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Court : Delhi

Decided On : Feb-07-1980

Reported in : 17(1980)DLT302

Judge : Charanjit Talwar, J.

Acts : Indian Penal code, 1860 - Sections 324 and 307; Code of Criminal Procedure (CrPC) , 1973 - Sections 360

Appeal No. : Criminal Appeal No. 209 of 1974

Appellant : Narinder Kumar

Respondent : The State (Delhi Administration)

Advocate for Pet/Ap. : S.B. Yadav and; K.K. Sharma, Advs

Judgement :

Charanjit Talwar, J.

(1) The Additional Sessions Judge, New Delhi, vide his judgmendated July 30, 1974, has convicted the appellant for an offence under Section 326, Indian Penal Code, and sentenced him to undergo rigorous imprisonment for two years and a fine of Rs. 500.00 in case of default of payment of fine, he has directed the appellant to undergo further rigorous imprisonment for three months.

(2) The appellant was challenged to stand his trial under Section 307, Indian Penal Code. The learned Trial Court found that as the prosecution had failed to prove the intention of the accused to murder the complainant, Jitender Pal Singh (Public Witness 9), the offence under Section 307, Indian Penal Code, was not made out. Instead, it was held that as the prosecution had established that the appellant had caused grievous hurt to Jitender Pal Singh with a sharp edged weapon, the offence fell under Section 326, Indian Penal Code. Accordingly, the appellant was convicted and sentenced as noted above.

(3) Briefly stated, the prosecution case was that the injured Jitender Pal Singh (Public Witness 9) and the accused were studying in North India College, a private coaching institution. The accused was studying for metriculation Examination, while the complainant was studying for Higher Secondary Board Examination. According to the injured, the accused used to tease him. He had reported the accused to the Principal and on that report the accused was turned out of the institution. On November 25, 1972 at about 8.30 p.m. when Public Witness PW9 was proceedings towards Andrewsganj bus stop, the accused met him near that bus stop and waylaid him on the pretext of having some private conversation. Afterwalking with him for about 10 or 15 paces, it is alleged, the accused took out a knief and gave him (Public Witness 9) a knife blow on the left side of the chest. Thereafter, the accused made good his escape. PW5 Amarjit Singh, who had witnessed the occurrence, was sent by the injured to his (Public Witness 9's) parents house to inform them about the incident. Another boy, Sanjeev Kumar, who had reached the spot immediately after the stabbing incident, took the injured in a taxi to Safdarjang Hospital where he was got admitted. On examination Dr. D.N. Taneja (Public Witness 7) found the following injuries which were recorded in the medico-legal report Exhibit PW7/A:

'1.Incised wound in left upper part of chest inanterior axillary line 1'x1/4' x? Sharp margins and curved. 2. Incised wound 1/2'x1/4'x1/4' on right elbow posteriorily.'

X-rays of the chest and abdomen of Jitenderpal Singh were taken on November 25, 1972 which are found to be of poor quality by Dr. D.N. Taneja (Public Witness 7). Again X-rays were taken on December 6, 1972 which showed that the injured

had received no bone injury. This doctor, thereafter, opined the injury to be grievous, caused by a sharp edged weapon.

(4) Before I analyze the evidence produced by the prosecution. I must note that the learned Trial Court's finding that during the investigation the police had applied for identification of the accused by Shri Amarjit Singh (PW5) under the supervision of a judicial Magistrate wherein the accused was correctly identified by the said witness, is not borne out from the record of this case. Mr. K.K. Sharma, learned counsel for the State, has not been able to support this finding. Assistant Sub-Inspector Gurdas Ram (Public Witness 10) who had investigated the case, merely stated that 'Identification parade of the accused was held and he was correctly identified by Amarjit Singh.' The said witness Amarjit Singh (Public Witness 5) in the last sentence of this examination-in-chief has stated:

'Iidentified the accused in jail before a Magistrate'.

It is surprising that the judicial Magistrate, Shri Mohinder Pal, who has been referred to in Question No. 7, in the statement of the accused under Section 313 of the Code of Criminal Procedure, was not produced by the prosecution. Neither the Magistrate's report regarding the holding of the identification parade nor the application seeking permission to hold the parade was brought on record. Amarjit Singh (Public Witness 5), when cross-examined on this aspect of identification, stated thus :

'Idid not see the accused in the court before identification. I came to the Court for identification purposes and thereafter I have only come today.'

No question in re-examination whether the said identification was in Court or in Jail, was put by the Public Prosecutor to this witness. Under these circumstances the statement of the Investigating Officer that anidentification parade was held in jail, cannot be accepted. The finding, thereforee, that Public Witness PW5 Amarjit Singh had identified the accused in a parade which was held in Jail under the supervision of Shri Mohinder Pal, Judicial Magistrate 1st class, is to be set aside. The maximum the prosecution can allege under the circumstances of this case is that the said witness had identified the accused in Court. No value can be

attached to such an identification.

