

Satish Kumar vs.the State (n.c.t. Of Delhi) & Anr.

Satish Kumar vs.the State (n.c.t. Of Delhi) & Anr.

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Court : Delhi

Decided On : Nov-30-2016

Appellant : Satish Kumar

Respondent : The State (n.c.t. Of Delhi) & Anr.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.REV.P. 695/2016 and Crl.M.(Bail) 1937/2016 Date of Decision:

30. h November, 2016 SATISH KUMAR Revisionist Through: Mr.Sanjay and Mr.G.P.Singh, Advocates. versus THE STATE (N.C.T. OF DELHI) & ANR.

... RESPONDENTS

Through: Mr.G.M.Farooqui, APP for State with ASI Rajender Prasad, P.S. Delhi Cantt., Delhi. % CORAM: HON'BLE MR. JUSTICE I.S.MEHTA I.S. MEHTA, J.

1. The instant revision petition filed under Section 397 read with Section 401 of the Cr.P.C. is arising out of the impugned judgment dated 22.03.2016 and order on sentence dated 07.04.2016 passed by MM(03), Patiala House Courts, New Delhi in case No.3/2B/14 and CRL.REV.P. 695/2016 Page 1 of 10 subsequent order dated 26.09.2016 passed by ASJ- 03, Patiala House Courts, New Delhi in case CA No.31/16, in FIR No.2 under Section 325 of the IPC.

2. The brief facts stated are that on the basis of the statement of the respondent No.2/complainant, i.e., Rahul, an FIR No.293/2006 was registered at Police Station Delhi Cantt. wherein the complainant had alleged that on 25.07.2006 at about 11.30 am at house No.16/4, in the street in front of Sadar Bazar grievous injuries were inflicted on the person of the complainant by the revisionist, i.e., Satish Kumar. The investigation was carried out and chargesheet under Section 173 of the Cr.P.C. qua against the revisionist/accused was filed under Section 325 of the IPC. The revisionist/accused was summoned and chargesheet was framed for the offence under Section 325 of the IPC to which accused claimed not guilty.

3. The prosecution examined eleven witnesses, i.e., PW1 Rahul-complainant/injured; PW2 Birmah- uncle of the complainant/injured; PW3 Munna Lal- father of complainant/injured; PW4 ASI Kapil Singh- duty officer; PW4 HC Kedar- investigating witness; PW5 W/HC Manita (DD Writer); PW6 Dr. Amandeep Singh Narang; PW7 Dr. Rishi- Medical Officer, DDU; PW8 ASI Suresh Kumar- IO; PW9 Dr. H.S. Chhabra from Indian Spinal Injuries Centre, Vasant Kunj, Delhi and PW10 Dr. Aruna Singh, Medical Officer, DDU.

4. After completion of the prosecution evidence statement of the revisionist/accused under Section 313 read with Section 281 of the Cr.P.C. was recorded and the incriminating evidence was put to the revisionist/accused. The plea taken by the revisionist/accused in the CRL.REV.P. 695/2016 Page 2 of 10 statement under Section 313 read with Section 281 of the Cr.P.C. was that he was quarrelling with one Birmah(PW2), uncle of the complainant. However the revisionist/accused pleaded innocent as he was falsely implicated in the case as he had previous rivalry with the family of the complainant.

5. After hearing the final arguments the learned MM convicted the revisionist/accused for the offence under Section 325 of the IPC vide judgment dated 22.03.2016 and was sentenced to undergo 03 years of rigorous imprisonment and a fine of Rs. 10,000/-, and in default of payment of fine, to further undergo 2 months of simple imprisonment vide order on sentence dated 07.04.2016.

6. The revisionist/accused feeling aggrieved with the conviction and the order on sentence filed an appeal petition before the learned ASJ- 03, Patiala House Courts, New Delhi. The learned ASJ after giving careful consideration to the submissions of the learned counsels for the parties and after perusal of the records upheld the conviction judgment dated 22.03.2016 and modified the order on sentence dated 07.04.2016 with direction that the present revisionist/appellant shall undergo 06 months of rigorous imprisonment and fine of Rs. 3,00,000/- (Rupees Three Lakhs Only) under Section 325 of the IPC, which shall be paid to the present respondent No.2/complainant as compensation within 15 days and in default of payment of fine amount the present revisionist/appellant shall further undergo two and half years of simple imprisonment. Hence the present revision petition. CRL.REV.P. 695/2016 Page 3 of 10 7. The learned counsel for the revisionist/accused has submitted that the Court below has misread the evidence and reached to the wrong conclusion. He has further submitted that the respondent No.2/complainant was admitted in the hospital, however, he absconded from there on the same day at 10:15 p.m. The learned counsel for the revisionist/accused submitted that the Court below relying upon the medical evidence of a private hospital reached to the wrong conclusion.

