

Sandeep Chaudhary Vs. State

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Court : Delhi

Decided On : Jul-31-2014

Judge : S. Muralidhar

Appellant : Sandeep Chaudhary

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. No.597 of 2014 & CRL.M.(B). No.965 of 2014 SANDEEP CHAUDHARY Appellant Through: Mr. Dinesh Garg, Advocate. versus STATE Respondent Through: Mr. Rajat Katyal, APP with SI Sandeep Yadav from Crime Branch. CORAM: JUSTICE S. MURALIDHAR

ORDER

3107.2014 1. This appeal is directed against the judgment dated 11 th April 2014 passed by the learned District & Sessions Judge (East), Karkardooma Courts, Delhi in SC No.13/2011 convicting the Appellant for the offences under Sections 186, 353 and 307 IPC and Sections 25 and 27 of the Arms Act and the order on sentence dated 16 th April 2014 whereby for the offence under Section 186 IPC the Appellant was awarded simple imprisonment (SI) for three months; for the offence under Section 353 IPC he was awarded rigorous imprisonment (RI) for two years; for the offence under Section 307 IPC he was awarded RI for three years and fine of Rs.5,000 and in default to undergo SI for three months; for the offence

under Section 25 of the Arms Act he was awarded RI for three years with fine of Rs.5,000 and in default to undergo SI for three months and for the offence under Section 27 of the Arms Act he was awarded RI for seven years with fine of Rs.5,000 and in default to undergo SI for three months. The sentences were directed to run concurrently.

2. The case of the prosecution is that on 10 th November 2010 at about 1 pm a secret informer came to the office of the Anti-Robbery Cell (ARC) Crime Branch, Nehru Place, Delhi. Information was given to Head Constable (HC) Suresh Kumar (PW-6) and Constable Rajesh (PW-5) that the Appellant who had an award of Rs.25,000 for his arrest and belonging to Bulandshehar, Uttar Pradesh would come near Anand Vihar, ISBT at around 5 pm. The secret informer was produced before Inspector Sajjan Singh (PW-12). PW-12 then briefed PW-6, PW-5, HC Sandeep, HC Pawan, Constable Anil, Constable Surender as well as Constable Ajit. PWs-5 and 6 were directed to remain in police uniform. At around 1.30 pm police party left in a private car and motorcycle and reached ISBT Anand Vihar. Police party took position on both sides of the exit gates of ISBT Anand Vihar. At around 5.50 pm, secret informer pointed out towards the motorcycle bearing No.DL8 AG5088stationed in front of the exit gate and identified the Appellant. In the meanwhile the Appellant began proceeding on his motorcycle, and the police party chased him. The Appellant took a u-turn towards Ghazipur village and then towards NH-24 Ghaziabad. While he drove the motorcycle towards the fruit and vegetable Market, HC Pawan overtook him and stopped his vehicle in front of the motorcycle due to which the Appellants motorcycle slipped on the debris. The Appellant then started running towards the vegetable market (mandi). The police party chased him and asked him to surrender at which point he took out a country made pistol from the right pocket of his track suit. Pointing the weapon towards the police party, he stated that if anyone chased him he would be killed. The Appellant is stated to have fired a shot pointing at PW6. At that moment, PW-12 gave cover to PW-6 and fired two shots in the air from his service revolver. Meanwhile, PW-6 caught hold of Appellant and PW-5 snatched the pistol from his hand. On searching the Appellant, three live cartridges were recovered from the right pocket of his track suit. One fired cartridge was also recovered from his pistol. The pistol was measured and a sketch prepared. The pistol and cartridges were converted

into sealed pullandas and seized under memos Ex. PW-5/B. The FSL Form was filled up and the seal after its use was handed over to PW-6 vide memo Ex.PW5/C.

3. PW-12 is stated to have prepared the rukka (Ex.PW-12/A) and handed it over to PW-5 who took it to police station Crime Branch, Nehru Place. Duty Officer HC Ashok Kumar (PW-3) registered an FIR (Ex.PW-2/A) by making an endorsement on the rukka. Further investigation was entrusted to SI Sumer Singh (PW-8) who reached the spot thereafter and prepared a site plan Ex. PW-8/A at the instance of PW-12.

4. The Appellant was arrested under arrest memo (Ex.PW-6/D) and a personal search was conducted vide memo Ex.PW-6/E. The two cartridges fired by PW-12 were seized from the spot under seizure memo (Ex.PW-6/B). The motorcycle used by the Appellant was seized under memo (Ex. PW-6/C). It was subsequently sent to PS Pandav Nagar as it constituted the stolen property in some other case.

