
(2009) 10 DEL CK 0061
In the Delhi High Court
Case No : Criminal App. 563 of 2009

Balmiki Mandal @ Chunnu

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Penal Code, 1860 (IPC) — Section 392, 397

Citation : (2010) 6 RCR(Criminal) 2552

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Sumeet Verma, Amicus curia, for the Appellant; Navin Sharma, APP, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.

Crl.M.A. 8972/2007 (for condonation of delay)

For the reasons stated in the application, delay is condoned.

Application stands disposed of.

Crl. App. 563/2009

1. This order shall dispose of the aforesaid appeal filed against the judgment of conviction and order of sentence dated 16.04.2009 passed by the Additional Sessions Judge, Delhi in S.C. No. 303/2006 arising out of FIR No. 96/2006 under Sections 392/397 IPC r/w Sections 27/54/59 of the Arms Act registered at P.S. Shalimar Bagh. By the impugned judgment, the appellant has been held guilty for the offence u/s 392 r/w Section 397 IPC and vide order of sentence he has been sentenced to undergo R.I for 7 years and also to pay a fine of Rs. 200/- and in default of payment of fine to further undergo S.I. for 7 days u/s 397 IPC.

No separate punishment was awarded to the appellant u/s 392 IPC. Benefit of Section 428 of Cr.P.C. has also been extended to the appellant.

2. Briefly stating, the facts of this case are that on 11.02.2006 complainant, Manoj Kumar (PW3), was going to Wazir Pur on Motor Cycle No. DL 8SW 9666 via Fatak No. 7, Kela Godown Road carrying Rs. 35000/- in a black colour bag. He also had some money in his pocket. At about 8.30 pm when he reached near Kela Godown and got down from the motor cycle to urinate, three boys came there and started beating him. One of the boys pointed knife towards him and asked him to hand over whatever he had. His co-accused snatched the bag from him and removed the purse from his pant pocket and the boy who was having knife stabbed on his abdomen. He shouted "Bachao - Bachao" and also caught hold of the leg of the boy who stabbed him. On hearing the shout of the complainant, the police reached at the spot and apprehended the boy (appellant herein), who was carrying the knife. However, other two boys succeeded in fleeing away from the spot. It was then the complainant/injured Manoj Kumar was removed to the hospital and the appellant was arrested in this case after registering the FIR on the statement of Manoj Kumar vide Ex. PW3/DA on 15.02.06 to the following effect;

Bayan kiya ki mein pata uprokt pe apne mata pita ke sath rehta hoon. Tatha padhai karne ke baad ab apne pit ke sath ik vyavasaye mein hath badhata hoon. Dinak 11.02.2006 ko mein samay karib 9 sava 9 baje raat ghar se 35,000/- (penti hazar rupaye) apne Eko ke driver va workeron ko kharcha den eke liye ek kale bag mein rakhkar apne kandhey va gale mein lagakar apni motorcycle libro YAMAHA No. DL8S w 9666 par bethkar vazirpur ke liye barista fatak No. 7 kela godam road se jaa raha tha us vakt kela godam par kafi andhera tha meri jeb pant ki pichli jeb mein mera purse jisme karib 400/500 ruapye va kuch card vagarah bhi the. Jab kela godam road ke antim choe pe pahunchne val tha ki mujhe peshab laga maine apni motorcycle uporokt khattey ke thoda pehle khadi ki tatha khatta ki sath wali jagah par khada hokar peshab karne laga. Paiso ka bag maine gale va kandhey ke beech mein daal rakha tha. Mein peshab puri tarah kar bhi nahin paya tha ki ? ladko ne achanak peeche se hamla kar diya tatha dhamkane lage ki jaldi se jot ere pass hein nikal. Mein kuch samajh pata usse pehle hi ek ladke ne mujhe ghoonsa mara tatha bag mere gale se nikalne laga maine virodh kiya to ek ladka jisko baad mein police ne moka pe pakad liya ne chaku kin nok meri aankh se saamne laga ke kehne laga kid eta hein ya "aankh kardū bahar" mein kuch samjh nahin paa raha tha tatha ghabra gaya tha. Doosre ladke ne mere gale se bag nikal liya tha va ek anya ladke ne meri pichli jeb se mera purse bhi nikal liya aur dono maar peet karne lage. Isi dauran kisi ke aane ki aahat hui jaise koi gadi car vagarah ho. maine chaku vale ladke ko dhakka diya jo gir pada maine vahan se bahar nikalna chaha itni der mein chaku vala ladka uthkar khad ho gaya tatha chaku ko poori takatse mere pet mein ghused diya meir cheekh nikal gayi va dard sahan nahin ho paya maine "bachao - bachao" ki awaz nikali tatha chaku vale ladke ki taang pakad lit hi mein niche gir chukka tha. mere shor macahne ko sunkar do ladke bhage bteesre ko maine

