

Naresh Gautam Vs. State

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Court : Delhi

Decided On : Feb-09-2015

Judge : Vipin Sanghi

Appellant : Naresh Gautam

Respondent : State

Judgement :

\$~R-51. * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

14. 01.2015 % + Judgment delivered on:

09. 02.2015 CRL.A. 97/2010 NARESH GAUTAM Through: Appellant Mr. Neeraj Bhardwaj, Advocate along with appellant in person. versus STATE Through: Respondent Mr. Lovkesh Sawhney, APP CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI

JUDGMENT

VIPIN SANGHI, J.

1. The present first appeal has been preferred by the Appellant under Section 374 Criminal Procedure Code, 1973 (Cr.P.C.) to assail the judgment and order on sentence dated 21.12.2009 and 24.12.2009 respectively passed by the learned

Additional Sessions Judge-03 (ASJ) (Outer), Rohini Courts, Delhi in S.C. No.115/2008 arising out of First Information Report (FIR) No.435/2002 registered at Police Station Paschim Vihar under Sections (u/s) 307/34 Indian Penal Code, 1860 (IPC). The Appellant was convicted for the offences u/s 307/34 IPC by the impugned judgment dated 21.12.2009, and was sentenced to undergo Rigorous Imprisonment (RI) for three years with fine of Rs.500/-, and in default of payment of fine, to undergo Simple Imprisonment(SI) for 30 days.

2. The case of the prosecution, as noticed in the impugned judgment, is that on 03.08.2002 at about 09:30 p.m. at Rohtak Road, Near Peeragarhi Pul, the Appellant Naresh, S/o Sh. Madhav Singh in furtherance of common intention along with 2-3 other persons - who could not be apprehended, had voluntarily caused dangerous injury on the person of the complainant Sharvan Kumar (PW-2) with such intention or knowledge and under such circumstances that if by that act he caused the death of Sharvan Kumar (PW2), he would have been guilty of murder. Therefore, the case of the prosecution was that the Appellant attempted to commit murder of Sharvan Kumar (PW-2), thereby committed offence punishable u/s 307/34 IPC. In support of its case, the prosecution examined 8 witnesses. The Appellant also led his evidence in defence. He examined one witness Smt. Bhudevi - his mother, as DW-1.

3. The facts noted by the learned ASJ are that on 03.08.2002, Sharvan Kumar (PW-2) was going from Mangolpuri towards Peeragarhi at about 09:00 p.m. When he reached under Railway Pul, 2-3 persons came there. One of them gave him a fist blow on his nose. He caught held of his hand and asked as to why he was beating him. In the meanwhile, one other person present there stabbed in his stomach. The said persons asked Sharvan Kumar (PW-2) as to where he has kept his money. He told them the pocket where the money was kept and they took away the money. Sharvan Kumar (PW-2) raised an alarm, whereupon two police officials came there. The Police caught held of one of the culprits at the spot. Sharvan Kumar (PW-2) was taken to the hospital, and the Police also took the apprehended person with them. In the hospital, the statement of Sharvan Kumar (PW-2) was recorded, which is Exhibit PW-2/A. The person apprehended at the site is the Appellant. He was identified by Sharvan Kumar (PW-2) as one of the

persons, who was involved in the attack. The Appellant was interrogated by the Police and was arrested. Rukka (Ex. PW-2/A) was prepared and sent to the Police Station, on the basis of which, the FIR was registered. The Appellant was then taken to the site, who pointed out the place of occurrence. Sharvan Kumar (PW-2) was examined by the doctors at the hospital, who advised surgery on Sharvan Kumar (PW-2). The doctors also classified the injury as dangerous in the MLC Exhibit PW-3/A. Consequently, upon appreciation of evidence, the learned ASJ convicted and sentenced the Appellant, as aforesaid.

