

Rahul @ Ganja vs.state

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SooperKanoon Citation : sooperkanoon.com/1206245

Court : Delhi

Decided On : May-25-2017

Appellant : Rahul @ Ganja

Respondent : State

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 353/2017 RAHUL @ GANJA Reserved on:

27. h April, 2017 Decided on:

25. h May, 2017 Appellant Represented by: Mr. K. Singhal and Ms. Sabia Malik, Advocates for Mr. Puneet Singhal, Advocate (DHCLSC) STATE versus Represented by: Ms. Aashaa Tiwari, APP for the Respondent State with PSI Pankaj Kumar, PS Shalimar Bagh. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA1 Convicted for offence punishable under Section 326 IPC, Rahul challenges the impugned judgment dated 7th January, 2017 and the order on sentence dated 12th January, 2017 directing him to undergo rigorous imprisonment for a period of four years and to pay a fine of `10,000/- for offence punishable under Section 326 IPC.

2. Assailing the conviction, learned counsel for the appellant contends that the prosecution has failed to prove any motive behind the alleged offence. Despite public persons being present at the spot when the appellant was allegedly

arrested, nobody was associated. Further no independent witness was also joined when the alleged disclosure statement of the appellant was recorded. In any case, even accepting the case of the prosecution, there was no pre-meditation and incident took place on the spur of the moment. Thus, offence punishable under Section 326 IPC is not CrI.A. 353/2017 Page 1 of 6 made out. The appellant is not habitual offender. He be thus released on the period already undergone.

3. Learned APP for the State on the other hand contends that in view of the statement of the injured, medical opinion and the knife injury inflicted on the vital part of the injured i.e. the neck, the prosecution has proved beyond reasonable doubt that Rahul committed the offence punishable under Section 326 IPC. The sentence of four years rigorous imprisonment awarded is not required to be reduced any further. Hence the appeal be dismissed.

4. Process of law was set into motion on 4th May, 2015 around 11:05 P.M. when a PCR call was received wherein the caller stated that his brother had received stab injury at Jhuggi H.Pur, Khadar, near MAX Hospital Main Gate around 8:00 P.M. and the person has been admitted in MAX Hospital. The aforesaid information was recorded as DD No.46A exhibited vide Ex. PW-4/A and assigned to PW- 11 SI Krishan Kumar who along with PW-3 Constable Vikas went to MAX Hospital, Shalimar Bagh. SI Krishan Kumar collected the MLC of injured PW-1 Satish, who was found unfit to make statement. SI Krishan Kumar met PW-2 Raju, brother of injured. On the statement of Raju who stated that somebody had inflicted knife injuries on his brother, FIR No.579/2015 was registered under Section 307 IPC at PS Shalimar Bagh. On the next day, SI Krishan Kumar along with PW-8 Constable Gurdeep went to the place of incident and made enquiries. On the way, they met Satish and Raju. Statement of Satish was recorded under Section 161 Cr.P.C. Satish pointed out the place of incident at Gali No.1, Ambedkar Nagar, Haiderpur. Site plan Ex. PW-1/A was prepared at the instance of Satish. Since Satish was unwell, he went home and further proceedings were carried on with Raju. Rahul was apprehended at the CrI.A. 353/2017 Page 2 of 6 instance of Raju vide arrest memo Ex. PW-2/A. Rahul disclosed that he had thrown the blade which he had used for causing injuries to Satish in dustbin (Haiderpur koodadaan of gali no.1). Efforts were made to search the blade from the dustbin, however, the same could

not be recovered.

5. Satish deposed in Court that he used to sell eggs at rehari near Red Light, Outer Ring Road, Badli Crossing. On 4th May, 2015, at about 8:00 P.M., when he was going back to his house and had reached Gali No.1, Ambedkar Nagar, Delhi, he saw Rahul @ Ganju who was consuming liquor behind the toilet near the dustbin. When he forbade him, Rahul started abusing him and told him "tu pehle bhi kei baar mujhe tok chuka hai, aaj tujhe sabak sikhata hun, aur tera kaam tamaam ker deta hun". He took out a blade from his pocket of the pant and caused injury on the neck of Satish and ran away. Blood started oozing out from his neck. He immediately rushed to his house and met his brother Raju, outside the house, who took him to MAX Hospital in a rickshaw and got him admitted. During his cross examination, he denied the suggestion that Raju had asked for money from Rahul for treatment and when he refused, he falsely implicated him in the present case.

6. Raju, brother of injured, deposed that on 4th May, 2015 around 8:15 P.M., when he was outside his house, Satish came in an injured condition with an injury on his neck from where blood was oozing. He took Satish to MAX Hospital and got him admitted. Next morning, Satish told him that Rahul had inflicted injury on his neck. During his cross-examination, he also denied the suggestion that he had asked for money from Rahul for treatment and when he refused, he falsely implicated Rahul in the present case.

