

Satish Kumar Vs. State (Nct of Delhi)

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Court : Delhi

Decided On : Apr-29-2013

Judge : Mukta Gupta

Appellant : Satish Kumar

Respondent : State (Nct of Delhi)

Advocate for Def. : Mr. Manoj Ohri

Advocate for Pet/Ap. : Ms. Shikha Pandey

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % CRL.A. 3/2003 Decided on: SATISH KUMAR Through:

29. h April, 2013 Appellant Ms. Shikha Pandey, Advocate with Appellant in person. versus STATE (NCT OF DELHI) Through: Respondent Mr. Manoj Ohri, APP for the State with SI Karamvir Singh, PS Malviya Nagar. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J (ORAL) 1. By the present appeal the Appellant lays a challenge to the judgment dated 19th December, 2002 whereby he was convicted for offence under Section 307 IPC and the order on sentence dated 21st December, 2002 whereby he has been directed to undergo Rigorous Imprisonment for a period of 3 years and a fine of Rs. 500/- and in default of payment of fine to further undergo Simple Imprisonment for 15 days.

2. Learned counsel for the Appellant contends that the injured witness has turned hostile. The Appellant has been convicted on the basis of the testimony of PW1, the alleged eye witness, a relative of the injured PW4 and an interested witness. No reliance can be placed on the testimony of PW1. The prosecution has failed to establish the motive and thus the ingredients of Section 307 IPC are not made out. Even as per the testimony of PW1 he came out on hearing the noise of the quarrel and did not know how the quarrel took place. CrI. Appeal No. 3 of 2003 Thus he was not aware of the motive. contradiction in the testimony of PW1 and the Investigating Officer, as PW1 states that police removed the injured to the hospital whereas the Investigating Officer states that when he went to the spot, the injured had already been removed to AIIMS. There is contradiction as regards the arrest of the Appellant because PW1 states that he was arrested from the spot whereas the Investigating Officer states that he was arrested later on. The case of the prosecution is that the knife was recovered at the instance of the Appellant. If the Appellant was at the spot itself, no recovery could have been made at his instance. Further the alleged weapon used was only a kitchen knife. It has not been identified by PW1. The exhibits were sent to the FSL after two months. The injury was opined to be simple in nature. Even as per the case of the prosecution, the injury was inflicted on the spur of the moment, hence the same was not a pre-mediated. Reliance is placed on Govindaraju @ Govinda vs. State by Sriramapuram P.S. and another, 2012 (4) SCC 722.Praveen Kumar vs. State, 17 (1980) DLT 297.State vs. Nanhe Babu, 2012 (3) JCC 2101.Sumit Kumar vs. State, 2012 (3) JCC 1827.Manoj Kumar and another vs. State, 2012 (1) JCC 1 and Manoj Kumar vs. The State, 114 (2004) DLT 511.The co-convict who was convicted for offence under Section 323 IPC has already been released on probation. In the alternative the Appellant be released on the period already undergone.

3. Learned APP for the State on the other hand contends that the version of PW1, the eye witness is corroborated by the MLC Ex. PW7/A which shows that the injured was taken to the hospital by the police. Further the injury on PW4 has been described by PW1. Even if PW4, the injured has turned hostile there is sufficient corroboration to the testimony of PW1 as the FSL opines that the blood on the knife, the shirt and banyan of the injured was of human origin of B Group. PW10 is

a natural witness. Further the doctor has opined vide Ex. PW5/B that the injury is possible with the knife recovered. Reliance is placed on Ratan Singh vs. State of Madhya Pradesh, AIR 201.SC 597. Hence no case for acquittal is made out. The appeal be dismissed.

4. I have heard learned counsel for the parties.

5. Briefly the case of the prosecution as per the statement of PW1 is that on 30th October, 1999 at about 8.00 p.m. he heard the noise of quarrel between Satish and Ramesh. When PW1 came outside he saw Satish and Ramesh quarrelling and both were beating each other and Gajju had also joined the quarrel and gave beatings to Ramesh by fist blows. In the meantime, some persons came. After quarrel Satish brought a knife used for cutting vegetables from his house and hit Ramesh from back side. Ramesh received injury and someone called the police by dialing 100 number. The police removed the injured to the hospital. Thereafter the Appellant was arrested from the spot in his presence and after about 3-4 days of incident the co-convict Gajju was also arrested. This witness in his cross-examination stated that both Ramesh and Satish were drunk. He denied that he had not seen Ramesh stabbing or that he was deposing falsely. However, he stated that the knife was not shown to him by the police thus he did not identify the knife.

6. PW4 Ramesh, the injured has supported the prosecution case only to the extent that PW4 and Satish had drinks together and thereafter they quarreled in which the co-accused Gajju joined. He further stated that he fell down on the road and when he stood up and walked two-three steps he saw blood was oozing out. Thus part testimony of PW4, the injured also corroborates the testimony of PW1. The testimony of PW1 is further corroborated by the MLC Ex. PW7/A which shows one clean incised wound on the right side chest wall near infra axillary lines. The injury was opined to be simple sharp in nature. Further the FSL report shows that the blood on the knife and the shirt and banyan of the injured was of B Group of human origin and the shirt and banyan had cuttings. The doctor opined that the injury was possible by the knife recovered at the instance of the Appellant.

7. Learned counsel for the Appellant has sought to raise discrepancy regarding the place of arrest however, the same is clarified by PW8 S.I. K.P. Singh who stated that when he reached the spot he came to know that the injured had been removed to AIIMS. On reaching AIIMS he found the injured admitted and with the permission of the doctor he recorded his statement Ex. PW4/A. On the basis of the said statement a Ruqqa was sent and FIR was registered. The Investigating Officer collected the clothes of the injured and went to the spot. At the spot, he met PW1 and on his pointing out the site plan was prepared. The Appellant Satish Kumar was arrested on the pointing out of the witness Vijay who was roaming near the spot. The Appellant was interrogated and in his disclosure statement he revealed that he could recover the knife from bed which was lying in his jhuggi. Pursuant to the disclosure, the weapon of offence knife was recovered from beneath the bed and a sketch was prepared Ex. PW8/E. Thus the statement of PW1 that the Appellant was arrested from the spot has been duly clarified by PW8 SI K.P. Singh. From the evidence on record the prosecution has proved beyond reasonable doubt the act of Appellant causing injury to PW4 by a knife.

8. The issue now arises is whether an offence under Section 307 IPC is made out or not. The essential ingredient of Section 307 IPC is the mensrea. Mensrea can be inferred from the kind of weapon used, the place of injury, motive etc. To bring home a charge under Section 307 IPC the onus lies on the prosecution to prove that the accused caused an act with the intention or knowledge and under such circumstances that if by that act death was caused he would be guilty of murder. In the present case on a quarrel ensuing, the Appellant caused a knife blow on the injured by a kitchen knife. The injury was caused on the back side and only one blow was given. In view of the weapon of offence and injury not being on the vital part it cannot be said that the Appellant had intention to cause murder of the injured. Further the Appellant certainly had intention to cause injury which was opined to be simple sharp in nature. Thus the Appellant is convicted for offence punishable under Section 324 IPC instead of Section 307 IPC and the conviction under Section 307 IPC is set aside.

9. As regards the quantum of sentence, the Appellant has remained in custody nearly for a period of four months. He was in a drunken condition and did not run

away from the spot. He is neither a previous convict nor involved in any other case. In view of these facts, I deem it fit to modify the order on sentence to the period already undergone. Bail bond and the surety bond are discharged. Appeal is disposed of accordingly. (MUKTA GUPTA) JUDGE APRIL 29 2013/vn

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