

Sanjay Vs. The State (Govt. of Delhi)

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Court : Delhi

Decided On : Dec-24-2014

Judge : S. Muralidhar

Appellant : Sanjay

Respondent : The State (Govt. of Delhi)

Advocate for Def. : Mr. Rajat Katyal

Advocate for Pet/Ap. : Mr. L.K. Verma

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. No.765 of 2008
Reserved on: December 15, 2014 Decision on: December 24, 2014 SANJAY
Appellant Through: Mr. L.K. Verma, Advocate. versus THE STATE (GOVT. OF
DELHI) Respondent Through: Mr. Rajat Katyal, APP. CORAM: JUSTICE S.
MURALIDHAR

JUDGMENT

2412.2014 1. This appeal is directed against the judgment dated 5 th August 2008 passed by the learned Additional Sessions Judge (ASJ) in SC No.3 of 2006 holding the Appellant guilty of the offences under Sections 394/454 IPC and the order on sentence dated 22nd August 2008 whereby he was sentenced to rigorous imprisonment (RI) for 7 years and fine of Rs.10,000 and in default to undergo simple imprisonment (SI) for 3 months for the offence under Section 394

IPC and RI for 2 years and fine of Rs.1,000 and in default to undergo SI for 15 days for the offence under Section 454 IPC. Both the sentences were directed to run concurrently. The case of the prosecution 2. The case of the prosecution is that M (PW-4), daughter of PW-1 who was a dentist was residing at a flat in Vasant Kunj, New Delhi. PW-4 was a student of 12th class in a school nearby. On 8th August 2005, at around 2.05 pm she returned home after school, obtained the keys of her house from the neighbours and opened the main door of her house. PW-4 stated that the main gate of the house opened towards the balcony. The door of the balcony was, however, not locked and it was only bolted. She opened the door and entered the house. At around 2.35 pm, she received a telephone call from her mother who was at her father's clinic. Thereafter she went to another room to listen to music. According to her, at that time, a boy aged about 20 years came from the side room and placed a knife-type object on her neck and dragged her to a room. He asked PW-4 where the money was to which she replied that she did not know where her parents had kept the money. Thereupon, the boy hit her head 10-12 times with a steel plier-type article. When PW-4 pretended to lose consciousness, the said boy got scared. He tied her hands and feet with the laces of shoes and put a brown tape on her mouth. He then left the house through the main gate. According to PW-4, she managed to reach the kitchen of her house to locate scissors to cut the laces but could not succeed. She then reached outside the house by jumping and rang the bell of her neighbours. Thereafter she lost consciousness. She was taken by the neighbours to the Indian Spinal Injury Centre (ISIC) at Vasant Kunj. Medical treatment of the injured 3. Dr. Shree Nath (PW-5) examined PW-4 at the ISIC. Meanwhile, her father PW-1 reached there on being informed over the telephone. This was around 4.45 pm. PW-5 found PW-4 to be conscious and oriented. On local examination, there were multiple deep lacerations of the skull on right temporal and parietal region. There was one laceration in the left occipital region. There was swelling and contusion on the neck region. There was also pain, swelling and tenderness on left distal forearm. There were bruises on the back of the neck. He classified the nature of injuries as grievous. PW-5 prepared the MLC (Ex.PW-5/A). He declared PW-4 fit for statement at around 5.30 pm.

4. A perusal of the MLC (Ex.PW-5/A) shows that PW-4 was admitted to the ICU under Dr. B.K. Rajoria on 8th August 2005. An application (Ex.PW-10/A) appears to have been made by Sub Inspector (SI) Partap Singh (PW-18), the Investigating Officer (IO) for recording the statement of PW-4. Dr. Sumit Gupta, the Chief Medical Officer (CMO) made an endorsement on the said application (Ex.PW-10/A) on 9th August 2005 at 11.15 am that PW-4 was unfit for statement. Another application was made on 10th August 2005 (Ex.PW-10/B). Now Dr. Gupta made an endorsement that As advised by Dr. Atul Soni, General Surgeon Resident, patient is fit for statement.

