Bishnu Vs. State

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Court : Delhi

Decided On : May-23-1996

Reported in : 1996CriLJ3572

Judge : Usha Mehra, J.

Acts : Indian Panel Code, 1860 - Sections 307; Code of Criminal Procedure (CrPC) , 1973 - Sections 161, 164 and 428; Arms Act, 1959 - Sections 27

Appeal No. : Criminal Appeal No. 15 of 1995

Appellant : Bishnu

Respondent : State

Advocate for Def. : Mrs. Santhosh Kohli, Adv.

Advocate for Pet/Ap. : P.R. Thakur, amices Curia

Judgement :

1. Sh. Bishnu the appellant herein was convicted by the Court of Addl. Sessions Judge under Section 307, I.P.C. and under Section 27 of the Arms Act and sentenced to undergo RI for a period of four years and a fine of Rs. 1,000/-, in default three months S.I. and sentenced to undergo R.I. for one year under Section 27 of the Arms Act and a fine of Rs. 500/-, in default two months further R.I. He was, of course, given benefit under Section 428, Cr.P.C.

Mr. P. R. Thakur, Advocate was appointed as amices Curiae for the appellant as the appellant is in jail and could not afford a lawyer. Mr. Thakur has assailed the impugned order, inter alia, on the following grounds :-

Injured Ms. Pia did not step up in the witness box to corroborate her complaint. Trial Court has convicted the appellant simply on the basis of complainant's statement recorded under Sections 161 & 164, Cr. P.C.

2. No Test Identification Parade (TIP) was conducted to establish that it was the appellant who inflicted stabbed injury on the person of the complainant.

3. Material contradiction in the story as set up by the prosecution and in the statement of PWs. 1 & 2.

4. The doctor PW-3 did not describe the nature of the injuries in his report nor gave the depth of the injury.

5. The knife allegedly recovered from the room of the complainant, a foreign tourist, was not sent for Chemical analysis nor finger prints lifted from it. Even the identity of the knife is in doubt.

6. Whether the knife was Buttondar/Spring actuated or Giraridar etc. has not been established. The Investigating Officer (In short the I.O.) did not give the description of the knife allegedly recovered from the room of the complainant.

7. The appellant was convicted on 8-12-94 and on the same day the order of sentence was passed. It deprived reasonable opportunity to the appellant.

To appreciate these points raised by Mr. P. R. Thakur, let us have brief and relevant facts of this case which are necessary to decide these points. As per the story put up by prosecution Ms. Pia was occupying a room in a hotel known as Namaskar at Paharganj. On 2nd September, 1993 after making some purchases she came back to the hotel at about 4.00 p.m. In order to take some rest she went to her room. After changing her garments she went to the bed. At that time somebody knocked at the door. In response to her enquiry the man replied he was the room boy came to check the room. She refused his entry. Again there was a

knock at the door which woke her up. She found a sturdy person sitting in her room. She asked him as to how he entered her room and what was he doing in her room. Instead of answering her questions that man stabbed her on her chest. She screamed for help. On hearing her scream one room attendant came there. That person tried to escape after causing injury on her person. Hotel owner came to her room and took her to Dr. R.M.L. Hospital, where she remained admitted for three days. Her statement was recorded under Section 161, Cr.P.C. and thereafter under S. 164, Cr.P.C. by the Magistrate. She did not appear in the witness box to corroborate her complaint, neither identified the appellant nor the knife allegedly used against her.

