

**Vinod Kumar Vs. State**

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**Court :** Delhi

**Decided On :** May-05-2014

**Judge :** V. K. Jain

**Appellant :** Vinod Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. Mir Akhtar, Mr. Feroz Khan Ghazi

**Judgement :**

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

05. 05.2014 + CRL.A. 1567 of 2013 SONI SINGH Through: ..... Appellant Mr. Mir Akhtar, Adv. Versus STATE Through: + ..... Respondent Mr. Feroz Khan Ghazi, APP. CRL.A. 1568 of 2013 LAKHPAT Through: ..... Appellant Mr. Mir Akhtar, Adv. Versus STATE Through: + ..... Respondent Mr. Feroz Khan Ghazi, APP. CRL.A. 1571 of 2013 VINOD KUMAR Through: ..... Appellant Mr. Mir Akhtar, Adv. Versus STATE Through: + ..... Respondent Mr. Feroz Khan Ghazi, APP. CRL.A. 1575 of 2013 DHAN BAI Through: ..... Appellant Mr. Mir Akhtar, Adv. Versus STATE Through: ..... Respondent Mr. Feroz Khan Ghazi, APP. CORAM: HON'BLE MR. JUSTICE V.K. JAIN JUDGEMENT V.K. JAIN, J.

(Oral) On 24.9.2004, on receipt of copy of DD No.62B, Head Constable Bhagirath of Police Station Sultanpuri reached House No.D-2/21, Sector-20, Sultanpuri, where ASI Karambir of Excise Department was found present. He was informed

that the injured, S.I. Virender of Excise Department, had already been taken to Bhagwati Hospital by Constable Gajender Kumar and the culprits Lakhpat, his wife and sons had already fled from the spot. Thereupon the Head Constable reached Bhagwati Hospital, where Virender Singh was found admitted and recorded his statement. S.I. Virender Singh told him that on the aforesaid date at about 7:00 p.m., he along with ASI Karambir, Head Constable Ravinder Singh and Constable Gajender Kumar reached House No.D-2/21, Sector-20 of Sultanpuri, on receipt of information with respect to sale of illicit liquor. Lakhpat, who being a bootlegger was already known to him, was found selling liquor in a bag outside his house. When he apprehended him Lakhpath raised alarm, whereupon his sons Vinod and Soni came out and all the three started quarrelling and grappling with him. They also threw stones on the Excise team. When Vinod S/o Lakhpat tried to run away snatching the bag containing illicit liquor, he chased Vinod and apprehended him in the street. In the meanwhile Dhan Bai, wife of Lakhpat, who also was previously known to him came out in the street and grappled with him, as a result of which he fell down and sustained injuries on his left elbow. An FIR under Sections 186/353/323 of IPC read with Section 34 thereof was registered on the statement made by S.I. Virender Singh and after completing investigation, the appellants Lakhpat, Vinod, Soni Singh and Dhan Bai were chargesheeted. All of them were charged by the learned trial Judge under Sections 186/353/333 of IPC read with Section 34 thereof. They having pleaded not guilty to the charges as many as fifteen (15) witnesses were examined by the prosecution. One witness was examined in defence.

2. The injured Virender Singh came in the witness box as PW5 and inter alia stated that on 24.9.2004, he along with Head Constable Ravinder and Constable Gajender reached House No.D-2/21, Sector-20, Sultanpuri on receiving information about illicit liquor. The accused Lakhpat was found selling liquor outside his house. The liquor had been kept in a bag. He apprehended Lakhpat, whereupon he raised his voice and his sons Vinod and Soni came out. All of them started quarrelling and pushing them. Vinod snatched the bag containing liquor from his hand and started running away. He chased Vinod and apprehended him in the street. In the meanwhile Dhan Bai wife of Lakhpat came there, pushed him and in the scuffle he fell down and received injuries on his left elbow.