The above writings of Dr. Gupta were proved by Dr. M.A. Khan (PW-10). The investigation 5. The IO (PW-18) stated that he was posted at PS Vasant Kunj. He received DD No.31A (Ex.PW-3/A). On the order of the SHO, he along with Constable Surender (PW-15) reached the premises in question. A huge crowd had already gathered there. He learnt that the injured girl had been taken to the ISIC. He reached there, collected the MLC and made an application for recording her statement. PW-18 claimed that no eye-witness was available at the spot or in the hospital. He then made an endorsement on the DD No.31A and sent the rukka to the PS through PW-15 for registration of FIR. After registering the FIR, PW-15 returned to the spot with a copy thereof and rukka and handed them over to PW-18. The Crime Team including a photographer and a dog squad was called at the spot. The Crime Team inspected the spot. The photographs taken were marked as Ex. PW-16/1 to 16/16 and negatives as Ex.PW-16/17 to 16/32. PW-18 states that he prepared a site plan (Ex.PW-18/B) with correct marginal notes of my own observation. PW-18 seized one oil bottle, a handkerchief like cloth piece and one dirty cloth piece from the kitchen of the premises under seizure memo Ex.PW-15/A. At the spot, some shoe laces and some pieces of rope were lying along with two scissors were lying which were seized under seizure memo Ex.PW-15/B. From one of the rooms, PW-18 seized one piece of carpet, blood stained piece of carpet, blood stained piece of foam, two pillows, one pillow cover, one bed sheet and two pieces of one baniyan under Ex.PW15/C. He converted the above articles into parcels. PW-18 also went to ISIC and collected the clothes that PW-4 was wearing at the time of the occurrence. He then deposited the case property in the malkhana of the PS.

6. On 11th August 2005, PW-18 again went to the place of occurrence with PW-15. There PW-1 gave them a broken lock which was seized under seizure memo (Ex.PW-15/E). On 11th August 2005, PW-18 recorded the statement of PW-4. He tried tracing the accused but was unsuccessful.

7. On 7th September 2005 Sanjay, the Appellant herein was arrested by the Head Constable Satbir (PW-3) in FIR No.507 of 2005 under Section 25 of the Arms Act. The Appellant is stated to have made a disclosure regarding the commission of the offence in the present case. The disclosure statement is Ex.PW3/B. PW-3 then handed it over to PW-18. The Appellant was then formally arrested in the present case and his personal search was conducted. According to PW-18 the Appellant pointed out the place of occurrence and made a disclosure statement leading the police to a park in front of the flat in question. There were some bushes in the said park from where the Appellant had produced one plier (plas) which was stained with blood and mud. It was seized under seizure memo Ex. PW15/J.

The Appellant then led the police to his house and from a slab in his room, he got recovered his pant and shirt which were blood stained.

8. The Appellant was instructed to cover his face with a muffler since his Test Identification Parade (TIP) was to be conducted. After depositing the case property in the malkhana of the police station (PS), PW-18 produced the Appellant before the Metropolitan Magistrate (MM) with muffled face. He moved an application for TIP. The TIP proceedings (Ex. PW17/A) shows that the Appellant had refused to participate in it. The Appellant was subsequently charged with the offences mentioned hereinabove. The statement of the accused under Section 313 Cr PC9 The prosecution examined eighteen witnesses. When the evidence was put to the Appellant under Section 313 of the Code of Criminal Procedure (Cr PC) he denied it. He claimed that he never visited the house of PW-4 and claimed to have been falsely implicated. He admitted that he had been arrested by the police on 4th September 2005 under DD-8B but later falsely implicated in the present case. He denied having made any disclosure to the police leading to the recovery of the plier. He denied having been produced before the Court in the muffled face. He stated I was produced to the Court in unmuffled face.