4. Learned counsel for the Appellant has submitted that the learned ASJ has failed to appreciate the glaring contradictions and omissions in the case of the prosecution. In this regard, he drew the attention of the Court to the Rukka (Ex. PW-2/A) prepared on the basis of the statement of Sharvan Kumar (PW-2). Learned counsel submits that in his statement recorded as Ex. PW-2/A dated 03.08.2002, the said witness had stated that on the said day, when he was going from Mangolpuri towards Peeragarhi at about 09:30 p.m. under the Peeragarhi Pul, he was caught held by 2-3 boys and verbally abused. He stated that one of these boys attacked him with a sharp device in his stomach, upon which he raised an alarm. Consequently, Sipahi Chander came running, whereupon the said boys started to run away. However, Sipahi Chander caught held of one of the boys, whose name and fathers name was later disclosed as Naresh, S/o Sh. Madhav Singh. He further stated that Naresh was brought along with him to the hospital. The other accomplice of Naresh had run away by taking advantage of the darkness, and that he had not seen the faces of the other boys.

5. Learned counsel for the Appellant submits that Sharvan Kumar (PW-

2) in his deposition sought to improve upon his case by claiming that one of them gave me a fist blow on my nose. I caught hold of his hand and asked him as to why he was beating me. He had also claimed that the said person asked him as to where I had kept my money. I told them the pocket where money was kept and they took away the money. Ld counsel submits that the factum of Sharvan Kumar (PW-2) receiving the blow on his nose; of his catching hold of the hand of the person, who inflicted the fist blow; of him being asked as to where he kept the

money, and; the taking away of the money from Sharvan Kumar (PW-2) were not disclosed by PW-2 when his initial statement was recorded on 03.08.2002. He had, thus, sought to improve upon his case and the aforesaid constitutes a material variation/ contradiction.

6. In his cross-examination, PW-2 had admitted that I had not mentioned in my statement to the police that I had caught hold hand of the said person, who had given a fist blow. However, he claimed that he had made a statement to the Police that one of the culprits had hit him on his nose with a fist blow. He further claimed (upon being confronted) that he had mentioned in his statement to the Police that on the asking of the culprits he had told them the pocket where he had kept the cash and that the cash was taken away by them.

7. Learned counsel further submits that in the Rukka (Ex PW-2/A), it had been mentioned that only one Policeman, namely Sipahi Chander had come to his rescue, while the complainant in his examination-in-chief, had stated that two officers had come there. Learned counsel further submits that while in Exhibit PW-2/A, Sharvan Kumar (PW-2) had stated that the Appellant had been taken along with PW-2 to the hospital, in his examination-in-chief, PW-2 had stated that Police took me to the hospital and took away the other person with them.

8. Learned counsel for the Appellant then drew the attention of the Court to the statement of PW-3- Dr. Shanker Gupta, Sanjay Gandhi Memorial Hospital. The said witness had stated that the MLC (Exhibit PW-3/A) was prepared by him and bore his signature. He also admitted that recording the nature of injury being dangerous in his handwriting and bore his signature. Learned counsel submits that the same shows that Sharvan Kumar (PW-2) had merely informed about an assault by a group of 4-5 people near Peeragarhi Chowk. Learned counsel submits that initially the FIR was registered only under Section 324 I.P.C.

9. Learned counsel for the Appellant further submits that PW-5 Constable Jasbir Singh had not entirely supported the case of the prosecution. Consequently, the prosecution sought to cross-examine the said witness. The deposition of the said witness with regard to the proceedings undertaken by the Police are at variance with the deposition of the other Police personnel.

10. Dr. Praveen, Sanjay Gandhi Memorial Hospital was examined as PW- 6, who stated that he had seen the MLC (Exhibit PW-3/A) and that a portion on the said MLC are in his handwriting and it bears his signature. He stated that he had given his opinion regarding the nature of injury being dangerous on 26.09.2002. Learned counsel submits that, whereas, the injury, allegedly was inflicted on 03.08.2002, this witness gave his opinion much later, i.e. on 26.09.2002. Thus, the said opinion was untrustworthy.

