

Zakir Ali vs.state

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Court : Delhi

Decided On : Sep-05-2018

Appellant : Zakir Ali

Respondent : State

Judgement :

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

5. h March, 2018 Decided on:

5. h September, 2018 CRL.A. 1035/2016 ARUN SANGWAN Appellant
Represented by: Mr. M.K. Choudhary, Adv. versus STATE OF DELHI
Respondent Represented by: Mr. Hirein Sharma, APP with SI R.S. Pandit PS
Preet Vihar. CRL.A. 1059/2016 ZAKIR ALI STATE Represented by: Mr. C.M.
Khan, Mr. Avinash Appellant versus Sharma, Advs. Represented by: Mr. Hirein
Sharma, APP with SI R.S. Pandit PS Preet Vihar. Respondent CRL.A.
1070/2016 MOHD. IMRAN Appellant Represented by: Mr. Puneet Mittal, Sr.
Adv. with Mr. C.M. Khan, Mr. Rajesh Kumar, Ms. Asma Choudhary, Ms. Sheeba
Khan, Mr. Ankur Goel, Mr. Soaib Khan, Advs. versus STATE (GOVT. OF NCT OF
DELHI) Respondent CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 1 of 12
Represented by: Mr. Hirein Sharma, APP with SI R.S. Pandit PS Preet Vihar.
CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA¹ The present appeals are
directed against the judgment dated 31st August, 2016 passed by the learned
Special Judge whereby the appellants Arun Sangwan, Zakir Ali and Mohd. Imran

were convicted for the offence punishable under Section 3

IPC and Mohd. Imran was also convicted under Section 397 IPC. Vide order on sentence dated 5th September, 2016, Arun Sangwan and Zakir Ali were sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months for the offence punishable under Section 3

IPC and Mohd. Imran sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months for the offence punishable under Section 3

IPC read with Section 397 IPC.

2. Learned Counsel for Mohd. Imran submits that neither the weapon of offence nor the chain was recovered from him. Site plan which was prepared at the instance of Yogesh (PW-1) was disowned by him in his cross-examination and no blood was found at the place of occurrence. The alleged eye witnesses namely Raju (PW-6) and Ram Singh (PW-7), the parking attendants, have turned hostile. Yogesh in his testimony deposes that he knew Imran by name prior to the incident and came to know about Arun Sangwan and Jakir later. The appellant cannot be convicted on the solitary statement of the injured Yogesh which is not of impeccable nature and is not CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 2 of 12 reliable. Earlier complaints against the appellant were neither confronted nor exhibited. No other involvement of the appellant has been proved. No motive has been attributed to the appellant in the FIR. Even as per the case of injured alleged motive if any was to snatch the chain and not to cause injury. Furthermore, no person will snatch the chain of a known person. Offence under Section 397 IPC is not made out as no deadly weapon has been used, nor has the same been recovered.

3. Learned Counsel for Zakir Ali submits that he was neither named in the FIR nor known to the injured, though Yogesh deposes that Zakir caught hold of his left hand. Neither the motorcycle was found parked nor any parking receipt was exhibited. No role has been attributed to the appellant. Appellant is not involved in any other offence. There is no description of the appellant in the FIR. No TIP was

conducted. Appellant was arrested from his house. It is highly improbable that an accused will remain at his house after committing an offence. Appellant has been falsely implicated in the present case.

4. Learned Counsel for Arun Sangwan submits that the statement of the father and brother have not been recorded even though the investigating officer met them at the Hospital. Furthermore as per Insp. Vijender Singh (PW-20), three statements of the injured Yogesh were recorded, however, only one statement has been exhibited as 'Mark A'. Appellant is not named in the FIR and only named in the disclosure statement of Mohd. Imran. Appellant had surrendered in Court. The reason for refusal of TIP was given both before the Learned Metropolitan Magistrate and in his statement recorded under Section 313 Cr.P.C.

5. Per contra, Learned APP for the State submits that Yogesh has named CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 3 of 12 Imran in the FIR. Testimony of Yogesh is corroborated by the testimony of Tejinder Singh (PW-2) and also of Puneet Bansal (PW-13) who received a phone call from Yogesh. Injuries have also been proved as per the testimonies of Dr. Rajat Saxena (PW-4) and Dr. Rajeev Saini (PW-5). The blood stained clothes of Yogesh were also seized and sent to FSL. The FSL report also corroborates the version of Yogesh.

