

Gopal vs.the State

Gopal vs.the State

SooperKanoon Citation : sooperkanoon.com/1224710

Court : Delhi

Decided On : Aug-19-2019

Appellant : Gopal

Respondent : The State

Judgement :

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

5. h August, 2019 Decided on:

19. h August, 2019 CRL.A. 210/2019 GOPAL Represented by: Ms. Supriya Juneja, Advocate Appellant versus (DHCLSC) THE STATE Respondent Represented by: Mr. Amit Gupta, APP for the State CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA1 By the present appeal, Gopal challenges the impugned judgment dated 16th October 2018 convicting him for the offence punishable under Sections 323/452/326-B IPC in FIR No.184/2017 registered at PS Sultan Puri and the order on sentence dated 18th October 2018 directing him to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 323 IPC, rigorous imprisonment for a period of three years and six months and to pay a fine of `10,000/- and in default whereof to undergo simple imprisonment for a period of one month for the offence punishable under Section 452 IPC and rigorous imprisonment for a period of five years and to pay a fine of `20,000/- and in default whereof to undergo simple imprisonment for a period of two months for the offence punishable under Section 326-B IPC.

2. Learned counsel for the appellant contends that the injured and the CRL.A. 210/2019 Page 1 of 10 eyewitness Rameshwari (PW-9) have turned hostile during the course of trial and only Nirmala (PW-11) has supported the case of the prosecution. On perusal of the testimony of Nirmala it is evident that she has not witnessed the incident and her evidence is required to be discarded as hearsay. Further Nirmala who supported the case of the prosecution in her cross-examination has stated that her house was at least 7-8 houses away from the house of the injured. Therefore, for her to witness the appellant entering the house of the injured with a plastic bottle and then throwing acid on him inside the house is unreliable. Nirmala in her cross-examination admitted that she had filed a complaint against the appellant one year ago, and therefore there is motive for her to depose falsely against the Appellant. Further the fact that the acid was poured from the bottle is belied by the FSL report, which found no acid in the bottle. Injured Raju (PW-8) did not support the case of the prosecution. He did not depose about the presence of the Appellant on the spot on the date of incident and does not corroborate the version of the prosecution. Similarly, Rameshwari who was also declared hostile in her cross-examination stated that no quarrel took place between the appellant and the injured.

3. Learned counsel further states that DW-1 and DW-2 have deposed that the appellant was picked up from his house, taken away and that no incident took place on the said date. Therefore, it creates doubt regarding the presence of the appellant at the spot on the date and time of the incident. It is contended that there was no acid found in the bottle, but only on the clothes. Presence of hydrochloric acid on the clothes can be attributed to a period/incident prior in time as it has come on record in the cross- examination of Jitender Kumar (PW-7), that effect of hydrochloric acid CRL.A. 210/2019 Page 2 of 10 cannot be washed away from clothes and can be detected for a long time period. This opinion of PW-7 raises doubt regarding the prosecution version. MLC of the injured does not bear any opinion of an injury being caused by acid. It merely states alleged corrosive acid on face. However, the appellant left the hospital when the case was referred to surgery department and hence no opinion was given on the MLC.

4. Learned APP for the State on the other hand contends that there is no need of injury to fulfill the requirement of offence punishable under Section 326-B IPC. He contends that the Trial Court in detail has dealt with the aspect of Raju and Rameshwari turning hostile. As per the FSL report, hydrochloric acid was present on both jeans and shirt which corroborates the version of Nirmala, proving the case of prosecution beyond reasonable doubt.

5. Process of law was set into motion on 7th March, 2017 at about 5:18 P.M., when Ct. Naveen received wireless information that someone threw acid on the brother of the caller at P-1 Gali No.4, H.No.922-933. Aforesaid information was recorded vide DD No.62-B (Ex.PW-1/A) and was assigned to ASI Balram. He along with Ct. Karampal reached at the spot where public persons had gathered and had caught hold of one person who was produced before him. He was informed that the person who had been caught had thrown acid on some other person and that the injured was taken to the SGM hospital. On inquiry the said person disclosed his name as Gopal (Appellant herein). He left the appellant in the custody of Ct. Karampal and went to the SGM Hospital where he collected the MLC of the injured. He recorded the statement of the injured wherein he stated that on 7th March 2017 at around 5:30 P.M. he was standing outside his house when his neighbour that is the CRL.A. 210/2019 Page 3 of 10 appellant came and started abusing him. When he asked the appellant to stop abusing, he lost his temper, punched him on his nose and ran into his house. Few minutes later, he came back with a plastic bottle, entered his house and threw acid on him. The acid fell on his clothes and the wall. Thereafter he made a call on 100 number and police ambulance took him to SGM hospital. He stated that he did not suffer any major injury. On the basis of the aforesaid statement, FIR No.184/2017 (Ex.PW-4/A) was lodged at PS Sultan Puri for the offences punishable under Sections 326-B/323/452 IPC.

