

Naveen @ Cheenu Vs. State

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Court : Delhi

Decided On : May-16-2013

Judge : Mukta Gupta

Appellant : Naveen @ Cheenu

Respondent : State

Advocate for Def. : Mr. Mukesh Gupta

Advocate for Pet/Ap. : Mr. Sandeep Tyagi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A.1452/2012 & Crl.M.B. 2242/2012 Reserved on:

11. h March, 2013 Decided on:

16. h May, 2013 % Naveen @ Cheenu Appellant Through: Mr. Sandeep Tyagi, Adv. versus State Through: Respondent Mr. Mukesh Gupta, APP for the State with SI Vidya Pathak, PS Anand Parbat. Coram: HON'BLE MS. JUSTICE MUKTA GUPTA 1 By the present appeal, the Appellant challenges the judgment dated 3rd April, 2012 whereby the Appellant was convicted for offence punishable under Sections 325/324/34 IPC and the order on sentence dated 18th October, 2012 whereby the Appellant was sentenced to undergo Rigorous Imprisonment for a period of 3 years and a fine of Rs.10,000/- and in default of payment of fine, to undergo Simple Imprisonment for a period of 3 months.

2. Learned counsel for the Appellant contends that on the same set of evidence, one accused has been acquitted and three others were released on probation. Despite the fact that MLC does not state that injured Gopal was unfit for statement, the FIR was deliberately registered on the statement of his brother PW3 Amar Singh. The doctor, who prepared the MLC, was not brought in the witness box. There are material contradictions in the statement of PW3 Amar Singh and PW13 Gopal. Further PW3 did not identify the Appellant in the Court and on identification stated that Appellant was Vikas. The statement of PW13 Gopal is full of improvements and he has been duly confronted with the same. The alleged motive is that the Appellant threatened the complainant to leave the business of Cable or face consequences. However, no complaint was made in this regard. Thus, the motive has not been proved. Further on the day of the alleged incident, it was stated that someone informed the Appellant that cable was being cut. However, it is not stated that who informed that cable was being cut. Though Gopal stated that he showed the cut pieces of the cable to PW14 the Investigating Officer, however, the Investigating Officer stated that Gopal did not show the disconnected cables and he did not seize the same. No enquiry was conducted by the Investigating officer on the point that the injured Gopal was Bad Character (BC) of the area. The Appellant took the plea of alibi and produced defence witnesses. However, they have not been considered. No recovery of the alleged rod has been made from the Appellant. No public witness has been associated in support of the allegation though the area was a thickly populated area. The Appellant was neither having a license nor running the business of cable and thus had no motive to injure PW13. Hence the Appellant be acquitted of the charge framed. In the alternative, he be released on the period already undergone which is more than 2 years.

3. Learned APP for the State relies on the statement of PW13 the injured Gopal wherein he stated that he was hit by the Appellant by rod on the head. As per the MLC, there are lacerated wounds on the head thus his testimony is fully corroborated. Minor contradictions in the testimonies of PW3 and PW13 do not go to the root of the matter and are bound to occur. An application was moved before the doctor wherein vide Ex.PW14/B it was opined that PW13 was unfit for statement and thus FIR was registered on the statement of his brother PW3, who

was also an injured witness. PW16 has duly proved and exhibited the MLC as he identified the handwriting of Dr. Shanti, who had prepared the MLC and left the Hospital. From the evidence on record, it is evident that PW13 suffered a nasal bone fracture and in view thereof the conviction under Section 325 IPC was clearly made out. The Appellant has already been convicted in two cases for offences under Section 324 and 323 IPC besides being involved in the number of cases. Further after the judgment of conviction was pronounced on 3rd April, 2012, the Appellant absconded and in proceedings under Section 174A IPC, he admitted his guilt. The Trial Court found no justification in releasing him on probation under bond of good behaviour. In view of the evidence on record, the judgment of conviction and order on sentence are justified and do not call for interference.

4. I have heard learned counsel for the parties.

5. PW13 Gopal in his testimony before the Court has stated that he was running a business of cable connection network in the area of Nehru Nagar, Anand Parbat. Accused Vicky was also having same business and thus there was a dispute between the two with regard to the cable connection. On 17th January, 2007, he was informed that cable connections are being disconnected near Shulab Shochalay at New Rohtak Road, Harijan Basti. So he rushed to the place after informing his brother Amar Singh. When he reached Harijan Basti, he found Raju Hakla, Papra, Naveen, Ram Singh and Vikas @ Vicky present there. This witness has identified the Appellant and other co-accused in Court. All the 5 accused were cutting his cable. When he objected to it, Raju Hakla and Ram Singh took out knife and stabbed him on his thighs whereas the Appellant and Papra hit him with iron rod on his head and other parts of the body. Accused Vicky, who was having a plas in his hand, hit the plas on his head and face. Meanwhile his brother reached at the spot and tried to save him when the accused persons also stabbed his brother and gave him beatings. Due to the cries and noise, the crowd collected and the accused persons ran away. PW13 became unconscious and regained consciousness only in the hospital where after his statement was recorded and blood stained clothes were seized.