pakde rakha usi vakt PCR ki gaadi mauka pea a gayi aur unhone chaku sahit us ladke ko pakad liya mera khoon kafi matramein behne laga PCR wale mujhe apni van mein leta kar aspatal ki taraf dauda di tatha raaste mein doosri gaadi mein litaya jo uske baad mein behosh ho gaya. mujhe nahin pata baad mein kya hua jab hosh mein aaya to apne aap ko aspatal mein paya. un ladko ne lootne ke liye mujh par hamla kiya tha tatha chaku maara tha. Raat ko andhera hone ke karan mein unke chehre theek se nahin dekh saka magar kad kathi va bolne ke tarike se unko pehchan sakta hoon. Aaj aapne mera bayan likha jo sun va samajh liya theek hein.

3. After the completion of investigation, challan was filed in the court of Ld. MM, who committed the case to Court of Sessions. Thereafter, vide order dated 31.05.2006 the Ld. ASJ framed charges to which the appellant pleaded not guilty and claimed trial.

4. Prosecution examined 9 witnesses. PW1 Dr. Neeraj has proved the MLC of the injured. PW2 H.C. Surrender has proved the copy of FIR Ex.PW2/A. Complainant Manoj Kumar appeared as PW3 & supported his version but he was not able to identify the appellant. However, he had stated that he caught hold of the leg of that boy who stabbed him. ASI Ram Kishore was examined as PW4 who was at PCR van. He stated that he along with the other staff members while returning via Fatak No. 7, railway crossing Shalimar Bagh at about 9.35 pm heard the noise of "BachaoBachao". On hearing the noise they stopped their vehicle and saw one person attacking the victim with knife. PW4 along with PW6 apprehended the appellant and identified him as the same person who was assaulting the complainant at the spot. PW5 Constable Satender Singh has deposed that during the investigation he was with IO, S.I. K.P. Tomar (PW8) who went to B.C Block, Kela Godown, Shalimar Bagh where ASI Ram Kishore, incharge of PCR van, met them and produced the accused along with a knife. He proved the various documents and supported the case of the prosecution. PW8 Insp. K.P. Tomar is the I O of the case who deposed that he collected the MLC of Manoj Kumar who was declared unfit for statement and also recorded the statement of witnesses and after completing the investigation submitted the chargesheet. PW9 Dr. Ajay Sonakar who was the Head of the Deptt., Babu Jagjeevan Ra Hospital, has deposed that he had seen the MLC of the injured and the patient was further referred to Hindu Rao Hospital, from where the final report was to be given.

5. It is thereafter the statement of appellant was recorded u/s 313 Cr.P.C, wherein he denied the case of the prosecution and stated that he had been falsely implicated in this case after lifting him from his house. He initially wanted to lead defence evidence but has closed his defence without examining any witness. The Ld. Sessions Judge convicted the appellant u/s 397 IPC and sentenced him as aforesaid. Hence, the present appeal.

6. It is submitted by the appellant that the pivot of the prosecution story is the evidence of PW3 Manoj Kumar, who is also the complainant and injured in the

alleged incident of robbery. It is also submitted that PW3 has not identified the appellant as one of the robbers and has also not attributed any specific role to the appellant in the alleged robbery. Even the robbed money has not been recovered at his instance. It is further submitted that the prosecution has not disclosed the number of persons involved in the incident. As stated by Manoj Kumar there were three/four persons involved in the alleged incident but they have not been identified by the prosecution despite arrest of the appellant. It is also submitted that the reason of darkness assigned by the PW3 in not identifying the appellant is belied by the statement of PW4 who deposed that the area was well lit.