6. Process of law was set into motion on 2nd August, 2009 around 9:30 P.M. when information was received from Lifeline Hospital that a patient namely Yogesh has been admitted in the hospital in an injured condition. Aforesaid information was recorded vide DD No.40A and was assigned to HC J.P. Singh. He along with HC Maal Singh went to Lifeline Hospital from where he got to know that the injured and the person accompanying him went to PS Preet Vihar. In the meantime around 9:42 P.M. another information was received stating that

"3. mall ki parking mein Laxmi Nagar mere bhai ko chaku maar kar chain chhen li". Aforesaid information was recorded vide DD No.41A and was entrusted to ASI Rajbir Singh. He along with HC Mal Singh went to Metro Hospital, Preet Vihar and obtained the MLC of injured Yogesh Kumar and the doctor opined that the injured was not fit for recording the statement. On 3rd August, 2009, he again went to Metro Hospital, Preet Vihar and recorded the statement of injured Yogesh after he

was declared fit for recording of the statement. Yogesh stated that on 2nd August, 2009, he had gone to V3S movie hall to enquire about the tickets. Around 9:00 P.M., when he was about to leave on his motorcycle from the parking of the mall after enquiring about the tickets, 4-5 boys came in front of him and asked him to give the chain which he was wearing. When he objected, one of the boys held his left hand, other boy held his CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 4 of 12 right hand, two other boys held him from back and front and one boy started stabbing him with a knife. Others boys told the boy who was stabbing that "Imran jaan se mat marna" to which Imran replied that if he would not kill him, he will identify him. Imran snatched his chain also. He, somehow, managed to escape from there and hid in the public gathered.

7. Aforesaid statement was recorded vide Ex. PW-1/A. On the basis of the aforesaid statement, FIR No.416/2009 (Ex.PW-3/A) was registered at PS Preet Vihar for the offences punishable under Sections 394/3 IPC.

8. On 4th August, 2009, SI P.S Rawat recorded supplementary statement of Yogesh at Metro Hospital. He stated that in the incident dated 2nd August, 2009, Imran inflicted knife injuries on him with intention to kill him while his 4 companions caught hold of him from behind and his side. After that, the 5 boys ran away. On 7th August, 2009, the investigation of the case was handed over to Insp. Vijender Singh.

9. On 13th August, 2009, Insp. Vijender Singh received secret information that Mohd. Imran will come at Saini Enclave. He along with Ct. Rahisuddin and HC Babu Lal reached Saini Enclave Market. On identification by the secret informer, Mohd. Imran was apprehended. He was arrested vide arrest memo Ex. PW-10/A, his personal search was conducted vide memo Ex. PW-10/B and his disclosure statement was recorded vide Ex. PW-10/C.

10. On 16th August, 2009, Mohd. Imran took Insp. Vijender Singh and other police officials to the place of incident i.e. DDA Market, Behind Laxmi Deep Building where he along with other accused had committed the offence. Insp. Vijender Singh prepared the pointing out memo Ex.PW-19/A. Thereafter, Mohd. Imran led

them to the spot where he had thrown the CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 5 of 12 weapon of offence i.e. knife. Ram Singh and Raju, who were the parking attendants, also joined investigation. On the pointing out by Yogesh, Zakir was arrested vide arrest memo Ex. PW-1/B, his personal search was conducted vide memo Ex. PW-1/C and his disclosure statement was recorded vide memo Ex. PW-1/D. On 20th August, 2009, Insp. Vijender Singh along with Yogesh and HC Babu Ram reached the spot and prepared the site plan Ex. PW-19/B. On 11th September, 2009 Arun Sangwan surrendered himself in Court. He was formally arrested vide memo Ex. PW-20/B and his disclosure statement was recorded vide Ex. PW-20/C.

11. After completion of the investigation, charge sheet was filed under Sections 307/394/3

IPC. Vide order dated 17th November, 2009 charge was framed under Section 392/3

IPC.

12. Yogesh deposed that on 2nd August, 2009, he had gone to V3S Mall regarding inquiry of movie tickets in the cinema hall. He left the mall at about 9:00 P.M. on his motorcycle. When he was passing through the parking of the mall, 4-5 boys came in front of him. He stopped his bike. One of them put his hand on his neck to snatch his chain. One of them caught hold of his right hand and the other caught hold of his left hand. 1-2 boys caught him from behind and Imran gave him knife blows on his stomach, neck and hand. The appellants snatched his chain and ran away from the spot when they saw the public gathering. He knew only appellant Imran by name prior to this incident. He did not know who took him to the hospital. When the doctor was examining him, he regained consciousness, called his brother Tejinder and informed him about the incident. He regained full consciousness on the next morning in Metro Hospital. He remained in Metro Hospital till 11th August, 2009. He identified Zakir in Kureji and. appellant CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 6 of 12 Imran in the PS. During his cross examination, he stated that appellant Arun caught hold of his right hand and the appellant Zakir caught hold of his left hand. Site plan Mark DA1 was not the same site plan which was prepared at his instance. He knew Imran since he had

seen him several times standing in front of the police station and also used to visit the police colony numerous times. He knew Imran since he was a notorious person with several cases against him.

