

Vikas @ Kishore Vs. State

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Court : Delhi

Decided On : Jul-04-2013

Judge : S. P. Garg

Appellant : Vikas @ Kishore

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON : April 18, 2013 DECIDED ON : July 04, 2013 + CRL.A.1026/2011 VIKAS @ KISHORE Through : Appellant Mr.S.K.Sethi, Advocate. versus STATE Through : Respondent Mr.M.N.Dudeja, APP for the State. CORAM: MR. JUSTICE S.P.GARG S.P.GARG, J.

1. The appellant-Vikas @ Kishore impugns judgment dated 31.03.2010 in Sessions Case No.1008/2009 arising out of FIR No.220/2008 police station Ashok Vihar by which he was convicted under Section 394/34 read with Section 397 IPC. By an order dated 13.04.2010, he was sentenced to undergo rigorous imprisonment for seven years with fine `50,000/-.

2. Allegations against the appellant Vikas @ Kishore were that on 28.06.2008 at 04.30 A.M. he and his associates Ravinder @ Sudhir and Raju committed lurking house trespass at Nathu Rams House not L-196, Wazirpur, JJ Colony. They were armed with knives and in the process of committing robbery injured Nathu Ram when he raised alarm. He was injured on his head with knife by the appellant. His

associates robbed purse containing `60/- and an identity card. Vikas was apprehended at the spot. He attempted to flee; jumped from the first floor and sustained injuries. Ravinder and Raju were chased and apprehended at some distance. The police was informed. Nathu Ram was taken to hospital for medical examination. The Investigating Officer lodged First Information Report. He recorded statements of the witnesses conversant with facts. On completion of investigation, a charge-sheet was submitted against the appellant and his associates for committing offences under Section 458/394/34 IPC read with Section 397 IPC. They were duly charged and brought to trial. The prosecution produced 17 witnesses to establish the guilt. In statement under Section 313 Cr.P.C., the appellant pleaded false implication. He examined his mother Imarti Devi (DW-1) in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment convicted the appellant and his associates. Being aggrieved, the appellant has preferred the appeal.

3. Learned counsel for the appellant urged that the impugned judgment is unsustainable as the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses. No independent public witness was associated at any stage of the investigation. Material contradictions have emerged in the statements of PWs-1, 2 and 3 regarding the place of incident, location of bathroom and the place from where the appellant jumped. Site plan does not depict the place from where the appellant had jumped. Injuries sustained by the appellant have not been established and explained. Nathu Ram sustained only simple injuries. Knife allegedly used in the incident was never shown to the doctor to seek his opinion. The assailants had no motive to commit robbery as the complainant was a labourer working in subzi mandi and there were no valuable articles to be robbed. Moreover one of the associates of the appellant was handicap. The Trial Court ignored the defence version proved by DW-1. Learned Additional Public Prosecutor urged that the impugned judgment is based on fair appraisal of the evidence and needs no interference.

4. I have considered the submissions and have examined the Trial Court record. Daily Diary (DD) No. 7 (Ex.PW-6/A) was recorded on the night intervening 27/28.06.2008 at 04.30 A.M. at police station Ashok Vihar on getting information that the informants father had been stabbed. The investigation was assigned to ASI Devraj who with Constable Dharmender and Constable Uggarsain went to the spot. Victim Nathu Ram met him there. The appellant Vikas was also found sitting in the gali. He had sustained injuries as he jumped from the first floor of the house and the public had given beatings to him. PCR removed Nathu Ram to the hospital where he was medically examined. In his statement (Ex.PW-2/A) given to the Investigating Officer, victim Nathu Ram gave detail account of the incident. He disclosed that on the night intervening 27/28.06.2005 at about 04.30 A.M., he was present on the first floor of his house and got up for bathroom. At that time, three assailants entered inside the house and caught him when he came out of the bathroom. When he attempted to raise alarm, one of the assailants having a knife hit him on his head. His associates removed purse from the pant lying on the bed and it contained his identity card and `60/-. On hearing his noise, other family members got up and caught hold the assailant who inflicted injuries with knife on his head. His associates fled the spot and were apprehended at some distance after chase. The police was informed. While appearing as PW-2, in his court statement, Nathu Ram proved the version given to the police at the first instance without any variation. He identified Vikas, the assailant, who inflicted churra blow on his head. He denied the suggestion in the cross-examination that Vikas was caught in the gali. He volunteered to add that Vikas was caught in the staircase. PW-1 (Bunty) his son corroborated him on material facts. He deposed that at around 04.30 A.M. on hearing his fathers noise of bachao bachao he woke up and saw that his father had caught hold of a boy on the third floor stairs of the house. He also saw that his father has sustained stab injuries on his head and forehead. In the meantime, two persons started running from the stairs. They chased and apprehended them near nala. The boy who was in his fathers custody escaped and jumped from the first floor and got injuries. He identified Raju and Ravinder @ Sudhir the assailants who were apprehended after chase. Vikas was the assailant who had jumped from the first floor. In the cross-examination, he disclosed that he had no prior acquaintance with the assailants but had seen them roaming in the

area earlier. PW-3 (Mohan Lal), victims brother, also corroborated the testimony of PW-1 that after some chase Sudhir and Raju were apprehended by them. He also deposed about the presence of Vikas at the spot and he was taken to hospital for medical examination. It reveals that despite lengthy cross-examination, the appellant could not elicit any material discrepancies in the testimony of PWs-1, 2 and 3 to disbelieve them. Minor discrepancies highlighted by the learned defence counsel are not material to throw the prosecution case in its entirety. No motive was assigned to any prosecution witnesses to falsely implicate the appellant with whom none of them had any prior animosity or acquaintance. The appellant did not explain his presence at the spot at odd hours on the night intervening 27/28.06.2008. Her mother DW-1 disclosed in her testimony that due to failure of electricity at her residence on the day of incident, her son Vikas had gone out of the house. However, she did not elaborate as to where Vikas had gone. She did not lodge any complaint when Vikas did not return. Vikas had no valid reasons to travel to Ashok Vihar. Rather it shows that at the time of occurrence the appellant was not present at his house. He also did not explain how and under what circumstances, he sustained injuries. He was arrested at the spot. To escape and flee, he dared to jump from the first floor. The injuries sustained by him confirm his presence at the spot. PW-4 (Dr. Neeraj Chaudhary) proved Nathu Rams MLC (Ex. PW-4/A). The injuries sustained by him were opined simple caused by sharp object. As per local examination, there was sharp incised wound over forehead and sharp incised wound over parital region. There is no conflict between ocular and medical evidence. The Trial Court has dealt with all the relevant contentions of the appellant minutely in the impugned judgment. I find no irregularity or illegality in the said findings and are affirmed. I find no substance in the appellants plea to take lenient view. Nominal roll reveals that he is involved in another case vide FIR No. 27/2007 under Section 25 Arms Act, PS Ashok Vihar. The appellant with his associates committed lurking house trespass at night at the house of the complainant with an intention to commit robbery. The appellant and his associates were armed with deadly weapons. The innocent complainant was injured in the incident in his house for no fault of his. The Court can understand the trauma of the inmates who had to confront with strangers armed with weapons at odd hours. The appellant deserves no leniency.

5. In the light of the above discussion, the appeal lacks merits and is dismissed. The conviction and sentence are maintained. Trial Court record be sent back forthwith. (S.P.GARG) JUDGE July 04, 2013 sa

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