7. It is also submitted by learned Amicus Curiae that in the absence of identification by alleged victim, the case solely rests upon the testimony of police witnesses which should not be relied as both the police witnesses PW4 ASI Ram Kishore and PW6 Ramphal were only chance witnesses and their testimonies are also contradictory. It is submitted that as per PW4, appellant was stabbing the complainant/Manoj Kumar while no such role has been assigned by PW-6 in his statement. Regarding the recovery of knife there is no clear evidence. It is also submitted that despite the alleged place of occurrence being a crowded place, no public person has been joined in the investigation.

8. On the other hand, Ld. APP has supported the impugned judgment and has submitted that in the present case, injured PW3 Manoj Kumar has fully supported the prosecution's case. He also submitted that testimony of PW4 and PW6 about apprehending the appellant on the spot with the knife and handing him over to Police coupled with the statement of PW-3 clearly shows that it was the appellant who had committed the offence and caused injuries with the knife, which is a dangerous weapon in the commission of robbery, which was committed by him and his co-accused and therefore, he should be held guilty and accordingly his appeal should be dismissed.

9. I have considered the submissions made by learned amicus curiae for the appellant and the learned APP for the State and have also scrutinized the evidence available on record. I agree with the opinion formed by the Ld. Sessions Judge that PW3 was robbed and that he was stabbed and there was injury and active bleeding as alleged in the MLC. I find that prosecution witnesses have fully supported the statement of PW3 and the minor discrepancies are not important and do not affect the case of the prosecution. The other ground raised by complainant turned hostile is of no help inasmuch as MLC proved assault on the person of PW3. It is due to darkness the injured was not able to identify the assaulter. Reliance in this regard can be made on a judgment delivered by the Apex Court in *Surender Singh Vs. State of Haryana*, wherein based on similar facts it was observed:

6. So far the minor discrepancy, which has been pointed to us, we are of the view that it is not of such a nature, which creates infirmity in the prosecution's case. It is a well-established principle of law that every discrepancy in the

witness statement cannot be treated as fatal to the prosecution case. The discrepancy, which does not affect the prosecution case materially, does not create infirmity.

7. With regard to PWs 3 and 4 panch witnesses being turned hostile, this contention was also well considered by the trial court and the High Court. And both the courts held that their statements do not affect materially the prosecution story. PW 3 stated that pistol or cartridges or currency notes mentioned in Ext. PC were not recovered in his presence. He, however, admitted his signatures over Ext. PC and Ext. PD. PW 4 also stated that the pistol, cartridges or currency notes mentioned in Ext. PC were not recovered in his presence. He also admitted that Ext. PC and Ext. PD bear his signatures. Therefore, both the courts correctly held that Ext. PC and Ext. PD were recovered in the presence of PWs 3 and 4 who were panch witnesses.

9. The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes. Curiously enough even the injured witness PW 2 has turned hostile. Learned Counsel for the appellants strenuously urged that PW 2 Baldev Raj stated that the accused were not the persons who attacked him and, therefore, the appellants are entitled to the benefit of doubt. This submission was considered by both the trial court and the High Court and rejected, in our view, rightly. Although PW 2 was declared hostile, he has categorically stated that he had gone to Oriental Bank of Commerce, Gannaur, to deposit the amount. He has also stated that 4-5 persons attacked him. He has also stated that they gave knife-blows to him and snatched the bag from him. This statement is well corroborated by the injuries suffered by him on his person, which is proved by PW 5 as well as seizure of the bag along with the money. PW 2 even denied that he had gone to the bank with PW 9 Ramesh Batra. The statement of PW 2 was belied by the statement of PW 9 who categorically stated that he had gone to the bank along with PW 2 Baldev Raj.