7. PW-6, Dr. Anita, attending Consultant (Emergency), MAX Hospital, Crl.A. 353/2017 Page 3 of 6 Shalimar Bagh, stated that Satish was examined and his MLC Ex.PW6/A was prepared by Dr. Shahid Khan in the emergency under her supervision.

8. PW-10 Dr. Shahid Khan, MAX Hospital, Shalimar Bagh, stated that on 4th May, 2015, when Satish was brought to the casualty, he was bleeding profusely from the wound on the neck. He had examined him and prepared the MLC Ex.PW-6/A. On examination, he noted the following injuries:-

"C-Spine Neck Lacerated, penetrating wound about 5cm right side of anterior surface of neck, horizontally, bleeding profusely, pulsatile flow, gross oedema of entire anterior part of neck, no crepitus. ExT (Extremity): Abrasions over left foot medial three toes, with loss of tissue over left great toe medial aspect. PW-9 Dr. Dinesh Kumar Mittal, Sr. Consultant, MAX Hospital, 9. Shalimar Bagh, deposed that he gave his opinion on the MLC of Satish vide Ex.PW-9/A and opined the nature of injuries as 'dangerous'. During his cross examination, he admitted that the injury which was noticed on the person of Satish could be possible with any sharp object. He further stated that the object which caused injury ought to have a depth of the blade to cause such like injury.

10. Section 320 IPC defines Grievous hurt as under- 320. Grievous hurt.- The following kinds of hurt only are designated as "grievous":-

"- Emasculation. First. Secondly.- Permanent privation of the sight of either eye. Thirdly.-. Permanent privation of the hearing of either ear. Fourthly.-. Privation of any member or joint. Fifthly.-.Destruction or permanent impairing of the powers of any member or joint. Sixthly.-. Permanent disfiguration of the head or face. CrI.A. 353/2017 Page 4 of 6 Seventhly- Fracture or dislocation of a bone or tooth. Eighthly.- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits. 11. Thus, the injury which is dangerous in nature as per clause eighthly of Section 320 IPC would fall in the category of grievous hurt. From the opinion of Dr. Dinesh Kumar Mittal, it is proved that the injury caused to Satish was dangerous.

12. Contention of learned counsel for the appellant is that Rahul had no mens rea to cause the injury and the incident took place on the spur of moment. That the incident happened on the spur of the moment is also evident from the statement of Satish who stated that while going back when he saw Rahul drinking, he tried to forbid him on which Rahul got agitated, abused him, took out a blade from pocket of his pant and caused the injury. Though there may not be pre-meditation however from the weapon of offence i.e. the blade from which injury was inflicted and at the neck which is a vital organ preceded by exhortation from the appellant

himself, it cannot be said that he had no mens rea to inflict the injury.

13. Defence of Rahul in his statement under Section 313 Cr.P.C. as stated in answer to question No.16 is as under:-

"Q16 Have you anything else to say?. Ans. Brother of the victim/injured i.e. Raju asked for money for the treatment of his brother Satish/injured as Rahu told me that Satish had fight at his working place (rehdi) with one of his customer and he needed money for the same. I was short of funds and thus was not able to help Raju or Satish and due to the said reason, I have been falsely implicated in the present case at the instance of Satish/injured and his brother Raju. I was not having Crl.A. 353/2017 Page 5 of 6 any quarrel or fight with Satish/injured or his brother Raju as alleged by them. 14. Thus, the case of Rahul is that when he met Satish and Raju and Satish was already injured and since he did not help them by giving money, he has been implicated. The explanation rendered is apparently implausible and deserves to be rejected.

15. In view of the discussion aforesaid, the conviction of Rahul for offence punishable under Section 326 IPC cannot be faulted. Vide order on sentence, Rahul has been directed to undergo rigorous imprisonment for four years and to pay fine of 10,000/-. Considering that only one injury was inflicted, the sentence of Rahul who was a young boy of 19 years at the time of alleged incident is reduced to rigorous imprisonment for a period of three years and to pay fine of 10,000/- in default whereof to undergo simple imprisonment for a period of one month. In case fine amount of 10,000/- is deposited, the same would be paid as compensation to the victim Satish.

16. Appeal is accordingly disposed of upholding the judgment of conviction and modifying the order on sentence as noted above.

17. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record, who also communicated the said judgment to the appellant.

18. TCR be returned. MAY25 2017 v mittal (MUKTA GUPTA) JUDGE Crl.A. 353/2017 Page 6 of 6