3. Karambir came in the witness box as PW6 and corroborated the deposition of PW5 Virender Singh with respect to their going to House No.D2/21 in Sector-20 of Sultanpuri on 24.9.2004 and apprehending Lakhpat, selling liquor kept in a bag. He also corroborated the deposition of PW5 with respect to the accused Vinod and Soni coming out of the house and quarrelling with them. He also corroborated the deposition of Virender Singh with respect to the wife of Lakhpath coming there and a scuffle having been taken place between her and Virender Singh. He further stated that the accused persons fled from the spot, taking the bag containing illicit liquor with them. Constable Gajender Kumar came in the witness box as PW9 and corroborated the deposition of PW5, PW6 in all respects.

4. PW12 Dr. Ashwani Sahi examined S.I. Virender Singh in Bhagwati Hospital on 24.9.2004 and found that he had fracture over olecranon left (left elbow fracture) and fracture radial head left. The MLC prepared by him is Ex.PW12/A.

5. In their statements under Section 313 of Cr.P.C., the appellants denied the allegations against them and claimed to be innocent.

6. DW1 Ms. Bharti stated that on 24.9.2004, when she was present in her house, Virender, Dhoop Singh and Karamvir came there and enquired about her parents, i.e., the appellant Lakhpat and Dhan Bai. They started searching the house and took out Rs.9,600/- kept in an almirah. They also tried to act indecently with her and when she cried all of them left the house. She claimed that her brother Vinod and Soni were not present in the house at that time and that she had made a written complaint to the higher police officials on account of no action having been taken on her complaint.

7. Vide impugned judgement dated 25.10.2013, all the appellants were convicted under Sections 353 & 186 of IPC read with Section 34 thereof. Vide impugned Order on Sentence dated 8.11.2013, they were sentenced to undergo RI for one (1) year each and to pay fine of Rs.5,000/- each or to undergo SI for two (2) months each under Sections 353/34 of IPC. They were also sentenced to undergo RI for two (2) months each and to pay a fine of Rs.500/- each under Section 186/34 of IPC. Being aggrieved from their conviction and the sentence awarded to them, the appellants are before this Court by way of these appeals.

8. The impugned judgment has been assailed by the learned counsel for the appellants on the following grounds: (i) The information alleged to have been received by the complainant was not reduced in writing and there is no evidence to indicate where and from whom the said information was received; (ii) No injury was sustained by the complainant. (iii) No case under Excise Act was registered against the appellant - Lakhpat though the case of the prosecution is that the bag containing illicit liquor was seized from the appellant - Vinod, son of the appellant - Lakhpat in the street. (iv) The Excise Officer had in fact committed trespass in the house of the appellant and tried to molest the daughter of the appellant - Lakhpat and Dhanbai, for which, a complaint before the Metropolitan Magistrate was filed and cognizance was taken.

9. As regards recording of information and the time and place it was received and the name of the informer, I find that the complainant was not at all cross examined on this aspect. He was not asked as to why the complaint was not reduced into writing and from whom and where it was received. Moreover, this is not a legal obligation of an Excise Officer to record the information received by him with respect to sale of illicit liquor, before he proceeds to inquire into the said information. In the absence of cross examination of the complainant in this regard, no adverse inference against the prosecution can be drawn on account of the witness having not given the place where the information was received and the name of the person who had provided the said information.

10. As regards, the injuries to the complainant, though there is no documentary evidence, such as X-ray report, of any grievous hurt having been sustained by him, his MLC Ex.PW12/A would show that he had swelling and tenderness on his left elbow and when he was examined in Bhagwati Hospital, he alleged that he had a scuffle and fell on the ground during that scuffle. He complained of swelling and tenderness over his left elbow. The swelling and tenderness of left elbow also constitutes hurt, within the meaning of Section 319 of IPC, since even causing bodily pain is included in the definition of hurt.