8. He further submitted that 'intention' is necessary for conviction under Section 325 of the IPC whereas both the witnesses, i.e., PW-1 Rahul(complainant) and PW-2 Birmah(uncle of the complainant), had not deposed in their statements that the revisionist/accused had inflicted any injury on the person of the respondent No.2/complainant. It is further submitted that there is no evidence on record of causing any injury on the person with intention of the injury and relied on the judgment of the Hon'ble High Court of Orissa in the case Dalapati Majhi vs. The State, Opposite Party reported at MANU/OR/0207/1981.

9. On the other hand, the learned APP for the State has vehemently opposed the contentions raised by the learned counsel for the revisionist/accused and submitted that the complainant/injured witness(PW1 Rahul) and the other two eye witnesses, i.e., PW2 Birmah and PW3 Munna Lal, had supported the case and stated the facts which are narrated in the FIR and identified the accused (present revisionist/accused) correctly. The learned APP has further submitted that as per

the MLC of the Deen Dhyal Upadhyay Hospital CRL.REV.P. 695/2016 Page 4 of 10 (in short DDU hospital), the doctor has opined the injury as grievous at spinal cord and it is only because of this reason that he was immediately sent to Indian Spinal Injury Centre, Vasant Kunj, New Delhi where he remained hospitalized for more than one and a half year.

10. The learned APP has further submitted that all the above facts have not been denied by the present revisionist/accused in the cross- examination and therefore, the Court below has rightly convicted and sentenced the revisionist/accused after considering the facts and circumstances of the case.

11. The revisionist/accused in the instant petition is convicted for an offence under section 325 of the IPC by the Courts, i.e., by the learned MM vide judgment dated 22.03.2016 and by the learned ASJ vide order dated 26.09.2016.

12. Section 325 of the IPC is reproduced as under:

"325. Punishment for voluntarily causing grievous hurt.- Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The revisionist/accused does not take its defence in the instant 13. petition under Section 335 of the IPC. The plea taken by the revisionist/accused in the present petition is that the Court below misread the evidence and reached to the wrong conclusion.

14. The facts of the instant case is that the revisionist/accused who was in a drunken condition was quarrelling with one Birmah uncle of CRL.REV.P. 695/2016 Page 5 of 10 the respondent No.2/complainant on 25.07.2006. The respondent No.2/complainant, i.e., PW1 Rahul, was present at his house on 25.07.2006. At about 11.30 am, on hearing the noise he came out to the balcony of his house and saw a quarrel was going on between his uncle Birmah and the revisionist/accused. The said uncle was rescued by the complainant Rahul who came down from the balcony and took his uncle to the house of one Gulbir as the place of the incident

was near to the house of Gulbir. Thereafter, the complainant was standing on the balcony of the house when the revisionist/accused again came to the complainant and pushed the complainant in such a manner that his shoulder hit the neck of the complainant and in consequence the complainant fell down and received the spinal injury on his person.

15. The defence taken by the revisionist/accused during the trial is that that the complainant received the injury on his person due to his own act.

16. In the instant case, the place of the incident as per the statement of the complainant(PW1 Rahul) is at the balcony of his house from where he saw his uncle(Birmah) quarrelling and beaten by the revisionist/accused and he came down to save his uncle who was then taken to the house of Gurbir. Subsequently, the complainant came back to the balcony of his house. The injury caused on the person of the complainant by the revisionist/accused is due to the act of the revisionist/accused pushing the complainant in such a manner that his shoulder hit the neck of the complainant as a result of which the complainant fell down from the balcony and received grievous injury on cervical spinal as mentioned in the MLC dated 25.07.2006 CRL.REV.P. 695/2016 Page 6 of 10 of the DDU hospital as well as the treatment summary Ex.PW9/A issued by the senior consultant PW9 Dr. H.S. Chhabra of the Indian Spinal Injuries Centre, Vasant Kunj, New Delhi.