10. It will also be appropriate to take note of the statement made by PW3 before the Ld. ASJ, which reads as under:

On 11/2/06 at about 8:30 P.m. I kept the cash amount of Rs. 35,000/ in my black colour bag and was going to Wazirpur on my motor cycle No. DL 8SW 9666 via fatak No. 7. Kela godown road. At that time I was also having a cash amount of Rs. 100/200 which were kept in bag pocket of my motor cycle near kela godown and I was carrying bag on my shoulder. I was about to attend the natural when 3 persons came there and started giving me beatings and also kept knife on my person and also asked me to hand over to them what I was having at that time. The said persons took my bag as well as purse from my pocket of the bag. In the course of snatching my purse and black coloured bag one of them stabbed knife in my abdomen and I raised alarm of bachao bachao. I fell down and I caught hold of legs of one person and remaining two had run away.

Meanwhile police reached there and I handed over the said person to the police and thereafter I was taken to the hospital by the police. I could not see any of the said persons as it was darkness. Even today I am unable to identify any of the said persons if shown to me.

11. Regarding the other grounds raised by the appellant, these have already been dealt with by the Ld. ASJ in the impugned judgment. The relevant paragraphs read as under:

14. The defence has also raised the issue during the cross-examination of PW-4 ASI Ram kishore, as to why they did not chase the boy, who fled away from the spot. In my opinion as there was one injured having injury in the stomach, saving the life of one person was more important at that time instead of chasing of one person, who had already fled away from the spot and that is why, PW-4 and PW-6 had done so.

15. So far as the question of recovery of knife is concerned, PW-4 and PW-6 specifically stated that they apprehended the accused. PW-6 stated that accused was having a knife and according to PW-5 Ct. satyender singh, the accused and knife were produced by ASI Ram kishore and that knife was also recovered from the accused. According to PW-8 Ins. K.P. Tomar, accused was produced by PCR Officials along with knife and PW-88 further stated that knife was handed over to him by PW-6 ASI Ram kishore. No doubt, there is small contradiction as to who handed over knife to the IO, but in my opinion that does not make much difference, when both the witnesses stated that accused was apprehended with knife and PW-5 and PW-8 stated that knife was produced by PCR Officials.

16. Learned defence counsel had also raised the issue that area was well-lit according to PW-4, but PW-3 stated that it was dark there. PW-3 was urinating and according to the site plan, it was in a corner. The area may be well-lit, but still there may be some corner as deposed by PW-3 that it was dark in that corner, where he was urinating and hence he was not able to see the faces of the assailants. This is not a material contradiction, which can shake the root of the prosecution case.

17. From the above discussion and the evidence collected on record, I am of the considered opinion that the accused is the person, who along with his co-accused robbed PW-3 Manoj Kumar of his bag containing Rs. 35000/- and also stabbed him with a knife, causing injuries to him as is evident from the MLC Ex. PW-1/A. I, therefore, hold the accused guilty u/s 392 read with Section 397 IPC and convict him accordingly.

12. Having gone through the record of the case and the judgment delivered by the Trial Court who has dealt with all the issues which have simply been reiterated before this Court and considering the statement made by PW3 Manoj Kumar, it is clear that he was robbed by the appellant along with others on the spot. He also inflicted knife injury on the appellants. The Ld. ASJ has rightly appreciated the statement of Manoj Kumar in these circumstances who has

reiterated the statement made before the police. His statement is also supported by PW4 & PW6. Moreover, the appellant has failed to substantiate his evidence or to prove that he has been falsely implicated. Therefore, taking into consideration the facts and circumstances of the case, I uphold the conviction of the appellant.

13. I also do not find any reason to interfere in the order of sentence awarded to the appellant. It is a case of robbery where the appellant along with other co-accused persons robbed the complainant by using a knife and even caused injury on the person of the complainant.

14. Accordingly, the appeal is dismissed. Copy of the order be sent to the appellant through Jail Superintendent and to the trial court with TCR. The fee of the amicus curiae is fixed as Rs. 4000/-.

Crl.M.B. 900/2009

In view of the aforesaid, this application also stands dismissed.