6. At the instance of the injured site plan was prepared vide Ex.PW-5/C. Injured also handed over his black colour jeans and purple colour shirt which he was wearing at the time of the incident. The same were seized and sealed vide seizure memo Ex. PW-2/A. One light blue colour plastic bottle from which acid was thrown was also seized vide seizure memo Ex. PW- 2/B. The appellant was arrested at

the instance of the injured vide arrest memo Ex.PW-2/C. His personal search was conducted vide Ex.PW-2/D. Medical examination of the appellant was also conducted. The case properties were deposited in the malkhana and statement of Ct. Karampal was recorded under Section 161 Cr.P.C. Statements of public witnesses namely Nirmala and Rameshwari were also recorded. On 28th April 2017, the exhibits of the present case were sent to FSL for examination. On completion of investigation, charge sheet was filed. Charge was framed against the appellant for offences punishable under Sections 323/452/326-B IPC vide order dated 8th January, 2018.

7. Raju, injured stated that he is a habitual drinker and he had not made any complaint to the police or any authority. He stated that he did not CRL.A. 210/2019 Page 4 of 10 remember the date or the month but it was the winter season of year 2017 while he was consuming liquor at his residence one bottle of acid fell from the rack and few drops of the same fell on his clothes. He stated that someone called the ambulance and he was shifted to the hospital. Neither the police met him nor he went to the police station. In his cross-examination by the Ld. APP for the State he stated that he knew the appellant and that he was a habitual drinker. He denied making any statement before the police regarding the role of the appellant. He stated that police had taken his signatures but had not recorded his statement.

8. Rameshwari (PW-9), a neighbor stated that on 7th March 2017 while she was returning home from her work at around 6:30 P.M. she came to know that some fight took place between the appellant and the injured Raju and a crowd had gathered at the spot. The appellant and the injured were habitual drinker and used to quarrel with each other. Thereafter, she along with other public persons went to the police station but she was not allowed to enter the police station. She stated that police enquired about the incident from her and took her signature on blank paper. She further stated that she did not know whether police recorded her statement or not. In her cross- examination by the Ld. APP for the State she denied making any statement before the police regarding the role of the appellant. In her cross- examination by the Ld. Counsel for the accused she stated that no quarrel took place between the injured and the appellant in her presence. She

further stated that she cannot mention the date and time when her statement was recorded by the police.

9. Nirmala, a neighbor stated that on 7th March 2017 she was present inside her residence and was cooking food when she heard noise of quarrel CRL.A. 210/2019 Page 5 of 10 and abuses. She came out and saw that the appellant was quarrelling with the injured and was giving beatings to him. The injured rescued himself from the hands of the appellant and rushed inside his house. The appellant also left from there and after some time at around 5:30 P.M. the appellant again reached there with a plastic bottle and entered the house of the injured and threw acid upon him. Police made inquiry from her and recorded her statement.

10. Dr. Nikhil, (PW-6) SR Surgery, SGM Hospital, Mangol Puri, Delhi stated that on 7th March 2017 the injured was referred to Surgery Department vide MLC No.3644 Ex. PW-6/A. At around 7:40 P.M. when he visited the casualty to examine the injured, he was not found there. Injured was not examined by the surgery department.

11. Dr. Binay Kumar (PW-12) CMO, SGM Hospital stated that the injured was medically examined by Dr. Sudhir who left the hospital on study leave for three years. As per the MLC (Ex.PW-6/A) injured was brought with alleged history of physical assault and corrosive liquid thrown over face, however, no opinion could be given on the nature of injuries as the injured was not examined in the surgery department. On examination, following observations were made i. Alcohol smell present, meter reading 0.07 mg/dL ii. Swelling on lips, upper and lower both iii. Swelling on left side of the face with vesicular lesions multiple.

12. Sh. Jitender Kumar, SSO(Chemistry), FSL, Rohini, Delhi stated that two sealed parcels were received in office of FSL through Ct. Rakesh. Parcel No.1 contained one empty light blue colour plastic bottle without lid marked as Ex.

1. Parcel No.2 contained one purple blue colour shirt and CRL.A. 210/2019 Page 6 of 10 one black colored jeans both having brownish white colored stains marked as Ex. 2A and Ex. 2B respectively. On chemical examination of Ex. 2A and Ex. 2B, hydrochloric acid was found upon them. No acid was detected on Ex.