5. Mr. V.R. Anand, Assistant Director (Ballistics) ((PW-9) examined the country made pistol and cartridges seized from the Appellant and gave a report confirming that the pistol was in working order and that test fire was conducted successfully. He confirmed that the pistol and the cartridges satisfied the definition of a firearm and ammunition under the Arms Act. Mr. Sanjay Bhatia (PW-11), the then Additional DCP, accorded sanction (Ex.PW-11/A) for prosecution of the Appellant under Section 39 of the Arms Act. PW-8 proved the involvement of the Appellant by giving the details of the other cases in which he was involved (Ex. PW-8/B).

6. Charges were framed against the Appellant for the aforementioned offences. He pleaded not guilty and claimed trial. The prosecution examined 12 witnesses. In his statement under Section 313 Cr PC, the Appellant denied the entire case of the prosecution claiming that he was not present on the date, time or place as alleged or that he was riding any motorcycle. He claimed that he had been falsely implicated by the police in order to procure the award of Rs.25,000 announced by the Uttar Pradesh Police. He denied having obstructed any police official in discharge of his public function or opening fire on the police. No defence witness was examined.

7. On an examination of the evidence, the trial Court came to conclusion that the prosecution had successfully established that on the date of the incident the Appellant obstructed the police party and used criminal force to deter them from discharging their public duties. The trial Court held that the prosecution had also established that the Appellant had attempted to kill PW-6 by firing at him. The Ballistics report (Ex.PW-9/A) corroborated the case of the prosecution. The trial Court further held that the intention of the Appellant to commit the murder of PW-6 was established from the testimonies of PWs- 5, 6 and 12. The Appellant had been correctly identified in the Court by the members of the police party as the person riding the motorcycle which was chased by the police party into the mandi at Ghazipur. It was held that the prosecution had proved the case against the Appellant beyond all reasonable doubts. By a separate order on sentence dated 16th April 2014, the trial Court awarded the Appellant the sentences as aforementioned.

8. Mr. Dinesh Garg, learned counsel for the Appellant first submitted that in terms of Section 195 Cr PC, it was mandatory that a separate complaint should have been filed for the offence under Section 186 IPC. He submitted that in the present case, the complaint was never formally filed before the learned Metropolitan Magistrate (MM) and a copy was merely attached to the charge sheet filed. Relying on the decision in Gurinder Singh v. State 1996 (2) C.C. Cases 396 (Del), he submitted that the failure to follow the mandatory procedure under Section 195 Cr PC would be fatal to the case.

9. Mr. Rajat Katyal, learned APP, in his reply referred to the complaint filed before the learned MM and the endorsement thereon made by the learned ACMM on 6th January 2011. It is only thereafter that the charge sheet was filed with a copy attached.

10. The Court on examining the trial Court record finds that indeed a separate complaint dated 4th January 2011 was made by Mr. Rajender Singh, Assistant Commissioner of Police, ARC to the Court of the learned ACMM in Karkardooma Courts, Delhi referring to the FIR No.150 of 2010 registered under Sections 307/353/186 IPC and Sections 25 and 27 of the Arms Act. On the said complaint,

the learned ACMM made an endorsement seen, be kept on record and be tagged to charge sheet as and when filed. The said endorsement is dated 6th January 2011. Therefore, there is no merit in the contention that a separate complaint for the purposes of Section 186 IPC was not filed before the learned ACMM. The requirement of Section 195 Cr PC has, therefore, been met by the prosecution.

11. Mr. Garg next submitted that the sanction was granted by PW-11 (Ex.PW-11/A) mechanically without noticing that the charge sheet placed before him mentioned that sanction had already been granted. A perusal of the trial Court record shows that it was a draft charge sheet which was placed before PW-11. It was not as if the charge sheet had already been filed by then.

12. It was next submitted that for the purposes of Section 39 of the Arms Act it was only the District Magistrate who could have granted sanction for prosecuting the Appellant under Sections 25 and 27 of the Arms Act. In the present case, PW-11 was only the Additional DCP and, therefore, not authorised to do so. Mr. Rajat Katyal submitted, and this Court has no means to doubt, that there is a delegation of the powers by the District Magistrate to the Additional DCP for the purposes of Section 39 of the Arms Act. There appears to be no illegality in PW-11 passing the sanction order.