11. Learned counsel next referred to the statement of PW-7 H.C. Chander Singh. He submits that H.C. Chander Singh deposed that he alongwith H.C. Om Prakash took the accused and the injured to Sanjay Gandhi Memorial Hospital. In his cross examination, PW-7 stated that he had not sent any intimation to SI Mahipal. However, PW-8 SI Mahipal, the IO stated that he along with Constable Jasbir reached the Sanjay Gandhi Memorial Hospital on receipt of DD No.47B. Since no intimation had been sent to S.I. Mahipal (PW-8) by HC Chander Singh (PW-7), the case of the prosecution that IO SI Mahipal had reached the Sanjay Gandhi Memorial Hospital on receipt of DD No.47B is falsified.

12. Ld. Counsel submits that the IO S.I. Mahipal (PW-8) in his cross- examination had deposed that he had not taken the accused, Naresh, to the hospital again after his arrest. He submits that, however, the complainant has stated in his cross-examination that the accused along with 2-3 other boys were brought to the Hospital where he identified the accused persons. Thus, there is a contradiction in the statements of two witnesses.

13. Ld. Counsel further refers to the statement of DW-1, Smt. Bhudevi- mother of the Appellant. He submits that she, in her examination-in-chief, stated that she along with the appellant and his friend Dinesh had gone to a relatives house in Jawalapuri to find work for the appellant on the day the Appellant is alleged to have committed the said offence. The relevant portion of her statement is enumerated as follows:

On 3.8.2002, I alongwith my son Naresh and his friend Dinesh went to Jawala puri to some relative to arrange for some work for both of them. We got late while coming back from there and when we reached to Sanjay Gandhi Hospital on our

foot, one police jeep stopped us and.

He further submits that the prosecution is falsely implicating the accused, as, at the time of the incident, the accused was with DW-1, Smt. Bhudevi.

14. He further refers to the statement of the accused u/s 313 Cr.P.C. In the statement the accused has deposed that accused was not one of the two culprits who were apprehended by the Police. The accused stated as follows:

Q4. It is further evidence against you that PW Sharvan Kumar has deposed that on the aforesaid date, time and place, officials came there and caught hold of the two culprits and that you were the said person/culprit. What have you to say?. Ans It is incorrect.

He submits that the accused also denied that he was produced before SI Mahipal (PW-8) in Sanjay Gandhi Memorial Hospital on 03.08.2002 by H.C. Chander Singh (PW-7).

15. Ld. Counsel for the Appellants has placed reliance on Woolmington vs. Director of Public Prosecution, (1935) AC462 and State of U.P. vs. Krishna Gopal, AIR 1987 SC2154. In Woolmington (supra), the Court held that it is for the prosecution to prove the guilt, not for the accused to prove his innocence. In Krishna Gopal (supra), the Supreme Court held that a person cannot be convicted for an offence which is not proved beyond reasonable doubt. He submits that there was no evidence that the appellant was the one who inflicted the injury upon the complainant.

16. Ld. APP submits that the Rukka (Ex PW2A), on the basis of which FIR was registered, states that the accused was apprehended by Sipahi Chander at the spot itself. The statement of the complainant PW-2 recorded in the Rukka is, inter alia, to the following effect main Mangolpuri se Peeragarhi ja raha tha tatha samay karib 9:30 PM par jab main Peeragarhi pull ke neeche tha toh peeche se do-teen ladke aaye tatha mujhe pakad kar gaali galoch dene lage tatha unmein se ek ladke ne kisi dhaardaar cheez se mere pet par vaar kiya. Toh mere shor machane par Sipahi Chander bhaag kar aaya toh ve ladke bhaagne lage parantu Sipahi

Chander ne unmein se ek ladke ko pakad liya jiska naam pata baad dariyakht Naresh s/o Madhav Singh. PW-2, Sharvan Kumar owned up his statement recorded in the rukka and his thumb impression thereon.

17. Further the Ld. APP submits that the MLC (Ex. PW3A) had been recorded on 03.08.2002, and it was stated in the report that Omentum of the complainant was hanging out of the wound. Dr. Praveen (PW-6) after examination and after considering the reports adjudged the injury as dangerous. Dr. Shankar Gupta (PW-3) further gave his opinion dated 08.10.2002 - that the injury was dangerous. Ld. APP submits that Dr. Praveen (PW-6) could only give his opinion on 26.09.2002 as the reports took time to be prepared, which was thereafter affirmed by Dr. Shankar Gupta (PW-3) on 08.10.2002. Therefore, to say that the opinion of the doctors is untrustworthy is incorrect.