Prosecution examined as many as nine witnesses. So far as PW-1, Rajender Kumar, owner of the Hotel and PW-2, Veer Singh Mehto waiter of the hotel are concerned, they appearing as PWs. made a complete somersault to the story given by the complainant and as set up by the prosecution. Rajinder Kumar PW-1 stated that the complainant was bleeding from the stomach, whereas complainant's own case is that she was stabbed in the chest. Rajinder Kumar PW-1, however, stated that one knife was lying in the room of the complainant. The incident was not witnessed by him. When subjected to cross-examination he admitted that he never went to the room of the complainant. According to him, the complainant herself came down. He did not apprehend the appellant. According to him appellant was apprehended by one waiter Kharak Singh or somebody else but not by PW-2 Veer Singh. The said Kharak Singh has not been produced to support this version that the appellant was apprehended from the hotel premises itself. He further testified that immediately on hearing the cry and seeing the bleeding he took the complainant to Dr. R.M.L. Hospital. It was thereafter that police arrived. Whereas in cross-examination he said that he did not take the complainant to the hospital till the police arrived there. This shows changing stand of the witness. He is not sure which version of his was correct. Hence it would not be safe to convict a person on such unreliable testimony. Complainant nowhere stated that the appellant accompanied her to her room in the hotel after she came back from the shopping. As per the version given in the complaint it can be inferred that she did not know the assailant, whereas PWs. 1 and 2 concocted a story that appellant accompanied the complainant to her room. This is after

thought story build up in order to implicate the appellant. This story it appears has been set up by these two PWs. It is not supported by the version given in the FIR. This indicates that either PW-1 and PW-2 were not present at that time or in order to implicate the appellant have falsely built up a story because otherwise there was none to identify the appellant. PW-2 has contradicted the statement of PW-1 when he stated that he along with PW 1 brought the complainant down. They then took her to the hospital. Police came to the hospital after about half an hour. According to him the accused struck him on the first step of the staircase and apprehended. Whereas according to owner of the hotel PW-1 the appellant was apprehended by Kharak Singh and not by PW. 2. Moreover, as per prosecution's own case the appellant was not having anything in his possession when apprehended. No Explanationn given why Kharak Singh who is alleged to have apprehended the appellant has not been brought in the witness box.

As per the testimony of the SI Dharmender Kumar, PW-8 the I.O. of this case, on receiving the information he recorded the statement of the injured in the hospital. After recording the statement of the injured, he directed ASI Raghubir Singh to reach the place of occurrence. He also reached there for the purpose of inspection of the site. Testimony of the I.O. that he reached the place of occurrence after recording the statement of the injured falsely the statements of PW-1 and PW-2 whereby PW-1 stated in cross-examination that he took the injured to hospital after arrival of the police. This is a material contradiction which proves the testimony of PW-1 and that of PW-2 to be false. So far as PW-4 Constable Narender Singh, he was duty Constable posted at Dr. R.M.L. Hospital. He stated that when Ms. Pia was brought to the hospital he informed this fact at the police station. So far as PW-5 Constable Sham Lal is concerned, he made DD entries. Constable Salam Mohd. PW-7 joined the I.O. in investigation. P.W. 6 Mr. Prem Kumar was the Metropolitan Magistrate. He recorded the statement of the injured under Section 164, Cr.P.C. PW-9 Ram Niwas was the Record Clerk of Dr. R.M.L. Hospital. The testimony of PW-1, PW-2 and that of the I.O. is relevant for the purpose of this case, the other witnesses were not concerned with the incident nor examined to prove the facts, hence can be called formal witnesses.

As already discussed above there are material contradictions in the testimonies of PW-1 and PW-2 with regard to the place of injury, injured being taken to the hospital as well as of the recovery of the knife and of the identification of the appellant. Unfortunately, the injured had not been put in the witness box. There was no witness to the occurrence except the injured herself. Hence in her absence it could not be said as to who caused the alleged injury to Ms. Pia. In the absence of proper identification the appellant cannot be linked with this crime. The appellant cannot be convicted on the basis of a statement recorded either under Section 161 or 164, Cr.P.C. In the absence of identification the needle of suspicion cannot be pointed out towards this appellant. Contention of Mr. P. R. Thakur that even the trial Court was aware of this legal position is apparent when he observed in para 15 of his judgment that statement under Sections 161 and 164 Cr.P.C. could only be used for contradiction and not for corroboration and yet relying on these statements the Court connected the appellant. To my mind, such a conviction based on the statement recorded under Section 161 or 164 Cr.P.C. is on the face of it against the settled principles of law. The complaint which ultimately got converted into FIR clearly show that the injured was not aware about the identity of the assailant. That is the reason she asked the assailant who he was and why was he sitting in her room. This shows she did not know the assailant. In this view of the matter, the TIP of the appellant was very necessary. Having failed to do so, the appellant could not have been held guilty, coupled with these facts the testimonies of PW-1 and PW-2 are not reliable because they introduced new version and gave a twist to the story given by the complainant. Hence, in view of the identity of the assailant being doubtful the appellant could not have been convicted.