He further maintained My photographs were taken by police so, I refused to participate in TIP. He pointed out that the report of the chance prints prepared by PW-7 was not produced in the Court for the reasons best known to the IO. The defence evidence 10. The Appellant examined his father Hoti Lal as DW-1. In his examination-in chief, DW-1 stated that on 4th September 2005 at around 12 noon the police official from PS Vasant Kunj came to his house and informed him that the Appellant had been lodged in police lock up in PS Vasant Kunj. DW-1 then visited the PS Vasant Kunj with his wife and asked PW-18 as to what wrong had been committed by the Appellant. He stated that on 3rd September 2005 the Appellant had been apprehended at around 11.30 pm in a dispute concerning Rs.150 in which one Rishi Pal was the Complainant. When DW-1 requested PW-18 to release the Appellant, PW-18 is stated to have demanded a sum of Rs.50,000. Leaving his wife at the PS, DW-1 could arrange Rs.5,000 and again went to PW-18 at around 4 pm. However, PW-18 insisted on being paid Rs.50,000 and therefore returned Rs.5,000 to DW-1. Again on 5th September 2005 DW-1 arranged Rs.10,000 and offered it to PW-18 but he still did not accept the said amount. DW-1 was permitted to meet the Appellant only on 6th September 2005. He stated that the Appellants photographs were taken and his signatures were obtained on some blank papers. Thereafter, the Appellant was shown to PW-4 and PW-1 in the room of the SHO and PW-18 told them that the Appellant was the accused. On 7th September 2005 the Appellant was produced before the Court. DW1 claimed that PW-18 had also agreed to help him in arranging a defence counsel. DW-1 had settled the fees as Rs.50,000 and half of the amount was paid by DW-1 to the said defence counsel. In his cross-examination by the Public Prosecutor, DW-1 admitted that he was stating all the above facts for the first time before the Court. He did not lodge any report regarding PW-18 to any higher authority. Judgment of the trial Court 11. The trial Court on an analysis of the evidence concluded that the case against the Appellant has been proved beyond reasonable doubt. The trial Court came to the following conclusions: (i) PW-4 had correctly identified the Appellant during her examination in Court after he refused to join the TIP. This was a substantive piece of evidence against him. (ii) The contradictions here and there which did not disturb the sub stratum of the case, having no value and have to be ignored. PW-4 had fully supported the prosecution

version and there were no material contradictions which could destroy the prosecution case. (iii) The injury caused to PW-4 was by a plier which could not be considered to be a deadly weapon. Therefore, it was difficult to find the accused guilty of the offence under Section 397 IPC. The case proved against the accused fell within the ambit of Section 394/454 IPC.

12. This Court has heard the submissions of Mr. L.K. Verma, learned counsel for the Appellant and Mr. Rajat Katyal, learned APP for the State.

13. At the outset, it requires to be observed that the entire analysis of the evidence by the trial Court is contained in paras 22 to 25 of the impugned judgment. Para 22, in fact, simply sets out the version of PW-4. How did the intruder(s) enter?.

14. One of the first question requires to be examined is that considering that the place of occurrence was a flat in Vasant Kunj, and PW-4 borrowed the keys from her neighbours to open the door, how did the intruder gain entry into the flat?.

15. There are many unanswered questions in connection with the above issue. In the first place the site plan of the scene of crime was drawn up by PW-18 himself and not at the instance of PW-4. He states that I prepared site plan Ex. PW18/B with correct marginal notes of my own observation. The site plan is rudimentary and it shows the rooms in the flat without indicating where PW-4 was when she first noticed the intruder. It shows that there was only one main gate which even according to PW-4 was locked from outside. It does show the balcony but not where the locks to the door leading to the balcony were placed. The balcony is given mark D, however, no photographs have been taken either of the main gate or the door to the balcony.

16. According to PW-18 on 11th August 2005 when he again went to the place of occurrence along with PW-15 he was handed over the broken lock by PW-1. He seized it under the seizure memo (Ex.PW15/E). The significance of this broken lock is, however, not explained. PW-18 was pointedly asked in his cross-examination about the entry into the flat. He stated I do not remember whether the flat was got photographed or not. It could not be ascertained that as to which portion of the flat accused persons entered into the flat. It is correct that during

investigation it was found that nothing was robbed.

17. It is not understood why PW-18 did not visit the place of occurrence after PW-4 gave her the statement. He could have prepared a far better site plan at her instance. It is PW-4s version that the accused was already present in the flat when she entered. In his crossexamination PW-18 states The broken lock was produced by father of injured girl. I did not try to know as to where the said lock was placed when it was broken however I asked the father of injured but he told me that he was perturbed due to injuries sustained by his daughter therefore he was not in a position to tell the placement of the lock. I did not ask accused as to with the help of which instrument he had broken the lock nor I asked him as to from where he entered the house. What prevented PW-18 from making visits to the place of occurrence to ascertain the full facts regarding the broken lock is not known. If the intruder gained entry from outside, that is not known. Strangely even after the arrest of the Appellant, when he was brought to the place of occurrence, PW-18 appears not to have asked him how he gained entry into the house. If the intruder gained a friendly entry, then the entire story put forth by PW-4 would be in doubt. There is a huge gap in the investigation of the case since it is not at all clear as to how the intruder gained the access to the house. Fixing the identity of the intruder

18. PW-4 was, by her version of the events, in a good position to observe the intruder at close quarters. However, except for mentioning his approximate age, no particular features observed by her of the intruder were described to the police. PW-18 admitted in his crossexamination No sketch of the culprit was got prepared.