18. Ld. APP further submits that the MLC (Ex. PW3A) has been proved by Dr. Shankar Gupta (PW-3) and Dr. Praveen (PW-6). He further submits that Dr Praveen (PW-6) in his cross-examination deposed that the injury which causes danger to life of a person, is classified as dangerous. The MLC, thereby, declaring the injury as dangerous, stands duly proved on record, and the appellant has not been able to impeach its authenticity or correctness.

19. Ld. APP submits that Section 34 of IPC had been invoked by the Police as the Appellant was accompanied by 2-3 persons. Dinesh @ Vikky s/o Sh. Banwar Singh, co-accused, was arrested on 04.08.2002 by SI Mahipal (PW-8). The arrest memo in this regard is Ex. PW5/A, and supported by HC Jasbir Singh (PW-5). Since the offence was committed in furtherance of the common intention of the two accused, Section 34 I.P.C. had been correctly invoked. Thus, it was not necessary to establish as to which of attackers had inflicted the dangerous injury on the complainant.

20. I have heard learned counsel for the Appellant and the learned APP, and perused the evidence, statements and judgment on record.

21. The Appellant contends that he was picked by the Police, while he was on his way from Mangolpuri. Whereas the Rukka (Ex. PW2A) clearly states that the

accused was apprehended by HC Chander Singh (PW-

7) at the spot of incident. The Rukka states that after the complainant made noise, HC Chander Singh (PW- 7), from the nearby Police picket, came to the spot and apprehended the Appellant while he was trying to flee away. The Rukka is supported by the complainant in his testimony. It was recorded contemporaneously, without any delay. Neither the complainant, nor the police have any motive to falsely implicate the appellant and to let the real culprit go scot free. The appellant was correctly identified by the complainant in the Court. There is no reason advanced by the appellant as to why the testimonies of the prosecution witness should not be believed. What are claimed as contradictions and improvements are mere elaborations or embellishments. In any event, the core of the case made out by the prosecution is intact, since in the cross examination of the prosecution witnesses, the appellant could not bring out anything to raise a doubt on the case of the prosecution and, at the same time, the appellant could not establish his defence of being with his mother DW-1 at some other place at the time of occurrence of the offence. Pertinently, DW-1 did not make any protest or grievance regarding detention of the appellant - which was the natural thing to do if he was framed and picked up suddenly for no rhyme or reason.

22. So far as the contradiction pointed out with regard to the identity of the Police personnel who took the complainant and the appellant to Sanjay Gandhi Memorial Hospital is concerned, the testimony of PW-7 is very clear. He has stated that on hearing the noise created by the complainant, he followed the same. He saw the complainant bleeding there. Two persons were running little ahead of him and he apprehended one person who was towards the back side. The person apprehended was the appellant - who was correctly identified by PW-7. He states that he then brought the accused and the injured to the Police picket. In this Police picket, he met HC Om Prakash. Then he and HC Om Prakash brought the accused and the injured to the hospital. As to how SI Mahipal came to the hospital may not have been known to PW-7, since he was with the complainant PW-2 and the appellant. Since the complainant was injured and bleeding, he may not have remembered while making his statement in the Court on 22.11.2004 (the incident

took place on 03.08.2002) that the appellant too was taken to the Hospital. PW-8 SI Mahipal has disclosed that on receipt of DD No.47B, he and Constable Jasbir (PW-5) reached the Sanjay Gandhi Memorial Hospital, where the injured Shravan Kumar was admitted. He also stated that he arrested the appellant and that he received the original Rukka and copy of the FIR brought by the constable to the hospital and delivered to him. Thereafter, PW-8, the IO, along with Constable Chander, Constable Jasbir, the accused and the appellant went to the spot near Peeragarhi flyover and at the instance of Constable Chander, he prepared the rough site plan of the place of crime, Ex. PW-8/B. Thus, merely because HC Chander PW-7 stated that he did not inform the IO SI Mahipal (PW-8) to reach the Sanjay Gandhi Memorial Hospital is of no relevance.

