Raja Vs. State

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Court : Delhi

Decided On : Feb-03-1997

Reported in : 1997IIAD(Delhi)186; 1997CriLJ1863; 1997(2)Crimes175; 66(1997)DLT309; 1997(40)DRJ765

Judge : Mohd. Shamim, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 307

Appeal No. : Criminal Appeal No. 26 of 1995

Appellant : Raja

Respondent : State

Advocate for Pet/Ap. : Qaisar Kazim and; P.K. Behl, Advs

Judgement :

Mohd. Shamim, J.

(1) This appeal is directed against the judgment and order dated 14th December, 1993 passed by Mr. M.S. Rohilla, Additional Sessions Judge, Delhi where through the convict/appellant (hereinafter referred to as the appellant for the sake of convenience) was found guilty under section 307 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of ten years with a fine of Rs. 2,000.00 . In case of his failure to clear the fine he was further

sentences to undergo rigorous imprisonment for a year.

(2) Brief facts which led to the present appeal are as under : that Public Witness -7 Ram Bharose Along with Public Witness 9 Ram Vilas went to their hut (jhuggi) situated in Block No. 11 near a dirty drain in Tilak Nagar, New Delhi on 22nd July, 1989 at 4:30 P.M. to collect there from fruits in a rickshaw belonging to one Public Witness 8 Arun Paswan. Public Witness 8 Arun Paswan stopped his rickshaw at a distance of 15-16 paces away from the above said hut. where after injured Public Witness 7 Ram Bharose and Public Witness 8 Ram Vilas covered that distance on foot. The appellant at that time was lying on a cot opposite to the entrance of the hut of the complainant Ram Vilas whereby he virtually blocked the passage leading to the said hut, complainant Ram Bharose requested the appellant to remove his cot in order to enable him to take out the fruits from his hut. The appellant however, did not accede to the request of the complainant Ram Bharose and instead started abusing him. Whereupon Public Witness 7 Ram Bharose requested him not to do so. It led to a flaming row. The appellant took out a dagger and stabbed the injured Ram Bharose on the left side of his abdomen. The injured bled as a corollary whereof. Ram Vilas Public Witness 9 came to his rescue. He raised an alarm. He took the injured to the hospital in a three wheeler rickshaw. The appellant after having caused afore-mentioned injury fled from the spot Along with the dagger.

(3) The appellant was arrested by the police on 23rd July, 1989 in a case Fir 424/89 under section 27 of the Arms Act. The appellant made a disclosure statement in the said Fir that the dagger which was recovered from his possession was also used by him in causing injury to Public Witness 7 Ram Bharose.

(4) PW9 Ram Vilas informed the police with regard to the above said incident. The same was recorded vide Dd No. 14-A dated 22nd July, 1989. A copy whereof was handed over to Asi Shanti Prasad. He Along with Constable Jag Saran arrived at the place of occurrence. They came to know that the injured had already been removed to the hospital. Shri Shanti Prasad thereafter left for the Deen Dayal Upadhaya Hospital. He collected from there the Mlc of Ram Bharose, who was declared unfit to make a statement on July 22, 1989. However, he recorded the

statement of Sh. Ram Vilas complainant vide exhibit Public Witness 9/A. Io Shanti Prasad Public Witness 12 recorded the statements of the prosecution witnesses including that of Shri Ram Bharose WP7 when he was declared fit for making a statement on 24th July, 1989. After completion of the investigation a charge-sheet was submitted against the appellant.

(5) Learned lower court after the appraisal of the evidence oral as well as documentary, came to the conclusion that the prosecution had proved its case against the appellant beyond any shadow of doubt. Thus the appellant was convicted under section 307 of the Indian Penal Code He was sentenced to undergo rigorous imprisonment for ten years with a fine of Rs. 2,000.00 alluded to above.

(6) Aggrieved and dissatisfied with the said judgment and order the appellant has approached this court through the present appeal.

(7) Learned counsel for the appellant Mr. Quisar Kazim has vehemently contended before this Court that the learned lower Court fell into a grave error by coming to the conclusion that the appellant was guilty under Section 307 of the Indian Penal Code According to the learned counsel there is absolutely no evidence worth the name on record to record a finding of conviction against the appellant. There is absolutely no motive on the part of the appellant, according to the learned counsel to have stabbed the injury. In fact the appellant was not at all present at the spot to have caused the injury.

