

Gurcharan Singh Vs. State

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Court : Delhi

Decided On : Dec-16-2010

Judge : Mukta Gupta, J.

Acts : Indian Penal Code,(IPC) - Section 392, 397,120B; Arms Act - Section 27;
Code of Criminal Procedure (CrPC) (Cr.P.C.) - Section 313

Appeal No. : Crl. Appeal No. 647/1999

Appellant : Gurcharan Singh

Respondent : State

Advocate for Def. : Mr. Manoj Ohri, Adv.

Advocate for Pet/Ap. : Mr. I.B.S. Thokchom; Mr. Vikas Dudeja, Advs.

Judgement :

1. On 19th April, 1996 Kulbeer Singh (PW4) had gone to Darya Ganj at about 6.00 P.M. to purchase medicines for his uncle who was admitted in G.B. Pant Hospital. Two persons i.e. the appellant and his deceased accomplice accosted him in the galli near "Dena Bank". One of these persons Crl. Appeal No. 647/1999 Page 1 of 12 put a knife on his stomach and told him not to shout, whose name he came to know later as Gurcharan Singh, and his accomplice Rama took out his purse from the pocket of his shirt. He threatened Kulbeer Singh that in case he shouts the consequences will not be good. Two police officers who were on the patrolling duty reached there and the Appellant along with his co-accused Rama were

caught on the spot. The knife was recovered from the right hand of the Appellant Gurcharan Singh.

2. On the basis of the statement of the complainant Kulbeer Singh, FIR No. 178/1996 under Section 392 IPC and another FIR bearing No. 179/1996 under Section 27 Arms Act, PS Darya Ganj were got registered. After completion of the investigation, a charge-sheet was filed against the Appellant and his co-accused for the offences punishable under Section 392 and 397 IPC. The co-accused Rama died during the trial and after adducing evidence and recording the statement of the Appellant under Section 313 Cr.P.C., the Appellant Gurcharan was convicted for offences punishable under Section 392 IPC read with Section 397 IPC and Section 27 Arms Act in the two FIRs. The Appellant was awarded a sentence of 7 years rigorous imprisonment and a fine of `1000/- and in default of payment of fine rigorous imprisonment for one month for offences punishable under Section 392 IPC read with Section 397 IPC and rigorous imprisonment for one month under Section 27 of the CrI. Appeal No. 647/1999 Page 2 of 12 Arms Act. This judgment of conviction and sentence is impugned in the present appeal.

3. Learned counsel for the Appellant contends that since the co-accused Rama expired, the witness has leveled entire allegation against the Appellant. On the said date when the incident took place, the Appellant was plying his TSR and was waiting for the customers when Rama, who used to run a tea stall and knew the Appellant, was called by the police. Thereafter the Appellant was also called and falsely implicated in the present case.

4. It is next contended that for one incident two FIRs cannot be registered and two separate charges cannot be framed. This act of registration of two FIRs is contrary to the law and thus, the second FIR needs to be quashed in view of the law laid down by the Hon'ble Supreme Court in Bhagat Singh vs. The State and another, AIR 1952 SC 45 and Sukhjinder Singh vs. State (N.C.T.) of Delhi, 2001 III AD (Cr.) SC 497.

5. Further, drawing the attention towards the discrepancy in the statement of the witnesses, it is contended that PW4 though in his examination-in-chief states that the Appellant had put a knife on his stomach however, in his cross- examination