Besides, the medical report pertaining to the injuries is vague. Dr. N. P. Singh of Dr. R.M.L. Hospital appearing as PW-3 except saying that there was wound on the right side chest 3 cm. long approximately 3 cm. above and lateral to xiphisternum and a scratch mark lateral and to the right of the 8 cm. extending on the right breast did not describe the nature of the injury. He also had not described the nature of injury in his report Ex. PW-3/A. We are not sure whether the injury was grievous or simple. In the absence of the nature of the injuries, the trial Court was not right in concluding that the injury was grievous. Court cannot impose its

personal knowledge. The nature of the inquiry was to be described by the doctor but he did not do so. Hence, in the absence of the nature of injury, it was wrong for the trial Court to conclude that this is covered under Section 307, I.P.C. On the basis of Ex. PW-3/A it cannot be inferred that the ingredients of Section 307, I.P.C. are made out in the facts of this case. This Court in the case of Narender Kumar v. State of Delhi 1980 Chand Cri. C. 62 : 1980 Cri LJ 121 in similar circumstances opined that even when injury is on the vital part of the body, still it will not be said to be a grievous injury and the conviction based on such a vague report is liable to be set aside. The prosecution was under duty to produce the medical record regarding treatment given to the injured. The depth of the injury has also not been mentioned in Ex. PW-3/A nor so stated orally by Dr. N. P. Singh. Without indicating the depth of the injury, grievousness of the injury could not be ascertained. Ex. PW-3/A nowhere points that the injury was grievous. Relying on the case of Narender Kumar (supra) it can be safely concluded that in the absence of nature of injury caused to Ms. Pia no case under Section 307, I.P.C. is made out.

Mr. P. R. Thakur further contended that the order of conviction and sentence were passed on the same day. It is against the law. I find force in this submission of Mr. P. R. Thakur. To arrive at this conclusion support can be had to the decision of Supreme Court in the case of Allauddin Mian v. State of Bihar AIR 1939 SC 1456 : , where the Apex Court opined that after convicting the accused, the matter should be adjourned to enable to convict to prepare his arguments on the sentence, meaning thereby that the conviction and sentence cannot be passed on the same day. Doing so would violate the mandatory provisions of law. After conviction, the trial Court instead of adjourning this matter passed the order of sentence simultaneously. This act of the trial Court is against the law laid down by the Apex Court and as pointed out above. Hence the conviction and sentence are liable to be set aside as valuable right of the appellant had been deprived.

As regards conviction under Section 27 of the Arms Act, that also cannot be sustained because neither the knife had been identified as the weapon of offence nor the knife was sent for Chemical analysis nor finger prints were lifted for the purpose of comparison by the expert. It has not been stated either by the I.O. or

any other witness that the knife, allegedly recovered from the room of the complainant fell in the prohibition specified in the notification dated 17th February, 1979 issued by the Delhi Administration, Delhi. Vide the said Notification the acquisition, possession and carrying of spring actuated knives, garridar knives, buttondar knives or all other knives which open or close with any other mechanical device with a blade of any size or folding knives with a sharp edged blade of 7.62 cm or more in length and 1.72 cm or more in breadth has been prohibited in public places. In order to cover the case under the prohibition contained in the Notification dated 17th February, 1979, the prosecution had to prove the description of the knife but this prosecution failed miserably to do so. Hence the conviction under Section 27 of the Arms Act cannot be sustained.

For the reasons stated above the conviction and sentence are set aside. Appellant be released forthwith, if not required in any other case. Copy of the judgment be sent to the appellant through the Superintendent, Central Jail, Tihar, New Delhi, for information.

8. Order accordingly.