23. From the aforesaid, it is clear that only one policeman i.e. PW-7 had come to the rescue of the complainant (PW-2) at the site. It was only at the Police picket HC Om Prakash had joined them and taken the complainant (PW-2) and the appellant to the Sanjay Gandhi Memorial Hospital. Thus, there is no contradiction or material variation as claimed by the appellant.

24. The Supreme Court in State of A.P. vs S. Janardhana Rao, (2005) 1 SCC360 held that when the prosecution has proved its case beyond reasonable doubt, then relying on minor contradictions in evidence of witnesses, will prove to be fatal. It held as follows:

From the foregoing discussions, it would be clear that the prosecution has succeeded in proving its case beyond reasonable doubt, the trial court was quite justified in recording conviction of A-1 and the judgment of High Court acquitting him suffers from the vice of perversity as it has refused to place reliance upon the evidence of witnesses merely on the basis of certain minor contradictions in the evidence of witnesses, though, they have supported the prosecution case on all material particulars.

25. Further, the complainant had deposed in his examination-in-chief that the accused had stabbed the Appellant in the stomach, and asked him where his money was kept and took it away. Thereafter, the complainant made noise upon which the accused/ appellant was apprehended by HC Chander Singh (PW-7).

The complainant in his cross-examination deposed as follows:

I had mentioned in my statement to the police that on asking of the culprits I told them the pocket where I had kept the cash or that my cash was taken away by the culprits. (Confronted with statement Ext.PW.2/A where it is not so recorded). I had not mentioned in my statement to the police that two police officials came to the spot. It is incorrect to suggest that none of the culprits had been apprehended by police in my presence. I had not mentioned in my statement to the police that police took away the apprehended culprit to the police station and brought me to the hospital.

26. From the above, it is clear the deposition of the complainant is on the same lines as the statement of HC Chander Singh (PW-7), and as recorded in the Rukka (Ex. PW2A). Thus, there are only minor contradictions between the aforesaid statements, which are not fatal to the case of the prosecution.

27. Therefore, the contention that the Appellant was falsely implicated in the present case does not hold good, as it is clearly established that the accused was apprehended at the spot by HC Chander Singh (PW- 7).

28. The Appellant contended that since the doctor gave his opinion regarding the injury being dangerous only on 26.09.2002, the opinion is untrustworthy as the incident took place about a month earlier. This contention of the Appellant is not sustainable. The doctor did not rush into giving his opinion regarding the nature of injury. Therefore, the opinion of the doctor as the injury being dangerous cannot be disregarded only on the ground that time was taken to give opinion. The appellant did not put any question to the doctor (PW-6) to explain the so-called delay. In fact, in the cross-examination of PW-6, the appellant did not even challenged the report given by him to the effect that the injury was dangerous.

29. The Appellant has relied on Krishna Gopal (supra), wherein the Supreme Court held that for a person to be convicted, the offence has to be proved beyond reasonable doubt by the prosecution. In the present case, the prosecution has produced sufficient evidence on record to prove its case beyond reasonable doubt, and, as such, Krishna Gopal (supra) has no relevance in facts of the present case.

He further relied on Woolmington (supra) to state that it is for the prosecution to prove the guilt, and not for the accused to prove his innocence. However, in the present case, the prosecution has proved the guilt of the accused, and beyond reasonable doubt with the help of sufficient evidence.

30. I am, therefore, of the view that the prosecution has proved its case beyond reasonable doubt. I do not find any infirmity in the judgment of the learned ASJ and hence, the conviction of the accused under Sections 307/34 IPC, is upheld. The Appellant was sentenced to undergo RI for three years with fine of Rs.500/-, and in default of payment of fine, to undergo SI for 30 days.

31. As the sentence of the Appellant had been suspended during the pendency of the appeal, he is directed to surrender and undergo the remaining period of his sentence forthwith.

32. The bail bond of the Appellant is cancelled.

33. In view of the aforesaid reasons, I find no merit in this appeal and the same is, accordingly, dismissed. VIPIN SANGHI, J FEBRUARY09 2015

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