states that the deceased co-accused Rama had put the knife on him i.e. there is a complete change in the roles attributed to the accused in the case and therefore, the Appellant is entitled to be acquitted of offence CrI. Appeal No. 647/1999 Page 3 of 12 punishable under Section 397 IPC. Though PW1 and PW2 state that they had witnessed the incident as they were Patrolling around and when they saw these two persons accosting PW4 Kulbeer Singh they ran after the accused persons and caught hold of them, there are material discrepancies in the statements of these witnesses. PW1 states that the finger prints and the photo of the Appellant were taken on the spot whereas PW2 and other witnesses say that the photographs of accused persons were taken in the police station. The testimony of the eye witness remains uncorroborated as no public witness has been associated despite the place of incident being a crowded area. It is alleged by the Prosecution that the Appellant was running with an open knife in a lane in Darya Ganj. This story of the prosecution sounds highly improbable as an area like Darya Ganj is always full of people and remains crowded. Reliance is placed on State vs. Hira Lal Tejlal, 1952 CrI Law Journal 825, Jagdeo Singh vs. State, 1979 CrI Law Journal 236 and Nanak Chand vs. State of Delhi, 1992 CrI Law Journal 55. To contend that the weapon of offence i.e. the knife is not a deadly weapon, reliance is placed on Paramjit and another vs. State of Haryana, JT 1996 (8) SC 440 and Balak Ram v. State, 1983 (5) DRJ 78.

6. Learned counsel for the Appellant contends that the prosecution has not produced the prescription slip which could prove the version of PW4 Kulbeer CrI. Appeal No. 647/1999 Page 4 of 12 that he had come to buy medicines for his ailing uncle. Further, the distance between Dena Bank, Dayanand Road and PS Darya Ganj is a few minute walk. The ruqqa was sent at 6.00 P.M. whereas the head-constable returned to the spot after getting the FIR registered only at 6.50 P.M. Though it is alleged to be a case of conspiracy but no question under Section 313 Cr.P.C. has been put to the Appellant as regards the conspiracy. Hence the Appellant cannot be convicted for conspiracy. Reliance is placed on Gulam Din Buch and ors. vs. State of J&K;, 1996 (9) SCC 239. Learned counsel for the appellant thus contends that the Appellant is entitled to acquittal as the prosecution has not been able to prove its case beyond reasonable doubt against the Appellant.

7. Per contra learned APP for the State contends that there is no discrepancy in the statement of PW4 Kulbeer Singh, the complainant as pointed out by the defence counsel. Name of the Appellant is mentioned in the Ruqqa Ex. PW4/A itself. PW4 Kulbeer Singh in his examination-in-chief recorded on 23rd December, 1998 has stated that the Appellant was the person who had put the knife on his stomach at the time of occurrence. He has deposed that the accused at the time of incident was "mona" and he did not have beard. In his cross-examination conducted on the same day he has denied the suggestion that the Appellant was not the person who had put the knife on his stomach. However, when this witness was further cross CrI. Appeal No. 647/1999 Page 5 of 12 examined after a year on 12th November, 1999 it was at this stage that PW 4 Kulbeer Singh stated that the other boy who was there with the Appellant had put the knife on his stomach. In his re-examination conducted by the learned APP thereafter on the same day it was admitted by him that he may have stated in the FIR the name of the Appellant as the person who took out the knife and put the same on his stomach and it is correct that he has forgotten the details due to passage of time. Reliance is placed on Khuji @ Surendra Tiwari vs. State of Madhya Pradesh, 1991 (3) SCC 627 and Radha Mohan Singh @ Lal Sahib and others vs. State of U.P, AIR 2006 SC 951. It is further stated that the testimony of Complainant PW4 is duly corroborated by PW1 Constable Govind Singh, PW2 Constable Ramesh Kumar, PW5 Head constable Gaje Singh and PW6 ASI Ram Chander. All these witnesses have deposed that while they were near Dena Bank they saw one person surrounded by two persons and being robbed at the point of knife. The police officers ran after them and overpowered the Appellant and co-accused Rama since died. It is stated that though PW1 has deposed that the finger prints and the photo of the accused had been taken on the spot, however, all the other witnesses have stated that the same were taken at the police station. This minor discrepancy in the testimony of PW1 is not a material discrepancy and cannot discredit the testimony of the witnesses. PW2 and PW5 have deposed CrI. Appeal No. 647/1999 Page 6 of 12 that the knife was a button operated knife. As per the recovery memo Ex. PW2/A and ruqqa it is mentioned that it was a button operated knife and the sketch Ex. PW2/B shows the length of the blade of the knife as 10 centimeter and thus, the contention of learned counsel for the Appellant that this kind of weapon is not a

deadly weapon is wholly unfounded. Though the Appellant has taken the defence that he was sitting with co-accused Rama and Rama who was illegally arrested by police, and so the Appellant was also arrested, however, no such suggestion has been given to any of the police witnesses and thus, there is no merit in this contention.