(8) The next limb of the argument advanced by the learned counsel for the appellant is that according to the case of the prosecution the injured was removed to the hospital in a three wheeler auto rickshaw. Curiously enough the said rickshaw driver was not examined by the prosecution. It casts a doubt with regard to the authenticity of the case of the prosecution. The prosecution has further miserably failed to obtain a report of the serologist with regard to the blood of the injured which must have spilled over his clothes. Thus there is nothing to connect the impugned dagger (Ex. P1) with the incident in question with which the injury was alleged to have been caused.

(9) Learned P.P. Mr. Pawan Behl has urged to the contrary.

(10) I have heard the learned counsel for the appellant and the learned P.P. Mr. Pawan Behl at sufficient length and have very carefully examined their rival contentions and have given my anxious thought thereto.

(11) It has been urged for and on behalf of the appellant that there is absolutely nothing on record to show and prove that the appellant was inimically disposed towards the injured which would have motivated the appellant to have caused the injury on the person of Shri Ram Bharose Public Witness 7. According to learned counsel this fact by itself is sufficient enough to cast a shadow of doubt on the authenticity of the case of the prosecution. I am sorry I am unable to agree with the contention of the learned counsel. It had now been held in a catena of authorities that in order to bring home the guilt to the accused it is not necessary in each and every case to prove the motive. More often times that not what motivates a man to cause a particular crime is only within his knowledge. It is a hard nut to crack to find out in each and every case as to what was the motive which led to the commission of a particular crime.

(12) Futhermore, admittedly ours is a codified law. Each and every section of the Indian Penal Code gives out the requisite ingredients of a particular offense with which the said sections deal. Thus the prosecutions is only required to show that a particular case falls within the domain of a particular section. If is succeeds in showing the same, in that eventuality it is not required to do anything further.

(13) I am supported in my above view by the observations of the Hon'ble Supreme Court as : 1976 CriLJ1895 , Molu & Ors. v. State of Haryana, 'It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes however, the motive is shrouded in the mystery and it is very difficult to locate the same. If however the evidence of eye-witnesses is credit worthy and is believed by the Court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant.'

(14) The next argument advanced by the learned counsel for the appellant is that admittedly the injured was removed to the hospital in a three-wheeler. The prosecution for the best reasons known to them had failed to examine the said rickshaw driver. This again is very much fatal to the case of the prosecution.

(15) The contention of the learned counsel is without any merit. The prosecution is under no obligation to examine each and every witness. It is well known principle of law that reliance can be based on the solitary statement of a witness is the Court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. The Courts are concerned with the merit of the statement of a particular witness. They are not concerned with the number of witnesses examined by the prosecution. What the Court had to see is the quality of the evidence of a witness and not the quantity of the evidence. The prosecution in the instant case has examined as many as three ocular witnesses i.e. Public Witness 7 injured Ram Bharose. Public Witness 8 Arun Paswan and Public Witness 9 Ram Vilas. There is absolutely nothing in their cross-examination to render their testimony unworthy of credence. Thus there is absolutely no reason whatsoever as to why they should not be believed, particularly when it was not put to any of the ocular witnesses that the appellant was not present at the spot at the time of occurrence.

(16) The other argument advanced by the learned counsel for the appellant is that the report of the serologist was not obtained in order to show and prove that in fact the appellant was stabbed with the dagger Ex. P1. The contention of the learned counsel is devoid of any force in the circumstances of the present case. Admittedly the appellant was arrested on the next day of the incident. No blood was found on the dagger. Thus it was not necessary to obtain a report of the serologist with regard to the blood of the injured as the same was not traced on the dagger in question. In any case, even in the absence of the said report there is sufficient evidence on record in the form of the statements of Public Witness 7 injured, Public Witness Arun Paswan and Public Witness 9 Ram Vilas to connect the appellant with the guilt. In the above circumstances, I do not find any force in the present appeal. It is liable to be dismissed.

(17) However, the learned counsel for the appellant has argued with great zeal and fervour that the injured in the instant case was admitted to the hospital on 22nd July, 1989. There is only one injury on the person of the injured. He was discharged from the Hospital on 24th July, 1989. The appellant has been in custody for the lost three years and two months. Thus the learned counsel contends that the interest of justice would be best served in case the term of the imprisonment is reduced to the one already undergone by the appellant. I agree.

(18) Keeping in view all the facts and circumstances of the present case, I think it in the interest of justice to reduce the term of imprisonment to the one already undergone by the appellant. Let the appellant be set at liberty in case he is not required to be detained in any other case.

(19) THE present appeal is disposed of accordingly.