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Ved Prakash Vs. State of Haryana

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Court : Supreme Court of India

Decided On : Aug-20-1996

Reported in : AIR1996SC2795; 1996(2)ALD(Cri)653; 1996CriLJ4156; 1996(3)Crimes194(SC); JT1997(10)SC465; 1996(6)SCALE78

Judge : M.K. Mukherjee and; S.P. Kurdukar, JJ.

Acts : Indian Penal Code (IPC), - Sections 307 and 324; Disruptive Activities (Prevention) Act, 1985 - Sections 6; Arms Act, - Sections 27; Crimianl Procedure Code , 1973 - Sections 313

Appeal No. : Criminal Appeal No. 412 of 1987

Appellant : Ved Prakash

Respondent : State of Haryana

Judgement :

M.K. Mukherjee and S.P. Kurdukar, JJ.

1. Gian Chand (Complainant) and the appellant accused were known to each other as they were neighbours living in the same locality at Karnal. It is the case of Gian Chand that fifteen days before the incident in question, the appellant/accused had come to his house and, when he was found drunk, he (the complainant) told him not to visit his house under the influence of liquor. The appellant took it as an

insult. It is alleged by the prosecution that on 14th October, 1986, at about 4.00 p.m. the complainant was returning to his house after attending his office duty. On the way just near his house, he stopped at a tea shop of Udhey Bhan where some persons were standing. Piare Lal also joined him. When they were going to their house, they came near the crossing (chowk) known as 'Lal Quan'. At that place, four persons, namely, Ram Lal, Anant Ram and two others were playing cards. They stopped there and were watching the game, Ved Parkash (hereinafter referred to as 'the accused') came there and questioned the complainant as to why he had insulted him the other day when he had come to his house. It is then alleged by the prosecution that the accused immediately took out a revolver from his pant pocket and fired at Gian Chand and the bullet hit his left toe. The bullet then hit against a hard substance, rebounded and hit Gian Chand on his right leg calf. The persons who were present there tried to apprehend the accused but he fled away. The injured was then taken to the hospital by Jai Devi (PW 5) where he was examined by Dr. V.K. Agarwal (PW 3) who noticed two injuries on the complainant. Doctor sent a ruqqa (Ex. PD) to the police post attached to the General Hospital. On receipt of this ruqqa, ASI Ajit Singh (PW 6) who was then incharge of this police post came to the hospital. ASI Ajit Singh (PW 6) then met the doctor who told him that the injured is in a fit condition to make a statement. ASI Ajit Singh then recorded the statement of Gian Chand Ex.PA) and forwarded it to the police station, City Karnal, for recording formal FIR. It was so recorded by SI Kartar Singh being Ex. PA/1. SI Kartar Singh (PW 9) then went to the hospital and took over the investigation. The investigating officer carried out part of the investigation. On the next day i.e. 15th October, 1986 he went to the house of the accused. Accused was not found in his house; however, his brother Jai Parkash produced the accused at about 1.30 p.m. During interrogation, accused made a statement under Section 27 of the Evidence Act which led to the recovery of revolver. Seizure panchnama was accordingly made and the revolver with five cartridges and his licence were taken charge of. After completing the investigation, the accused was put up for trial for the offences punishable under Section 307 of the Indian Penal Code and under Section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 read with Section 27 of the Arms Act.

2. The appellant denied the charge and claimed to be tried. In his statement recorded under Section 313 of the Cr PC, he asserted that he is innocent and had committed no offence. The appellant has examined Anant Ram as his witness DW 1).

3. The prosecution in support of its case examined Gian Chand-the complainant (PW 1) and other formal witnesses. It may be stated that one Piare Lal was the eye witness and was accordingly shown in the list of prosecution witnesses, but he was not examined during trial.

4. The learned Trial Judge on appreciation of ocular evidence and other materials on record vide his judgment and order dated 12th August, 1987 fond the accused guilty of an offence punishable under Section 324 of the Indian Penal Code. He also convicted him under Section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 read with Section 27 of the Arms Act. On the first count, the learned Trial Judge sentenced the accused to suffer rigorous imprisonment for one year and pay a fine of Rs. 250/- and in default of payment of fine to undergo further rigorous imprisonment for three months. On the second count, the learned Trial Judge sentenced the accused to suffer rigorous imprisonment for three months. It is this order of conviction and sentence which is the subject matter of challenge in this appeal.