8. Learned APP for the State states that for the incident two FIRs have been registered, one for the offence punishable under Section 392/397 IPC and the other for the offence punishable under Section 27 Arms Act though the two distinct offences could be registered in one FIR however, the same i.e. recording of the separate FIRs does not vitiate the trial as the offence under Section 392/397 and 27 Arms Act are distinct offences and being a part of the transaction have been tried together. It is prayed that the appeal be dismissed being devoid of merit.

9. I have heard learned counsel for the parties and perused the record. On a perusal of the testimony of PW4 Kulbeer Singh, the complainant the role assigned to the Appellant is that while accompanied by the co-accused Rama, CrI. Appeal No. 647/1999 Page 7 of 12 he put knife on the stomach of the complainant, whereupon his co-accused removed the purse from the pocket of his shirt containing five currency notes of `50 each and his driving license. This witness duly identified his purse, currency notes and the driving license. In his cross-examination on the same date, i.e. on 23rd December, 1998 he has denied the suggestion that the Appellant was not the person who had put knife on his stomach. It is only after a year when he was recalled for further cross examination he stated that the co-accused Rama was the one who had put the knife on his stomach. Immediately thereafter on re-examination by the learned APP he has clarified that he may have stated in the FIR that the name of the person who carried the knife and put the same on his stomach whose name was later disclosed was Gurcharan Singh and it was correct that he had forgotten the details of the case due to passage of time. This change in the stand after a year of his examination and cross-examination stands clarified by him in his re- examination. This testimony of the PW4 Kulbeer Singh complainant itself is sufficient to convict the Appellant for the offences punishable under Section 392/397 IPC and Sec. 27 Arms Act. At this stage it would be appropriate to note the decision rendered by

the Hon'ble Supreme Court in Khujji (supra) where dealing with a similar situation the Hon'ble Supreme Court held: - "The examination-in-chief of this witness was recorded on November 16, 1976 when he identified all the assailants by CrI. Appeal No. 647/1999 Page 8 of 12 name. He stated that he knew the six accused persons in court and they were the persons who had surrounded the rickshaw and launched an assault on PW 4 and the deceased Gulab. Of them Gopal struck PW 4 with a chain. He also stated that the appellant Khujji and his companions Gudda and Parsu were armed with knives and when Khujji tried to assault PW 4 with a knife, Gopal shouted "Khujji that man is not Gulab". Thereupon Khujji and his companions ran after the Gulab, overtook him and the appellant, Parsu and Gudda assaulted Gulab with their weapons. Gudda struck Gulab from the front on his chest, Parsu stabbed him on the side of the stomach while Ram Kishan and Gopal held him and the appellant attacked him from behind with a knife whereupon Gulab staggered shouting 'save-save' and fell in front of the house of Advocate Chintaman Sahu. Thereafter all the six persons ran away. His cross examination commenced on 15th December, 1978. In his cross-examination he stated that the appellant Khujji and Gudda had their backs towards him and hence he could not see their faces while he could identify the remaining four persons. He stated that he had inferred that the other two persons were the appellant and Gudda. On the basis of this statement Mr. Lalit submitted that the evidence regarding the identity of the appellant is rendered highly doubtful and it would be hazardous to convict the appellant solely on the basis of identification by such a wavering witness. The High Court came to the conclusion and, in our opinion rightly, that during the one month period that elapsed since the recording of his examination-in-chief something transpired which made him shift his evidence on the question of identity to help the appellant. We are satisfied on a reading of his entire evidence that his statement in cross-examination on the question of identity of the appellant and his companion is a clear attempt to wriggle out of what he had stated earlier in his examination- in-chief. Since the incident occurred at a public place, it is reasonable to infer that the street lights illuminated the place sufficiently to enable this witness to identify the assailants. We have, therefore, no hesitation in concluding that he had ample opportunity to identify the assailants of Gulab, his presence at the scene of occurrence is not unnatural nor is his statement that he

