

Ashwani Kumar vs.the State

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Court : Delhi

Decided On : May-25-2017

Appellant : Ashwani Kumar

Respondent : The State

Judgement :

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

20. h April, 2017 Decided on:

25. h May, 2017 CRL.A. 155/2016 ASHWANI KUMAR Appellant Represented by: Mr. Krishan Kumar and Ms. Sunita Arora, Advocates. versus THE STATE Represented by: Mr. Hirein Sharma, APP for the State with ASI Om Prakash, PS Hauz Khas. Respondent CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA1 Convicted for offences punishable under Section 307 IPC and Section 25 of the Arms Act, 1959, Ashwani Kumar challenges the impugned judgment dated 31st October, 2015 and the order on sentence dated 23rd November, 2015 directing him to undergo rigorous imprisonment for a period of four years and to pay a fine of `5,000/- for offence punishable under Section 307 IPC and rigorous imprisonment for a period of two years for offence punishable under Section 25 of the Arms Act.

2. Assailing the conviction, learned counsel for Ashwani Kumar submits that the recovery of knife is highly improbable and is not admissible under Section 27 of

Indian Evidence Act. The alleged recovery of knife is also not admissible because it was recovered from an open place accessible to all and sundry and this fact has been admitted by PW-10 Constable Anil Kumar in CRL.A. 155/2016 Page 1 of 7 his testimony. Reliance is placed upon the decision of Division Bench of this Court reported as 2014 SCC OnLine Del 7126 Heera Lal @ Heera v. State of NCT of Delhi. It was further submitted that nature of injury cannot be ascertained when there is no mention about the dimension of the injury in the MLC. Mere mentioning of 'grievous' in the MLC without dimension is not enough to convict the appellant for offence punishable under Section 307 IPC. The arrest of Ashwani Kumar is also doubtful. Hence the appellant be acquitted.

3. Learned APP for the State on the other hand submits that the impugned judgment of conviction and order on sentence suffer from no illegality. Appellant was apprehended at the spot. The knife was recovered from the heap of garbage.

4. Process of law was set into motion on 23rd September, 2013 when three DD entries were received at PS Hauz Khas. DD No.50A received at 11:35 P.M. stated about a quarrel at C-106, Panchsheel Park which was assigned to PW-9 Constable Pritam. DD No.56A was also received at 11:35 P.M. informing about a quarrel near Verma Paranthewala behind AIIMS which was assigned to PW-14 SI Babu Ram. DD No.57A was received around 11:40 P.M. informing that the caller has been stabbed by a knife by some boys behind Sudarshan Cinema at Gautam Nagar. The said entry was assigned to PW-8 HC Harkesh. When PW-14 SI Babu Ram along with PW- 9 Constable Pritam reached the spot at Gautam Nagar, they found the injured Keshav Saini PW-1 with an injury on the right side of his chest. Keshav pointed out towards the two boys on the motorcycle who had assaulted him with a knife. On seeing the police, those two boys tried to flee away however, they were apprehended by the police. In the meantime, Keshav was CRL.A. 155/2016 Page 2 of 7 sent to AIIMS hospital for medical examination. Names of the two boys were revealed as Ashwani Kumar and Manish Tiwari. Both the accused persons were also taken to the hospital for medical examination. FIR No.398/2013 was registered under Sections 3

IPC at PS Hauz Khas on the statement of SI Babu Ram. Motor cycle bearing No.DL3S BZ8866 was seized by SI Babu Ram. Blood stained clothes of Keshav

and blood sample of accused persons were sent to FSL for analysis. Weapon of offence i.e. buttondar knife was recovered at the instance of Ashwani Kumar.

5. Charge sheet was filed for offences punishable under Section 3

IPC and Section 25 Arms Act. Charge was also framed against Ashwani Kumar and Manish for offence punishable under Section 307 read with Section 34 IPC and against Ashwani Kumar for Section 25 of the Arms Act also. By the impugned judgment, co-accused Manish was acquitted. Thus, this Court is only concerned with Ashwani Kumar.

6. Keshav deposed that on 1st September, 2013, he had left his office at Nehru Place around 9:00/9:30 P.M. after which he went to Sunil Nursing Home, Malviya Nagar along with his colleague for her check up. After dropping her at her residence, when he was on way to his home, around 11:00/11:30 P.M., he reached Nale Wala Road, Yusuf Sarai, near Verma Paranthewala in his car i.e. Swift Desire white colour bearing registration No.DL-3CC-0854. On that road, vehicles were parked on both sides, as a result of which there was congestion. Since the road was broken and an auto was coming from the opposite side, he stopped his car in front of the chemist shop. The moment he stopped his car, two boys came on a motorcycle bearing registration number DL-3SBZ-8868, whose names were later on revealed as Ashwani Kumar and Manish Tiwari, near the driver's side and CRL.A. 155/2016 Page 3 of 7 started banging window of his car. On seeing them banging, he rolled down the window and asked 'kya'. The person who was driving the said motorcycle was Manish Tiwari and said 'tune gaadi kaise roki'. He replied 'road kharab hai, saamne se auto aa raha hai, gaadi na roku to kya karun'. In the meantime, the motorcycle was stopped and the pillion rider got down and stood near the door of the car. Thereafter, Keshav asked Manish that 'tu Guptaaji ka ladka hai' to which Manish replied 'na main gaon ka hun'. During the aforesaid conversation, the pillion driver i.e. Ashwani repeatedly told Manish that 'tu gaadi chala... tu gaadi chala'. Thereafter, Manish started the motorcycle and all of a sudden Ashwani came towards Keshav and stabbed knife on the right side of his chest and jumped on the motorcycle. Since the car was in ignition mode, with the force of stabbing, he released the clutch and his car and motorcycle collided slightly and both the accused persons fell on the road. When he came out of the

