

Anwar Vs. State

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Court : Delhi

Decided On : May-21-2014

Judge : Indermeet Kaur

Appellant : Anwar

Respondent : State

Judgement :

\$~R-98 to 99 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of judgment:

21. 5.2014 + CRL.A. 384/2006 ANWAR Appellant Through Mr.Zafar Sadique, Advocate. versus STATE Respondent Through + Mr.Fizani Hussain, APP. CRL.A. 599/2006 MOHD. ALAM Appellant Through Mr.Zafar Sadique, Advocate. versus STATE Respondent Through Mr.Fizani Hussain, APP. INDERMEET KAUR, J (oral) 1 There are two appellants before this Court Anwar and Mohd. Alam. They are aggrieved by the impugned judgment and order of sentence dated 27.3.2006 and 30.3.2006 respectively; each of them had been convicted under Section 392/34 of the IPC and had been sentenced to undergo RI for 5 years and to pay a fine of Rs.2000/- in default of payment of fine to undergo SI for 1 month. 2 Nominal rolls of the appellants have been requisitioned. It reflects that as on the date when appellant Anwar had been enlarged on bail he had suffered incarceration of 2 years and 2 months. Mohd. Alam had suffered incarceration of 3 years 5 months on the date when his sentence had been

suspended. 3 Record shows that on 21.6.1998 on the statement of Ms.Ambli (PW-1) a complaint had been registered; this was to the effect that when PW-1 had gone to see her cousin Sindhu Kumari (PW-2) who was working as a maid at the residence of Dr.L.N.Batra, Khirki Extension and when they were watching T.V. someone knocked at the door. PW-2 opened the door; PW-2 was asked for water by a boy; PW-2 went inside to fetch water; three boys who were following that boy able to enter the room. Two boys affixed tape on the mouth of PW-2; her gold chain and ear tops were removed. They both were tied by the accused persons. PW-1 and PW-2 were dragged into the bath room; their house search was effected by the aforementioned persons. The accused left the place of incident after half an hour. One of the assailants had a revolver with him and other were armed with knife. At 2.00 p.m. when Dr.Laxmi returned home; she found PW-1 and PW-2 lying in tide condition. Dr.Laxmi disclosed that one video camera, one brief case containing some documents and one cloth bag were also missing. It was on the complaint of PW-1 that the present FIR was registered. There were six assailants. As noted supra only two of them i.e. Anwar and Mohd. Alam are before this Court.

4 Record further shows that Anwar was arrested on 24.6.1998. His disclosure statement was recorded. Pursuant to this disclosure statement he had led the police party to his house from where he had got recovered one blue coloured raxin suitcase and two bags and a briefcase; they were taken into possession vide memo Ex.PW-10/G. This memo has been perused. It has been attested by two witnesses namely constable Jagat Singh and SI Mahender Dahiya (PW-6). Constable Jagat Singh has not been examined. PW-6 in his entire deposition has stated nothing about this recovery having been got effected at the instance of appellant Anwar. This Court agrees with the submission of the learned counsel for the appellants that recovery is doubtful for the reason that the recovery memo having been attested by two witnesses of whom one witness has not been examined and second witness has totally become silent on this recovery; there are dark shadows of doubt created upon this recovery; which recovery is suspicious and thus cannot be relied upon. Recovery is thus liable to be disbelieved.

5 The versions of PW-1 and PW-2 who are eye-witnesses to the incident have also been perused. Learned counsel for the appellants has drawn attention of this Court to their versions wherein PW-1 in her deposition has admitted that she was asked by

the police to identify the accused and they had been asked to go to the police station; PW-1 having categorically stated that she had seen the accused Anwar at her resident at Lado Sarai who was brought by the police. In her cross-examination conducted on behalf of accused Mohd. Alam she has reiterated that she has been asked by the police to identify the accused at the police station. Version of PW-1 being clear that the accused persons had been shown to her in the police station and she had been asked to identify them; although she had specifically named accused Anwar but had also spoken of other accused persons. 6 PW-2 Sindhu Kumari had also deposed on the same lines; she had admitted in the cross-examination that Mohd. Alam and Amir Khan were also shown to her by the police two days after the incident. Incident having taken place on Sunday; they were shown to her on Tuesday and her sister PW-1 also identified them on the same day. PW-2 has further deposed that on the following day (i.e. third day after the incident) the police came and brought accused Mohd. Alam and he was also identified by PW-2 in the police station along with her sister (PW-1). 7 It was in this background that refusal of TIP proceedings by the accused Anwar and Mohd. Alam has to be appreciated. TIP has been conducted by the Mr. Vinod Kumar Sharma, M.M. (PW-5). The TIP proceeding of accused Anwar has been proved as Ex.PW-5/3. This was conducted on 30.6.1998. He has categorically stated that he does not wish to participate in the TIP as he was shown to the witnesses several times. The refusal of Mohd. Alam to join the TIP proceedings because of the fact that he had been shown to the witnesses in the police station was thus a valid reason. This is fully corroborated by the version of PW-1 and PW-2. No adverse inference can be drawn against him for not joining the TIP. 8 No TIP was conducted of appellant Mohd. Alam. This is clear from the statement of the investigating officer SI Pawan Sharma (PW10) who has stated that TIP of all accused except Mohd. Alam was conducted. Mohd. Alam was identified for the first time in Court only. Such an identification is useless. PW-10 has also admitted that no recovery had been got effected at the instance of Mohd. Alam. 9 As noted supra the recovery memo Ex.PW-10/G evidencing recovery at the instance of accused Anwar has also not been disbelieved. Mohd. Alam had made a disclosure statement but no recovery had been made from him. Identity of both the accused persons is also doubtful as both PW-1 and PW-2 have admitted that they seen the

accused two days after the incident and they had been asked by the investigating officer to identify them, the refusal of the accused Anwar to join TIP was thus for a cogent reason. The identification of the accused persons in Court thereafter for the first time is a useless identification. There is no other evidence connecting the appellants with crime. The appellants are entitled to a benefit of doubt and consequent acquittal. Appeals are allowed. 10 Appellants are acquitted. Bail bonds cancelled. Sureties discharged. INDERMEET KAUR, J MAY21 2014 ndn

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