13. Tejinder Singh stated that on 2nd August, 2009, he received a telephonic call from his brother Yogesh who informed him that one Imran and his associate had given knife blow on him and he was present in Lifeline Hospital. He along with his friend Puneet and some other friend reached Lifeline Hospital where he found that doctors were giving first aid to his brother. Thereafter, they went to PS Preet Vihar. During his cross- examination, he stated that he called the PCR on way to the hospital from his mobile No.9268484808. He had not informed his father. Yogesh was referred to a govt. hospital but he took him to Metro Hospital, which is a private hospital. He knew Imran prior to the incident.

14. Raju (PW-6), parking attendant, stated that he did not join any proceedings with the police. He was thus declared hostile.

15. Ram Singh (PW-7), parking attendant, stated that when police had come to make enquiries whether any incident took place or not, he told them that no quarrel took place in his presence and to his knowledge. He was also declared hostile.

16. Puneet Bansal (PW-13) stated that on 2nd August, 2009 when he along with his friend Tejinder were walking in the colony park of the police colony, at about 8:15 P.M., one call was received on the mobile of Tejinder CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 7 of 12 from Yogesh who informed Tejinder that Imran and his companion stabbed him and he was at Lifeline Hospital. Thereafter, he along with Tejinder and some other friends reached Lifeline Hospital. After that, they along with Yogesh went to PS Preet Vihar. Father of Yogesh namely Shri Pal reached there at PS Preet Vihar.

17. Dr. Dheeraj Gupta (PW-17), CMO Metro Hospital, Preet Vihar, Delhi stated that on 2nd August, 2009, Yogesh was brought to the Metro Hospital by his father with alleged history of stab injury over abdomen, face, hand and scalp. On local examination, there were seven injuries on the person of Yogesh. He prepared his

MLC Ex.PW-4/A. The patient was given treatment and handed over to Dr. Rajat Saxena (PW-4) for further treatment.

18. Dr. Rajat Saxena (PW-4), Consultant Surgeon, Metro Hospital & Cancer Institute, Preet Vihar, Delhi stated that on 2nd August, 2009, he had examined Yogesh and operated upon him. Yogesh had a penetrating injury in the abdomen which was breaching the peritonium, and hence an exploratory laparotomy was done. The MLC was prepared by Dr. Dheeraj and he gave his opinion on the MLC Ex. PW-4/A opining the nature of injury as dangerous. There were other multiple lacerations which were also stitched by him. During cross-examination, he stated that it was correct that the penetrating wounds would only be caused by pointing-edged weapon.

19. Dr. Rajeev Saini (PW-5), CMO, Lifeline Hospital, A-13, Priyadarshini Vihar, Delhi stated that on 2nd August, 2009, at about 9:15 P.M., Yogesh was brought with alleged history of stab injury by knife by a person Mr. Imran along with 5-6 friends. On examination, Yogesh was oriented, active and conscious. Multiple lacerations and cut wounds were present on his face, abdomen and scalp with bleeding. His pulse rate was CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 8 of 12 98/minute and BP was 1

mmhg. First aid was given to him, along with primary treatment of cleaning and dressing of wounds. The treatment sheet was exhibited as Ex.PW-5/A. Yogesh was referred to Dr.Hedgevar Hospital for further management and medico legal formalities.

20. Sh. VK Gautam (PW-14) stated that on 11th September, 2009, an application Ex. PW-14/A was received from Insp.Vijender Singh (PW-20) regarding TIP of Arun Sanghwan. Arun Sangwan refused to join the TIP on the ground that his photographs were taken by one unknown person inside the court at the time of surrender and his landlord gave the photocopy of his passport to the police. The TIP proceedings were exhibited as Ex.PW-14/B.

21. Sh. Indresh Kumar Mishra (PW-22), Senior Scientific Officer (Biology) FSL, Rohini stated that on 12th October, 2009, he received two cloth parcels and exhibits which were biologically and serologically examined by him. His detailed

biological report was proved as Ex. PW-22/A and serological report as Ex.PW-22/B.

