

Manglu Vs. State

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Court : Delhi

Decided On : Mar-05-2013

Judge : S. P. Garg

Appellant : Manglu

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : February 18, 2013 DECIDED ON : March 05, 2013 + CRL.A.301/2000 MANGLU Through : Appellant Mr.Javed Hashmi, Advocate. versus STATE Through : + Respondent Ms.Fizani Husain, APP. CRL.A.293/2000 TARA CHAND Through : Appellant Mr.M.L.Yadav & Mr.Lokesh Chander, Advocates. versus STATE Through : Respondent Ms.Fizani Husain, APP. AND + CRL.A.321/2000 RAJESH SHUKLA Through : Appellant Mr.S.D.S.Rathi, Advocate. versus STATE Through : Crl.A.Nos.301-00, 293-00 & 321-00 Respondent Ms.Fizani Husain, APP. Page 1 of 12 CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Manglu (A-1), Tara Chand (A-2) and Rajesh Shukla (A-3) impugn their conviction and sentence in Sessions Case No.139/1997 arising out of FIR No.569/1994 registered at Police Station Shakarpur by which they were held guilty for committing offences punishable under Sections 394/34 IPC read with Section 397 IPC and sentenced to undergo Rigorous Imprisonment for seven years with fine `1,000/-.

2. Allegations against the appellants were that on 30.11.1994 at about 07:30 P.M. at School Block, near Tyagi Hotel, they in furtherance of common intention committed robbery on the person of complainant Raj Kumar at the point of knife and deprived him of `10,000/-. It was also alleged that while committing robbery, they caused injuries with deadly weapon i.e. knife and iron punch to Raj Kumar. During the course of investigation, statement of the victim was recorded. At first instance he was admitted in Walia Nursing Home and shifted to JPN hospital later on. Statements of the witnesses conversant with the facts were recorded. The accused were arrested and their disclosure statements were recorded. On completion of investigation, charge-sheet was submitted against the accused. They were duly charged and brought to book. The prosecution examined 15 witnesses to prove the charges. In their 313 Cr.P.C. statements, the accused pleaded false implication. DW-1 (Constable Om Parkash), DW-2 (Sunil Kumar) and DW-3 (HC Sri Niwas) stepped in defence. On appreciating the evidence and considering the contentions of the parties, by the impugned judgment, the appellants were convicted and sentenced. Being aggrieved, they have preferred the appeals.

3. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective and erred to base conviction on the sole testimony of complainant-Raj Kumar. PW13 (Yogeshwar Tyagi) an alleged eye witness did not corroborate the complainants version. PW-1 (Kirpi Dev), victims mother, did not support the prosecution and turned hostile. No weapon was recovered from the accuseds possession. Robbed cash was not found in possession of any accused. Counsel further emphasized that the prosecution did not adduce cogent evidence to prove if any deadly weapon was used in the commission of offence. Conviction under Section 397 IPC cannot be sustained. Learned Additional Public Prosecutor urged that the complainant (Raj Kumar), an injured witness, has no ulterior motive to falsely implicate the accused. Non-recovery of crime weapon is not fatal.

4. I have considered the submissions of the parties and have examined the Trial Court record. Daily Diary (DD) No.17A (Ex.PW14/A) was recorded at Police Station Shakarpur at 08.30 P.M. on getting information from PCR that a boy has

been stabbed and the assailant had been apprehended. The investigation was assigned to ASI Yoginder Singh who with Constable Rajinder went to the spot. DD No. 19A (Ex.PW-14/B) was recorded on 30.11.1994 at 09.30 p.m. on getting information from JPN hospital that Raj Kumar was admitted in injured condition by his brother Rohtash Kumar. PW-14 (SI Yoginder Singh) reached Walia Nursing Home and came to know that the injured has been shifted to JPN hospital. He went to JPN hospital, collected the MLC of injured Raj Kumar and recorded his statement (Ex.PW-3/A). In his statement Raj Kumar gave detailed account of the incident and named the accused persons for causing injuries to him while committing robbery. He attributed specific role to the each accused. The Investigating Officer made endorsement (Ex.PW14/C) and lodged First Information Report. The occurrence took place at 07.30 P.M. and the rukka was sent without any delay at 11.15 P.M. CrI.A.Nos.301-00, 293-00 & 321-00 Since First Information Report was lodged Page 4 of 12 promptly without any delay, there was least possibility of manipulating a false story. While appearing as PW-3/Complainant-Raj Kumar proved the version given by him to the police at the first instance without any variation. He deposed that on 30.11.1994 at about 07.00 or 07.30 P.M. he went to his house to take `10,000/- from her mother. When he was coming to the shop with money, the accused met him. They stopped their motor-cycle and started taking his search. When he opposed, A-1 took out a knife and stabbed him in chest, abdomen and leg. A-3 caught hold him when A-1 gave knife blows. A-2 hit him with punch blows on his face and head. A-2 and A-3 took out `10,000/- from his pocket. The assailants fled the spot. His brother Rohtash reached there and took him to Walia Nursing Home where his statement was recorded. In the crossexamination, he elaborated that he was taken to JPN hospital at about 09.00 or 09.30 P.M. He was discharged the next date at about 3.00 or 04.00 P.M. The accused were known to him prior to the occurrence for about one and a half years. He denied the suggestion that due to enmity with the accused they were falsely implicated in this case.