had come to purchase vegetables unacceptable. We do CrI. Appeal No. 647/1999 Page 9 of 12 not find any material contradictions in his evidence to doubt his testimony. He is a totally independent witness who had no cause to give false evidence against the appellant and his companions. We are, therefore, not impressed by the reasons which weighed that the trial court for rejecting his evidence. We agree with the High Court that his evidence is acceptable regarding the time, place and manner of the incident as well as the identity of the assailants."

Moreover in the present case, the testimony of PW4 is corroborated by that of PW1, PW2, PW5 and PW6 who apprehended the Appellant on the spot with a knife along with the co-accused.

10. I also do not find any force in the contention of the learned counsel for the Appellant that this knife cannot be termed as a deadly weapon. In the present case as per the testimony of the witnesses the knife is a button operated knife and has a blade of 10 cms length. In *Paramjit* (supra) the Hon'ble Supreme Court held that a knife with a blade measuring 13 1/2" is a formidable weapon.

11. The contention that the distance between Dena Bank, Dayanand Road and the police station is a few minutes distance and it should not have taken PW2 Constable Ramesh 50 minutes in taking the Ruqqa and getting the FIR registered is also misconceived. Though the walking time may have been a few minutes, however, PW2 took the ruqqa to the police station, the same was recorded in the First Information register and it is thereafter that a copy of the CrI. Appeal No. 647/1999 Page 10 of 12 same was sent which reached at about 6.50 p.m. Therefore, time gap of 50 minutes is not such which can be said to be unreasonable for all these actions. Even though PW1 has deposed that the finger prints and the photo of the Appellant were taken at the spot however, in view of the testimony of all other witnesses that the finger prints and photo of the Appellant were taken in the police station I am of the opinion that this being a minor discrepancy does not hit at the root of the matter and does not discredit the otherwise reliable testimony of the witnesses. The contention that the question of conspiracy has not been put to the Appellant in his cross examination under Section 313 Cr. P.C. is also wholly untenable as the Appellant was neither

charged nor convicted for offence punishable under Section 120B IPC. It is the settled law that the mere non-joining of public witnesses does not discredit the testimony of the complainant and the police witnesses. Thus I find no infirmity in the order of conviction.

12. In the order on sentence, the Appellant has been awarded a sentence of Rigorous Imprisonment for seven years under Section 392 read with Section 397 IPC. As the minimum sentence prescribed for an offence punishable under Sec. 397 IPC is rigorous imprisonment for 7 years which has been awarded to the Appellant, the same cannot be reduced. However, the Appellant has been awarded a sentence of rigorous imprisonment for one Crl. Appeal No. 647/1999 Page 11 of 12 month under Section 27 of the Arms Act which is less than the minimum sentence of imprisonment for three years prescribed under the Act. The learned Trial Court erred in awarding the sentence for a period of less than three years to the Appellant under Section 27 of the Arms Act. The State has filed no appeal for enhancement of the sentence under Section 27 of the Arms Act. After 14 1/2 years of the incident and 11 years of the impugned judgment, it will not be in the interest of justice for this Court to issue a notice of enhancement of the sentence for offence punishable under Sec. 27 Arms Act.

13. The appeal is dismissed. The bail bond and the surety bond are cancelled. The Appellant be taken into custody to serve the remaining sentence.

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