more so, when the appellants do not claim any enmity or ill-will between them and the injured.

7. It is contended by the learned counsel for the appellants that there was delay in lodging the FIR since the incident in question took place at 9:30 p.m. on 25.4.2009 whereas the statement of the injured Mahender Kumar was recorded at 4:30 p.m. on the next day. It has come in the deposition of the injured Mahender Kumar that he had become unconscious on account of the injuries sustained by him and he found himself in RML Hospital, when he regained consciousness. Though no documentary evidence of the treatment of the injured in RML Hospital has been collected, it has come in the deposition of PW4 Head Constable Ramesh Tiwari that when he went to DDU Hospital in the night of 25.4.2009, the doctor on duty had certified that the patient was unfit for statement. He further stated that when he went to DDU Hospital again in the morning of 26.4.2009, he was informed that the patient had been taken to RML Hospital. He then reached RML Hospital and recorded the statement of the injured there. Considering the condition of the injured on 25.4.2009, the delay in lodging the FIR stands duly explained. Obviously, the statement could not have been recorded before he was fit for making such a statement. In fact, the application, which PW4 submitted in DDU Hospital on 25.4.2009 and on which the injured was declared unfit for statement while in that hospital and was later declared fit for making statement at RML Hospital on 26.4.2009, is on record though it has not been exhibited during the deposition of PW4. In these circumstances it cannot be said that there is an unexplained delay in lodging the FIR.

8. The next question which comes up for consideration is as to what offence is made out against the appellants on account of the injuries caused to PW1 Mahender Kumar. As far as the appellant Ram Karan is concerned, the allegation against him is that he caused injuries to PW1 using a belt for the purpose. As far as the appellants Hunny and Varun are concerned they had held the injured at the time injuries were caused to him by Ram Karan and Govind. No exhortation was imputed to the appellants Ram Karan, Varun or Hunny either by the injured Mahender Kumar or his brother Narender Kumar. Though they could see the appellant Govind causing injuries to the injured Mahender using a pipe for the purpose, they could not have anticipated that the injuries would be caused on some vital part of the body. Therefore, it cannot be said that they shared a common intention with Govind, to cause injuries, at some vital part of the body of the complainant, using a steel pipe for the purpose.

9. As far as the appellant Govind is concerned, though the injured Mahender has stated in the Court that an iron rod was used for causing injuries to him the said rod was neither seized nor described in the FIR. The Court, therefore, does not really know what type of rod it was and what was its size. The complainant who is present in the Court states that in fact it was a small steel hollow pipe, like the one which is being used in the bathrooms. The complainant who is present in the Court states that in fact the steel pipe was picked up by the appellant Govind from a nearby piao. A steel pipe normally used in bathroom for supplying water cannot be said to be a weapon which is likely to cause death. Considering the nature of the weapon alleged to have been used by the appellant Govind it would be difficult to say that he had acted with such intention or knowledge and under such circumstances that if by that act caused death of Mahender he would be guilty of culpable homicide not amounting to murder. It appears to me that a quarrel broke out between the complainant on the one hand and the appellants on the other on account of one of the appellants having demanded money from the complainant for purchasing liquor and it was during the course of said quarrel that injuries were caused to the complainant. There was no pre-planning or pre-meditation since the appellants could not be knowing that the complainant would meet them at the place where this incident took place. Therefore, in the facts & circumstances of the case offence under Section 308 of IPC is not made out even against the appellant

Govind.

10. Though it has come in the deposition of PW9 Dr. Vijay he had got conducted NCCT Head and found fracture of right temporal bone, no fracture was detected during X-ray of the injured as would be evident from his MLC and the deposition of PW11 Dr. Dhananjay Kumar. Therefore, no offence under Section 325 of IPC is also made out against the appellants.

11. In my view, the facts & circumstances of the case disclose commission of offence punishable under Section 323 of IPC read with Section 34 thereof by all the appellants. Therefore, while acquitting them of the charge under Section 308/34 of IPC, they are convicted under Section 323 of IPC read with Section 34 thereof. Considering that the complainant who is present in the Court, states that he has forgiven the appellants and desires that they should not be sent to jail and also considering that they have already spent some time in custody, in fact, the complainant has even denied to accept any compensation from the appellants, I am of the view that the appellants ought to be given the benefit of probation. Accordingly they are released on furnishing bond of peace and good conduct in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the trial court concerned for a period of one (1) year. During the period of probation the appellants shall maintain peace and good conduct and refrain from committing any crime. They shall appear as and when directed to receive the sentence imposed on them. The bonds will be furnished within two weeks from today. In the event of default of furnishing the bond, the appellants shall undergo SI for six (6) months each. The appeals stand disposed of accordingly. One copy of this order be sent to the concerned Jail Superintendent for information and necessary action. The LCR be sent back along with a copy of this order. MAY05 2014 rd/bnesh CrI. A. Nos.738, 750 & 848 of 2013

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