

Mohd. Abid Vs. State

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Court : Delhi

Decided On : Sep-09-1992

Reported in : 1992(3)Crimes881; 1992(24)DRJ267

Judge : Usha Mehra, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 311; Indian Penal Code (IPC) - Sections 302

Appeal No. : Crl. M(M) 841/92

Appellant : Mohd. Abid

Respondent : State

Advocate for Def. : R.D. Jolly, Adv.

Advocate for Pet/Ap. : I.U. Khan, Adv

Judgement :

Usha Mehra, J.

1. Mohd. Abid, the petitioner has been charged for murder under Section 302-I-P-C. of Police Station Haus Qazi, Delhi vide F.I.R. No. 174/90. The prosecution case is based on the fact that one Mohd. Zakhir informed the police about the stabbing incident which is alleged to have taken place on 18th June, 1990 at about 11.55

P.M. on a road near Hamdard Dawakhana, Gali Mir Afzal, Hauz Qazi, Delhi. It is the case of the prosecution that the said knife blow was given by the petitioner to the deceased Shamimuddin. The complainant, Mohd. Zakhir removed the injured to L.N.J.P. Hospital where he died on the same night. After the framing of the charge, prosecution examined some witnesses in support of its case. The doctor who filled the M.L.C. has also been examined as P.W.16.

2. It is the case of the petitioner that on the said M.L.C. nowhere it is mentioned that the history was given by the injured, but the doctor when appeared in the witness box has volunteered an information that the M.L.C. was filled on the information given by the injured/patient. The said Dr. Harish Kapoor was questioned by the accused to the effect that whenever history is given by the injured, it is so mentioned in the M.L.C. But in this case it is not so done therefore, his oral testimony should not be taken on record. In order to prove his point that whenever the history is given by the injured or the deceased, it is so mentioned on the M.L.C. the petitioner wants to produce such a record in order to confront this witness, but the learned Addl. Sessions Judge has rejected this request.

3. It is against this order the present petition has been filed. This has been contested by the counsel for the State, Mr. R.D. Jolly on the ground that Dr. Harish Kapoor cannot be recalled for the purposes of confronting with the documents. The petitioner ought to have confronted him when he appeared in the witness box. I find no merit in this submission of Mr. Jolly. It is the case of Mr. I.U. Khan that he can prove it by confronting from other M.L.C's recorded by Dr. Harish Kapoor that whenever the history was given by the injured it was so recorded on the M.L.C. But when the history is not given by the injured himself then no mention of the same is made as in the present case. This according to petitioner will be a material factor for consideration. The petitioner who happened to be charged with an offence under Section 302-I.P.C. should not be deprived of his right to bring on record the contradiction if any. Mr. Khan contended that to bring home his point he put a question to this witness that whenever history is given by the patient is so mentioned in the M.L.C., but this fact has been denied by the doctor in answer to his question. In view of this question put and the answer given by the doctor it has

become necessary that an opportunity should be given to the petitioner to place on record all those M.L.C's issued by this very Dr. Harish Kapoor in which he has mentioned that the history has been given by the patient himself. These M.L.C's he wants to show to the witness in order to challenge his veracity and for the purposes of contradicting the testimony of the doctor. It is in the interest of Justice and fairplay that opportunity ought to be granted to the accused for confronting this doctor with his other M.L.C's issued by him in which such a factum is mentioned.

4. I find force in the submission of Mr. I.U. Khan. It would be in the interest of justice and fairplay that he should be allowed to recall Dr. Harish Kapoor P.W.16 and be shown only those M.L.C.'s filled in by him in which he had specifically mentioned that history of injury was recorded on the information given by the injured/ victim. Dr. will be called at the expense of the petitioner. With these observations, application stand disposed of.

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