1. He exhibited the report vide Ex. PW-7/A. In his cross-examination he stated that the effect of hydrochloric acid cannot be removed by washing the cloth. The hydrochloric acid is not an inflammable chemical and that hydrochloric acid can be detected after a long time but the time period is not certain.

13. The appellant in his statement recorded under Section 313 Cr.P.C. stated that at the time of the incident he was sleeping in his house. He stated that police arrested him but not at the instance of Raju. He and Raju used to consume liquor together but never quarreled with each other. He stated that Nirmala has enmity with her. He further stated that he is innocent and has been falsely implicated in the present matter.

14. Saroj (DW-1), neighbour of the appellant stated that on the date of incident she was at her place and does not remember the date, month and year of the incident. The relation between the family of the appellant and the injured were normal. On the date of incident, the appellant was sleeping in his house and police official woke him up and took him along with them. She further stated one year prior to the incident some dispute took place between the appellant and Nirmala and Nirmala threatened him that she will put him behind the bars. The injured is a habitual drinker and his wife has left him. She further stated that to her knowledge there was no dispute between the injured and the appellant. She had not witnessed any incident.

15. Laxmi (DW-2), tenant of the appellant stated that the relation between the family of the appellant and the injured were normal. She stated that after CRL.A. 210/2019 Page 7 of 10 hearing the noise of quarrel she came out and saw that police was taking the appellant with them. Nirmala resides in her neighborhood. There is a gap of 3-4 houses between house of Nirmala and the injured and they had a normal relationship. She stated that one year prior to the date of the incident son of Nirmala had beaten the appellant on the street but she does not know the cause of same and thereafter, the relations between Nirmala and the appellant were not normal. Injured was a habitual drinker and his wife left him.

16. As noted above, the only evidence in favour of the prosecution is that of Nirmala and that Hydrochloric acid was found on the clothes of Raju, the victim. It

is the case of Nirmala that appellant was quarrelling with Raju and giving him beatings who rescued himself and rushed inside his house whereafter, the appellant also left and came back at around 5.30 p.m. with a plastic bottle, entered the house of the victim and threw acid on him. It is thus evident that the alleged incident of throwing acid on Raju as per Nirmala took place in the house of Raju. Nirmala does not claim that she went behind the appellant inside the house of Raju and witnessed the incident. Further, Hydrochloric acid was not found in the bottle when sent to the FSL thereby, not supporting her statement that acid on the clothes of the injured fell from the bottle recovered. In her cross examination, Nirmala admitted that she had filed a complaint against the appellant, a year ago which fact has also been deposed to by the defence witnesses. Further, in cross examination, Jitender Kumar, the expert from FSL also stated that Hydrochloric acid cannot be washed away from the clothes and can be detected for a long time period. Hence, the fact that Hydrochloric acid was poured on the clothes of the injured at the time of alleged incident is also not CRL.A. 210/2019 Page 8 of 10 proved beyond reasonable doubt with no eye witness or victim stating this fact. Hence, appellant is liable to be acquitted for offence punishable under Section 326-B IPC. This Court having disbelieved the testimony of Nirmala to the extent that she could see what the appellant did on entering the house of Raju and committing the offence punishable under Section 326-B IPC, the appellant is liable to be acquitted for offence punishable under Section 452 IPC also. Therefore, the impugned judgment of conviction to the extent it convicts the appellant for offences punishable under Sections 326-B and 452 IPC is set aside as also the order on sentence in respect of these two offences is set aside.

17. As regards offence punishable under Section 323 IPC, the alleged incident of beating Raju by the appellant took place in open which was witnessed by Rameshwari and Nirmala. Further, it is the case of Raju also that a quarrel took place between him and the appellant. Soon after the incident, MLC of Raju was prepared which notes swelling on lips, upper and lower both, swelling on left side of the face with vesicular lesions multiple. No opinion of the nature of injury has been given by the doctor as Raju left the hospital hence the injury would be deemed to be simple in nature. Thus, the conviction of the appellant for offence punishable under Section 323 IPC and the consequential sentence awarded is

upheld.

18. Since appellant has undergone nearly 2 years imprisonment including remissions which is beyond the period of sentence awarded for offence punishable under Section 323 IPC, Superintendent, Tihar Jail is directed to release the appellant forthwith if not required in any other case.

19. Copy of this judgment be sent to the Superintendent, Tihar Jail for updation of records and intimation to the appellant. CRL.A. 210/2019 Page 9 of 10 20. Trial Court record be sent back.

21. Appeal is disposed of. AUGUST19 2019 sk/rk (MUKTA GUPTA) JUDGE CRL.A. 210/2019 Page 10 of 10

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com