5. We heard learned Counsel for the parties and were taken through the evidence on record. Mr. K.K. Mohan, learned Counsel appearing in support of this appeal urged that the evidence of Gian Chand (PW 1) - the complainant be not accepted in the absence of corroboration from other independent witness. He urged that although according to the prosecution, several persons had witnessed the alleged incident and although Piare Lal was cited as a witness yet none was examined. There is a serious lacuna in the prosecution case and, therefore, it is a fit case where an adverse inference be drawn against the prosecution. He also urged that it was because of enmity between the complainant and the accused, the former had tried to implicate the latter on false accusation. It was then urged that the revolver which was alleged to have been recovered at his instance was not having the mechanism of ejecting the used cartridge automatically and on fire an empty

cartridge was required to be manually ejected. It was not the case of Gian Chand-the complainant that the accused manually ejected the empty cartridge from the revolver at the place of occurrence yet the investigating officer claimed to have seized the said cartridge therefrom. This indicates that the prosecution had planted an empty cartridge at the scene of occurrence to rope in the accused. Counsel, therefore, urged that the prosecution had lodged a false case against the accused and therefore the accused be acquitted. We are however not impressed by this argument. Gian Chand who sustained the bullet injury to his left toe was more concerned to look after it. Moreover, many persons had gathered around him. The accused appeared to have swiftly ejected the empty from his revolver which was not noticed by Gian Chand. At the most, this might be an honest omission which would not discredit his evidence.

6. Mr. Malhotra, learned Counsel appearing for the respondent supported the impugned judgment.

7. We have carefully gone through the evidence of Gian Chand (PW 1) and in our opinion it can be safely accepted without any corroboration. Gian Chand (PW 1) was an injured person who had sustained the bullet injuries to his left toe and calf He was immediately taken to the Govt. Hospital and was examined by Dr. V.K: Agarwal (PW 3) who noted the following injuries:

1. There was circular lacerated wound 0.8 x 0.8 on the right shin, slightly on the medical aspect 17 cms. above the medical malleclus. Bleeding was present. Margins of the wound were blackened. X-ray was advised.

2. Lacerated wound 1.5 cm x 1 cm on the front side of left big toe beneath the nail. The skin was blackened. Bleeding was present. X-ray of the part was advised.

8. From the above evidence, it is thus clear that Gian Chand (PW 1) had sustained the aforesaid injuries. He asserted that the accused had fired at him through his revolver which caused two injuries. Although he was cross-examined at great length but defence had failed to bring on record any material to discard his testimony. The report of the ballastic expert which was placed on record also indicated that the empty cartridge could be fired from the revolver in question and

not from any other weapon. The report of the Assistant Director (Ballastics), in our opinion clearly supports the evidence of Gian Chand (PW 1). It may also be stated that the evidence as regards the discovery statement of the accused under Section 27 of the Evidence Act and recovery of revolver in question persuant thereto is an important circumstance and pointer to the guilt of the accused.

9. After going through the entire evidence on record, we are satisfied that the Trial Court had committed no error in convicting the accused under Section 324 of the Indian Penal Code and also under Section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 read with Section 27 of the Arms Act.

10. Mr. K.K. Mohan, learned Counsel appearing for the appellant urged that the appellant at the time of incident was 28 years old and was having a shop at Karnal. He was granted bail by this Court on 10th September, 1987 and since then he is on bail. More than nine years have passed and there is no adverse report against him as regards the misuse of the bail facility. Accused is now well settled and he be not sent to jail again. It is found from the record that the accused has not been in jail for three months even. Having regard to the facts and circumstances of the case, we are of the opinion that it is not a fit case where any reduction in the sentence is called for.

11. In the result, the appeal fails and the same is dismissed. The appellant (accused) to surrender to his bail bond forthwith to serve out the remainder of his sentence.

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