

Shafiquddin and ors. Vs. State

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Court : Delhi

Decided On : Jul-05-2006

Reported in : 2006(90)DRJ766

Judge : Badar Durrez Ahmed, J.

Acts : Indian Penal Code (IPC) - Sections 34, 308, 323 and 452

Appeal No. : Crl. Rev. 199-200/2006Badar Durrez Ahmed, J.

1. This is a revision petition filed against the judgment and order passed by the learned Additional Sessions Judge on 15.2.2006. By virtue of the said judgment and order, the learned Additional Sessions Judge found the three accused persons, namely Shafiquddin (petitioner No. 1), Sarfaraz and Mohd. Suleman (petitioner No. 2) guilty of having committed offences under Section 323/34 IPC. By the order on sentence dated 16.2.2006 the convicts were given benefit of probation. They were directed to be released on probation on their entering into a bond in the sum of Rs 5000/- each with one surety each in the like amount to appear and receive the sentence when they are called upon during the period of one year from the date of entering into the bond and in the meantime they were to keep peace and be of good behavior. The present petition has been filed on behalf of the accused Shafiqudeen and Suleman.

2. The accused had been tried for the commission of offences under Sections 452, 308 and 34 IPC. The prosecution case in brief as set out in the impugned order is as under:

The facts in brief of the prosecution's case are that on 6.4.04 on receipt of DD No. 2A SI Ram Nivas alongwith Ct. Bijender reached at H. No. 1104 Ganj Meer Khan where they came to know that injured has been removed to JPN Hospital. They both reached at JPN hospital and collected the MLC of injured Mohd. Abid s/o Kallu (complainant) and recorded the statement of Kallu Mark A in which he has stated that on 13.7.04 he had gone to Kolkatta in a Jamat for 40 days and returned to Delhi on 23.8.04. During the said Jamat accused Shafiquddeen had a quarrel with him on some religious matter. Due to the said matter Shafiquddeen alongwith his brother and father had quarrelled with him on 5.9.04 in the night at about 11.30 p.m. and abused him. During the said period his son Abid came over there and asked as to why they all are quarreling with his father. On this Hazi Babu along with his three sons Sharafraj, Suleman and Shafiquddeen brought hockey and dandas from their house. On seeing them complainant and his son ran towards their house and said three persons also chased them. They entered into their house and Shafiquddeen gave blow with hockey on the person of Abid, Hazi Babu with danda and Sarafraz gave legs and fists blow on the person of his son and his son sustained injuries on his head and legs. On this statement Mark A, IO prepared the rukka on the basis of which the present case was registered. The investigation was done and accused persons were arrested in this case and after completing the investigations they were challaned to the court for trial.

3. The learned Counsel for the petitioners submitted that the testimony of PW2 (Kallu) who is the father of the injured Abid and also the testimony of PW5 (Mohd. Abid), the injured are contradictory to each other as also the prosecution case. He pointed out that the two glaring contradictions are (a) with regard to the question as to with whom the accused Shafiquddeen had a quarrel - the father (Kallu) or the son Abid? (b) the place of occurrence; whether it was inside the house of the complainant (Abid) or in the Gali opposite Shish Mahal Masjid? The learned Counsel for the petitioner pointed out that although the petitioners were charged, inter alia, under Section 452, the learned Additional Sessions Judge gave benefit of doubt to the accused with regard to the offence under this Section. This is so stated in paragraph 19 after the discussion recorded in paragraph 18 of the impugned judgment. It is clearly recorded in paragraph 18 of the impugned judgment with regard to testimony of PW5 (Abid) that:...but regarding place of

incident he has changed his stand from time to time. So I am of the opinion that prosecution has not been able to prove its case under Section 452/34 IPC against the accused persons.

Therefore, it was contended by the learned Counsel for the petitioner that the place of occurrence itself was indeterminate and it was so found by the learned Additional Sessions Judge. It was his further submission that since the place of occurrence could not be fixed, a major strand of the prosecution story was not established. He, then, pointed out that PW2 (Kallu) in his testimony has stated, as recorded in paragraph 10 of the impugned judgment, that he does not know with whom the quarrel took place and who had beaten him. It is further noted in the said paragraph 10 that Kallu deposed that no person at any time abused him or quarrelled with him. The learned Counsel for the petitioners then referred to the contents of paragraph 12 of the impugned judgment, where the testimony of Mohd. Abid PW5 is discussed. Here, it is recorded that PW5 is said to have stated that some hot exchange took place between Shafiquddeen and his father as they had quarrelled during Jamat (religious congregation). So according to the prosecution case there was a quarrel between Shafiquddeen and Kallu whereas according to the Kallu himself there was no quarrel between him and Shafiquddeen and no person at any time abused him. In fact, PW2 Kallu went to the extent to say that he did not know with whom the quarrel had taken place and who had injured Abid. The said witness was declared hostile.

4. The learned Counsel for the State made submissions in support of the judgment whereby the accused have been convicted on the grounds mentioned in the judgment and particularly with regard to the testimony of PW5.

5. Having considered the arguments advanced by the learned Counsel for the parties and examined the impugned order in detail, I am inclined to agree with the learned Counsel for the petitioners that the place of occurrence being in doubt as well as the persons with whom quarrel is said to have taken place also not having been clearly established, it cannot be said beyond any shadow of doubt that the accused petitioners were guilty of the offence for which they have been convicted. Accordingly, the impugned order is set aside insofar as it relates to the present

petitioners and the petitioners are acquitted.

6. This Revision Petition stands disposed of.

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