Strangely, he stated:

I recorded the statement of injured girl in the hospital and after her discharge I never visited neither her house nor she was called at police station. This was contrary to his statement in his examinationin-chief that after the arrest of the Appellant, he went back to the scene of crime with the Appellant and the pointing out memo was prepared.

19. Another important aspect of the matter is that certain chance prints were lifted from the site. The evidence of Head Constable Balwant Singh (PW-7) in this regard is significant. He states that on 8th August 2005, at the request of the IO he

reached the place of occurrence and he lifted the chance prints from there. He proved the report prepared by him (Ex. PW7/A). He confirmed that The above mentioned chance prints were sent for comparison to Finger Print Bureau.

Yet in the cross-examination of PW-18 he stated I do not remember if the chance prints if any, were sent to CFSL.

Fixing the presence of the intruder inside the house with the help of said chance prints would have been extremely crucial to conclusively establish that he had gained entry into the house even before PW-4 returned from school. No attempt appears to have been made to obtain from the FSL the report of examination of the chance prints. An adverse inference has to be drawn against the prosecution since it could have been an important piece of evidence for the accused to establish that he was not the person who was seen by PW-4 in the house.

20. The FSL report that has been produced is dated 3 rd May 2006 (Ex.PW18/C). It reveals that the pillow covers, chadar, T-shirt and the cloth pieces were examined. Blood was detected on a large number of such pieces including one small scissor with red grip having brownish stains and the light green pant and half-sleeved striped shirt purportedly worn by the Appellant and got recovered at his instance. Incidentally, on the said pant and shirt, for the tests species of origin as well as ABO Group/Remarks the results stated no reaction. Likewise, even on the plier there is no reaction of any human blood. On all other garments including the undergarments of PW-4 the blood group is of O group which matches the blood group of PW-4. This has to be seen in the context of the fact that the clothes of the accused stated to have been recovered from his house at his instance were not shown to PW-4 in her examination in Court. The photographs tell a different story 21. A close look at the photographs taken of the scene of crime also raises several questions. There is a table shown with a laptop on it which presumably was used by PW-4. Yet no attempt was made by the intruder to steal it. In fact no article was stolen even after PW-4 was attacked and fell unconscious. This raises doubts about the motive for the entry and whether in fact it was robbery as projected by the prosecution. The photographs show large and very dark blood stains on the mattress on the cot in the room of PW-4 and yet there is no

explanation forthcoming from her as to how that happened. PW-4 does not state that at any point of time she was made to lie down on the mattress after receiving injuries or that her head touched the pillow which also had blood stains. The photographs therefore appear to be telling a story as to what had happened inside the flat different from the version spoken to by PW-4. Added to this mystery, is the photo of a small bowl (container) next to the cot. It is shown filled partly by oil. This too is also not sought to be explained by PW-4. PW-18 stated The mustard oil bottle and bowl (catory) was seized for the possibility of getting chance prints."

And yet, as already noted, those finger prints were not matched with the specimen finger prints of the Appellant. Non-examination of the neighbours 22. The version of PW-4 is that after the intruder left she jumped and reached the house of the neighbours, rang their bell and then became unconscious. Yet, PW-18 failed, during investigation, to record the statement of even one of the neighbours. In his cross-examination, PW-18 stated:

It is correct that no independent public witness has joined the investigation of this case. This seems strange considering that the neighbours were the first to notice the injured PW-4 and perhaps helped her reach ISIC, although even this is not very clear. The MLC shows that the person accompanying PW-2 was her father. However, the father (PW-1) stated:

