

Rajbir Vs. State

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Court : Delhi

Decided On : May-07-2014

Judge : Indermeet Kaur

Appellant : Rajbir

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on :

01. 05.2014 Judgment delivered on :

07. 05.2014 CRL. APPEAL NO.760/2002 & CRL. M.A. NO.2542/2002 RAJBIR
Appellant + Through Appellant with his counsel Mr. M.D. Farman, Adv. versus
STATE Respondent Through Ms.Kusum Dhalla, APP. CORAM: HON'BLE MS.
JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 The appellant is aggrieved by the impugned judgment and order of sentence dated 11.09.2002 & 12.09.2002 respectively wherein he has been convicted under Sections 452/324 of the IPC and has been sentenced to undergo RI for a period of 1 year and to pay a fine of Rs.500/- and in default of payment of fine, to undergo RI for 1 month for the offence under Section 452 of the IPC; for his conviction under Section 324 of the IPC, he has been sentenced to undergo RI for 1 year. Both the sentences were to run concurrently. Benefit of Section 428 of the Cr.PC has been granted to the appellant. 2 Nominal roll of the appellant has been

requisitioned. Record has also been perused. It reflects that the appellant remained in custody between 18.08.1999 up to 27.11.1999 when he was granted bail; meaning thereby that he has suffered incarceration for more than 3 months. 3 Record shows that the present FIR had been registered on the complaint of Manju. This was to the effect that on 03.05.1999 when she was alone in her house, appellant Rajbir came into her room and started misbehaving with her; she resisted and raised alarm. She was given a knife blow on her head. Her husband Jaswant (PW-1) also reached there. On his rebuking the appellant, PW-1 was also given a knife blow; their neighbor Hargovind (PW-2) also reached the spot. He apprehended the appellant but the appellant managed to slip away. The appellant was finally arrested on 19.08.1999. His disclosure statement (Ex.PW-8/B) was recorded by SI Ajay Kumar (PW-8) pursuant thereto the knife (Ex.P-1) which was the weapon of offence was recovered vide memo Ex.PW-8/E. Dr. Vinita (PW-4) had medically examined the complainant Manju; her MLC Ex.PW-4/A was prepared; an incised wound measuring 3.5 cm X 05 cm was noted upon her scalp; injury was reported to be simple having been caused by a sharp object. The MLC of PW-1 was conducted by Dr. Virender Kumar (PW-9) and proved as Ex.PW-8/J.

An incised wound measuring 3 cm was noted on his left chest as also wound on the back of his elbow. Injury was opined to be dangerous having been caused by a sharp object. Dr. Gaurav Aggarwal examined as PW-7 had reported vide his report (Ex.PW-7/A) that injuries in both the aforementioned MLCs (Ex.PW-4/A and Ex.PW-8/J) could have been caused by Ex.P-1. 4 In the statement of the accused recorded under Section 313 of the Cr.PC, he pleaded innocence stating that he has been falsely implicated in the present case. 5 No evidence was led in defence. 6 On the basis of the aforementioned evidence both oral and documentary, the appellant has been convicted under Sections 452/324 of the IPC and sentenced accordingly. 7 On behalf of the appellant arguments had been addressed by Mr. M.D. Farman, Advocate. It is pointed out that the complainant Manju has not been examined for which there is no explanation. Attention has been drawn to the version of PW-2, the neighbour wherein in one part of his cross-examination, he had stated that he had not seen the quarrel in the house of Jaswant; submission being that in this background, the conviction based on the sole version of PW-1 is an illegality. The ingredients of offence under Section 452 of the IPC have also not

been met. Lastly it has been submitted that in case the Court is reluctant to interfere with the conviction, leniency be considered in the matter of sentence. Reliance has been placed upon a judgment of the Apex Court reported as 1999 SCC (Cri) 1313 Jagat Pal Singh and Others Vs. State of Haryana to support a submission that in a case under Section 452 of the IPC where the appellant had undergone incarceration of one month, the Apex Court had released him on probation. Probation is accordingly prayed for. 8 Arguments have been refuted by the learned public prosecutor. It is pointed out that the testimony of PW-1 and PW-2 is cogent and coherent; PW-2 has become hostile after two months of his initial cross-examination and this was on an application seeking recall of the witness and as such this part of the version of PW-2 should not be taken into account. The medical evidence fully corroborates the oral version of PW-1 and PW-2. The impugned judgment does not call for any interference. 9 Arguments have been heard. Record has been perused. 10 The appellant has been convicted both under Section 452 as also Section 324 of the IPC. PW-1 was injured Jaswant. Complaint had been made by his wife Manju who has not been examined. However her non-examination does not make any difference as apart from the fact that her MLC is on record, her version in the complaint has been fully corroborated by the testimony of PW-1 who is her husband. The complaint (Ex.PW-1/DA) had categorically recited that while Manju was in her house, the appellant attempted to molest her; on her raising hue and cry, her husband had entered into the room. The appellant gave knife blows both to Manju and PW-1. This version in the complaint has been fully corroborated from the medical record which is the MLCs of Manju and PW-1 proved as Ex.PW-4/A and Ex.PW-8/J.