22. Mohd. Imran stated in his statement recorded under Section 313 Cr.P.C. that he was lifted from his house. He had been falsely implicated in the present case. The injured was the friend of his brother Azharuddin and about 15 days prior to the alleged incident, injured took his brother Azharuddin on his motorcycle and caused accident at Mayur Vihar in which his brother sustained injuries. Due to the accident caused by the injured, he and his other family members scolded him and asked him to keep away from his brother. For this reason, the injured developed ill-will and grudge against him and threatened to teach him a lesson very soon. The present case is the result of the execution of his threat. No defence evidence was led by Mohd. Imran. CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 9 of 12 23. Zakir, in his statement recorded under Section 313 Cr.P.C., stated that he was never present at the alleged spot at the time of alleged incident. He was lifted by the police at the instance of Nasir, r/o Rani Garden, Delhi who was inimical towards him. He was taken away by the police from his house at 12 noon on 19th August, 2009 and was subsequently falsely implicated in the present case. No defence evidence was led by Zakir.

24. Arun Sangwan, in his statement recorded under Section 313 Cr.P.C., stated that the present case is a false case and he has been falsely implicated in this case by the police. On the date of the alleged incident, he was not present at the alleged spot. He had no concern either with the complainant or with Mohd. Imran or Zakir. No defence evidence was lead by Arun.

25. From the evidence of Dr.Rajeev Saini and the treatment sheet Ex.PW- 5/A it is evident that immediately after the incident on Yogesh Kumar reaching Life Line hospital on 2nd August, 2009 at 9.15 P.M., he took the name of Imran with his friends who injured him with the knife. MLC Ex.PW-5/A notes multiple lacerated and cut wounds on face, abdomen and scalp and bleeding. As per the MLC Ex.PW-4/A prepared at Metro Hospital and Cancer Institute on 2nd August, 2009 at 10:00 P.M., Yogesh had the following injuries which were opined to be dangerous in nature by Dr.Rajat Saxena:-

"L.W. penetrating of approx 3 x 2 cm Lt. lumber region Linear LW of approx. 3 inches Lt. iliac to suprapubic region L.W. over Rt. Thumb laterally - middle L.W. over Rt. Ring finger vertically L.W. over Lt. forearm, middle region L.W. over Lt. mandible region L.W. over Lt. parietal region approx. 4.5 inches CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 10 of 12 26. As per Ex.PW-4/A Yogesh was declared fit for statement only at 8:00 P.M. on 3rd August, 2009. The injuries being dangerous particularly the penetrating injury on the abdomen breaching the peritoneum for which laparotomy surgery was conducted the anxiety of the family members to provide the appropriate treatment by taking the injured to Metro hospital instead of government hospital, which may have caused some delay cannot be a ground to reject the prosecution case.

27. Contention of learned counsel for the appellants that Yogesh disowned the site plan Mark DA1 and his signatures at point X does not affect the prosecution case for the reason scaled site plan was exhibited as Ex.PW-19/B where he signed at point X with which document Yogesh was not confronted.

28. Though defence of Imran is that his brother Azharuddin and Yogesh were friends and on 20th July, 2009 they had gone on motorcycle when they met with an accident resulting in fractures to Azharuddin and also injuries to Yogesh and a complaint was made by Imran to DCP regarding threats extended by Yogesh however, no such prior complaint has been proved or confronted.

29. Arun Sangwan refused to undergo TIP on the ground that his photographs were taken by unknown person when he surrendered in Court and the copy of his passport was handed over by his landlord to the police. However, when Yogesh appeared in the witness box no such suggestion was given to him in the cross-examination. Rather the suggestions given were that Yogesh visited the house of Arun in this matter and that he had wrongly identified him in the Court. CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 11 of 12 30. Zakir Ali was arrested on the identification of Yogesh. In the cross- examination on behalf of Zakir, Yogesh reiterated that he only knew Imran before the incident. The entire thrust of cross-examination is that Yogesh was conscious when people gathered. To the suggestions Yogesh stated that the entire incident was over in 2-3 minutes, he

raised alarm and people gathered. Since he was semi-conscious, he did not know who took him to the hospital but in between he got some conscious and called his brother which facts are also corroborated by the other evidence on record.

31. In view of the overwhelming evidence in the form of testimony of Yogesh, his brother Tejinder Singh, Puneet Bansal, MLC of the injured, his treatment sheet and Imran being named in the first statement before Dr.Rajeev Saini, even in the absence of weapon of offence and the chain having been recovered, this Court finds that the prosecution has proved beyond reasonable doubt the offences committed by the appellants.

32. Appeals are accordingly dismissed.

33. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to accused.

34. TCR be returned. SEPTEMBER05 2018 rk (MUKTA GUPTA) JUDGE CRL.A. 1035/2016, 1059/2016 & 1070/2016 Page 12 of 12

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