11. The case of the prosecution is that no case under Excise act was registered against the appellant - Lakhpat since the appellants ran away from the spot along

with the bag containing illicit liquor. Though the bag containing illicit was allegedly recovered from the appellant - Vinod in the street, it was later taken away by the appellants with them when they fled from the spot after assaulting the complainant, as would be evident from the deposition of the complainant and other witnesses. Obviously, prosecution for selling illicit liquor could not have succeeded, without such liquor being seized.

12. DW1 - Bharti who is the daughter of the appellant - Lakhpat and Dhanbai inter alia stated that Virender, Dhoop Singh and Karamvir had come to their house on 24.09.2004 when her parents had gone to Kosikala in U.P. and her brothers were not at home. Thus, the visit of the complainant and other officials to the house of the appellants is admitted by none other than the daughter of the appellant - Lakhpat and Dhanbai who happens to be the sister of Vinod and Soni Singh. Obviously, the complainant and other officials would have been gone to the house of the appellants only on receipt of some information about them. Therefore, it can hardly be disputed that the complainant - Virender was acting in discharge of his official duties at the time he visited the place of appellants. Even if the court proceeds on the assumption that the appellant - Lakhpat was not actually found selling illicit liquor, the complainant was certainly acting in discharge of his official duty when he visited their house pursuant to information which might or might not proved to be correct. The Excise Officer, on receipt of a complaint about place of illicit liquor is duty bound to inquire into such complaint and visit the place where the sale is alleged to be taking place. Therefore, the visit of the complainant and other officials to the house of the appellants would be in discharge of their duties as public servants.

13. The defence taken by the appellant is that though according to DW1 she had informed Police Control Room by dialling 100 and police officials had come to the spot and talked to the Excise Officers. No record of the PCR was summoned by them to prove the aforesaid complaint and the visit of PCR official to their house. Though a legal notice was given by DW1 to the complainant, the said notice was given more than one month after the incident in question and, therefore, would be considered to be only an afterthought, with a view to create a defence in favour of the appellants. No complaint to any superior officer of the police was made on

24.09.2009 or immediately thereafter alleging therein that the complainant and other Excise Officers had unlawfully entered the house of the appellants and had misbehaved with DW1. In these circumstances, no reliance of the testimony of DW1 can be placed.

14. The deposition of the complainant which finds full corroboration from the deposition of Karamvir and Dhoop Singh in all material particulars clearly proved that the appellants assaulted the complainant and use criminal force to him, in consequence of his having seized the illicit liquor from the appellant - Lakhpat and later from his son - Vinod who was trying to flee away with the bag containing the said liquor. Therefore, offence under Sections 186 and 353 of IPC were clearly committed by the appellants who also obstructed the complainant and other Excise Officers in discharge of their public functions by assaulting the complainant and tried to run away with illicit liquor. The conviction of the appellants under Section 186 and 353 of IPC read with Section 34 thereof cannot be interfered with.

15. The learned counsel for the appellants submits that none of the appellants is a previous convict and all of them except appellant - Dhan Bai have spent one month each in custody. He further submits that the appellants are prepared to pay suitable compensation to the injured - Virender Singh. Considering all the facts and circumstances of the case, I am of the considered view that the appellants should be given an opportunity to reform themselves. Accordingly, they are released on furnishing bond of peace and good conduct in the sum of Rs.10,000/- each with one surety each in the like amount to the satisfaction of trial court concerned, for the period of two years each. During the period of bond, the appellants shall maintain peace and good conduct and shall refrain from committing any crime. They shall also pay Rs.15,000/- each as compensation to the injured Inspector - Virender Singh by way of a pay order in his name. The pay order shall be submitted along with the bail bond. In default of furnishing the bond and/or paying compensation within two weeks from today, the appellants shall undergo the sentence awarded by the trial Judge. Once the pay order is deposited with it, the trial court shall issue notice to the complainant Inspector - Virender Singh and deliver the pay order to him under acknowledgment. The appeal stands disposed of accordingly. The LCR be sent back along with a copy of this judgment.

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