11 In his oral version, PW-1 has on oath testified all these facts. He has stuck to his stand. He has stated that it was summer season on the third day of the month when he came to his house after completing his duty and on hearing hue of his wife, he went inside and at his resistance on the appellant trying to misbehave with his wife, he was given a knife blow on his chest and abdomen; he was medically examined at GTB hospital. His wife had also been attacked. PW-1 had stuck to his stand in his lengthy cross-examination. He has not shifted it. In fact no argument had been addressed before this Court on the version of PW-1 which is cogent and credible. 12 PW-2 was the neighbor. He has corroborated the version of PW- 1.

He has stated that in summer season it was third day of the month at about 10:30 PM. He heard a noise of crying in the house of PW-1. On reaching there, he saw that the appellant Rajbir was giving a knife blow to Jaswant. This examination in chief of PW-2 was conducted on 31.03.2000. He had been discharged on the same day. It was thereafter i.e. on 29.05.2000 that the second cross-examination was permitted in which testimony he had stated that he had not seen the quarrel having been taken place in the house of Jaswant. Obviously this witness was won over in this intervening period of 2 months and has rightly been pointed out by the learned APP for the State that this part of the testimony of PW-2 cannot be looked into. The law on a hostile witness is clear. Testimony of such a hostile witness which is in conformity with the version of the prosecution can be relied upon. In this context, the observations of the Supreme in AIR 2011 SC3753 Mrinal Das & Others Vs. The State of Tripura are relevant and read herein as under:

In the case on hand Ganesh Kol (PW-2), Satyendra Tanti (PW-9), Ramakanta Paul (PW-10) and Prabhir Biswas (PW-12) were declared as hostile witnesses. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the Court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The Court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

13 The appellant was known to PW-1. He was finally arrested on 19.08.1999 wherein his disclosure statement (Ex.PW-8/B) was recorded pursuant to which he had got recovered the knife which was the weapon of offence. Recovery also stands proved. 14 The medical evidence of PW-1 has been corroborated by the doctors who have been examined as PW-4 and PW-7. The MLC of Manju, wife of PW-1 and MLC of Jaswant both have been proved. The medical examination of PW-1 had been conducted by Dr. Virender Kumar (PW-9); he had opined these injuries to be dangerous. This is a public document; the MLC having been conducted in the Government hospital i.e. Guru Teg Bahadur Hospital. This medical record shows that the injuries suffered by Manju and PW-1 were simple and dangerous and opinion given by the doctor (PW-7) that both the injuries in these MLCs could have been caused by the knife which had been shown to him and which had been recovered pursuant to the disclosure statement of the appellant again advances the version of the prosecution. 15 The defence of the appellant was that he has been falsely implicated in the case because of an quarrel which had taken place between Jaswant and Dharmender as Manju was having illicit relations with Dharmender and since the appellant was running a Halwai shop near the house of PW-1 and PW-1 had asked him to close the shop on several occasions which was the reason for his false implication. This bald defence however did not stand substantiated as even presuming that Manju was having an illicit relationship with Dharmender, the reason for false implication by PW-1 of the appellant has not been explained. This defence was rightly rejected. 16 Section 452 of the IPC presupposes that there must be a house trespass coupled with a wrongful restraint or assault or injury. The incident had admittedly taken place in the house of PW-1. The appellant had entered the room of PW-1 to tease his wife Manju; injuries have been suffered both by PW-1 and Manju. The ingredients of offence under Section 452 of the IPC are complete. The ingredients of offence under Section 324 of the IPC also stand substantiated. On no count, does the impugned conviction call for any interference. 17 However, on the point of sentence, submission of the learned counsel for the appellant is that the appellant is more than 55 years of age having five children; he is presently running a halwai shop and looking after his family and it would be against the interest of justice if he is ordered to be re-incarcerated again after such a long span i.e. after

a span of 15 years and ever since his bail, he has never misused that process; as such his case be considered for probation. 18 In this background, in terms of Section 360 of the Cr.PC and having considered the fact that the appellant remained in custody for more than three months out of a total sentence of one year which has been imposed against him; the fact that he had paid the fine; his jail conduct being satisfactory; he being in his mid-fifties and having a family to support; this Court in its discretion thinks it fit to grant him the benefit of probation. Accordingly while upholding the conviction of the appellant, instead of re-incarcerating him, the appellant is directed to remain on probation for a period of one year on his executing personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the concerned trial Court with the condition that he will maintain good behaviour and peace in society and will report before the Probation Officer once in every two months. 19 With these directions, appeal disposed off. INDERMEET KAUR, J MAY07 2014 A

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