(5) Now turning to the evidence which has been produced by the prosecution to establish firstly that the accused Narinder Kumar was the one who was the one who inflicted the injury and secondly that the injury inflicted was grievous, Public Witness PW9 Jitenderpal Singh has categorically stated that the accused Narinder Kumar had accosted him on November 25, 1972 near the Andrewsganj bus stop and gave him the knief blow on the left side of his chest. While trying to snatch the knief from the accused, he further received a blow on the right elbow. He told a Sikh gentleman, who later on transpired to be Amaijit Singh (Public Witness 5), to goto his parents house on the address given by him. Jitenderpal Singh was immediately thereafter removed to the hospital in the injured condition by Public Witness PW1 Sanjiv Kumar. Sanjiv Kumar in his statement has stated that immediately after the occurrence the injured had informed him that one Narinder Kumar had attacked him. This witness was not cross-examined at all, although an opportunity to do so was afforded. After going through the evidence of Public Witness PW9 Jitender Pal Singh, I have no doubt in my mind that it was the accused Narinder Kumar who had inflicted the knife injury on the person of the injured (Jitender Pal Singh). The incident had been witnessed by Public Witness PW5 Amarjit Singh. Although, as has been noticed above, the identification of the accused by the said witness (Public Witness 5) in Court is of no value, nevertheless the injured person's version that the accused had given him the knife blow is worthy of credit.

(6) Having held that Narinder Kumar in fact stabbed Public Witness Public Witness Jitender Pal Singh, the question, which arises for consideration, is whether the injury inflicted was of a grievous nature as opined by Public Witness PW7 Dr. D.N. Taneja

(7) The prosecution has not produced the relevant medical record of Safdarjing Hospital relating to the treatment given to the injured person. Admittedly, Dr. D.N. Taneja (Public Witness 7) has examined the injured person in the casualty ward. He rightly did not give the depth of injury No. 1 in the medico-legal report as he could not possibily do so. It was for the Surgeon who had attended on the injured

person to give the depth of the said injury. No other doctor) who attended on the injured, has been produced by the prosecution for reasons best known to them. Dr. Taneja had examined the X-ray reports taken on December 6, 19 72 of the chest and abdomen of the injured and found no bony injury. Although he has labelled the injury as grievous, yet has not given any reasons for forming that opinion. It was for the prosecution to prove conclusively by producing not only the medical record relating to the treatment given to the injured but also by producing the doctor who had attended on the injured in the surgical ward, that the said injury was of such a depth or of such a nature which would be covered by the definition of grievous hu,rt as given in Section 320, Indian Penal Code. Alternatively, it was open to the prosecution to prove the intention of the accused in inflicting the said injury, which injury is admittedly on a vital part, was of the kind referred to under Section 300, Indian Penal Code. As held by the Supreme Court in Sarju Prasad v. State of Bihar, : 1965 CriLJ766 , the burden is still on the prosecution to establish such an intention where in fact no vital part has been actually cut as a result of the injury. The learned Trial Court has rightly held that the requisite intention has not been established by the prosecution in the present case. Without proof of the requisite intention, it is unsafe to hold that the injury caused was grievous especially in the absence of the reasons which prompted Dr. Taneja to opine it as such. In this view of the matter, injury No. 1 mentioned in Exhibit PW7/A (medico-legal report) is to be held to be simple. The offence committed by accused Narinder Kumar is thus covered by Section 324, Indian Penal Code, and not by Section 396, Indian Penal Code, as has been found by the learned Trial Court.

(8) The accused Narinder Kumar at the time of committing the offence was of 20 years of age. DW1 Kanwal Singh, a clerk employed in the Higher Secondary School, Shahabad proved a certificate issued by the Principal which showed that the date of birth of the accused was October 22, 1953. In his statement under Section 313 of the Code of Criminal Procedure the accused's age has been recorded as 20 years. As there is no rebuttal by the prosecution of this fact) the age given by the accused is to be taken as correct. He was less than 2l years at the time of the sentence was awarded. The accused is not a previous convict and has been on bail through out. This fact was conceded by the learned counsel for the State. Under these circumstances he is thereforee, entitled to the benefit of the

provisions of Section 360 of the Code of Criminal Procedure and is to be released on probation of good conduct. Instead of sentencing him at once to the punishment for an offence under S. 324, Indian Penal Code, which carries a maximum sentence of three years' rigorous imprisonment) I direct that he be released on his entering into a bond of Rs. 5000.00 with one surety in the like amount to appear and receive sentence when called upon during the next two years, and in the meantime to keep the peace and be of good behavior. Accordingly this appeal is partly accepted.

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