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Safaq Ahmad vs.state

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SooperKanoon Citation : sooperkanoon.com/1205626

Court : Delhi

Decided On : Apr-28-2017

Appellant : Safaq Ahmad

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

28. h March, 2017 Decided on:

28. h April, 2017 CRL.A. 518/2015 SAFAQ AHMAD ..... Appellant Represented by: Mr. Ajay Verma, Ms. Divya STATE versus Chugh, Advocates. Represented by: Mr. Hirein Sharma, APP for the ..... Respondent CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA State with SI Om Parkash PS Anand Parbat.

1. The instant appeal has been filed by the appellant Safaq Ahmad challenging the impugned judgment dated 18th September, 2014 whereby the appellant has been convicted for the offences punishable under Sections
IPC and Section
of the Arms Act in FIR No.34/2013 registered at PS Anand Parbat and the order on sentence dated 22nd September, 2014 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of `5,000/- for the offence punishable under Section 393 IPC, rigorous imprisonment for a period of seven years for the offence punishable under Section 398 IPC and rigorous

imprisonment for a period of one year and to pay a fine of `2,000/- for the offence punishable under Section
Arms Act 2. Assailing the conviction, learned counsel for Safaq Ahmad submits Crl.A. 518/2015 Page 1 of 4 that no injury was sustained by PW-3 Rajesh Kumar. In the absence of corroboration from any independent witness, conviction cannot be based on the sole testimony of Rajesh.

3. Per contra, learned APP for the State submits that there is no infirmity in the impugned judgment of conviction and order on sentence.

4. The prosecution case is that on 9th March, 2013 when Rajesh Kumar was standing in front of his shop, Gullu (the appellant herein) came there, took out a knife from his pant and put it on the abdomen of Rajesh. He asked Rajesh to take out the money whatever he had, otherwise he would stab him. In the meantime, Rajesh saw PW-6 SI Bal Mukund Rai along with two other policemen who were in uniform and raised alarm, as a result of which Gullu tried to flee. However, he was apprehended. On the basis of the statement of Rajesh, FIR No.34/2013 was registered under Sections
IPC at PS Anand Parbat. On formal search of the appellant, knife was recovered. Site plan was prepared by SI Bal Mukund Rai at the instance of Rajesh.

5. Rajesh Kumar deposed in conformity with his statement made before the police. During his cross examination, he stated that he wanted to withdraw the case as he was receiving continuous threats from the appellant.

6. PW-2 Smt. Veena Devi, mother of Rajesh, corroborated the version of Rajesh. She also stated that the appellant was well known to her as he was residing in her locality and was a criminal. Since the people in the locality are afraid of the appellant, nobody came forward to depose against him. Prior to this incident, the appellant along with his 2-3 associates had come to her shop where she sold eggs, ate eggs three times and whenever she demanded money, he used to beat her husband and daughter.

7. Though apparently the statement of Rajesh duly corroborated by his Crl.A. 518/2015 Page 2 of 4 mother proves the prosecution case as held by the learned

Trial Court, however a close scrutiny of the record shows material improvements and contradiction. Though Smt. Veena Devi claims to be an eyewitness having incidentally gone out of the house to take red chillies from her egg rehri however, neither in the FIR nor in his deposition, Rajesh claims her mother being present at the place of incident and having witnessed the incident. Further even from the testimony of the Police witnesses who were claimed to be present at the spot, the presence of Smt. Veena is not deposed to. Smt. Veena has not signed any of the memos stated to be prepared at the spot. Further in her examination in chief Smt. Veena deposes that on the 12th August, 2013, brother of the appellant had met her son at Patel Nagar and threatened to kill him if he deposed against the appellant. Firstly this fact has not been deposed to by Rajesh to whom threat was purportedly extended, moreover appellant has produced certified copies of the order and judgment dated 23rd September, 2013 in FIR No.585/2003 under Section 302/1
IPC registered at PS Kirti Nagar showing that on 12th August, 2013 brother of the appellant was in judicial custody and thus could not have threatened Rajesh at Patel Nagar. Thus no reliance can be placed on the testimony of Smt. Veena mother of Rajesh.

8. This Court is thus left with the testimony of Rajesh and the fact that as per the prosecution case SI Bal Mukund and two other police apprehended the appellant at the spot with a knife.

9. No doubt conviction of the appellant can be based on the sole testimony of Rajesh, if it inspires confidence. Though in the FIR itself Rajesh gives the name of the appellant and that he is involved in offences, in his deposition Rajesh admits that he had not seen the appellant prior to the Crl.A. 518/2015 Page 3 of 4 incident and did not know him. Though Rajesh claims to be a witness to the apprehension of the appellant and recovery of the knife from appellant in his presence, however in cross-examination he admitted that the appellant was brought to his rehri after 10 to 15 minutes of his running away and when the Police officer reached near his rehri with the appellant the knife was in the hand of SI Bal Mukund. He identified the knife as the one in the hand of SI Bal Mukund and not as the one shown to him by the appellant.

10. Considering the inherent contradictions in testimony of Rajesh Kumar and that the testimony of Smt. Veena Devi is not reliable, this Court finds it to be a fit case where the appellant is entitled to the benefit of doubt. Consequently, the conviction of the appellant for offences punishable under Section
IPC and Section
of Arms Act and the order on sentence are set aside. Appeal is disposed of.

11. Appellant be released forthwith if not required in any other case. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

12. TCR be returned. APRIL28 2017 ga (MUKTA GUPTA) JUDGE Crl.A. 518/2015 Page 4 of 4

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