I was informed on telephone that my daughter M received injuries at the hands of someone and I was also informed that I should reach Spinal Injury Hospital situated at Vasant Kunj. I reached the said hospital at about 4.30 pm. My daughter was removed to the Hospital by some of my neighbours. The weapon used 23. The Appellant is supposed to have made a disclosure to the police after his arrest and this is supposed to have led to the recovery of a plier and not a knife. PW-4 states that accused put a knife at her back and pressed her mouth. Yet she was not attacked with the knife but with the plier. No knife appears to have been sent to the FSL for examination. As already noticed there was 'no reaction' when the plier was examined for human blood stains. PW-18 in fact states It is correct that as per my investigation no knife was used in commission of crime. I did not try to ascertain the ownership of the plier (plas) seized in this case. Consequences of

failure of the Appellant to participate in the TIP²⁴ About the Appellant refusing to participate in the TIP, we have the evidence of DW-1 who states that the Appellant was shown in the PS to both PW-4 and her father. In his statement under Section 313 Cr PC the Appellant states that his photographs were already taken soon after he was arrested. Importantly PW-18 states in his cross-examination At the time of pointing out of the place of occurrence mother and father of injured were present there. The pointing out memo was prepared at the place of occurrence itself. It is clear that the parents of PW-4 had already seen the accused. It is not clear if PW-4 was also present at that time. Yet there was justification for the accused to refuse to participate in the TIP since at the time of pointing out he was not muffled and the parents of PW-4 had seen him at that time. Even as per PW-18 he was muffled only when he was taken to the Court and not when he was arrested and taken to the place of occurrence, or when he got the plier recovered from his house.

25. PW-4 herself appeared to indicate that she saw the accused even before she identified him in the Court. She states I myself identified accused in the court premises and nobody had told me that he was the culprit. I had told the SI Pratap that accused Sanjay was the same person who had committed offence. He had recorded my statement in Court regarding my identification of accused. I do not remember the date even by approximation. Clearly, there was one occasion when she identified the accused to PW-18 and that was prior to her identification of the Appellant in the Court during the trial. It cannot, therefore, be said that her identification of the Appellant in the Court is entirely reliable notwithstanding the fact that the Appellant had refused the TIP. Doubts as to the arrest of the Appellant 26. The cross-examination of DW-1 does not seem to shaken his testimony regarding the manner of arrest of the Appellant in another FIR. This part of the evidence was not even discussed by the trial Court. When PW-18 was confronted with DD No.8B dated 4th September 2005 he only stated I cannot tell anything about the contents of DD no.8B as mentioned above only the concerned DD Writer can tell about the same. As per DD entry 8 B it is recorded by ASI Ved Parkash. The photocopy of DD no.8B is Ex.PW18/DA. (Original seen and returned). The said DD entry No.8 B does bear out what DW-1 had stated viz., that the Appellant was first arrested in some other case where the Complainant was

one Rishi Pal. The arrest of the Appellant took place more than several months after the incident. Not even a sketch was prepared from the description of the intruder, if any, given by PW-4 to try and locate the accused. Two intruders or one?.

27. The first DD entry as far as the present case is concerned is based on PCR report (Ex.PW19/A) which states that two boys had attacked one girl and the police should be sent. When PW-18 was asked about the second person he stated Since the injured girl and accused did not tell about involvement of any other person, therefore no inquiry was made in that regard. In her cross-examination PW-4 stated:

It is correct that earlier I told that two boys came to my house. I do not know as to what was the age of other boy. I cannot tell as to what other person was wearing. This makes the entire case even more mysterious if in fact there were two boys and not just one at the scene of crime.

28. All the above questions find no answers in the entire record of the case. The more one examines the trial Court record the more the case appears to have many loose ends which have not been tied up by the prosecution. The manner of investigation of the entire case by PW-18 raises far too many questions which do not have satisfactory answers. Conclusion 29. The Court is of the considered view that the prosecution has not proved the case against the Appellant beyond all reasonable doubt for the offence under Section 394/454 IPC. The Appellant is accordingly given the benefit of doubt and is acquitted of the above offence.

30. The impugned judgment the judgment dated 5th August 2008 and the order on sentence dated 22nd August 2008 of the trial Court are set aside. The appeal is allowed. The bail bond and the surety bond of the Appellant will continue for a period of six months in terms of Section 437A Cr PC.

31. The trial Court record along with a certified copy of this order be sent back to the trial Court forthwith. S. MURALIDHAR, J.

DECEMBER24 2014 dn/mg