6. PW3 the brother of PW13 in his statement before the Court has stated that on 17th January, 2007 at about 6.00 pm when he was getting puncture of tyre of his car repaired, his brother came on the motor cycle and informed that some persons were cutting the wire of his cable. He also followed his brother where he went. He saw Raju @ Hakla, Ram Singh, Chinu, Papra and Vicky cutting the wires near public toilet in Anand Parbat Industrial Area. In the Court PW3 pointed out towards the Appellant as Vikas and Vicky @ Vikas as the Appellant. However, he immediately thereafter corrected the same and pointed out towards the Appellant as Naveen @ Chinu and stated that he had wrongly pointed out towards Vikas as Chinu. Hakla @ Raju and Ram Singh were having knives in their hands and gave knife blows in both thighs of his brother Gopal. Vicky gave a plas blow on the head of Gopal. Papra and Chinu gave rod blows on the legs of Gopal. In the meantime, he reached there. Raju @ Hakla gave a blow with punch in his head near his right eye and left side of his chin. His brother was lying on the ground. All the accused ran away when he raised an alarm due to which public persons collected. They called the police and police took him and his brother to DDU Hospital. His statement was recorded vide Ex.PW3/A and in his presence the police lifted blood stained earth control and seized the same. He also handed over the blood stained pant, shirt and Baniyan of his brother to the police in hospital.

7. Learned counsel for the Appellant has stated that there are discrepancies in the testimony of PW3 and PW13. As per PW13 Gopal the injured, the Appellant gave rod blow on his head whereas PW3 has stated that Appellant gave rod blows on the legs of Gopal. A perusal of testimony of PW3 shows that he reached the spot immediately after his brother when fight was already going on. He has described the role of each of the accused as he saw in his presence. This witness also received blow with punch in his head near his right eye and left side of his chin after he reached at the spot. Thus, the discrepancies in the statement of this witness ascribing specific role of the Appellant and the co-accused will not be fatal to the version of the injured Gopal PW13. PW13 in his testimony has clearly ascribed the role of each accused person and then stated that in the meanwhile his brother also reached there and when he tried to save him, the accused persons stabbed him and gave him beatings. It is thus evident from the testimony of both these witnesses that PW3 did not witness the entire incident as he was

following his brother.

8. Learned counsel for the Appellant further contended that there are lot of improvements in the testimony of PW13. A perusal of the cross- examination of PW13 shows that he has not been confronted with any of the alleged improvements except that he stated before the Court that he showed the disconnected cables to the police which was not recorded in his statement under Section 161 Cr.P.C. In his cross-examination PW13 had clarified that his brother Amar Singh reached the spot after about 10 minutes of the incident when the accused were still present and accused Raju took out the knife after confrontation of 2-3 minutes. All that is put to this witness is that two criminal cases were pending against him. However, he clarified that he was not the bad character of the area. This witness has denied that he was not unconscious and stated that he regained the consciousness on 18th January, 2007. The testimony of this witness is duly corroborated by his MLC Ex.PW11/A which shows that he received lacerated wound in the occipital region and parietal region of skull and on the cheek, clean incised wound on the middle thigh and anterior and posterior aspect of middle thigh. PW16 Dr. Rohit Goyal has identified the handwriting of Dr. Shanti, who had opined fracture on the right nasal bone thus proving that the injury was grievous in nature. As regards the patient being unfit for statement, an application was moved by the Investigating Officer in the Hospital, however on 17th January, 2007 at 7.30 PM it was opined that patient was not fit for statement. It is for this reason that FIR was rightly registered on the statement of Amar Singh PW3.

9. As regards the contention of learned counsel for the Appellant that the defence version was not taken into consideration, it may be noted that DW1 Satpal had appeared in the witness box and stated that on 17 th January, 2007 the Appellant was with him as they had gone to his daughters house at Palam by train at about 2.35 PM and returned back on 18 th January, 2007 in the morning. This witness has not placed on record anything either in the form of tickets of the train by which they travelled or any other material evidence to show that Appellant Naveen was with him at about 2.30 PM on 17th January, 2007 till 18th January, 2007 in the morning. Thus, no credence can be given to the testimony of this witness.

10. Learned counsel for the Appellant has laid stress on the fact that the weapon of offence has not been recovered. In *Gurjant Singh v. State of Punjab*, JT 200.(8) SC238 their Lordships laid down that it is well settled that from the mere non-recovery of the weapon alone, the case against the accused concerned cannot be held to be not substantiated when there is otherwise positive, convincing and credible ocular evidence to prove the presence of the said accused and his participation in the case. In the present case, the evidence of the two injured witnesses is cogent and credible on which conviction can safely be based. Learned counsel states that no public witness has been associated. No recovery was made pursuant to disclosure of the Appellant, hence there was no occasion to associate public witnesses. Further the Investigating Officer found no public eye-witness and thus there was no public witness cited as an eye-witness.

11. In view of the testimony of the injured witness PW13 Gopal fully corroborated by his MLC, I find no error committed by the learned Trial Court in convicting the Appellant as above. As regards the quantum of sentence, the injured has suffered grievous injury. The Appellant has already been convicted in two other cases and after pronouncement of judgment of conviction, he absconded. The plea of the Appellant for not coming to the Court after conviction was that his mother was unwell. However, all the documents placed on record relate to the period after he was declared proclaimed offender. Thus, in view of the aforesaid facts, I do not find any infirmity in the order of sentence declining probation to the Appellant and awarding him Rigorous Imprisonment of 3 years and a fine of Rs.10,000/- and in default of payment of fine, to undergo Simple Imprisonment for a period of 3 months. The appeal and application are consequently dismissed. (MUKTA GUPTA) JUDGE MAY 16.2013 VKM

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