5. On analyzing the testimony of the injured witness it reveals that no material discrepancies have emerged in his cross-examination to disbelieve him. He has stood the test of cross-examination. The accused did not deny injuries suffered by PW-3 (Raj Kumar) on his person. No suggestion was put to them in the cross-

examination that none of them was present at the spot. No ulterior motive was assigned to the victim for falsely implicating them. PW-3 assigned specific role to the each accused. One of them was apprehended soon after the occurrence.

6. Statement of the victim is in consonance with the medical evidence. MLC (Ex.PW-9/A) was prepared at JPN hospital where Raj Kumar was admitted at 08.40 P.M. on 30.11.2004. The MLC records the alleged history whereby the informant (Raj Kumar) was stabbed by Manglu, Tara Chand and Rajesh Shukla at School Block and they took away currency notes worth `10,000/-. Stab injuries on the chest, abdomen and right leg were noticed on the body of the victim. There were bruises on the forehead. Nature of injuries was simple. There was no conflict between the ocular and medical evidence. The testimony of a stamped witness has its own relevance and efficacy. The fact that the witness had sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. The testimony of the injured witness is accorded a special status in law. This is a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of crime and because the witness will not want to let the actual assailant to go unpunished merely to falsely involve a third party for the commission of the offence. In the case of State of Uttar Pradesh vs.Naresh and Ors. (2011) 4 SCC 324.the Supreme Court held:The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

7. In the case of Abdul Sayed Vs.State of Madhya Pradesh (2010) 10 SCC 25.the Supreme Court held:The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness".

8. PW-2 (Rohtash Kumar) corroborated complainants version to the extent that on 30.11.1994 at about 06.55 P.M., he had asked him to fetch `10,000/- from his mother as there was no other employee in the shop at the time. He further deposed that after 15-20 minutes Yogeshwar Tyagi informed him that his brother Raj Kumar was stabbed and admitted at Walia Nursing Home. He took his brother Raj Kumar to JPN hospital. On the way, Raj Kumar told him that he was stabbed by Manglu, Tara Chand and Shukla and they snatched `10,000/- from him. PW-1 (Kirpi Devi) also deposed that she had handed over `10,000/- at about 7.00 P.M. to her son Raj Kumar. PW-13 (Yogeshwar Tyagi) did not support the prosecution on material facts. However, he deposed that when he and Raj Kumar reached at School Block on 30.11.1994 at about 08.30 P.M. on his motor-cycle bearing not DLK-3776, Manglu, Tara Chand and Shukla to whom he knew earlier met them and they had conversation with Raj Kumar. The testimony of a hostile witness can be relied to the extent its supports the prosecution case.

9. In the case of Bhajju @ Karan Singh v.State of M.P. 2012 CrI.L.J.1926 it was held:Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the Appellant/accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 of the Code of Criminal Procedure., the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence

to crossexamine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness in so far as it supports the case of the prosecution. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The Courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled cannon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution.

10. PW-15 (B.D.Singh) proved the MLC (Ex.PW15/A) in which stabbed injuries were noticed on the body of the complainant. In his opinion, the injuries were simple.

11. Non recovery of crime weapon or the case property is not fatal. Efforts were made to search the weapon of offence but it could not be traced. The accused did not give plausible explanation to the incriminating circumstances proved against them. They did not reveal as to where else they were present at the time of occurrence. Minor contradictions and discrepancies highlighted by the counsel are not fatal to the prosecution case as they do not go to the root of the case and affect the core issue that the appellants stabbed and robbed `10,000/-. The victim was stabbed only by A-1. A-3 did not have any weapon. The only role ascribed to him is that he caught hold the victim when A-1 stabbed him. A-2 was having an iron punch. No such punch was recovered. In the absence of any plausible

evidence it cannot be inferred that iron punch used in the incident was a deadly weapon. Its dimensions have not been revealed. No injury caused with punch was noticed on the body of the victim. Knife used by A-1 was not recovered. Again the court is not aware about its size, dimensions etc. PW-15 (Dr.B.D.Singh) did not give specific opinion that the injuries found on the victims body were caused by knife. The injuries were simple in nature. The victim was discharged the next day. Conviction of the appellants under Section 397 IPC, thus, cannot be sustained. The prosecution failed to prove beyond reasonable doubt that the weapon used to cause injuries to the victim was deadly weapon within the meaning of Section 397 IPC.

12. In the light of the above discussion the conviction of the appellants only under Section 394/34 IPC is maintained. The appellants were sentenced to undergo RI for seven years. They have suffered trial for about 18 years. They remained in custody for more than three and a half years. Their substantive sentence was suspended during the pendency of the appeal and there is nothing on record to show that they indulged in any similar offence or misused the liberty granted to them. No previous conviction of the appellants has been proved. Considering the facts and circumstances of the case, order on sentence is modified and sentence is reduced to RI for four years with fine of `1,000/- each under Section 394 read with Section 34 IPC. In default of payment of fine they shall undergo SI for one month each.

13. The appeal stands disposed of in the above terms. The appellants shall surrender before the Trial Court on 13.03.2013 to serve the remainder of their sentence. The Trial Court record be sent back immediately. (S.P.GARG) JUDGE
March 05, 2013 sa

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