car, Ashwani started running away from there and Manish started saying 'gaadi maar di, gaadi maar di'. Thereafter, few persons gathered and caught hold of Manish. It was then he saw that his shirt was stained with blood which was oozing out from the injury to his chest. He made a call at 100 number and informed about the incident. After that he made a call to his maternal uncle Anil Saini, informed him about the incident and asked him to come immediately to the spot. He took some photographs of Manish and other persons present at the spot. In meantime, one person who was having a shop on that road, came to him with a bundle of cotton, tore his shirt and placed some cotton on his chest. Thereafter, the police came and took him to Trauma Centre AIIMS.

7. PW-3 Dharmesh Saini stated that on 23rd September, 2013 around 11:00 P.M., after having dinner, he went for a walk. Around 11:30 P.M., he CRL.A. 155/2016 Page 4 of 7 along with his friends while walking, stopped near betel leaf shop at Sudershan road, when he heard the noise 'kisine kisi ko chaku mar diya'. Number of persons had gathered. They saw a white colour swift car stationed there and a motorcycle lying on the ground. Public persons had apprehended one of the accused who then made a call to the other accused who had fled away. Pursuant to the call, the co-accused came back from a gali. The public persons apprehended both the accused persons.

8. PW-6 Dr. Adarsh Kumar stated that he had seen the MLC Ex. PW-6/A of Keshav prepared by Dr. Arun Iyer who had left the services of the hospital. As per the MLC, there was a stab injury over right chest wall at the level of nipple. The injury was opined to be grievous in nature caused by a sharp weapon.

9. PW-12 Dr. Azfar Mateen who was posted as Senior Resident, Trauma Centre AIIMS on 30th October, 2013, stated that he gave his subsequent opinion on the MLC of Keshav marked as Ex. PW-6/B which reads as under: i). The injury mentioned in the MLC (No.390555) could be possible from the given weapon of offence ii). The cut present on the clothes (cut No.1 on shirt and the cut on vest) could be possible from the given weapon of offence.

10. Contention of learned counsel for the appellant is that recovery of weapon of offence i.e. the knife cannot be taken into consideration as firstly the case of the

prosecution qua recovery of weapon of offence is highly improbable and secondly it was recovered from an open place accessible to all and sundry. Ashwani Kumar was apprehended at the spot however after the incident he fled away and co-accused Manish Tiwari was apprehended CRL.A. 155/2016 Page 5 of 7 by the public persons. On being apprehended, Manish Tiwari called Ashwani Kumar on the phone and he returned back. In the meantime, he had concealed the weapon of offence i.e. the knife. After the arrest of Ashwani Kumar, disclosure statement was recorded and he was taken to the place for recovery of the knife. However, on that date, knife was not recovered and thus on 24th September, 2013 at 11.00 AM again Ashwani Kumar led the police party to Gurukul walli gali from where knife was recovered from under the garbage. Even though the plot was vacant however since the knife was lying concealed in the garbage, it cannot be said that the recovery was from an open place accessible to all and not concealed. Further pursuant to the recovery of knife, opinion was sought from the doctor who opined that the injury to Keshav was possible by the said weapon of offence vide Ex.PW6/B. It was further opined that the cuts present on the clothes i.e. the shirt and vest were also possible by the said weapon of offence. Thus, weapon of offence recovered at the instance of Ashwani Kumar was duly connected to the injury caused.

11. In view of the cogent and convincing testimony of the injured victim and the fact that the appellant and the co-accused were apprehended at the spot, this Court can safely conclude that the injury found at the right chest of Keshav was caused by Ashwani Kumar. The issue still remains whether the appellant is liable to be convicted for offence punishable under Section 307 IPC or 326 IPC. As noted above, the quarrel took place when due to an auto coming from the opposite side, Keshav stopped his vehicle on the road and the appellant who was a pillion rider on the motorcycle came and started fighting with him. From the evidence it is apparent that the appellant was the aggressor and for no rhyme or reason started quarrelling with Keshav and CRL.A. 155/2016 Page 6 of 7 inflicted knife injury on his right side of the chest. The act of Ashwani Kumar will not amount to a sudden quarrel because his all actions were one sided hence the plea of learned counsel for the appellant that in view of the decision of this Court reported as 2010 CriLJ3683 Rajpal & Anr. Vs. State, his conviction be converted to under Section

326 IPC deserves to be rejected.

12. Considering the evidence led by the prosecution, this Court finds no infirmity in the impugned judgment of conviction and the order on sentence.

13. The appeal is dismissed.

14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

15. TCR be returned. MAY25 2017 ga/v mittal (MUKTA GUPTA) JUDGE CRL.A.
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