

(2009) 11 DEL CK 0229

In the Delhi High Court

Case No : Criminal Appeal No. 633 of 1999 and Criminal M.B. No. 564 of 2009

Hardwari Lal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Arms Act, 1959 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 307, 323, 326, 34

Citation : (2009) 164 DLT 325 : (2010) 6 RCR(Criminal) 2088

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : R.S. Gupta, for the Appellant; R.N. Vats, APP and S.I. Manohar Lal, I.O., for the Respondent

Judgement

V.K. Jain, J.—This is an appeal against the Judgment and Order on Sentence, both dated 30.10.2009 whereby the appellant was convicted u/s 307/34 of IPC and was sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs. 1,000/- or to undergo simple imprisonment for one month in default.

2. The case of the prosecution is that on 07.11.1996, at about 8:30 p.m., complainant Sarabjeet Singh, accompanied by his mother Smt. Joginder Kaur was going to Rani Bagh in a cycle rickshaw. When they reached near a railway crossing, they found the railway crossing closed. One boy came from behind the rickshaw and gave a hand on the ear of his mother. When he prevented him, the boy started running towards trees. The complainant chased him. After some distance, 2-3 companions of that person caught hold of the complainant. One of them gave a knife blow on the left side of his chest whereas the other one gave a blow on his back. The assailants ran away after causing injury to him. He was brought to the hospital and was admitted there.

3. The case of the prosecution is that appellant Hardwari Lal is the person who had given knife blow to the complainant.

4. The learned Counsel for the appellant did not submit any argument on merit of the conviction and only sought reduction of sentence to the period already undergone by the appellant in jail. This, however, being a First Appeal, it becomes duly of this Court to examine the matter, to satisfy itself, as to legality of the conviction, on the basis of evidence led during trial.

5. During trial, the complainant came in the witness box as PW-4 and stated that on 07.11.1996 when they reached railway crossing while travelling on a rickshaw, the crossing was found closed and there was a traffic jam at the crossing. The rickshaw puller had therefore to stop awaiting clearance of the traffic and opening of railway crossing. One person snatched the golden ear ring which his mother was wearing and started running towards the jungle near the road. He chased him. Suddenly, 2-3 persons came there and one of them stabbed him firstly on the chest and then on the back. He identified appellant Hardwari Lal as the person who had stabbed him. According to him all the accused persons managed to run away, after causing injury to him.

6. The mother of the complainant Smt. Joginder Kaur came to the witness box as PW-6 but since she was not a witness of the injuries caused to the complainant, she identified only the co-accused of the appellant, namely Anish, who had snatched her ear-rings.

7. In his statement u/s 313 of Cr. P.C., the appellant denied the allegations against him.

8. PW-4 Sarabjeet Singh is the only witness produced by the prosecution to prove the identity of the appellant as the person who gave knife blows to him. Admittedly, the appellant was not previously known to the complainant. Admittedly, the appellant was not apprehended on the spot. A Test Identification Parade was conducted by the Learned Metropolitan Magistrate during investigation. The complainant did not identify the appellant during Test Identification Parade.

9. It is settled proposition of law that when the accused is not previously known to the witness, and is not apprehended on the spot, there is no evidence to corroborate identification during trial, and there are no special features in the testimony of a witness, which persuade the court to accept identification in the court, even without any corroborative evidence, it is obligatory for the prosecution to get his identity verified in a Test Identification Parade.

10. In Munna Tuin Vs. District Magistrate, Lucknow and Others, the witness did not know the accused before the occurrence and no TIP was held to test his power of identification. It was held that the evidence had become absolutely valueless on the question of identification and could not be relied upon.

11. In Mohd. Abdul Hafeez Vs. State of Andhra Pradesh, the victim did not give any description of the accused in the FIR No. TIP was held. The accused was held guilty on the identification in the court by the victim after four months of

occurrence. It was held that the conviction was not sustainable.

12. In *Hari Nath and Another Vs. State of U.P.*, it was held by the Hon''ble Supreme Court that in a case where eye witnesses did not know the appellant before the occurrence, identification of the accused for the first time in the dock after a long lapse of time, would have been improper. The following passage from Halsbury's Law of England was recalled:

It is undesirable that witnesses should be asked to identify a defendant for the first time in the dock at his trial; and as a general practice it is preferable that he should have been placed previously on a parade with other persons, so that potential witness can be asked to pick him out.