13. Mr. Garg then relied on the decision in *Rohtash Kumar v. State of Haryana* 2013(3) RCR (Criminal) 355 and submitted that the DD entry supposed to be recorded at police post Ghazipur were never produced. He submitted that the withholding of such material evidence would lead to an adverse inference under Section 114 of the Evidence Act. He also submitted that the statements of all the policemen who formed part of the raiding party were not recorded and they were not produced as prosecution witnesses.

14. Mr. Katyal pointed out to the Court that the relevant DD entry is Ex.PW-10/A and forms part of the trial Court record. The said entry has been perused. It clearly records that information was received at around 6.24 pm while the police party chased the Appellant. As long as the evidence of PWs 4, 5 and 12 were clear and cogent as to the events that transpired it makes little difference that the other members of the raiding party were not examined. It is quality and not the quantity

of evidence that matters.

15. Mr. Garg then submitted that the MHC(M) of PS Pandav Nagar was not examined to prove that the motorcycle was indeed a stolen property in some other case. He submitted that the non-production of the motorcycle in the trial Court in the present case could be fatal to the case of the prosecution inasmuch as one main limb of the prosecution story is about the Appellant travelling on that motorcycle while being chased by the police party.

16. As pointed out by Mr. Katyal, the evidence of PWs-8 and 12 reveals that after the motorcycle was seized it was handed over to PS Pandav Nagar since it was wanted in the another case concerning theft of the said motorcycle. Although the witnesses have spoken in clear terms about this fact, they have not been cross-examined by the counsel for the defence on it. Once it was shown that the motorcycle was indeed recovered and handed over to PS Pandav Nagar, there was a satisfactory explanation for its non-production in the trial of the present case.

17. Mr. Garg submitted that no effort had been made by the prosecution to recover the leads of the bullets that were fired. This according to Mr. Garg was crucial because the case of the prosecution is that one shot was fired by the Appellant from his country made pistol and two were fired by PW-12 who had given cover to PW-6. He submitted that even if it was during the evening hours, nothing prevented the police party from going back to the spot the next morning to search for the bullet leads. Reliance was placed on the decision in State of U.P. v. Siya Ram 2010 (4) RCR (Criminal) 114 and Kamal Singh v. State of Delhi 2013 (2) LRC272(Del).

18. The evidence of PW-8 shows that when the pistol was snatched from the Appellant by PW-5 and later examined, it did contain the remnants of the fired cartridge. This was preserved and sent to the FSL which confirmed that it was the remnant of the cartridge fired from the said pistol. This was sufficient to show that the country made pistol was used for firing one shot. In these circumstances, there is no merit in the contention that the failure to recover the bullet leads was fatal to the case of the prosecution.

19. Mr. Garg took the Court through the depositions of the prosecution witnesses and urged that there were material contradictions in their versions. He submitted that the evidence of PWs-3 and 4 who were attached to PS Ghazipur and on patrolling duty was also contradictory.

20. The Court finds that the evidence of prosecution witnesses have been discussed in great detail by the trial Court. The sequence of events as described by the prosecution has been satisfactorily proved by it in the trial Court. As pointed out by the trial Court while there may be some contradictions and inconsistencies in the statements of some of the prosecution witnesses, they are not material so as to destroy their credibility. The police witnesses have clearly spoken about the chase of the Appellant, the motorcycle skidding to a halt and slipping on the debris; his running towards the mandi and when challenged, opening fire on PW-6 by pointing at him the country made pistol. While the chase was in progress an intimation was sent to PS Ghazipur through the PCR. This Court finds no reason to differ with the view of the trial Court on this aspect.

21. Consequently, this Court is satisfied that the trial Court has committed no error in convicting the Appellant for the offences with which he was charged.

22. Turning to the question of sentence, learned counsel for the Appellant submitted that the Appellant has a young child of seven months and has already spent nearly 30 months in prison. He prayed that a lenient view should be taken by the Court.

23. The Court finds that for the offence under Section 27(2) of the Arms Act, which is clearly proved against the Appellant in the present case as he was using a prohibited firearm, the minimum sentence is seven years. The trial Court has awarded the minimum sentence and, therefore, there is no scope for any interference on that score. The sentence awarded for the other offences which have been directed to run concurrently also cannot be said to be excessive. Accordingly, the Court finds no reason to interfere even on the order on sentence passed by the trial Court.

24. The appeal and application are accordingly dismissed. The trial Court record be sent back forthwith. S. MURALIDHAR, J.

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