17. Ordinarily, the value of the medical evidence is only corroborative as the complainant was on rehabilitation programme and his chance of complete recovery is practically nil. Such injury cannot be presumed to be self inflicted without the act of the revisionist/accused who had pushed the complainant/injured as a result of which the complainant fell from the balcony and got injured. The Ex.PW9/A indicates that the complainant/injured was diagnosed with fracture C5-6 with quadriplegia with loss of bladder and bowel sensation. He has not shown any functional recovery and his chance of complete recovery are practically nil and is likely to stay as such. Reliance could be placed on the judgment of the Apex Court in the case Solanki Chimanbhai Ukabhai vs. State of Gujrat reported at AIR 1983 SC484 18. The statement of PW1 Rahul is also corroborated by the statement of PW2 Birmah and PW3 Munna Lal on the material point. The presence of PW2

Birmah at the spot is not been denied by the revisionist/accused rather during the cross-examination to PW2 with whom initial quarrel had taken place the revisionist/accused has himself admitted hitting the complainant(Rahul) by him on the said date, time and place. Subsequently, the same is reproduced as under:

"When the accused was coming towards me in the meantime the complainant, Rahul, tried to stop him but it is correct that in that CRL.REV.P. 695/2016 Page 7 of 10 duration, the accused could not hit me but the accused hit the complainant, Rahul."

19. So far as the presence of the PW3 Munna Lal at the spot is concerned, the same is not disputed and is admitted by the revisionist/accused and the same is reproduced as under:

"...I reached immediately at the spot i.e. in front of Balmiki Mandir, Sadar Bazar, where I saw the accused, Satish, present in the court (correctly identified) running towards my brother, Birmah and hit against my son, namely, Rahul."

20. The ocular statement of both the witnesses PW2 Birmah and PW3 Munna Lal supports the version given by the complainant/PW1 Rahul and falsifies the defence taken by the revisionist/accused that the injury caused on the person of the complainant was caused due to his own act.

21. The contentions of the learned counsel for the revisionist/accused that there was no intention to cause such injury on the person of the respondent/complainant is also falsified by the presence of the revisionist/accused by visiting the balcony of the house of the complainant after PW2 Birmah was rescued and was taken to the house of Gulbir which was near to the place of the incident.

22. The place of quarrel between the revisionist/accused and PW2 Birmah was near Balmiki Mandir, Sadar Bazar whereas the incident in the instant case is at the balcony of the complainant's house and there was no point to visit the said balcony by the revisionist/accused CRL.REV.P. 695/2016 Page 8 of 10 unless and until the revisionist/accused has an intention to harm on the person of the complainant.

23. Consequently, the revisionist/accused pushed the complainant in such a manner that his shoulder hit the neck of the complainant as a result of which the complainant fell down from the balcony and received grievous injury on cervical spinal as shown in the MLC dated 25.07.2006 of the DDU hospital and subsequently the complainant/injured was diagnosed with fracture C5-6 with quadriplegia with loss of bladder and bowel sensation by the Indian Spinal Injuries Centre and its summary report is Ex PW9A issued by senior consultant PW9 Dr. H.S. Chhabra.

24. What is emerging on the record by the aforesaid statements of the witnesses is that, the revisionist/accused with the intention to harm the respondent No.2/complainant went to the balcony where the complainant was standing and pushed him as a result the complainant fell down and received spinal injury. Had there been no intention to harm/injury on the person of the respondent No.2/complainant the revisionist/accused would have not gone to the balcony to push and hit the complainant. There is no cross-examination on the point that the complainant/injured did not fell from the balcony.

25. The judgment relied upon by the learned counsel for the revisionist/accused is not applicable to the facts of the present case as in the instant case firstly, the revisionist/accused was quarrelling with PW2 Birmah uncle of the respondent No.2/complainant and secondly, when the uncle was rescued and taken to the house of CRL.REV.P. 695/2016 Page 9 of 10 Gurbir the revisionist/accused got annoyed and intentionally went to the balcony to quarrel with the respondent No.2/complainant and pushed him in such a manner that the complainant fell from the balcony and received spinal injury.

26. As discussed above, this Court is of the view that the impugned judgment dated 22.03.2016 and order on sentence dated 07.04.2016 passed by MM(03), Patiala House Courts, New Delhi in case No.3/2B/14 and subsequent order dated 26.09.2016 passed by ASJ- 03, Patiala House Courts, New Delhi in case CA No.31/16, in FIR No.2

under Section 325 of the IPC requires no interference. Consequently, the present revision petition is dismissed.

27. Let one copy of this order be sent to the concerned court for necessary compliance. No order as to costs. All the pending applications are disposed of accordingly. I.S.MEHTA (JUDGE) NOVEMBER30 2016 CRL.REV.P. 695/2016
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