13. In *Vaikuntam v. State of A.P.* 1960, Cri. IJ. 1681, the Hon''ble SC, inter alia observed as under:

it is true that when he came to give evidence in court, the witness did point out to the same three accused as having been seen by him at the time of the murder. It is also true that the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding. There may be exception to this rule where the court is satisfied that the evidence of a particular witness is such that it can safely rely on it without the precaution of an earlier identification proceeding.

14. In *Budhsen and Another Vs. State of U.P.*, , the Hon''ble Supreme Court, inter-alia observed as under:

The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, seems to be to rest and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration.

15. In *V.C. Shukla and Others Vs. State (Delhi Administration)*, , a three Judge Bench of the Hon''ble SC held that identification by the witness for the first time in the court, without being tested by a prior T.I.P., was valueless.

16. In *State of Maharashtra Vs. Sukhdeo Singh and another Vs. State of Maharashtra Through C.B.I. Vs. Sukhdev Singh alias Sukha and others*, , the Hon''ble SC, inter-alia observed as under:

In the case of total strangers, it is not safe to place implicit reliance on the evidence of witnesses who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in Court.

17. It was held by the Hon^{ble} Supreme Court in *George v. State of Kerala* 1988 (2) JCC 1927 that though not fatal, absence of corroborative evidence of prior identification in a TIP makes the substantive evidence of identification in court after a long lapse of time, a weak piece of evidence and no reliance can be placed upon it unless sufficiently and satisfactorily corroborated by other evidence. "

18. In *Kanan and Others Vs. State of Kerala*, the accused was not previously known to the witness and nor know Test Identification Parade was held. It was held that it would not be safe to rely on identification for the first time in Court. Similar view was taken in *Deputy Commissioner of Agricultural Income Tax and Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Aluminium Industries Ltd., Kundara*, , which was a case u/s 326/323/34 of IPC.

19. In his cross-examination, the complainant has stated that he did not identify the accused persons during TIP as they had shown threatening eyes to him. This part of the deposition of the complainant cannot be accepted for the simple reason that no such complaint was ever made by him either to the Magistrate who held the Test Identification Parade or to the Investigating Officer at any point of time. What is material is that the complainant failed to identify the appellant during Test Identification Parade. In fact the facts and circumstances of the case indicate very little likelihood of the complainant having properly seen the person who gave knife blows to him. This is his own case that the incident of stabbing took place in a jungle. In cross- examination, he admitted that it was dark at that time. He claims to have seen the assailants in the light of the vehicles passing from there. At the time the vehicles are waiting for railway crossing to open, their headlights would be towards the railway crossing and not on the jungle on the sides of the roads. Therefore, it is difficult to expect that the complainant was able to see the assailants in the light of vehicles. It is note worthy that according to the complainant the incident of stabbing took place at the distance of about 100 meters from the crossing and there was darkness in the jungle except the light of the passing vehicles. The complainant has admitted that there was no electric poll at the place where the incident of stabbing takes place. It was also stated by the complainant that he saw the assailants in the light of the vehicles which were moving on an over bridge/flyover. As some light was coming from there. According to him that fly over was a distance of about 50 meters from the place where the incident took place. Since the headlights of the vehicles would be towards the direction in which they are moving, it is unlikely that a person, running at a lower level, 50 meters away from the fly over, could have seen the assailants in the light of the vehicles moving on the fly over, When the jungle in which the incident took place was on the side and at a

lower level. This is more so when according to the witness he was chasing one of the assailants when 2-3 persons came on a sudden and one of them gave a knife blow to him. While chasing the person who had snatched the ear-ring of his mother, the attention of the complainant would be only on that person, as he could not have known that his associates will come from nowhere and give him knife blows. It would be difficult for him to properly set those persons when he did not engage himself with them and did not have any scuffle with them, which might have given him an opportunity to have a close look at them. In fact, these very circumstances explain the inability of the complainant to identify the appellant during Test Identification Parade.

20. The identification of the appellant during trial could have been acceptable to establish his identity had there been some corroborative evidence to connect him with the commission of the offence. Admittedly, the stolen case property was not recovered from him. The case of the prosecution is that one knife was recovered from the possession of the appellant when he was arrested. There is no evidence to show that injuries to the appellant were caused from that very knife. What is more important is that the trial court has disbelieved the alleged recovery of knife from the appellant and has acquitted him of the charge u/s 25 of the Arms Act. No Cross Appeal has been filed by the prosecution against the acquittal of the appellant for the charge u/s 25 of the Arms Act.

21. For the reasons stated in the preceding paragraphs, I am of the considered view that the identity of the appellant could not be established beyond reasonable doubt. He is, therefore, given benefit of doubt and is hereby acquitted.