

Mohd. YamIn Vs. State

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Court : Delhi

Decided On : Sep-08-1978

Reported in : 15(1979)DLT120

Judge : R.N. Aggarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 393; [Arms Act, 1959](#) - Sections 27

Appeal No. : Criminal Appeal No. 1 of 1978

Appellant : Mohd. Yamin

Respondent : State

Judgement :

R.N. Aggarwal, J.

(1) MOHD. Yamin, aged 25, was tried in the Court of Shri V.B. Bansal, Additional Sessions Judge on the charges under Sections 393, 398 and 451 of the Indian Penal Code. He was also tried for the offence under Section 27 of the Indian Arms Act. The learned Additional Sessions Judge found the accused guilty of all the charges and sentenced him to rigorous imprisonment for 7 years under Section 393 read with Section 398 and to rigorous imprisonment for one year on the charge under Section 451 of the Indian Penal Code. The accused was convicted

of the offence under the Indian Arms Act and sentenced to rigorous imprisonment for 2 years. All the sentences were ordered to run concurrently. Against his convictions and sentences the accused has preferred this appeal through jail. The case for the prosecution is this Public Witness .4 Gurdial Singh with his wife Rattan Devi (P.W.3) and children resided in house No. 26/25, Gali No. 11 Vishwas Nagar. Gurdial Singh has a tea stall 3 or 4 galis away from his house' On 9th April 1977 at about 11.30a.m. Ratten Devi was cooking food inside the house. The children were playing in the courtyard. According to Rattan Devi the accused came inside the house and bolted the door. The accused took out a knife and on the threat of killing her asked her to produce whatever she had, just at the same time Gurdial Singh happened to come and he raised alarm and with the help of public who came to the spot apprehended the accused. The people from the public gave a few danda blows to the accused and also snatched the knife from his hands.

(2) Gurdial Singh went to the police station and made a report which was recorded by Public Witness .4 in the daily diary. Public Witness .1 sent a copy of the report to the Sub-Inspector Ajit Singh (P.W. 6) who had gone in connection with the investigation of another case. Public Witness .6 on receipt of the report went to the house of Public Witness . 4 and he saw the accused secured by Rattan Devi and other people from the mohalla, Public Witness . 6 left the spot since he had to investigate the other case and he returned after 2 or 3 hours and recorded the statement Ex. Public Witness Public Witness 6. of Rattan Devi and sent the same with his endorsement to the police station for formal registration of the case. Ratten Devi produced a knife which was seized by Public Witness .6. Public Witness .6 after completing the investigation filed the challan in the Court.

(3) MOHD. Yamin in his statement at the trial denied the prosecution case. He stated that on 9th April 1977 he had gone to the tea stall of Gurdial Singh and there after taking a cup of tea had given a currency note of Rs. 10.00 to Gurdial Singh, that Gurdial Singh went to his house without returning the balance and he followed Gurdial Singh to his house where Rattan Devi gave two danda blows on his head and later on implicated him in this false case.

(4) Public Witness .3 has given in court a detailed version of the occurrence. In cross-examination she stated that her husband had never told her that the accused used to take tea at his tea stall and that she did not know the accused prior to the occurrence. A suggestion was made to Public Witness .3 that the accused had gone to the tea stall of her husband and taken tea and given a ten rupee note to her husband and that her husband had come away without paying the balance of the money to the accused and, therefore, the accused had followed her husband to the house to take the balance of the money. The above suggestion was refuted by Public Witness .3. Public Witness .4 has substantially corroborated the testimony of P.W.3. A suggestion on the lines made to Public Witness .3 was also made to Public Witness . 4 who refuted the same.

(5) Ram Kumar (P.W. 5) deposed that he did not know anything about the case. The witness was declared hostile and was cross-examined by the Public Prosecutor. In cross-examination Public Witness . 5 denied to have stated in his statement before the police that on hearing the alarm 'Chor Chor' he had gone out of his shop and gone to the house of Public Witness .3 and seen the accused inside the house of Public Witness .3. The witness also denied to have stated before the police that he had seen Yamin attacking Gurdial Singh with a knife. P.W.6 Ajit Singh gave, evidence that on receiving the report from the police station he had gone to the house of Public Witness .3 and found there the accused besides Rattan Devi, her husband and many other persons. The witness further testified that he recorded the statement Ex. Public Witness . 6/A of Rattan Devi and sent the same to the police station for registration of the case. Public Witness .6 also deposed that one knife was produced by Rattan Devi which was seized by him vide memo Ex. Public Witness Public Witness 3/B.

(6) The prosecution case admits of no doubt that the accused was caught by Public Witness s 3 and 4 and others from the mohalla, inside the house of Public Witness .4. The version of the accused is that he had gone to the tea stall of Public Witness .4 and taken a cup of tea and given a ten rupee note to Public Witness .4. that Public Witness .4 went away to his house without paying the balance of the money and he followed Public Witness .4 to his house and there Rattan Devi gave two danda blows to him on his head and implicated him in the

case falsely. The above Explanationn of the accused regarding his presence in the house of Public Witness .4 does not appeal to reason. Firstly, there could be no reason for Public Witness .4 not to have returned the balance of the money to the accused and secondly, assuming, for the sake of argument, that P.W.4 had gone to his house without paying the balance of the money and the accused had followed him to his house there was no reason for Public Witness .3 to have given danda blows to the accused, there is no allegation that there were any previous accounts between the accused and Public Witness . 4 and there was any dispute over the accounts. It appears that the accused has invented a false version to create a defense. My view is that the defense version has no truth or substance in it.

(7) There is nothing on the record to suggest that Public Witness .3 or Public Witness .4 had known the accused prior to the occurrence. I find no motive whatsoever for P.Ws 3 and 4 to trump up a false charge against the accused. The first report Ex. Public Witness .1/A regarding the occurrence was made by Public Witness .4 at 11.30 a.m. In the first report it is stated by Public Witness .4 that a stranger had come into the house and he had attacked his wife and children and that he with the help of his children had caught him, This report fully supports the prosecution case. I have carefully perused the testimony of Public Witness . 5 and, in my opinion, he has suppressed the truth and for some reason which cannot be discovered from the record tried to favor the accused.

(8) The accused in his statement has admitted that a knife was produced by P.W.4 before the police, but asserted that it has been falsely planted on him. Public Witness .6 gave evidence that the knife was produced before him by Public Witness .3. Public Witness .4 testified that he had produced the knife before the police. The above discrepancy in the state ments of the witnesses is not material and does not in any way shake the credibility of the witnesses. Another small discrepancy brought out in the evidence of Public Witness s 3 and 4 is regarding the bolting of the door from inside by the accused. Public Witness .3 gave evidence that the accused on entering the house tried to bolt the door and in the meantime her husband came who pushed the door open. Public Witness .4 deposed that there is no konda in the door of his house and therefore, the

question of bolting the door from accused had closed the door and he had pushed the door open. The above discrepancy is also, in my opinion, not Significant and cannot prove fatal to the prosecution case.

(9) On a careful consideration of the record, I am of the view that the prosecution has brought the charges home to the accused beyond any doubt. The appellant has in the grounds of appeal submitted that he should be given the benefit of the provisions of the Probation of Offenders Act. In my opinion, it is not a fit case where the benefit of probation should be allowed. There is no scope for interference regarding the sentences imposed on the appellant. Consequently, I maintain the convictions and sentences and dismiss the appeal. Before concluding I must say that Shri S.K. Aggarwal, advocate, presented the case fairly on behalf of the State. The appellant be informed of the Judgment in jail.

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